



COLONIAL OFFICE

THE PROPOSED CONSTITUTION
OF GHANA

*Presented by the Secretary of State for the Colonies to
Parliament by Command of Her Majesty.
February, 1957.*



ACCRA:

PRINTED BY THE GOVERNMENT PRINTER

PRICE: THREEPENCE.

CMND 71.

1/DP

UNIVERSITY OF GOLD COAST LIBRARY

THE PROPOSED CONSTITUTION OF GHANA

I. ORIGIN AND NATURE OF THE PROPOSALS

In 1954 a new constitution was introduced in the Gold Coast which granted virtually full internal self-government. Later that year an organised Opposition movement emerged and during the following months it became apparent that there was a difference of view within the country about the desirable constitution for the country on its attainment of independence. Towards the end of September 1955, Sir Frederick Bourne, K.C.S.I., C.I.E., was appointed independent Constitutional Adviser at the request of the Gold Coast Government. He had talks in all parts of the country and published his recommendations in December 1955. In February 1956 the Gold Coast Government convened a round table conference (subsequently known as the Achimota Conference) to discuss the Bourne Report. This conference recommended the adoption of the Bourne Report with minor modifications. The Opposition felt unable to co-operate with Sir Frederick Bourne or to participate in the Achimota Conference. In April 1956 the Gold Coast Government published a White Paper containing their own constitutional proposals for Gold Coast independence: in substance these proposals conformed with the Bourne recommendations as modified by the Achimota Conference. This White Paper was debated in the Gold Coast Legislative Assembly on the 18th and 22nd May 1956. The Opposition were not present at the debate.

On the 11th May 1956 the Secretary of State for the Colonies stated in the House of Commons that, because of the failure to resolve the constitutional dispute within the Gold Coast, the aim of the early independence of the Gold Coast within the Commonwealth could only be achieved in one way, by giving the peoples of the Gold Coast an opportunity to consider their own constitution and to express their views on it in a General Election. The Colonial Secretary undertook on behalf of Her Majesty's Government in the United Kingdom that if a General Election were held in the Gold Coast Her Majesty's Government would be ready to accept a motion calling for independence within the Commonwealth passed by a reasonable majority in a newly elected legislature and then to declare a firm date for independence. A General Election was accordingly held in the Gold Coast on the 12th and 17th July 1956.

2. As a result of the General Election the Government Party (the Convention People's Party) was returned to power and now holds 72 of the 104 seats in the Legislative Assembly. On the 3rd August the Assembly passed by 72 votes to none a motion calling for independence within the Commonwealth. The Opposition parties abstained from voting on this occasion. Her Majesty's Government considered that the outcome of the General Election and the vote on the motion fulfilled the conditions of the Colonial Secretary's undertaking of the 11th May 1956 referred to above. Accordingly the Secretary of State for the Colonies announced on the 18th September that Her Majesty's Government would at the first available opportunity introduce into the United Kingdom Parliament a Bill to accord independence to the Gold Coast and that subject to Parliamentary approval Her Majesty's Government intended that independence should come about on the 6th March 1957.

3. In October 1956 the Gold Coast Government held talks about the constitution with the Parliamentary Opposition and with the Territorial Councils. Following these talks the Gold Coast Government published in November 1956 their Revised Constitutional Proposals for Gold Coast independence in a further White Paper which was debated by the Legislative Assembly on the 12th to 14th November, and approved (as amended in one small respect) by a vote of 70 to 25. The Gold Coast Government then requested Her Majesty's Government in the United Kingdom to enact an Order in Council, to come into effect on the date of independence, based on the Revised Constitutional Proposals as approved by the Assembly.

4. The existing constitution of the Gold Coast is, according to normal colonial practice, contained in an Order in Council. The amendments necessary or desirable on account of independence must similarly be made by Order in Council. The Order will have to be made before "the appointed day", that is before independence comes about. The final responsibility for the terms of the Order in Council must therefore necessarily rest with United Kingdom Ministers. In drafting the constitution the United Kingdom Government has naturally taken the fullest possible account of the views of the Gold Coast Government.

5. For reasons of convenience it has been decided to enact a consolidated Order which will repeat many of the provisions of the existing constitution and incorporate the necessary amendments and additions. The advantage of this procedure over a simple amending Order is that the constitution inherited by Ghana on the date of independence will be contained in a single document. This document will, however, contain many provisions which are simply reproduced from the existing constitution.

