

Completed Questionnaire Ghana

Author: Christiane Gwendolin Roth
Reviewed by Prof. Kwasi H. Prempeh

Content still under review

TABLE OF CONTENT

I. Introduction

Presumption: It is supposed that a Constitutional Court is the highest court of a country, either on top of the court hierarchy or an extra institution standing aside. If in a respective country a constitutional court may be a lower court from which appeals are taken to the higher Court (e.g. Supreme Court), please indicate that clearly and consider that while responding to the questions below.

II. The relevance of different legal systems as a source of inspiration for judicial systems in West Africa

1. Common Law (to be answered by researchers for Ghana, Liberia, Nigeria, Sierra Leone, Gambia)

General Structure	
What are relevant features of the Common Law system with regard to constitutional review and the institutional setting allowing for constitutional review?	A central feature of the common law system is a professional judiciary that is separate from and independent of the legislative and executive branches. Thus, whether the legislative and executive branches are fused, as in Westminster, or separate from each other, as in the American system, the judicial branch in common law systems is a body independent of the political branches. In those common law systems that follow strictly the British constitutional model, courts are not clothed with the power to review or determine the constitutionality of legislation. Instead, the doctrine of Parliamentary Supremacy prevails: The courts may determine whether an executive or administrative action is authorised by an Act of Parliament and thus valid, but the question whether an Act of Parliament is itself valid or “constitutional” does not arise, ¹ as Parliament is constitutionally supreme. In those other common law systems that follow the American constitutional model based on Constitutional Supremacy , the courts, or designated courts, may review acts of the government, including duly enacted legislation, against the commands of a supreme constitution and declare as unconstitutional, and therefore invalid, any laws or measures that violate the constitution. Thus, constitutional review, or judicial review of the constitutionality of legislation, is a feature of those common law systems where there is a constitution that is supreme in the hierarchy of laws and the courts are empowered to interpret, enforce, and apply the constitution in the cases that come before them.
To what extent and in what ways is the legal system of the respective country (still) influenced by the Common Law	Ghana is a democratic republic with a written constitution that is the supreme law and a system of government that features, among other things, a directly elected President in whom is vested

¹ There cannot be said to be a distinctive separation of powers. However, in line with the changes regarding the doctrine of Parliamentary Supremacy (e.g. establishment of Supreme Court, intrusion of European Union), a clearer division of the three branches of government is evolving.

<p>system insofar (related to constitutional review / institutional setting allowing for constitutional review?)</p>	<p>the executive authority of the state, a unicameral Parliament comprising representatives elected on a first-past-the-post basis from 275 single-member constituencies, and a judiciary comprising a hierarchy of inferior and superior courts with a Supreme Court at the apex.² Ghana has “inherited” the principles and traditions of the English Common Law. Present-day decisions of the English courts on issues unaffected by statute do not bind the Ghanaian courts but may be relied upon or cited as persuasive authority.</p> <p>Article 11 (2) of the 1992 Constitution identifies the laws of Ghana as comprising the following: The Constitution; enactments made by or under the authority of the Parliament established by this Constitution; any Orders, Rules and Regulations made by any person or authority under a power conferred by this Constitution; the existing law; and the common law.</p> <p>The constitution defines the common law of Ghana as comprising “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.”</p> <p>Art 1 (2) of the Constitution establishes clear constitutional supremacy and, together with Art 130, the power of judicial review:</p> <p>Art 1 (2): <i>“The Constitution shall be the supreme law of Ghana and any other law found to be inconsistent with any provision of this Constitution should, to the extent of the inconsistency, be void.”</i></p> <p>Art 130 (1): <i>“the Supreme Court shall have exclusive original jurisdiction in -</i></p> <p><i>(a) all matters relating to the enforcement or interpretation of this Constitution; and</i></p> <p><i>(b) all matters arising as to whether an enactment was made in excess of the powers conferred on Parliament or any other authority or person by law or under this Constitution.”</i></p> <p>Regarding the structure and judicial proceedings, Ghana operates the adversarial legal system and assures hierarchy of courts, with the Supreme Court supervising all lower courts.</p>
<p>What are relevant features of the Common law system with regard to the judiciary</p>	<ul style="list-style-type: none"> - Rule of Law - Independent Judiciary - Hierarchy of Courts - Judge-made law (i.e. case law) as part of the body of laws <ul style="list-style-type: none"> - Courts below the Supreme Court must follow binding precedents, following the principles of stare decisis. - Adversarial system of litigation <p>⇒ These principle are all inherent/applied in Ghana</p>

² The 1992 Constitution of the Republic of Ghana; henceforth referred to as “the constitution” or “C.R.G.”

