

**AUDIT OF KEY LEGISLATION IN GHANA  
FOR  
INFORMATION ACCESS OPPORTUNITIES**

**Report of the Findings**

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## ACRONYMS

|        |   |
|--------|---|
| A-G    | Attorney-General                                      |
| AU     | African Union   |
| CHRAJ  | Commission on Human Rights and Administrative Justice |
| DA     | District Assembly                                     |
| ECOWAS | Economic Community of West African States             |
| GPRS   | Ghana Poverty Reduction Strategy                      |
| IGP    | Inspector General of Police                           |
| LGA    | Local Government Act                                  |
| LI     | Legislative Instrument                                |
| MDAs   | Ministries, Departments and Agencies                  |
| MP     | Member of Parliament                                  |
| MTEF   | Medium Term Expenditure Framework                     |
| NDPC   | National Development Planning Commission              |
| PAC    | Public Accounts Committee                             |
| PIPS   | Police Intelligence and Professional Standards        |
| RTI    | Right to Information                                  |
| SMTDP  | Sectoral Medium Term Development Plans                |
| UN     | United Nations  |

## LIST OF CASES

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## **BACKGROUND**

The focus of this research is to examine existing Ghanaian sources of law relating to access to information. While article 21(1)(f) of the Constitution of the Republic of Ghana guarantees every person “the right to information subject to qualifications and such laws as are necessary in a democratic society,” there is no enabling legislation relating to the subject of access to information yet. At the time of writing this report, a Right to Information (RTI) Bill is under consideration by Parliament. In the absence of such an enactment, however, there are sources of law that support, facilitate or grant access to certain government documents, and information on public officials and political figures, etc. These are found in the Constitution itself, Acts of Parliament, subsidiary legislation, etc. It is hoped that a collation of this information can serve a useful purpose for civil society activists in their efforts to access critical information which may be used to hold government accountable and to make claims and demands on the government as well as relevant non-state actors.

While they can be used in the interim, pending the passage of a RTI law, they can also be used as a standard to measure the access rights that the new law would guarantee Ghanaians. Identifying these provisions is also useful for the purpose of harmonising all access provisions into a uniform access regime when the proposed RTI Bill becomes law.

### **Areas of Focus**

The focus areas for the report are:

- Laws governing police functions;
- Legislative and budgetary processes in the Parliament of Ghana;
- Declaration of assets and liabilities of political leaders and public officials; and
- Local government systems.

In fulfilment of the above task, the work involved:

1. Research and compilation of information access provisions in the laws and enactments relating to the themes mentioned above.
2. Research and compilation of subordinate legislation in the form of rules, regulations, guidelines, instructions, executive orders, office memoranda, etc. relating to the operationalisation of information disclosure provisions relating to the four themes mentioned above;
3. Research and compilation of the operative parts of any decisions of the Supreme Court of Ghana during the last 10 years relating to disclosure of information on any of the four themes mentioned above;
4. Detailing the systems and procedures established within public authorities for disclosure of information relating to the four themes mentioned above.
5. Preparing a high quality report of the findings of the audit in English targeting civil society actors.

## Research Methodology

The work involved desktop and library research to identify and review the relevant laws and literature that relate to access to information. This was followed by doctrinal research and analysis of the provisions in the various sources of law identified and the extent to which they could be used to access information. Also, practical ways to access information relying on these provisions were examined, as well as the challenges that lie in the way of using these provisions to access information.

In addition, empirical research through elite interview was conducted. The goal was to obtain information and solicit opinions on the practical application of some of the provisions identified above as well as some administrative procedures which particular institutions of government may adopt to facilitate access to information. Interviewing took the form of verbal conversations and instantaneous writing of notes.<sup>1</sup> Information gathered was analysed and conclusions drawn.

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<sup>1</sup> Names and or positions of people who were interviewed are directly attached to the particular areas of the report where their views were provided and incorporated.

## RIGHT TO INFORMATION – INTRODUCTION

Right to Information (RTI) is an important and critical component of the right to freedom of speech and expression. Ghana's Fourth Republican Constitution recognises the right of "all persons to freedom of speech and expression, which shall include freedom of the press and other media."<sup>2</sup> Further to that, the Constitution expressly recognises, for the first time in Ghana's constitutional history, the right of all persons to enjoy "the right to information, subject to such qualifications and laws as are necessary in a democratic society."<sup>3</sup>

Though it seems to be a recent addition or extension of freedom of expression, in practice, RTI has been and is considered one of the ingredient rights which makes the attainment and enjoyment of freedom of expression possible. In other words, one has to have access to the needed information before he/she can form an opinion around it and express it beyond the self to reach a recipient or audience. Also, an expression of opinion involves simultaneous impartation of information to another entity. Thus, without RTI, an idea cannot be developed and expressed. In a nutshell, RTI is inherent in the right to freedom of expression.

It is of interest to note, in this context, that John Humphrey groups together the various nomenclatures relating to freedom of expression, such as freedoms of opinion, communication and the press together as "freedom of information."<sup>4</sup> However, freedom of information, strictly speaking can be defined loosely as the right to be informed, to scrutinize information, and know what an entity (in most cases, the government) is doing, has done or is likely to do and why. Seen in this light, RTI serves as the bedrock to ensuring transparency, openness and accountability in the society, particularly on the part of government. Its separate and specific recognition is to reinforce the fundamental importance of freedom of expression and to facilitate its enjoyment.<sup>5</sup>

### Sources of Law in Ghana and the Place of RTI

Article 11(1) of the Constitution of Ghana identifies five main sources of law for the country in this order:

- (a) the Constitution;
- (b) enactments made by or under the authority of the Parliament established by this Constitution;
- (c) any Orders, Rules and Regulations made by any person or authority under a power conferred by this Constitution;
- (d) the existing law,<sup>6</sup> and
- (e) the common law.<sup>7</sup>

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<sup>2</sup> Article 21(1)(a).

<sup>3</sup> Article 21(1)(f).

<sup>4</sup> J. Humphrey, "Political and Related Rights", in Theodor Meron, ed., *Human Rights in International Law*, (Oxford: Clarendon Press, 1984), 171 at 183.

<sup>5</sup> See, for example, *Republic v Mensa-Bonsu and Others; Ex Parte Attorney-General* [1995-96] 1 GLR 377 SC, discussed below where a journalist had to seek and obtain the judgement of a particular Supreme Court judge and used it to criticise the judge in his newspaper. Unfortunately for him though, it was held that the information was not properly obtained. Also, by a thin majority it was decided that the journalist overstepped the limits of freedom of expression.

<sup>6</sup> Existing laws "comprise the written and unwritten laws of Ghana as they existed immediately before the coming into force of this Constitution, and any Act, Decree, Law or statutory instrument issued or made before that date, which is to come into force on or after that date." (Article 11(4) of the Constitution).

Embedded in these laws of the land are provisions which relate to RTI. As the Constitution is the supreme law of the land, it provides the foundation for the exercise and enjoyment of RTI by expressly recognising this right under article 21(1)(a). Therefore where the laws of the land provide for the society to contribute to governance through participation (voting and standing for office, staying informed, making elected government accountable, etc), it is indirectly referring to a reliance on RTI which will serve as the vehicle to providing the conducive, facilitative means to perform these functions and duties.

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<sup>7</sup> Article 11(2) of the Constitution stipulates that “[t]he common law of Ghana shall comprise the rules of law generally known as the common law, the rules generally known as the doctrines of equity and the rules of customary law including those determined by the Superior Court of Judicature. Article 11(3) provides a definition for customary thus: “For the purposes of this article, “customary law” means the rules of law which by custom are applicable to particular communities in Ghana.



## POLICE FUNCTIONS

The Police Service is established under article 200(1) of the Constitution. Article 200(3) provides that the Service “shall be equipped and maintained to perform its traditional role of maintaining law and order” in the country. The functions of the Police Service are spelled out under section 1(1) of the *Police Service Act, 1970* (Act 350),<sup>8</sup> which are, “to prevent and detect crime, to apprehend offenders, and to maintain public order and the safety of persons and property.”<sup>9</sup>

The Police Service is considered part of the public service.<sup>10</sup> Police officers are also public office holders or public officers.<sup>11</sup> Therefore, apart from specific provisions relating to the Police, other provisions referring to “public service” or “public office” generally are also applicable to the Police.

Among the legal provisions and customary norms that relate to police functions and access to information are the following:

1. The Constitution, 1992
2. The *Police Service Act, 1970* (Act 350) (Codes & Conducts);
3. Legislative Instruments (LIs) attached to Act 350;
4. Police Service Instructions;
5. Police Intelligence and Professional Standards (PIPS).<sup>12</sup>

### Judicial Review/Interpretation of the Constitution

Article 2 of the Constitution confers a right on any citizen of Ghana to access the Supreme Court to demand an interpretation of the Constitution where an act by a person or authority, or an enactment, is alleged to have been made *ultra vires* the Constitution. The declaration made by the Supreme Court is a vital source of information. More directly, where, for example, a Police Officer, as a public officer, is under a duty to provide some information and fails to do so, any citizen can go by way of articles 2 and 130, to among others, compel the officer to perform his legally-assigned job.

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<sup>8</sup> Of the various pieces of legislation, the single most important legislation governing the police service is the *Police Service Act, 1970* (Act 350). The Act deals with the functions of the police, the structure and conditions of service, misconduct and unsatisfactory service, complaints and offences, the Volunteer Police Reserve, etc.

<sup>9</sup> Further discussion on the functions of the Police Service under the *Police Service Act, 1970* is provided in the sections that follow.

<sup>10</sup> According to article 190(1)(a) of the Constitution, “public service” includes service in any civil office of Government, the emoluments attached to which are paid directly from the Consolidated Fund or directly out of moneys provided by Parliament and service with a public corporation.

<sup>11</sup> “Public office” includes “an office the emoluments attached to which are paid directly from the Consolidated Fund or directly out of moneys provided by Parliament and an office in a public corporation established entirely out of public funds or moneys provided by Parliament. See article 295(1) of the Constitution. This could be explained in simpler terms as follows, that a ‘public office’ means an office or position in a government body or public sector corporation which is funded by the taxpayer’s money and which has been established for the purpose of performing one or more functions to benefit the people of Ghana.

<sup>12</sup> Interview conducted by Mr. Asumah Karikari of an officer at the Public Relations department, Police Headquarters, Accra.