6. The Secretary of State for the Colonies visited the Gold Coast between the 24th and 30th January and held talks with the Government, the Leader of the Opposition and his colleagues, the Asantehene and other Chiefs and leaders. He has considered most carefully the views put before him, and Part II of this Paper reflects the result of his discussions. Despite many apparent differences of view and some lack of mutual confidence between different parties, he was very conscious throughout his visit of an underlying unity of purpose. All whom he met were united in their earnest desire that Ghana should make a successful start to its independent life. He is confident that the constitution outlined in this Paper provides reasonable safeguards against abuse and a fair and workable foundation on which the people of Ghana will be able to build their independent nationhood within the Commonwealth.

PART II. SUMMARY OF THE PROPOSED CONSTITUTION

Ghana is to be an independent State within the Commonwealth with the Queen as Sovereign and with a Cabinet and Parliamentary system of government of the same general type as is found in the United Kingdom and other independent Commonwealth countries.

The Executive

2. The executive power will be vested in the Queen, represented in Ghana by a Governor-General, appointed by Her Majesty in accordance with the conventions obtaining in other Commonwealth countries.

3. The Constitution will provide that the powers and functions of the Queen and the Governor-General will, save where there is express provision to the contrary, be exercised as far as may be in accordance with the constitutional conventions applicable in the United Kingdom.

4. The salary of the Governor-General will be statutory expenditure and may not be diminished during his period of office.

5. The Constitution will provide for a Cabinet of Ministers drawn from Members of Parliament and collectively responsible to Parliament. Ministers will be appointed and may be removed by the Governor-General on the advice of the Prime Minister. The Governor-General shall terminate the Prime Minister's appointment if at any time the National Assembly passes a vote of no confidence in his Government unless within three days the Prime Minister advises the Governor-General to dissolve the Assembly.

The Legislature

6. Supreme legislative power will be vested in Parliament consisting of Her Majesty the Queen and the National Assembly. The Assembly will consist of a Speaker and not less than 104 Members. Bills passed by the Assembly and assented to by the Governor-General in Her Majesty's name will be known as Acts of Parliament.

7. The maximum life of the National Assembly will be increased to five years instead of four years as at present. This provision will also apply to the Legislative Assembly elected in July 1956 which will continue in being as the National Assembly. The first session shall begin within three months after the date of independence. There shall be a session of the Assembly at least once a year.

8. The qualifications for being elected or remaining a Member of Parliament will be set out in the constitution. Changes will be made in the present law to make it conform more nearly to the existing practice in the United Kingdom.

9. The constitution will provide for universal adult suffrage and secret ballot as at present. Every citizen of Ghana, without distinction of religion, race or sex, who fulfils the existing qualifications shall be entitled to be registered as a voter.

10. The constitution also provides for the continuance of the existing constituencies. There will be machinery to review their number and boundaries from time to time, having regard to changes in population.

The Public Service

11. The constitution will provide for a Public Service Commission which will continue to function very much as at present. The existing members will, it is hoped, consent to remain in office at least until the expiry of their term of office in two or three years. Thereafter future appointments will be made by the Governor-General acting on the advice of the Prime Minister. The Prime Minister has informed the Secretary of State that it is his intention to consult the Leader of the Opposition before making any appointments and that it is his hope that his successors would do the same.

12. The appointment, promotion, transfer, termination of appointment, dismissal and disciplinary control of public officers will be vested in the Governor-General acting on the advice of the Public Service Commission with the exception of the posts mentioned in paragraph 13 below.

13. In regard to a limited class of posts in the Public Service the Governor-General will act on the advice of the Prime Minister. The posts affected are those of Permanent Secretary and of corresponding or higher grade in the Public Service (other than the post of Attorney-General) and special overseas posts.

14. Regulations affecting the Public Service Commission will be made by the Governor-General acting on the advice of the Public Service Commission.

15. The present constitution provides for the payment of compensation to Public Officers appointed before the 31st March 1954 who elect to retire from the Public Service. These provisions will be continued.

Attorney-General

16. The post of Attorney-General will continue to be a post in the Public Service for at least as long as the present holder of this post continues in office; and the assignment of responsibility for the Attorney-General's department to a Minister shall relate only to Cabinet and Parliamentary business, the Attorney-General himself retaining responsibility for initiating and discontinuing prosecutions. The Gold Coast Government in their White Paper of November 1956, while welcoming this arrangement so long as the present Attorney-General remains in office, expressed the view that there are strong arguments in favour of this post thereafter being held by a Minister as has been done in other Commonwealth countries. They added, however, that before making any such change they would consult with the Opposition and were prepared after independence, in the light of experience gained, to look at the matter afresh. Any such change would of course require an amendment of the constitution.