## Information Relating to Arrest of a Suspect

A person who is arrested by a police officer for having allegedly committed an offence must be notified of the cause of the arrest, unless the person was arrested in the course of committing the act. All officers, apart from undercover investigators, are supposed to display their name-tags on their uniform while on duty, including while making arrests. Alternatively, they are supposed to show their badges.<sup>13</sup> Where the person is arrested by a warrant of arrest, he/she shall be informed of the contents of the warrant and shown the warrant if so required.<sup>14</sup>

An arrest made without showing cause for the arrest is considered illegal and may entitle the suspect to lawfully resist the arrest.<sup>15</sup>

### **CASE #1:**

#### **Asante v The Republic [1972] 2 GLR 177 (HC)**

Upon a complaint by K. that the appellant had assaulted her, an escort police constable was detailed to go with K. to invite the appellant to the police station. When they found the appellant, the constable showed his identity card and invited the appellant to the station. There was no evidence that the constable at any time told the appellant why he was wanted. The appellant refused to go and the constable therefore seized the ignition key of the appellant's lorry, thus preventing him from driving away. In his attempts to retrieve his keys, the appellant knocked the constable down, and whilst he was on the floor kicked him, injuring him and damaging his trousers. The appellant was convicted of two charges of assault of a police officer and of causing damage to the property of the same.

At page 179 of its decision, the Court held, *inter alia*, "[s]ection 10 (a) of the *Criminal Procedure Code, 1960* (Act 30), empowers a police officer to arrest, without a warrant, any person whom he reasonably suspects of having committed a felony or misdemeanour, but the person to be arrested must first have been put under lawful arrest. In the instant case, the police officer failed to put the appellant under lawful arrest by informing him of the cause of the arrest, and was not therefore legally acting in execution of his duty as a police officer but was committing on the appellant an assault by imprisonment within Act 29, s.88 by confining him to the area bounded by the body of his vehicle, and it is irrelevant that K., the complainant, was present at the scene of the arrest."

Upon arrest the suspect is then to be taken to the nearest police station or detention centre. At the police station or detention centre the arrested person shall be informed by the police officer who effected the arrest details of the charges preferred against the suspect, the person's right to a lawyer<sup>16</sup> and his/her right to remain silent in order not to give any incriminatory evidence against him/herself.<sup>17</sup> The information must be provided in the language in which the suspect understands.<sup>18</sup> This information is vital towards protecting the suspect's right to dignity and to ensure his/her right to a fair trial should he/she be arraigned

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<sup>13</sup> Interview conducted at Police Headquarters by Mr. Karikari.

<sup>14</sup> Section 7, *Criminal and Offences (Procedure) Act, 1960* (Act 30).

<sup>15</sup> See **Asante v. Republic** [1972] GLR 177 at 179.

<sup>16</sup> It is not mandatory, however, for police stations to display a list of lawyers or legal aid organisations whose assistance can be sought by accused persons who are indigent and cannot afford a lawyer on their own.

<sup>17</sup> Section 9, Act 30

<sup>18</sup> See Article 19 of the Constitution.

before court. Provision of this information is mandatory and is not to be demanded before being granted.<sup>19</sup>

Where such information is not given any statement made by the suspect may not be admitted in evidence to support the prosecution's case against the accused. It could also lead to the dismissal of the case.<sup>20</sup> It is important to note, though, that the mere provision of information by the Police may not be enough, particularly where the information/decision is exercised in a discretionary manner and reasons may not have to be given and the decision is not subject to review or appeal.<sup>21</sup>

### **CASE #2:**

#### **Appiah v The Republic [1997-98] 1 GLR 219 (SC)**

The applicant was the special prosecutor of the special tribunal set up under the *Armed Forces Revolutionary Council (Special Tribunal and Other Matters) Decree, 1979* (AFRCD 23). He was subsequently convicted by the Circuit Court, Accra, of extortion contrary to section 239(11) of the *Criminal Code, 1960* (Act 29). His appeal against both his conviction and sentence was allowed by the High Court. An appeal by the Republic from that decision was however allowed by the Court of Appeal which restored the judgment of the circuit court.

An appeal by the appellant to the Supreme Court from the decision of the judgment of the Court of Appeal was dismissed on the ground, *inter alia*, that the prosecution had successfully proved all the ingredients of the offence of extortion at the trial before the circuit court. Eight years after the dismissal of the appeal, and after the applicant had served his sentence, he brought an application before the Supreme Court, under the court's inherent jurisdiction, to set aside his conviction and sentence on the ground that the courts that tried him had no jurisdiction to try him. In support of his application he contended that: (a) the charge sheet for his trial was defective in that it did not state the date and place of the alleged commission of the offence of extortion; and (b) there was no act or omission alleged in the charge sheet as proved to have been done in Ghana.

In dismissing the application, the Court held, *inter alia*, "[t]he proviso to section 26(12) of Act 372 provided for the dismissal of an appeal based on grounds of defect or error in the charge sheet, provided there was available evidence to support the offence alleged in the statement of offence, or any other offence of which the accused could have been convicted. Accordingly, in the instant case, even if the charge sheet before the trial circuit court was defective, i.e. for failing to disclose the date and the place where the offence had been committed, since all the essential elements of the charge of extortion were proved against the appellant, that defect could not subvert the jurisdiction of the trial circuit court."

A suspect has the right to contact his family or friends about his arrest to arrange for bail or access a legal counsel.<sup>22</sup> Information about the arrest is provided to the court upon the arraignment of the suspect. Before then, the suspect's lawyer may access a copy of the statement given by his/her client.

Alternatively, a case of alleged offence can be reported directly to a Magistrate. The Magistrate may proceed to issue a summons compelling the accused to appear before the court to answer the charges preferred against him. The summons, according to section 62(3)

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<sup>19</sup> See Article 14 of the Constitution.

<sup>20</sup> See *Appiah v The Republic* [1997-98] 1 GLR 219.

<sup>21</sup> *New Patriotic Party v Inspector-General Of Police* [1993-94] 2 GLR 459 (SC). See details below.

<sup>22</sup> Section 9, Act 30.

of Act 30, shall contain the offence with which the person against whom it is issued is charged.

The accused has the right to the following information/documents before his trial: the cause of his/her arrest; the information on the warrant of arrest; the charge sheet containing the charges preferred against him or the summons issued by the court, which also contains the statement of offence. The accused, in addition, has the right to access detailed information from the prosecution through the court process by having the opportunity to cross-examine witnesses<sup>23</sup> and to have access to an interpreter where necessary to help obtain the needed information.<sup>24</sup>

A suspect who is arrested without warrant but not released or charged within 48 hours has to be brought before court to know the reason for the arrest or the charges preferred against him.<sup>25</sup> A breach of this rule constitutes a violation of the accused's fundamental rights which may occasion his/her immediate release by a judge or magistrate.

The Police Service Instruction provides that, if an arrest is made of a person employed by a commercial firm, mining company, or any other non-governmental undertaking, as a matter of courtesy, the Manager of the Company shall be informed by the officer making the arrest at the time of the arrest.<sup>26</sup> The Instruction also notes that where a non-Ghanaian is arrested, his/her embassy has the right to know the charge or the reasons for the arrest through an interview of the suspect.<sup>27</sup> With regard to the first, no remedy is necessarily available as it is supposed to be done out of courtesy. However, in the second instance, it will constitute a breach of Ghana's international obligations for a representative of the Police Service not to inform the embassy.<sup>28</sup>

An officer who is placed in charge of a police station is mandated to report monthly to the nearest District Magistrate the cases of the persons arrested without warrant within the limits of the area of authority of the police station and not subsequently charged with an offence, whether those persons have been admitted to bail or not.<sup>29</sup>

There is a police control room where people can call and obtain basic information on the police, to report crime or how to respond to crime in one's home or community.

Access to court documents is not automatic. Section 70(1) of the *Courts Act, 1993* (Act 459) stipulates that obtaining such information is subject to the Constitution, a rule of court or other enactment. The Constitution provides for access by an accused person, after prosecution, to a copy of his/her record which may include all the information relating to the court proceedings as well as documentary evidence used to prosecute the case. This is an important piece of information which the accused or his representative is entitled to, upon request and which request should be granted within 6 months from the time of demand.<sup>30</sup>

Section 70(2) provides that where information can be granted, the person demanding it should be one affected by the judgment or court order and a fee has to be paid to obtain the information, unless it is waived by the Court. In the *Mensa-Bonsu* case (discussed below), the Supreme Court specified that demand for such information has to be channelled through the Registrar of the Court or the information obtained may be considered as illegally or

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<sup>23</sup> Article 19(2)(g).

<sup>24</sup> Article 19 (2)(h).

<sup>25</sup> Article 14(3)(b) of the Constitution and section 14 of Act 30.

<sup>26</sup> Instruction No. 166 at para 7.

<sup>27</sup> *Ibid.*, at paras. 10-12.

<sup>28</sup> Article 36 of the Vienna Convention on Consular Relations.

<sup>29</sup> Section 16 of Act 30.

<sup>30</sup> Article 19(4).

improperly obtained. The **Mensa-Bonsu** case, however, seems to indicate anybody at all may access a judgement or court order.

### **CASE #3:**

#### **Republic v Mensa-Bonsu And Others; Ex Parte Attorney-General [1995-96] 1 GLR 377 (SC)**

After the Supreme Court had delivered its judgment in the case of **New Patriotic Party v Attorney-General** (subsequently reported in [1993-94] 2 GLR 35 (SC)) the first respondent, a legal practitioner and a columnist of the Free Press newspaper obtained through the Deputy Judicial Secretary a copy of the judgment (exhibit MB1) delivered by Justice Abban – a member of the panel.

Subsequently, the first respondent wrote to Justice Abban that a statement praising the coup d'état of 24 February 1966 which had been published in the Daily Graphic newspaper of 24 February 1970 and which the justice had attributed to Dr K A Busia at page 28 of his judgment was in fact the editorial opinion—"Graphic View"—of the newspaper and called on the justice to offer an explanation for the mistake. He attached a photocopy of the publication to his letter. He copied that letter to the Chief Justice and then published a copy in his column in the Free Press of 13 May 1994. An article in that issue of the Free Press entitled "Justice Abban is a Liar" accused the justice, *inter alia*, of displaying political chicanery and bamboozlement of Ghanaians by his conduct.

Some time later, the registrar of the Supreme Court (L) on the directions of the Chief Justice wrote to the first respondent and informed him that from the certified true copy of the judgment of Justice Abban (exhibit CTC) the justice had at page 28 attributed the statement in question to the "Graphic View" and he enclosed a copy of the page in the letter. In the Free Press of 20 May 1994, however, in an article headed "Judicial Chicanery" the first respondent alleged, *inter alia*, that by his conduct Justice Abban had indulged in "judicial chicanery", "plain falsehood", and had used the bench for "politics of undisguised partisan nature" and "done violence to the truth."

Moreover, in his reply to the registrar of the Supreme Court, the first respondent alleged that Justice Abban had altered the text of what he had read in court to meet his criticism. After attempts to have the issue resolved through the Media Commission failed, lodged a complaint against the three respondents with the police. After the police had taken statements from them, the Attorney-General brought a motion for an order to attach the first and second respondents for contempt of court and for the third respondent to pay a heavy fine and the costs of the proceedings.

In granting the application, the Court held, *inter alia*, "[a]lthough under CI 13 the registrar was defined to include the Judicial Secretary, on the evidence, the Deputy Judicial Secretary had never been in possession of the judgments of the court. Accordingly, the registrar of the Supreme Court was the person entitled to proper custody of the judgments and the one to whom applications for copies had to be made. And besides, since under section 162 of the Evidence Decree, 1972 (NRCD 323) a certified copy of any document was presumed to be genuine, the certified copy of the judgment of Justice Abban (exhibit CTC) was the only correct, admissible and acceptable judgment. On the evidence, however, and contrary to the provisions of section 70(2) of the *Courts Act, 1993* (Act 459), the first respondent was not the only one who had not been affected by the judgment of the Supreme Court but had also not made any written or oral application to the court for a copy of the judgment of Justice Abban nor had he been exempted from paying any costs therefore. In the circumstances, the conduct of the first respondent with respect to obtaining the judgment of Justice Abban and publishing it was a contempt of court since it was an interference with the rules and processes of the Supreme Court."

Notably, the Court also held, "[f]reedom of expression was essential to the achievement and maintenance of a democratic society. Accordingly, the press might criticise in

matters of public interest. That right was however not absolute but subject to the limitation that it did not violate the integrity of the court or present a threat to judicial authority. Thus even though trenchant criticism of a judgment was permitted, scurrilous abuse of a judge as a judge by the imputation of unfairness and impartiality, as in the instant case, was not and would thus constitute contempt of court. Accordingly, in the instant case, the defence of fair criticism would not ensure to the benefit of the respondents.”

In the case of homicide, an inquiry into the cause of death will be made by a coroner. The report is then submitted to the High Court<sup>31</sup> as evidence in the case. Persons not connected to a criminal case cannot access case papers either during or after the trial. Where the police, after investigation, decide to close a case for lack of sufficient evidence to bring the accused person to trial, the victim of such an offence (if any) is entitled to be informed of the outcome of the investigation.

Under the *Public Order Act, 1994* (Act 491), which came about following the decision in the case of ***New Patriotic Party v. IGP*** (discussed below), before an individual or group may exercise their freedom of assembly (e.g., organising demonstrations) they must notify the Police within the relevant jurisdiction at least five days before the event is held. Where the Police are of the view that it would not be appropriate to hold the event at that time and place, the organiser is requested to postpone the event or relocate it. The justification for the refusal has to be communicated to the organiser and must be based on certain factors, such as the possibility of violence, breach of public order or the rights of other people should the event be held.<sup>32</sup> Where the organiser refuses the request from the Police, the latter has to apply to the court for an injunctive order to stop the holding of the event. Where the court agrees with the decision of the Police it also has to assign reasons and necessary information supporting its decision.

#### **CASE #4:**

##### **New Patriotic Party v Inspector-General of Police [1993-94] 2 GLR 459 (SC)**

Action by the plaintiff, a registered political party, against the Inspector-General of Police for a declaration that sections 7, 8, 12(a) and 13 of the Public Order Decree, 1972 (NRCD 68) which required, *inter alia*, that a permit or the consent of the Minister for the Interior or a police officer be obtained before citizens could embark on a public demonstration or procession or celebration of a custom were inconsistent with the letter and spirit of article 21(1)(d) of the Constitution, 1992 which granted the citizen the freedom of assembly, and were therefore void and unenforceable.

The Court held, *inter alia*, “[s]ections 7, 8, 12(a) and 13(a) of the Public Order Decree, 1972 (NRCD 68) were inconsistent with article 21 (1)(d) of the Constitution, 1992 and were therefore unconstitutional, void and unenforceable because: (a) the freedom of assembly granted the citizen under article 21(1)(d) of the Constitution, 1992 encompassed the right of the citizens to come together to petition for redress of their grievances or take part in processions and demonstrations in support of or in opposition to a cause, policy or event. But the consent or permit requirements under section 7 of NRCD 68 sought to demand leave of the Minister for the Interior for the exercise of those rights, with the necessary implication that contrary to the provision of article 21(1)(d) of the Constitution, 1992, meetings, processions and demonstrations.”

Equally important, the Court went on to hold that, “...although section 8(2) of NRCD 68

<sup>31</sup> Section 17 of Coroner's Act of 1960 (Act 18).

<sup>32</sup> Section 1 of Act 491.

required the superior police officer to consider an application for permit under section 8(1) of NRCD 68 fairly and impartially, that duty presupposed a choice between the citizen's right of assembly, procession and demonstration against the choice of the senior police officer to determine whether to refuse the permit on the ground that there was the likelihood of a breach of the peace or that the meeting or procession would be prejudicial to national security. However, section 8(2) of NRCD 68 did not provide for the form and content of an application for a permit not the yardstick or the standard which the officer should apply in determining whether or not he should grant the permit. And although the police officer had to inform the applicant of the reasons for his refusal to grant the permit, such refusal could not be challenged in any court whether it was out of prejudice, bias or even political preference or any flippant and untenable ground. It is clear then that the danger that the awesome power contained in section 8 of NRCD 68 could be used to suppress the fundamental freedoms and civil rights of the citizens was real. Accordingly, even though under the Constitution, 1992 either the courts or a relevant law might in appropriate cases impose a restriction on any of the freedoms contained in article 21 of the Constitution, 1992 the requirement that a permit be obtained before the exercise thereof was unconstitutional and therefore void."

### **Disclosure or otherwise of Official Document in Court**

As part of the Executive arm of the state, the Police are in possession of vital state documents. The Police may refuse to make information in such documents available to the public on grounds of national security (public interest immunity). However, Article 135 of the Constitution<sup>33</sup> states that where such a contention arises, the issue shall be referred to the Supreme Court to determine whether the document may be injurious to the public interest or prejudicial to national security and therefore cannot be made available for public consumption or otherwise. By this means, the court provides another means to access information which may otherwise be impossible to access.

### **Proactive Disclosures: States of Emergency**

Some of the protections provided by the Constitution, the Criminal Code and the Criminal Procedure Code may be suspended in the event of emergencies subject to additional protections made available for people arrested under such circumstances.

The Constitution, under Article 31 thereof, grants power to the President to proclaim a state of emergency. The proclamation should be published and the facts and circumstances leading to the declaration of the state of emergency brought before Parliament.

Where a person is restricted or detained by virtue of the emergency, he is entitled to be provided in writing within 24 hours, detailed information regarding the basis for the arrest or restriction.<sup>34</sup> The same information shall be made available to a relative or next-of-kin within the same time frame;<sup>35</sup> and later, to the whole public through gazette notification<sup>36</sup> and in the media within the next 10 days. The authority in charge of providing this information is the Ministry of Interior.

### **Enforcement of Rights before the High Court**

The High Court is specially designated by the Constitution to ensure enforcement of fundamental rights provided under Chapter 5 of the Constitution. The court, in performing this

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<sup>33</sup> Reproduced in Section 8, Courts Act, 1993 (Act 459).

<sup>34</sup> Article 32(1)(a)

<sup>35</sup> Article 32 (1)(b)

<sup>36</sup> When information is gazetted, it is published and made available at the Government printing house. While this is accessible to the public, there are severe limitations regarding its dissemination as it becomes the responsibility of the public to access (in most cases by purchasing it) and utilise it.

function may issue directions or orders or writs including those in the nature of *habeas corpus*, *certiorari*, *mandamus*, prohibition and *quo warranto* as it may consider appropriate.

Among others, *habeas corpus*<sup>37</sup> and *quo warranto*<sup>38</sup> orders can be used to demand the release of certain information about a person who may be incarcerated by a police officer. The latter would also apply to other activities by the Police which will be outside its scope of work, e.g., a police officer using his office to collect debt on behalf of a complainant. Both the Supreme Court and the High Court have supervisory jurisdiction under Article 162 of the Constitution and by reference to that can issue these writs under Articles 132 and 141, respectively.

### **Court Jurisdiction over Fundamental Human Rights and Freedoms**

It appears the High Court is solely responsible for ensuring the enforcement of Fundamental Human Rights and Freedoms but this conclusion is not necessarily certain.

Under the Constitution, and subject to the "jurisdiction of the High Court in the enforcement of the Fundamental Human Rights and Freedoms as provided in article 33 of this Constitution," the Supreme Court has exclusive original jurisdiction in, among other things, "all matters relating to the enforcement or interpretation of this Constitution" (Art. 130(1)), while the High Court has, among other things, "jurisdiction to enforce the Fundamental Human Rights and Freedoms guaranteed by this Constitution" (Art. 140(2)).

Article 33 (1) provides, "where a person alleges that a provision of this Constitution on the fundamental human rights and freedoms has been, or is being or is likely to be contravened in relation to him, then, without prejudice to any other action that is lawfully available, that person may apply to the High Court for redress." Article 33(2) then goes on to provide for various mechanisms for enforcing or securing the enforcement of any of the provisions on the fundamental human rights and freedoms while Article 33(3) describes appeals processes.

Article 12 (1) provides: "The fundamental human rights and freedoms enshrined in this chapter shall be respected and upheld by the Executive, Legislature and Judiciary and all other organs of government and its agencies and, where applicable to them, by all natural and legal persons in Ghana, and shall be enforceable by the Courts as provided for in this Constitution."

Article 295(1) provides "court" means "a court of competent jurisdiction established by or under the authority of this Constitution and includes a tribunal". As such it appear the Superior Courts (and possibly all levels of the judiciary) appear to be competent in this regard. Notably, the Judiciary of Ghana is comprised of Superior Courts (the Supreme Court of Ghana, the Court of Appeal, and the High Court and Regional Tribunals) and such lower courts or tribunals as Parliament may by law establish [Art. 126(1)].

While, arguably, the High Court has jurisdiction over the enforcement of the Fundamental Human Rights and Freedoms under the Constitution, whether this is exclusive jurisdiction is someone unclear and it is possible to imagine situations where a court other than the High Court might entertain cases involving multiple issues including infringements of Constitutional rights and freedoms.