The Judiciary

17. There will continue to be, as at present, a Judicial Service Commission. It will be composed of the Chief Justice, the Attorney-General, the senior Puisne Judge (until Justices of Appeal are appointed when he will be replaced by the senior Justice of Appeal), the Chairman of the Public Service Commission and a person who is or shall have been a Judge of the Supreme Court appointed by the Governor-General acting on the advice of the Prime Minister. Regulations affecting the Judicial Service Commission will be made by the Governor-General acting on the advice of the Commission.

18. The Chief Justice and (when they exist) Justices of Appeal will be appointed by the Governor-General acting on the advice of the Prime Minister. Puisne Judges will be appointed by the Governor-General acting on the advice of the Judicial Service Commission.

19. Any Judge will be liable to removal from his office on an address of Parliament carried by not less than two-thirds of all the members thereof praying for his removal from office on the ground of stated misbehaviour or of infirmity of body or mind.

20. The age of retirement of Judges will continue to be 62 subject to permission being granted to a Judge by the Governor-General to continue in office for a further specified period subject to continued mental and physical fitness.

21. The appointment, promotion, transfer, termination of appointment, dismissal and disciplinary control of judicial officers (other than Judges) will be vested in the Governor-General acting on the advice of the Judicial Service Commission.

22. The Chief Justice and other Judges of the Supreme Court, and judicial officers, appointed before independence day, shall continue in office thereafter and shall be deemed to have been appointed under the conditions specified in the independence constitution. Provision will be made in the constitution for the payment of compensation to overseas judges who elect to retire before the age of 60.

23. At present there are no Justices of Appeal in the Gold Coast, and appeals from its Supreme Court lie to the West African Court of Appeal. The Gold Coast Government stated in their White Paper of November 1956 that after independence they proposed to enact legislation providing for a unified judiciary consisting of Magistrates, Judges and Justices of Appeal with the Chief Justice at the head; and that thereafter they proposed that the West African Court of Appeal should cease to exercise jurisdiction in the Gold Coast. In the same White Paper the Gold Coast Government have affirmed that the powers of the Judicial Committee of the Privy Council to entertain appeals from the Gold Coast will be retained. The existing provisions in respect of appeals to the West African Court of Appeal are contained, not in the Gold Coast constitution, but in separate Orders in Council. It has now been decided by the Gold Coast Government to set up the Ghana Court of Appeal on the attainment of Independence and appeals to the Privy Council will lie from that Court as soon as it is established.

Public Audit

24. The accounts of all Government departments and offices shall be audited by the Auditor-General. The Auditor-General will be appointed by the Governor-General acting on the advice of the Prime Minister and will not be removable except by the Governor-General on an address of the Assembly, carried by not less than two-thirds of all the members, praying for his removal on the grounds of stated misbehaviour or of infirmity of body or mind.

The Regions

25. The constitution will provide that the whole of Ghana shall be divided into the following Regions, namely the Eastern and Western Regions, Trans-Volta/Togoland, Ashanti and the Northern Territories (including the northern section of Togoland), with their present boundaries. These boundaries shall not be altered except with the consent of the Region or Regions concerned under the procedure set out in the next two paragraphs.

26. If it is desired to alter the boundaries of a Region without increasing the number of Regions, then the following procedure shall be followed:—

- (a) If there are fewer than 10,000 registered voters resident in the area affected, then the alteration can be made after a vote in favour of it passed by a simple majority in the Regional Assembly of the Regions concerned, followed by the passage through the National Assembly by a simple majority of whatever legal measure may be necessary.
- (b) If there are more than 10,000 registered voters resident in the area affected, then a referendum shall be taken in the Region containing the area. If the majority of the votes cast in the referendum are in favour of the change, then the proposal should be put to the Regional Assembly of the Region into which it is proposed to incorporate the area. If that body approves of the proposal by the vote of a simple majority, then the necessary legal measures shall be placed before the National Assembly where their passage shall require a simple majority of those present and voting.

27. If the alteration proposed will increase the number of Regions, then a referendum shall be held in the Region or Regions whose boundaries will be affected by the change. If a simple majority of the votes cast in each of these Regions is in favour of the change, then the proposal shall be put to the Regional Assemblies or Interim Regional Assemblies (see para. 32) of all the other Regions in the country. If two-thirds of all the Regions agree to it (i.e. by the referendum in the case of those whose boundaries are affected and by a simple majority vote in the Regional Assemblies of the other Regions), then it shall be put to the National Assembly and if it obtains a simple majority, the change shall come into effect.