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<sup>37</sup> A writ of *habeas corpus* is a summons with the force of a court order addressed to the custodian (a police or prison officer) demanding that a prisoner be brought before the court, together with proof of authority, allowing the court to determine whether that custodian has lawful authority to hold that person, or, if not, the person should be released from custody.

<sup>38</sup> *Quo warranto* – common law writ used to inquire into the authority by which a public office is held.



## Action against a Police Officer

Information of proceedings of the Police Council is not made public except, for example, the decision of an appeal submitted by a Police officer to the Council for review. In this case, the Council will submit a copy of its decision to the affected officer.<sup>39</sup>

According to section 23(1) of the *Police Service Act*, any member of the public shall be entitled to make a complaint regarding bribery, corruption, oppression, intimidation, neglect or non-performance of his duties or misconduct by a police officer.<sup>40</sup> Following receipt of the complaint, a full and impartial investigation shall be conducted internally but where necessary, the complainant may assist in the investigation through provision of detailed information. A report of conclusions from the investigations will be made available to the complainant. In addition, the Inspector General of Police (IGP) or a superior officer shall take any necessary action that the report would recommend. There is no time limit for completing the investigations.<sup>41</sup>

Under section 36(1) of the *Police Service Act*, the IGP is mandated to prepare and submit an annual report at the end of June of each year. The report is supposed to cover details of the administration of the Police Service and the Volunteer Police Reserve during the previous twelve months. This report is submitted to the Minister of Interior who in turn will cause it to be laid before Parliament.<sup>42</sup> At this point, the report, after deliberation, shall become public document, accessible to the general public. Copies may be obtained at the Parliamentary Library. It is noted, however, that in most cases, these reports are not prepared and published at all or not done on time. Some reports could be two or more years late.<sup>43</sup> Deliberations of Parliament on the report may also be accessed through the Hansard (record of parliamentary proceedings).<sup>44</sup>

The Police Service prepares its budget through its sector ministry, the Ministry of Interior which is in turn submitted to Parliament for approval. Some information on the amount allocated to the Police from the Ministry's budget and how the money is spent is provided in its annual report.<sup>45</sup> Ghana does not have a citizens' service charter for the police.<sup>46</sup>

Upon the issuance of a search warrant by a Magistrate authorising a police officer to search a building, vessel, container, etc the latter will have to produce the search warrant to allow for entrance.<sup>47</sup> Advanced notice is not necessary. The seized items are detained and where necessary used as evidence in the case. The person whose items are seized is entitled to a copy of the list of seized items. Searches can be conducted without warrant where the

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<sup>39</sup> Interview with a member of the Police Council by email. See also, E.A. Foley, "The Police Council in Ghana." EALS/CHRI Roundtable on Police Accountability, Arusha, 12-13/6/06: [www.humanrightsinitiative.org/programs/aj/police/ea/conference\\_2006/ghana\\_police\\_council\\_edmund\\_foley.pdf](http://www.humanrightsinitiative.org/programs/aj/police/ea/conference_2006/ghana_police_council_edmund_foley.pdf)

<sup>40</sup> Also, (2) A complaint of bribery, corruption, oppression or intimidation shall be addressed to the superior police officer in charge of the district or unit to which the police officer concerning whom the complaint is made belongs or to the Inspector-General of Police.(3) A complaint of neglect or non-performance of duty or other misconduct shall be addressed to any superior police officer.

<sup>41</sup> Section 23(4).

<sup>42</sup> Section 36(2).

<sup>43</sup> In such a case, interested stakeholders may resort to the Supreme Court for a declaration or the High Court to compel the IGP to issue the report on time.

<sup>44</sup> Truncated versions of Hansard are available on the Parliament of Ghana website ([www.parliament.gh](http://www.parliament.gh)).

<sup>45</sup> AfriMAP, Ghana: Justice Sector and the Rule of Law (June 2007), 69ff: [http://www.afriMAP.org/english/images/report/AfriMAP\\_Ghana\\_Justice.pdf](http://www.afriMAP.org/english/images/report/AfriMAP_Ghana_Justice.pdf).

<sup>46</sup> However, similar information may found on its website ([www.ghanapolice.org](http://www.ghanapolice.org)).

<sup>47</sup> Sections 88 of the *Criminal Procedure Code, 1970* (Act 30).

circumstances so permit.<sup>48</sup> Search warrant can also be issued by a Magistrate authorising a police officer to search and rescue a mentally-retarded person who is suspected of being mistreated. But here, information on the warrant need not disclose the identity of the mental patient.<sup>49</sup>

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<sup>48</sup> Sections 93 and 94 of Act 30.

<sup>49</sup> Section 22 of the *Mental Health Act* (NRCD 22 of 1972). One may also refer to the *Pawnbrokers Ordinance*, the *State Secret Act*, and the *Exchange Control Act*, among others.

## **BUDGETARY AND LEGISLATIVE PROCESSES IN PARLIAMENT**

Ghana's budgetary and legislative processes, by reference to the Constitution and other laws, are comprised of four stages. They are: budget formulation, enactment, implementation and auditing stages. Each level presents an opportunity for individuals and civil society actors to access information relating to the budget even in the absence of a right to information statute.<sup>50</sup>

The rights conferred and duties imposed on Ghanaians to access information relating to the budget, among others, are expressed in the Preamble to the Constitution which makes reference to the people of Ghana's "[s]olemn declaration and affirmation of our commitment to Freedom, Justice, Probity and Accountability."<sup>51</sup> Secondly, article 41(f) places a duty on every citizen "to protect and preserve public property and expose and combat misuse and waste of public funds and property." Moreover, the Constitution calls for the enactment of legislation that will enable citizens to have "rights of access to agencies and officials of the State necessary in order to realise effective participation in development processes."<sup>52</sup> So far no legislation has been enacted to give effect to this constitutional provision.<sup>53</sup> Furthermore, the Constitution provides that "[t]he State shall promote just and reasonable access by all citizens to public facilities and services in accordance with law."<sup>54</sup>

One can also refer to Ghana's international commitments. Under article 40(d) of the Constitution, in its dealings with other nations, the Government is required to adhere to the principles enshrined in or as the case may be, the aims and ideals of the United Nations (UN) Charter, the Constitutive Act of the African Union (AU), the Commonwealth; the Economic Community of West African States (ECOWAS) Treaty; and any other international organisation of which Ghana is a member. Among these fundamental principles which are considered emerging norms for the international community are adherence to liberal democratic ethos, the rule of law, good governance and respect for human rights. A key element commonly shared by these principles is transparency which requires that the budget process, among others, be subject to public scrutiny. To be able to do this, individual and civil society actors will need to have access to information regarding the state's finances and resources – how they are acquired, managed, invested and distributed.

### **Stage One: Budget Formulation**

Under Article 179 of the Constitution, the President is mandated to cause to be prepared and laid before Parliament estimates of the revenues and expenditure of the Government of Ghana for the following financial year. This exercise is undertaken for the information of Parliament to enable it exercise control over government expenditure.<sup>55</sup> It is being done at least one month before the end of the financial year.<sup>56</sup> The time framework proposed is to

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<sup>50</sup> See details below.

<sup>51</sup> Preamble para

<sup>52</sup> Article 37(2)(a)

<sup>53</sup> This provision falls under the directive principles of state policy which are generally speaking not binding or justiciable.

<sup>54</sup> Article 35(3) of the Constitution.

<sup>55</sup> Article 179(2)(b)

<sup>56</sup> Article 179(1).

enable a debate or discussion to be undertaken by all relevant stakeholders in order to come up with a final budget that speaks to the interests of all, as much as possible.<sup>57</sup>

The budget is prepared by the Ministry of Finance and Economic Planning. It first examines the macro-economic framework for the country to enable it to prepare a draft budget with guidelines for the preparation of sectoral budgets. These are then distributed to Ministries, Departments and Agents (MDAs).<sup>58</sup> Budget hearings are held during which the MDAs would submit their draft estimates. From there, the District and Municipal Assemblies are given the opportunity to contribute to the budget process by coming up with proposals<sup>59</sup> which are fed into the draft budget circular and returned to the Ministry of Finance and Economic Planning through the MDAS.<sup>60</sup>

Thus, the formulation process does not directly include the industrial community and civil society organisations. Indirect influence, though, can be significant considering the direct and critical role these agencies play in the formulation of the Ghana Poverty Reduction Strategy (GPRS).<sup>61</sup> The character of the GPRS is that it describes “the country’s macroeconomic, structural, and social policies in support of growth and poverty reduction, as well as associated external financing needs and major sources of financing.”<sup>62</sup> They are updated every three years with annual progress reports. Therefore, the GPRS plays a critical role in the budgetary process. As noted in the report, “The GPRS represents comprehensive policies, strategies, programmes, and projects to support growth and poverty reduction over a three-year period (2002-2004).”<sup>63</sup> Also, it is noted in the GPRS that “the salient features of the GPRS include a broad based sequence of programmed events in support of growth and poverty reduction and a three-year costed growth and poverty reduction measures to find expression in the Sectoral Medium Term Development Plans (SMTDP), the corresponding Medium Term Expenditure Framework (MTEF) and annual budgets.”<sup>64</sup>

Among others, the process involved in the preparation and formulation of the GPRS includes, first, the creation of core teams to constitute the focus of analysis and recommendations for poverty reduction. Next are local level consultations on dimensions of poverty and recommended solutions, followed by consultation among the core teams and major agencies on analysis of data with the goal of identifying priority issues and required actions for poverty reduction. Subsequently, a forum of civil society, private sector, government agencies and development partners is held to review and harmonise priority issues and actions; as well as a special forum for civil society to validate priority issues and actions. The final stages of the process involve review and prioritisation at the National Economic Dialogue which is made up of development stakeholders in the country.<sup>65</sup>

Thus, it is aptly noted by the Ghana Integrity Initiative, the local Chapter of Transparency International that “In Ghana citizens sometimes indirectly contribute towards the preparation of the budget. The new planning system in Ghana has a combination of top-down approach and bottom-up approach. Through their Assembly members, communities come up with

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<sup>57</sup> Interview with Parliamentary Librarian by Mr. Francis Sosu.

<sup>58</sup> Regulations 151-153 of LI 1802 (Financial Administration)

<sup>59</sup> See details under Chapter 4 (Local Government)

<sup>60</sup> Interview of Mr. Osei-Bonsu, an economist by Mr. Yeboah-Asuama.

<sup>61</sup> Government of Ghana, “Ghana Poverty Reduction Strategy (2003-2005): An Agenda for Growth and Prosperity”

<sup>62</sup> World Bank: “Republic of Ghana Poverty Reduction Strategy Paper Progress Report 2002.”: [www.imf.org/External/NP/prsp/2002/gha/01/Index.htm](http://www.imf.org/External/NP/prsp/2002/gha/01/Index.htm)

<sup>63</sup> Ghana Poverty Reduction Strategy (2003-2005), ix.