Regional Assemblies

28. Quite apart from the understandable strength of local patriotism there is for administrative reasons an undoubted need for a body at regional level with effective powers in specified fields. The Constitution will therefore provide for a Regional Assembly to be established by Act of Parliament in each Region; and each Regional Assembly shall have authority, functions and powers to such an extent as may be prescribed by Act of Parliament relating to:—

- (a) Local Government.
- (b) Agriculture, Animal Health and Forestry.
- (c) Education.
- (d) Communications.
- (e) Medical and Health Services.
- (f) Public Works.
- (g) Town and Country Planning.
- (h) Housing.
- (i) Police.
- (j) Such other matters as the Parliament of Ghana may from time to time determine.

The maximum life of a Regional Assembly should be three years.

29. A Regional Constitutional Commission shall be appointed as soon as may be and if possible within three months of Independence to make recommendations as to the composition, authority, functions and powers of the Regional Assemblies, the funds they will require, and the means by which these funds shall be provided. They will also make recommendations as to the legislation required to give effect to their proposals.

30. The Commission will consist of the Chief Justice or a Judge nominated by him, ten representatives of the Regions nominated by the Interim Regional Assemblies (see para. 32), five persons nominated by the Territorial Councils and not more than six members nominated by the Government. The Commission will hold meetings in public in each Region and consult with the Territorial Councils and the Interim Regional Assemblies and such other persons and bodies as they deem fit.

31. The Commission's report shall be presented to the Parliament of Ghana within nine months and as soon as may be thereafter a Bill is to be introduced into the National Assembly to give effect to its recommendations.

32. Pending the establishment of the permanent Regional Assemblies, Interim Regional Assemblies shall be formed consisting of the Members of Parliament for each Region. The Speaker will convene the first meeting of each of these bodies under his Chairmanship to enable them to make their own rules of procedure and elect their first Chairman. Thereafter they will meet in accordance with their own rules.

33. An Interim Regional Assembly may appoint a Police Relations Committee with the object of encouraging good relations between the Police Force and the public. Such a Committee shall consist of not less than four persons appointed by the Interim Regional Assembly, to whom shall be added two members appointed by the Commissioner of Police and, if the Minister responsible for Police so desires, two persons appointed by him. This Committee shall be entitled to call upon the senior Police Officer of the Region to assist it in its task and to make recommendations to the Minister. It shall also be entitled, if it so desires, to present an annual report to the Minister which he shall forthwith lay upon the table of the National Assembly.

34. No member of any local government Council shall hold office for more than four years unless he be re-elected. Because for a variety of reasons certain local elections have been several times postponed, there will be provision to permit those members of councils who have already held office for more than three years to continue in office for up to one more year.

Houses of Chiefs

35. The constitution will guarantee the office of Chief in Ghana as existing by customary law and usage. It will provide for a House of Chiefs to be established by Act of Parliament for each Region. There will be a Head of each Region who shall for Ashanti be the Asantehene and for the other Regions a person chosen by the House of Chiefs. A House of Chiefs will have power to consider any matter referred to it by a Minister or the Assembly and may at any time offer advice to any Minister.

36. The Constitution will contain provision for dealing with appeals from traditional councils in matters of a local constitutional nature which will be defined in the following terms:—

- (a) the nomination, election or installation of any person as a Chief or the claim of any person to be elected or installed as a Chief; or
- (b) the deposition or abdication of any Chief; or
- (c) the right of any person to take part in the election or installation of any person as a Chief or in the deposition of any Chief; or
- (d) the recovery or delivery of Stool property or Skin property in connection with any such election, installation, deposition or abdication; or
- (e) political or constitutional relations under customary law between Chiefs.

This is the current definition laid down by statute.

37. Appeals from State Councils will be made to the House of Chiefs of the Region in which the issue has arisen, who will be obliged within a prescribed period to refer the appeal to an Appeal Commissioner, appointed by the Judicial Service Commission. It will be permissible for the Appeal Commissioner to sit with Assessors or to call on any person to give him advice on local law and custom. The Appeal Commissioner will transmit his report and findings to the House of Chiefs which will not have power to depart from the findings of the Appeal Commissioner but may remit the matter back to him for further clarification. The House of Chiefs will be obliged within a prescribed time limit to transmit the report and findings of the Appeal Commissioner to the appropriate Minister who will be responsible for publishing the findings.

38. In the case of matters heard in the first instance by the House of Chiefs for the Ashanti Region, or by a Committee of that House, an appeal shall lie to an Appeal Commissioner who will forward his report and findings to the Head of the Region, who will thereupon act in the same way as provided above for a House of Chiefs in relation to Appeal Commissioners and the Minister. Pending the establishment of Houses of Chiefs appeals will lie direct to Appeal Commissioners. Thus in all cases the ultimate decision on appeals will be that of the Appeal Commissioner sitting with or without Assessors.