<sup>64</sup> Ibid, 1.

<sup>65</sup> Ibid

development projects for consideration by the District Assembly. Some of the projects are packaged to be considered in the national budget by the District Assembly through the Regional Coordinating Council and Ministries Department and Agencies (MDAs).<sup>66</sup>

In addition to confirming government expenditure, Parliament is given the sole mandate to impose taxes<sup>67</sup> and to raise loans for the country.<sup>68</sup> These processes are debated openly in Parliament and therefore provide unfettered access to information for the public.<sup>69</sup> Access to parliamentary information takes different shapes and forms. First, a person can have direct access to the information by observing the debates in Parliament. Secondly, information is made available through public broadcast, either broadcast live or reported on television and radio. Information is also made available in the Hansard.<sup>70</sup>

In view of the fact that taxes and loans are closely tied to budget formulation and implementation, the critical role of Parliament in the budgetary process cannot be ignored. Therefore, in spite of the fact that the budget is prepared by the President with the support of the Executive, Parliament has the final say in determining the budget for the nation, subject to the proviso that it can only reduce but not increase the figure to be submitted to the House by the President through his Minister of Finance.<sup>71</sup> The significant role played by Parliament in this effort therefore opens the way for citizen participation in the process and access to information.

Further details on the process of legislation enactment in relation to contracting of loans are worth noting. Article 181(4) states that an Act of Parliament enacted in relation to loans shall provide, among others that the terms and conditions of a loan shall be laid before Parliament and shall not come into operation unless they have been approved by a resolution of Parliament. This is to ensure that the public has access to the necessary information and thus be placed in a position to influence the process. The Minister for Finance is also mandated to bring to the attention of Parliament, any information concerning any discrepancies relating to the granting of loans, their repayment and servicing.<sup>72</sup>

## Stage Two: Enactment

The budget estimates, apart from those related to or set up as commercial ventures, are classified and placed under programmes which are included in an Appropriation Bill which incorporates the Budget Statement. The Appropriation Bill is introduced into Parliament to enable the House to make provisions for the delivery of the sums of money required to meet that expenditure and the appropriation of those sums for the purposes specified in that bill.<sup>73</sup> The sums of money are issued from the Consolidated Fund or such other appropriate fund.

The passage of the Appropriation Bill goes through the regular rigours that accompany the ultimate passage of a Bill. The Bill is initiated by the Minister of Finance in Parliament and is widely covered by the media. After a Bill is initiated, it is published in the *Gazette* for fourteen days prior to being introduced at the floor of the house.<sup>74</sup> **The Gazette can be accessed**

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<sup>66</sup> Global Integrity report (2004): <http://www.globalintegrity.org/reports/2004/2004/scores6ed0.html?cc=gh&intQuestionID=92&catID1=3&catID2=2#33>

<sup>67</sup> Article 174(1).

<sup>68</sup> Article 181(3).

<sup>69</sup> Article 181(3)-(7) of the Constitution.

<sup>70</sup> Interview with Parliamentary Librarian by Mr. Francis Sosu.

<sup>71</sup> Article 108.

<sup>72</sup> Article 181(7).

<sup>73</sup> Article 179(2)(a).

<sup>74</sup> Article 106(2) of the Constitution.

**through the Government printing press in Accra and its sales outlets.** This requirement allows the public to access information relating to the budget for study and input into the final budget document. For Bills dealing with budget, taxation, etc a memorandum cannot be attached.<sup>75</sup> The memorandum presents vital information which can be accessed and used as a basis for critiquing the Bill and making input into it. Therefore its absence presents a limitation to the nature of information that citizens can access. However, other opportunities for accessing information relating to the budget exist.<sup>76</sup> This includes presentation of the Bill and its first reading on the floor of the House and the discussion and debate that takes place when the Appropriation Bill is referred to the Finance Committee of Parliament.<sup>77</sup>

The work of the Select Committees of Parliament, among which is the Finance Committee, includes investigating and making inquiry into the activities and administration of ministries and departments as Parliament may determine. Such investigation and inquiries may extend to proposals for legislation.<sup>78</sup> The Committees are endowed with powers to subpoena and examine witnesses or documents.<sup>79</sup> In conformity with its function, the Finance Committee is mandated to meet and discuss the budget in detail and to allow input from the public. The Committee system allows for the public to present memos expressing a position on a bill that has been presented before it for detailed discussion with the goal of influencing the outcome of the discussions. In some situations, the Committee could invite individuals or organisations possessing expertise in the area of law about to be passed to provide expert knowledge. Thus, through the Finance Committee's presents an important opportunity for citizens to attain more information on the budget through clarification, explanations, and critique of government inefficiencies and financial mismanagement.

The next stage in the process of enacting the Appropriation Bill is the second reading of the Bill where the Chairman of the Committee will present his Committee report which will form the basis for the debate. The report and the accompanying debate also present an important facet of information that is made available to the public. The final stage before passage is the Consideration Stage where the Bill is examined in detail, clause by clause and the necessary amendments made. The final stage is the presentation of the bill to the President to assent to it so that it becomes law.<sup>80</sup>

It is to be noted here that the processes gone through here to enact a budget is similar to the legislative process that all laws go through before becoming law. The most notable differences, though, are the fact that no memorandum attaches to a bill relating to the budget.<sup>81</sup> Secondly, the President does not have the power to refuse to assent to the Appropriation Bill.<sup>82</sup>

In a situation where the President refuses to assent to a bill, he shall, within fourteen days after the refusal, state in a memorandum to the Speaker any specific provisions of the bill which in his opinion should be reconsidered by Parliament, including his recommendations for amendments if any. Alternatively, the President could refer the bill to the Council of State

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<sup>75</sup> The memorandum is supposed to set out in detail the policy and principles guiding the enactment of the new law, defects of any prior existing law, the remedies proposed and the necessity for introducing the bill.

<sup>76</sup> One may refer to the Presidential statements and reports noted above which are related, directly and indirectly, to the budget.

<sup>77</sup> K.B. Ayensu and S.N. Darkwa, "How our Parliament functions."

<sup>78</sup> Article 103(3).

<sup>79</sup> Article 103(6)

<sup>80</sup> Articles 106(1) and (7).

<sup>81</sup> Yet, as noted above, the absence of a memorandum is a limitation.

<sup>82</sup> Article 106(12).

for consideration and comment under article 90 of this Constitution<sup>83</sup> and duly inform the Speaker about this.

The text of the budget statement and the highlights are uploaded on the Government website for people to access.<sup>84</sup>

### **Stage Three: Implementation**

The next stage of the budgetary process is implementation. Following that, the final auditing stage requires the MDAs to account for the actual expenditures on the budget and an assessment of the effectiveness of their performance. In other words, the auditing stage tackles how to track the money to where it is disbursed (from the central government) through the various levels (local government) to the end users, e.g., the sick person, the teacher, the pupil, etc.

Mechanisms put in place to promote accountability can be grouped into two: vertical and horizontal. Vertical accountability involves the submission of governmental institutions to public scrutiny and check by the individuals or civil society organisations. Horizontal accountability, on the other hand, involves the public institutions keeping watch on government agencies.

Ability of any of these accountability systems to work depends on availability of information to form the basis for critique. Citizens can obtain information relating to the implementation of the budget from various sources. These include through the courts, the Public Accounts Committee (PAC), the Commission on Human Rights and Administrative Justice (CHRAJ), the Auditor-General's Department, and the National Development Planning Commission (NDPC).

### **Auditing: Public Accounts Committee (PAC)**

The PAC examines the accounts of government to determine whether money granted by Parliament for public expenditure has been properly utilised. PAC's mandate extends to any other accounts laid before Parliament and referred to it, together with the Auditor-General's report on the accounts. It also examines the accounts which have been laid before Parliament of any statutory body. The PAC must report to Parliament at least twice a year.<sup>85</sup>

According to the Parliamentary Standing Orders, the PAC can sit in-camera or in public at the discretion of the Chairman of the Committee. The last sitting of the Committee in 2007 was public and some of the proceedings were telecast live on national television, allowing for direct access to information on the financial management of the state to the general public. Even where the session is not held in public, the information can still be made available to the public.

**According to section 207 of the Standing Orders of the Parliament of Ghana, a Committee can authorize the Clerk of the House to supply copies of reports to, among others, government departments, lobby journalists and other representatives as the Committee would think fit. No formal procedures, such as filling forms, charging fees, etc are required. An interested entity may simply contact the office of the Clerk to obtain the information.** Also, subject to meeting certain conditions, minutes of committee hearings, documents presented before it, etc can be used as evidence before certain fora.<sup>86</sup> The PAC is also mandated to monitor the foreign exchange receipts and payments or

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<sup>83</sup> Article 106(8).

<sup>84</sup> [http://www.ghana.gov.gh/ghana/budget\\_statements.jsp](http://www.ghana.gov.gh/ghana/budget_statements.jsp) as on 13 January, 2008.

<sup>85</sup> K.B. Ayensu and S.N. Darkwa, "How our Parliament functions" at 56.

<sup>86</sup> Standings Orders 208, 209.

transfers of the Bank of Ghana in and outside Ghana and shall report on them to Parliament once in every six months.<sup>87</sup>

Additionally, through the Financial Administration Act, 2003 (Act 654), Parliament may solicit information on the financial state and accounts of departments of state which will relate one way or the other to the budget. This information may be transmitted to the Auditor-General, the Minister for Finance, etc.<sup>88</sup> Section 44 of Act 654 calls for the auditing of accounts in accordance with the Audit Service Act while section 55 calls for the preparation and submission of annual reports. The legislative instrument (LI) accompanying Act 654 (Financial Administration Regulations, 2004 (LI 1802) contains regulations including, the rights conferred on the Auditor-General and Controller-General to seek and obtain information on bank records of state institutions which may be included in its annual reports or could be submitted to Parliament and ultimately come into the public domain.<sup>89</sup>

### **Auditing: CHRAJ**

CHRAJ is another body that can be relied on to obtain information relating to the budget or how money disbursed has been utilised. CHRAJ was set up as a constitutional body with a three-fold mandate to promote human rights, administrative justice and to fight corruption in the public service.<sup>90</sup> It was set up under article 216 of the Constitution by an Act of Parliament<sup>91</sup> within the stipulated time frame defined by the Constitution. CHRAJ can rely on its mandate under article 218 of the Constitution<sup>92</sup> to, among others, investigate complaints of corruption and abuse of power by a public officer in the exercise of his official duties; as well as complaints concerning the functioning of the Public Services Commission, the administrative organs of the State, the security services, etc. Further to that, CHRAJ has the power to take the appropriate steps to remedy the situation. These will include making reports to the Attorney-General (to initiate criminal prosecution) and the Auditor-General, resulting from such investigations.<sup>93</sup> In the exercise of this function the CHRAJ is placed in a position to monitor the way budgetary allocations are utilized by public officials and organizations.

Individuals can lodge complaints with CHRAJ<sup>94</sup> after which it will proceed to conduct investigations which may involve the disclosure of information by individuals or agencies as evidence. Following the investigations, it shall prepare and submit a report with recommendations to the appropriate Ministry, department or agency. As well, a copy shall be made available to the complainant.<sup>95</sup> CHRAJ is also mandated to prepare and submit annual reports to Parliament.

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<sup>87</sup> Article 184(1)

<sup>88</sup> Section 41(1) Financial Administration Act, 2003 (Act 654)

<sup>89</sup> Among others, see regulations 129 and 147 of LI 1802. Also, section 55 of Act 654 which, among others, calls for the preparation and submission of annual report to Parliament.

<sup>90</sup> See Chapter 18 of the Constitution.

<sup>91</sup> The Commission on Human Rights and Administrative Justice Act, 1993 (Act 456).

<sup>92</sup> See comparable references under the CHRAJ Act.

<sup>93</sup> Article 218(e) of the Constitution

<sup>94</sup> Section 12, Act 456

<sup>95</sup> Section 18 of Act 456.



## Auditing: The Courts

The public can also seek information relating to the budget through the courts, for example, by resorting to judicial review under Articles 2(1) and 130 of the Constitution (before the Supreme Court) and Article 33 (before the High Court).<sup>96</sup>

Application of Article 33 in this context draws the link between improper or illegal use of government resources and its impact on the enjoyment of economic, social and cultural rights. Thus, where a particular fund has been allotted under the budget for the construction of a classroom block but the money is diverted, misused or misapplied it would constitute violation of the economic, social and cultural rights of the people who were the intended beneficiaries of the proposed school project.

### **CASE #5:**

#### **New Patriotic Party v Attorney-General [1993-94] 2 GLR 35 (SC)**

The case involved an action by the Plaintiff before the Supreme Court under article 2(1) of the Constitution, 1992 for a declaration that the public celebration of the coup d'état of 31 December out of public funds was inconsistent with or in contravention of the letter and spirit of the Constitution, 1992 particularly articles 3(3)-(7), 35(1) and 41(f). That is, the celebration would constitute waste of public funds. In his defence on the other hand, the defendant contended, *inter alia*, that 31 December was a statutory public holiday by virtue of the Public Holidays Law, 1989 (PNDCL 220) and moneys were lawfully appropriated under the 1993 budget estimates approved by Parliament for its celebration in recognition of the historical values and good works that the revolution stood for and therefore the intended expenditure was lawful.

The Court held, *inter alia*, "[e]ven though sections 18 and 19 of the transitional provisions of the Constitution, 1992 continued in force the Consolidated Fund, the Contingency Fund and the financial estimates in operation before the coming into force of the Constitution, section 36 of the transitional provisions of the Constitution, 1992 emphasised that the application or enforcement of such expenditure should not be inconsistent with any provision of the Constitution, 1992. In the circumstances of the instant case, therefore, the application of public funds so provided intended to be utilised for the celebration of the 31 December revolution would be unconstitutional."

## The Auditor-General

The Auditor-General's office is set up as a public office<sup>97</sup> and he is given the responsibility to audit and report on the public accounts of Ghana and all public offices.<sup>98</sup> To facilitate the performance of his functions, the Constitution grants him the right to have access to all books, records returns and other documents relating or relevant to those accounts.<sup>99</sup> The information obtained through the search will be incorporated into an annual report which the Auditor-General is mandated to submit to Parliament, within six months after the end of the immediately preceding year. In this report, the Auditor-General is expected to draw attention

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<sup>96</sup> Refer to section on Police functions for details. While beyond the scope of this report, Article 33 presents an issue with regard to the question of whether a person is entitled to bring a question before the High Court. Article 33 provides, "where a person alleges that a provision of this Constitution on the fundamental human rights and freedoms has been, or is being or is likely to be contravened in relation to him..." Unless this situation has already been tested at Court it is unclear whether this is a real option.

<sup>97</sup> Article 187(1)

<sup>98</sup> Article 187(2)

<sup>99</sup> Article 187(3). This power may be delegated by the Auditor-General to any person he so wishes.

to any irregularities in the accounts audited and to any other matter which in his opinion ought to be brought to the notice of Parliament.<sup>100</sup>

It becomes clear that the Auditor-General has an important role to play in providing information relating to outcome assessment of the budget. Like most annual reports that are supposed to be presented to Parliament, the Auditor-General's report has habitually been submitted late. **Thus, though this information can be accessed by the public through Parliament (and the Auditor-General's office after approval by Parliament) its effectiveness as a tool by the citizenry to influence the budgetary process is minimised. This information is not available on the Internet. Another means of accessing this information is where Parliament, under clause (6) of Article 187 decides to debate the report of the Auditor-General and appoint where necessary, in the public interest, a committee to deal with any matters arising from it. Another report that the Auditor-General is supposed to submit to Parliament for debate is covered under article 184(2)-(4), which is a report that the Bank of Ghana is to submit to the Auditor-General which relates to a statement of the Central Bank's foreign exchange receipts and payments or transfers in and outside Ghana.**<sup>101</sup>

A further means of accessing information from the Auditor-General might be through the courts – where a person aggrieved by a disallowance or surcharge made by the Auditor-General exercises his constitutional right provided under article 187(9) to appeal to the High Court. Since the court does not sit in-camera, the information and documentation to be tendered in evidence and other testimonies that will be given will become available to the public. Moreover, some court records may be accessed through application through the Registrar of the Court.

## **Information from the President in Relation to the Budget**

Among the information that the Constitution mandates the President to make available to the public and which relates to the budget are the state of the nation address which he is expected to deliver at the beginning of each session of Parliament and before a dissolution of Parliament.<sup>102</sup> Furthermore, under Article 34(2), the President is mandated to report to Parliament at least once a year all the steps taken to ensure the realization of the policy objectives contained in Chapter 6 of the Constitution on Directive Principles of State Policy, “in particular, the realization of basic human rights, a healthy economy, the right to work, the right to good health care and the right to education.”

Also, article 36(5) mandates the President, within two years after assuming office, to present to Parliament a co-ordinated programme of economic and social development policies, including agricultural and industrial programmes at all levels and in all the regions of Ghana. This information which relates to the budget is also public information which the public can and should have unfettered access to.

These pieces of information emanating from the President, among others, are supposed to contain important information on the socio-economic conditions of the country. Ineluctably, therefore, they provide an insight into how the government has been acting in conformity with the Appropriation Act passed the previous year in relation to the budget. Thus, it provides some information on the implementation of the budget and therefore for assessment purposes by individuals and civil society actors. Secondly, the state of the nation address does not only deal with the past but the future direction of the economy. It therefore also

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<sup>100</sup> Article 187(5)

<sup>101</sup> The Bank of Ghana shall submit this report not later than three months after the end of the first six months of its financial year, and after the end of its financial year submit to the Auditor-General for audit.

<sup>102</sup> Article 67

provides information on the formulation aspect of the next budget. The information is made available through Parliament.

In addition, one can make reference to the Annual Report of the NDPC. The NDPC is a constitutional body created under articles 86 and 87 of the Constitution. The enabling legislation is the National Development Planning Commission Act, 1994 (Act 479). Article 86 of the Constitution outlines the functions of the Commission which are given detailed specifications under section 2(2) of the NDPC Act. A significant proportion of these functions relate to budget preparation or supervision.<sup>103</sup> Access to information on the NDPC includes its Annual Report and other information which is made available on its website.<sup>104</sup> Copies are also available at the NDPC's head office in Accra.

## Conclusion

Apart from the various means outlined above that indicates the nature of information that one can access from Parliament, one can also make mention of information provided by individuals summoned to appear before Parliament itself.<sup>105</sup> Where the information provided is not privileged, it can be accessed by the public through the Clerk of the House by way of submission of formal application.

The claim that the various information submitted to Parliament are public information which can be accessed without any hindrance is affirmed by reference to article 120 of the Constitution which states that subject to certain exceptions, everyone has the right to access to information and publication of the text or a summary of any report, papers, minutes, votes and proceedings of Parliament; or a contemporaneous report of the proceedings of Parliament.<sup>106</sup> The freedom to report Parliamentary proceedings and publish reports submitted to Parliament is a further evidence and means of making information accessible to the public from Parliament.

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<sup>103</sup> See e.g., s2(2)(a),(b) and (h): (2) The Commission shall, at the request of the President, Parliament, or on its own initiative (a) study and make strategic analyses of macro-economic and structural reform options; (b) make proposals for the development of multiyear rolling plans taking into consideration the resource potential and comparative advantage of the different districts of Ghana; (h) prepare broad national development plans.

<sup>104</sup> See [www.ndpc.gov.gh](http://www.ndpc.gov.gh).

<sup>105</sup> Article 121(1).

<sup>106</sup> K.B. Ayensu and S.N. Darkwa, "How our Parliament functions: An Introduction to the Law, Practice and Procedure of the Parliament of Ghana" (Sub-Saharan Publishers: Ghana, 2006).

## **DECLARATION OF ASSETS AND LIABILITIES OF POLITICAL LEADERS AND PUBLIC OFFICIALS**

Ghana's assets and liabilities declaration regime is provided for under Article 286 of the Constitution and its enabling legislation, the *Public Office Holders (Declaration of Assets and Disqualification) Act 1998 (Act 550)*.

A comprehensive assets declaration regime would contain six principal issues: coverage; filing frequency and method; declaration content; declaration processing; punishment for breach; public access.

Article 286 of the 1992 Constitution obliges public officials listed under the Article and those included under Act 550<sup>107</sup> to submit to the Auditor-General a written declaration of all property or assets owned, or liabilities owed, by them directly or indirectly. The declaration containing the requested information is submitted under seal to the Auditor-General for safe keeping. In the case of the Auditor-General, his declaration is submitted to the President.<sup>108</sup> In effect, the law limits the role of the Auditor-General in the entire exercise to that of a mere custodian of the assets declared. He cannot, for example, verify the accuracy and veracity of the information provided before the form is sealed. Similarly, an ordinary person or group of people is prohibited from directly accessing the information.