39. It is not proposed to provide to any greater extent for the devolution of the Governor's discretionary powers under the existing State Councils Ordinances, which will automatically pass to the Governor-General acting on the advice of the Cabinet.

40. When any Bill affecting the traditional functions or privileges of a Chief is introduced into the National Assembly, the Speaker shall forthwith refer it to the House of Chiefs of the Region in which the Chief exercises his functions and no motion shall be moved for the second reading of the Bill in the National Assembly until three months after the date of its introduction into the National Assembly.

Emergency Powers

41. The present Emergency Powers Orders in Council 1939-56 will remain in effect as part of the law of Ghana after independence but the constitution will limit their validity in Ghana to a period of twelve months. This will give the Ghana Government time to prepare and introduce local legislation dealing with the question of emergency powers to replace the United Kingdom Order.

42. The Constitution will further provide that during the twelve months period the Emergency Powers Orders in Council will have effect in Ghana subject to the following modifications:—

- (a) Emergency Regulations made by the Governor-General under the Order shall be laid immediately before Parliament, which shall be summoned specially if not already sitting at the time, and shall lapse twenty-eight days after they have been laid unless they are confirmed within that period by affirmative resolution in the Assembly. This follows the general lines of precedents in emergency powers legislation in the United Kingdom and other Commonwealth countries.
- (b) No part of the Order shall be construed so as to confer power to make regulations inconsistent with or overriding the Constitution itself.

Freedom of Religion

43. The constitution will provide that no law shall deprive any person of his freedom of conscience or of the right freely to profess, practise or propagate any religion, subject to public order, morality and health.

No Racial Discrimination

44. It will also provide that no law shall be made discriminating against any racial community.

Restrictions on Compulsory Acquisition of Property

45. The provisions of the present constitution about the compulsory acquisition of property will be reproduced in the new constitution. These forbid compulsory acquisition save under law; require the payment of adequate compensation; give any person claiming such compensation a right of access to the Supreme Court of Ghana for determining his rights (including the amount of compensation); and give any party to proceedings in the Supreme Court relating to such a claim the same rights of appeal as are accorded to parties to civil proceedings in that Court (for appeal procedure see paragraph 23 above).

Amendment of Constitution

46. It will be laid down that no Bill to amend, repeal or modify any part of the constitution shall be presented for the Royal Assent unless it has on its third reading received a two-thirds majority of the whole number of Members of Parliament.

47. Additional processes will be required when a Bill seeks to amend repeal or modify certain basic clauses of the Constitution dealing with the subjects set out in the Appendix. On report after the Committee stage in the National Assembly, such a Bill must be referred to all the Regional Assemblies and to the Houses of Chiefs. In each Region the House of Chiefs may within one month submit its views to the Regional Assembly. The Regional Assembly after taking account of any views submitted by the House of Chiefs shall within three months of reference to them express by a simple majority its approval or disapproval of the Bill as it stands. When Assemblies of two-thirds of Regions have expressed their approval of the Bill, the third reading can be taken in the National Assembly, where to become law it shall require the support of two-thirds of all the members of the Assembly.

48. Any Bill for the abolition or suspension of a Regional Assembly or for diminishing its functions or powers shall require the consent of the Regional Assembly of the Region concerned. If it is rejected by that Assembly it may be submitted to a referendum in the Region and, if approved by simple majority vote, this shall be regarded as constituting the required approval of the Regional Assembly.

49. The Interim Regional Assemblies shall not be competent to perform the functions ascribed to Regional Assemblies in the two preceding paragraphs.

APPENDIX

- Executive power vested in the Queen, represented by the Governor-General.
- Parliament to consist of the Queen and the National Assembly.
- Adult suffrage and secret ballot.
- Power of Parliament to make laws.
- No racial discrimination.
- Freedom of conscience.
- Provisions affecting compulsory acquisition of property.
- Bills affecting Chiefs to be referred to Regional Houses of Chiefs.
- Royal Assent to Bills.
- Parliament to meet at least once a year and to be dissolved at least once in every five years.
 - A General Election to take place within two months of every dissolution.
- The provisions relating to the Public Service and the Public Service Commission.
- The provisions relating to the Judicature and the Judicial Service Commission.
- Provision for audit and for the appointment and tenure of office of the Auditor-General.
- Provision for Regional Assemblies.
- Alteration of Regional boundaries.
- Powers of Regional Assemblies.
- Provision for Houses of Chiefs.
- Functions of Houses of Chiefs.
- Provisions for constitutional change.
- Various definitions relating to the above matters.