However, citizens can indirectly access the information by reference to article 286(3) of the Constitution. Article 286(3) provides that the declaration made by the public official shall, on demand, be produced in evidence before a court of competent jurisdiction; a commission of inquiry appointed under article 278 of this Constitution; or, an investigator appointed by the Commissioner for Human Rights and Administrative Justice (CHRAJ). In all these instances, the Auditor-General is mandated to produce the information to the relevant body. Where such an order is refused mandamus may issue to compel him to do the same.

### **Court**

First, the individual can access information on assets declared by public officials by initiating proceedings in court in relation to the assets of the official and making reference to his/her assets in the statement of claim and accompanying affidavit. In the course of the trial, the declaration can then be called in evidence.<sup>109</sup> It will also enable the verification of whether a declaration has been filed in the first place.

### **Commission of Inquiry**

Article 278 of the Constitution gives authority to the President, by way of a constitutional instrument, to appoint a commission of inquiry to investigate any matter of public interest<sup>110</sup> where he is satisfied that a commission of inquiry should be appointed. Apart from the President, a commission may cause to be set up by the Council of State where it advises that it is in the public interest to do so. Thirdly, by Parliament, through a resolution requesting that a commission of inquiry is appointed to inquire into any matter which is specified in the resolution as being a matter of public importance.

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<sup>107</sup> Please refer to the First Schedule of Act 550 for comprehensive list.

<sup>108</sup> Article 286(6).

<sup>109</sup> Please refer to the Civil Procedure Rules.

<sup>110</sup> Article 295 defines "public interest" to include "any right or advantage which inures or is intended to inure to the benefit generally of the whole of the people of Ghana."

Information made available to a commission of inquiry can be accessed by the public in at least two ways: through the documents ordered by the commission to be produced or the testimony given by witnesses<sup>111</sup> before the commission. The commission's sittings are held in public except otherwise ordered by the commission in the interest of public morality, public safety or public order.<sup>112</sup> Also, ultimately, the commission is mandated, under the Constitution, to produce a written report at the end of its sitting to the President. This will become public document<sup>113</sup> when in response to the report, the government issues a White Paper which shall be published in addition to the report.<sup>114</sup> Thus, the unlikely situation where the activities of a commission of inquiry shall not lead to access to information is where the proceedings are held in-camera and the President declines to have the report published.

## **CHRAJ**

Another means of accessing information on assets declared by a public official under article 286(3) is through the CHRAJ. CHRAJ's position in this regard is further strengthened by the provision that where there is an allegation that a public officer has contravened a provision of Chapter 24<sup>115</sup> it shall be made to the CHRAJ Commissioner and, in the case of the CHRAJ Commissioner, to the Chief Justice cause the matter to be investigated.<sup>116</sup>

Thus, with regard to CHRAJ, two avenues are provided, that is, either indirectly<sup>117</sup> or directly, via article 287(1). In the latter instance, investigation shall involve (a) the issuing of subpoenas requiring the attendance of any person before the Commission and the production of any document or record relevant to any investigation by the Commission; (b) causing any person contemptuous of any such subpoena to be prosecuted before a competent court; (c) questioning any person in respect of any subject matter under investigation before the Commission; (d) requiring any person to disclose truthfully and frankly any information within his knowledge relevant to any investigation by the Commissioner.<sup>118</sup>

## **Availability or otherwise of Information as Evidence**

It is the view of some commentators that the information declared by the public official and made available to the three institutions discussed above will still not be accessible to the public in any manner whatsoever.<sup>119</sup> However, that position seems to be wrong since section 106(1) of the Evidence Act, 1975 provides that the Government has a privilege to refuse to disclose and to prevent any person from disclosing a state secret. Yet, that prerogative will not be exercised where the need to preserve the confidentiality of the information is outweighed by the need for disclosure in the interest of justice.

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<sup>111</sup> Article 279

<sup>112</sup> Article 281(1)

<sup>113</sup> Article 280(1)

<sup>114</sup> Article 280(3), unless the President uses his discretion not to have the report published (Article 280(4))

<sup>115</sup> Code of Conduct for Public Officials.

<sup>116</sup> Article 287(1).

<sup>117</sup> As in the case of subpoenaing a declaration as evidence in court proceedings or a commission of inquiry.

<sup>118</sup> Section 8 of the CHRAJ Act, 1993 (Act 456).

<sup>119</sup> CDD, "Public Office Holders Assets Declaration Regime." (Draft). Also, interview with Kojo Asante, CDD-Ghana.

Moreover, the information referred to in section 106(2) relates to state secret which will not be covered by an asset declaration.<sup>120</sup> Where a dispute would arise as to the classification of a declaration, article 135 of the Constitution will be resorted to. The article grants exclusive jurisdiction to the Supreme Court to determine whether an official document shall not be produced in court because its production or the disclosure of its contents will be prejudicial to the security of the State or will be injurious to the public interest.<sup>121</sup> Should such a situation arise, proceedings in a lower court as well as administrative tribunals (including a commission on inquiry) shall be suspended and the issue as to whether the document should be produced or not is determined by the Supreme Court.

In the particular case of CHRAJ the CHRAJ Act (Act 456) delineates the nature of cases that it cannot investigate, which are: matters pending before a court or judicial tribunal; involving the relations between the Government and any other Government or an international organisation; or, relating to the exercise of the prerogative of mercy.<sup>122</sup>

## Privacy versus Public Interest

To strengthen the case for investigating the assets of political leaders and public officials, it is important to make a brief legal analysis on privacy rights as against the public interest.

The Constitution provides for and protects the right to privacy.<sup>123</sup> It is also considered a criminal offence to invade someone's privacy. However, privacy rights on public officials or public figures are less strictly complied with. Seen in terms of public officers, the interpretation of "public interest" may include any information about them that are essential attributes of the collective right of a people as a public who must be fully informed. This information naturally goes beyond the public image of a public official to include aspects of his or her private life which are considered of public interest.<sup>124</sup> Thus, this provision creates a right for citizens to access certain information about public officials which ordinarily would not be allowed by the laws of the land. In the *Mensa-Bonsu* case, the Supreme Court held, *inter alia*, that "[f]reedom of expression was essential to the achievement and maintenance of a democratic society. Accordingly, the press might criticise in matters of public interest. That right was however not absolute but subject to the limitation that it did not violate the integrity of the court or present a threat to judicial authority."<sup>125</sup>

To create an atmosphere conducive for the performance of duties, the necessary and enabling rights environment has to be created. Article 41(f) imposes a duty on citizens to fulfil by providing: "The exercise and enjoyment of rights and freedoms is inseparable from the performance of duties and obligations, and accordingly, it shall be the duty of every citizen to protect and preserve public property and expose and combat misuse and waste of public funds and property." To be able to perform this duty, people should be allowed to access certain information from public officers and institutions.

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<sup>120</sup> A "state secret" is defined under the Act as "information considered confidential by the Government, that has not been officially disclosed to the public, and which it would be prejudicial to the security of the state or injurious to the public interest to disclose."

<sup>121</sup> Article 135.

<sup>122</sup> Section 13 of Act 456.

<sup>123</sup> Article 18(2): "(2) No person shall be subjected to interference with the privacy of his home, property, correspondence or communication except in accordance with law and as may be necessary in a free and democratic society for public safety or the economic well-being of the country, for the protection of the rights or freedoms of others."

<sup>124</sup> Article 295(1) where "public interest" is defined as "any right or advantage which ensures or is intended to ensure to the benefit generally of the whole of the people of Ghana."

<sup>125</sup> See *Republic v Mensa-Bonsu And Others; Ex Parte Attorney-General* [1995-96] 1 GLR 377 SC

One may also turn to another duty that is imposed on institutions, particularly the media, to promote accountability, which in turn hinges on access to information.

First of all, media freedom is one of the few rights which are doubly guaranteed under the Constitution. First, reference is under article 21(a) and under 162(1) which stipulates that “[F]reedom and independence of the media are hereby guaranteed.” Censorship is banned as well as impediments that may be placed in the way of establishing private press or media.<sup>126</sup>

Furthermore, it is provided under Article 162(5) of the Constitution, that “All agencies of the mass media shall, at all times, be free to uphold the principles, provisions and objectives of this Constitution, and shall uphold the responsibility and accountability of the Government to the people of Ghana.”

The Code of Ethics of the Ghana Journalists Association (GJA) provides, under article 5(2), that “enquiries and intrusions into a person’s private life can only be justified when done in public interest.” Furthermore, it provides that a “journalist shall obtain information, photographs and illustration only by straightforward means.” The use of other means, such as through subterfuge, can only be justified “by overriding considerations of the public interest.”<sup>127</sup>

The publication of rejoinders provides another avenue for accessing the truthfulness or accuracy of a previous information which may have been tainted with falsehood or bias.<sup>128</sup> This information may be demanded.

All state-owned media are obliged to afford fair opportunities and facilities for the presentation of divergent views and dissenting opinions.<sup>129</sup> These provisions assert the right of the public to information on matters of public interest. Thus, where such information is lacking, one may go to court for remedies that will compel the media house to provide information from divergent perspectives.

#### **CASE #6:**

#### **New Patriotic Party v. Ghana Broadcasting Corporation [1993-94] 2 GLR 354 (SC)**

The plaintiff was a registered political party while the defendant is a statutory corporation established by the Ghana Broadcasting Corporation Decree, 1968 (NLCD 226) with the mandate to educate, inform and entertain the citizens of the country. On the presentation of the 1993 budget by the government, there were severe criticisms of its provisions by several persons including the plaintiff. In response to those criticisms the Minister of Finance on 23 and 24 January 1993 appeared on radio and television for over two hours to defend the budget proposals. The plaintiff therefore applied to the defendant to be given time on radio and television to also express its views on the budget proposals. The defendant however refused its request. Consequently, the plaintiff brought an action against the defendant for (a) a declaration that under articles 55(11) and 163 of the Constitution, 1992 the defendant, a state-owned media, had a duty to afford the plaintiff fair opportunities and facilities to present its views on the budget especially as those views diverged from those of the government or of the National Democratic Congress, the party which formed the government and which sponsored the appearance of the Minister of Finance on the television.

The Court held, *inter alia*, “[a]rticle 55(11) of the Constitution, 1992 defined with regard

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<sup>126</sup> Articles 162(2) and (3).

<sup>127</sup> Articles 12(1) and (2); GJA Code of Ethics.

<sup>128</sup> Article 162(6).

<sup>129</sup> Article 163.

to political parties, both the object of state policy and the means to achieve it. The object was the provision of fair opportunity to all political parties to present their programmes to the public, and the means of achieving that was by ensuring that each party had equal access to the state-owned media.



## THE LOCAL GOVERNMENT SYSTEM

One of the directive principles of State policy, stipulated in the Constitution is that the State shall actively promote the integration of the peoples of Ghana and prohibit discrimination and prejudice on the grounds of place of origin, circumstances of birth, ethnic origin, gender or religion, creed or other beliefs.<sup>130</sup>

In pursuance of achieving this objective, the Constitution further provides that the State shall take appropriate measures to “make democracy a reality by decentralizing the administrative and financial machinery of government to the regions and districts and by affording all possible opportunities to the people to participate in decision-making at every level in national life and in government.”<sup>131</sup>

In support of this goal, Chapter 20 of the Constitution is devoted to decentralisation and local government. The first article under this chapter states that “Ghana shall have a system of local government and administration which shall, as far as practicable, be decentralized.”<sup>132</sup>

Decentralisation or local governance involves the devolution of political, administrative, and fiscal decision-making power from central to local governments. It creates an opportunity for citizens at the local level to participate in decisions that directly affect their lives. The features for a decentralised administrative system of governance were left in the hands of Parliament to enact a law to that effect.<sup>133</sup> In response to that Parliament enacted the Local Government Act (LGA) (Act 462) in 1993. Another feature that the Constitution itself prescribed which relates to access to information is that the decentralised system should “ensure the accountability of local government authorities, people in particular local government areas shall, as far as practicable, be afforded the opportunity to participate effectively in their governance.”<sup>134</sup>

As noted before, imposition of the duty to hold those that govern accountable calls for access to information which will form the basis for critique and comment. The avenues available for accessing information are made available in the Constitution and in the LGA.

An Assembly is the highest political authority in the district, municipal or metropolitan area and possesses deliberative, legislative and executive powers.<sup>135</sup> They are set up by the Minister responsible for Local Government by way of an LI. The LI specifies, among others, the jurisdiction, functions, powers and responsibilities of the Assembly.<sup>136</sup> The Minister may also call for the establishment of Sub-Metropolitan District Councils; Urban or Zonal Councils; Town or Area Councils; and Unit committees, within the area of authority of the District Assembly (DA).<sup>137</sup>

The District Assembly consists of the following members: the District Chief Executive; one elected representative from each electoral area within the District; the Member(s) of Parliament (MP(s) from the constituencies that fall within the area of authority of the District

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<sup>130</sup> Article 35(5) of Constitution.

<sup>131</sup> Article 35(6)(d).

<sup>132</sup> Article 240(1).

<sup>133</sup> Articles 240(2)(a) and (b).

<sup>134</sup> Article 240(2)(e).

<sup>135</sup> Article 241(3).

<sup>136</sup> Section 3(2)(c) of the LGA.

<sup>137</sup> Section 3(3) of the LGA.

Assembly;<sup>138</sup> Presidential appointees not exceeding 30 per cent of the total membership of the Assembly. The latter are appointed by the President in consultation with the traditional authorities and other interest groups in the district.<sup>139</sup>

The requirement for consultation to appoint members to the Assembly provides an opportunity for local citizens to obtain information on the basis/criteria used by the President to appoint people to the Assembly.

As the political and administrative authority in the District imbued with deliberative, legislative and executive power, the Assembly's functions include the following: the preparation of development plans of the district to the NDPC for approval; and the budget of the district related to the approved plans to the Minister for Finance for approval. It is also mandated to formulate and execute plans, programmes and strategies for the effective mobilization of the resources necessary for the overall development of the district; as well as promote and support productive activity and social development in the district and remove any obstacles to initiative and development.<sup>140</sup>

In the first place, the deliberative and legislative functions of the DA is open to the public, which therefore allows for direct access to deliberations and the processes followed in the enactment of bye-laws by the Assembly. In addition, citizens can access the text or a summary of a report, papers, minutes, notes or proceedings of a District Assembly as well as a contemporaneous report of the meetings of the Assembly by applying through the Presiding Officer.<sup>141</sup> Furthermore, such information can be published to enable others have access to them, subject to the fact that the publication shall not be made in bad faith and with malice aforethought.<sup>142</sup> There is no time limit for giving this information. It is expected that it should be given within a reasonable time. Where there is undue delay there is no internal mechanism to appeal to for resolution of the issue. An aggrieved person may have to go through the courts to access information that is delayed or denied.

Additional information can be obtained by the citizenry from their Assembly member. Section 16(1) of the LGA provides that a member of a DA shall as appropriate maintain close contact with his electoral area, consult his people on issues to be discussed in the District Assembly, and collate their views, opinions, and proposals. Secondly, he should meet his electorate before each meeting of the Assembly; and, thirdly, report to his electorate the general decisions of the Assembly and its Executive Committee and the actions he has taken to solve problems raised by residents in his electoral area. This requirement is done in practice. It is the responsibility of the Assembly to notify his constituents about the meeting. The performance of these functions on the part of the DA Member will make information available to the local citizens he/she represents.

The information obtained will enable the citizenry and interest groups to influence policy at the district level as well as determine who are elected<sup>143</sup> or appointed to the Assembly.<sup>144</sup>

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<sup>138</sup> Except that such member or members shall have no voting rights.

<sup>139</sup> Section 5 LGA.

<sup>140</sup> Section 10 LGA.

<sup>141</sup> Section 137, LGA.

<sup>142</sup> *Ibid.*

<sup>143</sup> Article 246: (1) Elections to the District Assemblies shall be held every four years except that such elections and elections to Parliament shall be held at least six months apart.

<sup>144</sup> Article 242(d).

Information obtained can also be used by the citizenry where necessary as a basis to revoke the mandate of the DCE<sup>145</sup> and the Presiding Member of the Assembly, among others.

Citizens have the right to access information regarding the decision or action of the District Planning Authority<sup>146</sup> in relation to an application for permit for physical development by a citizen or association within the district. This is to, among others, enable the aggrieved party to file an appeal.<sup>147</sup> Information is accessed through application to the District Planning Authority.

Copies of by-laws made by a DA should “at all reasonable times be open to public inspection without the payment of any fee” to the public at the office of the Assembly.<sup>148</sup> Moreover, a certified copy of such by-laws can be used as evidence in court.<sup>149</sup> With respect to the finances of the District, the Minister for Local Government can authorize a person to access the District’s accounts and report to him.<sup>150</sup> These documents and records are kept at the Central Administration department or the relevant department.<sup>151</sup>

The Auditor-General is expected to audit the accounts of the DA annually and submit his reports on the audit to Parliament.<sup>152</sup>

## **The District Assembly (DA) Common Fund**

The DA Assemblies Common Fund<sup>153</sup> is run by the District Assemblies Common Fund Administrator<sup>154</sup> whose office is established under the *District Assemblies Common Fund Act, 1993* (Act 455). The Administrator’s functions include, proposing a formula annually for the distribution of the Common Fund for approval by Parliament; administering and distributing monies paid into the Common Fund among the District Assemblies; reporting in writing to the Minister on how allocations made from the Common Fund to the District Assemblies have been utilized by the DAs.<sup>155</sup> Apart from reporting to the Minister, the Administrator is also enjoined by the Act to produce an annual report to Parliament,<sup>156</sup> which will, after review by Parliament, become a public document. The Office of the Administrator does not have an information disclosure policy. Yet, one is able to access information by applying directly to the Administrator’s office or through the DAs. There is no time limit for accessing the information and there are no structured internal mechanisms to appeal or demand speedier access to information.

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<sup>145</sup> Article 243 (3) provides: “The office of District Chief Executive shall become vacant if – (a) a vote of no confidence, supported by the votes of not less than two-thirds of all the members.

<sup>146</sup> In charge of physical development in the district.

<sup>147</sup> Section 57, LGA.

<sup>148</sup> Section 82, LGA.

<sup>149</sup> Section 83, LGA.

<sup>150</sup> Section 93, LGA.

<sup>151</sup> Every Assembly is supposed to have 16 departments. See schedule 1 to LGA.

<sup>152</sup> Section 121, LGA.

<sup>153</sup> Which is a Fund set up by Parliament on an annual basis for allocation to the districts and composed of not less than five per cent of the total revenues of Ghana to the District Assemblies for development.

<sup>154</sup> With office located in the capital city, Accra.

<sup>155</sup> Section 7, Act 455.

<sup>156</sup> The report covers his/her activities during the preceding financial year including the manner in which he has distributed the monies lodged in the Fund and the report of the Auditor-General on the accounts. (Section 14, Act 455).

Any person or DA can lodge a complaint pertaining to the performance of the Common Fund Administrator to the CHRAJ.<sup>157</sup> Considering the procedures adopted by CHRAJ in resolving disputes, the public can access information during the proceedings against the Administrator. Moreover, the decision by CHRAJ can be made accessible to any person who applies for a certified true copy. The information may also be reported in CHRAJ's annual report, though it is not able to report all its decisions for lack of space.

An interview with an official of the Local Government Ministry reveals that there are no clear rules that govern access to information apart from Administrative Instructions which has no element of compulsion on the Assembly to provide the demanded information.<sup>158</sup> The official indicated that any person in need of any specific information from the Local Government Ministry can make his intentions known through a formal letter addressed to the Director. The Director will in turn forward it to the appropriate department or offices for such information to be given on condition that such information is not confidential.

A review of the approximately 52 by-laws passed to date by the Abokobi Municipal Assembly<sup>159</sup> revealed that access to information was not catered for under any of these by-laws. However, the research revealed that people who needed any information could do so through the Municipal Chief Executive who would usually refer them to the Coordinator for onward referral to the departments from which such information could be received. Further enquiry from the legal department of the Assembly revealed that access to information was purely governed by Administrative Instructions.<sup>160</sup>

According to the Public Affairs department of the Abokobi Municipal Assembly, there is no specific rule, order or bye-law on information access. However, one could seek information on budgets, planning, licences, rates etc. either by letter or in person at the Public Affairs department. The department must direct the inquirer to the appropriate area for the information needed. Usually, where the information is not considered "sensitive"<sup>161</sup> it is disclosed, often after experiencing long delays. Sometimes the delays are deliberately created to force the person demanding the information to bribe his/her way through. So far no case has been brought before CHRAJ to demand access to information from a DA.

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<sup>157</sup> Section 15, Act 455.

<sup>158</sup> Interview by Francis Sosu, of Mr. K. Agyemang, Ministry of Local Government, Accra..

<sup>159</sup> In the Ga-East District, near Accra.

<sup>160</sup> Interview by F. Sosu of Mr. E.Y. Brobby, office of the Municipal Chief Executive.

<sup>161</sup> What is "sensitive", however, is not defined.