1. Religious / Customary / Mixed Legal Systems

Religious / Customary elements in the judicial system	
<p>Does the judicial system in the respective country have religious courts / customary courts?</p>	<p>The Constitution does not formally recognize—or prohibit—religious or customary courts. “Customary law,” however, forms part of the laws of Ghana, and the regular courts may apply customary law in appropriate cases.</p> <p>There are also (10) Regional and (1) National Houses of Chiefs which by virtue of Art 273 (5) of the Constitution and Section 22/23 of the Chieftaincy Act of 2008 (act 759) adjudicate chieftaincy disputes through their Judicial Committees.³</p> <p>The Constitution, however, protects the right of persons to “enjoy, practice, profess, maintain, and promote” their culture, tradition or religion, subject to the Constitution. (Article 26(1)). Arguably, this includes the right of persons to have recourse to customary modes of dispute resolution or arbitration, if their culture, tradition, or religion so dictates or permits. Under the Chieftaincy Act 2008, a chief may act as an arbitrator of customary arbitration in any dispute where the parties consent to the arbitration.</p>
<p>Do (lower) courts apply / accept customary law or religious law?</p>	<p>Regional Houses of Chiefs and National Houses of Chiefs accept customary law through their Judicial Committees in matters arising through chieftaincy (C.R.G. Art. 273).</p> <p>Lower Courts accept and apply customary law (see above).</p>
<p>Does customary law or religious law have a formal status in the country (or does it exclusively exist in a parallel system and is not addressed in the constitution)?</p>	<p>The existence of “customary law” as one of the sources of law in Ghana is formally recognized by the Constitution in Art 11 (2) and (3).</p> <p>Article 26(1) also recognizes and protects the right of every person to enjoy, practice, profess, maintain, and promote their culture, traditions, or religion, subject to the Constitution.</p> <p>The existence of Chieftaincy is recognized and guaranteed by the Constitution in Art 270 (1).</p> <p>The House of Chiefs is furthermore responsible for the undertaking of a progressive study, interpretation and codification of Customary Law with a view to evolving, if appropriate, a unified system of rules of customary law, and compiling the customary laws and lines of succession applicable to each stool or kin. It is also responsible for the undertaking of an evaluation of traditional customs and usages with a view to eliminating those customs and usages that are outmoded and socially harmful (C.R.G. Art. 272 (b and c)).</p>

³ On Customary law – see also: Abdullahi Ahmen Al – Na’im (2003) “Human Rights under African Constitutions: Realizing the Promise for Ourselves”

	<p>It is guaranteed by the Chieftaincy Act 2008, in Art 30, that a chief may act as an arbitrator of customary arbitration in any dispute where the parties consent to the arbitration.</p> <p>Since 2006, the National House of Chiefs in partnership with the Ghana Law Reform Commission has commenced a project for the Ascertainment and Codification of Customary Law, especially in the areas of land ownership and family life. The project is still in progress.</p> <p><u>LIMITATION:</u> Art 26 (2) of the Constitution holds that all customary practices which dehumanize or are injurious to the physical and mental well-being of a person are prohibited.⁴</p>
<p>Are customary courts established under the constitution / a statute? Are they part of the regular court system? Are appeals from them taken to the regular court system? If yes, what is the appeals procedure?</p>	<p>Houses of Chiefs and their Judicial Committees, with their power to adjudicate matters relating to chieftaincy, are established by the Constitution by Chapter 22. They are integrated in the regular court system in the sense that an appeal lies from the National House of Chiefs to the Supreme Court.</p> <p>A Judicial Committee of the National House of Chiefs has original jurisdiction in any cause or matter affecting chieftaincy which lies within the competence of two or more Regional Houses of Chiefs or which cannot be dealt with by a Regional House of Chiefs (C.R.G. Art 273 (5)).</p> <p>For judgements or orders to be enforced, a House of Chiefs can, if the favoured party so requests, forward the order or judgement to the High Court for purpose of execution of the judgement. The High Court plays a supervisory role over the Houses of Chiefs. (Art 43, Ghana Chieftaincy Act 2008, Act 759)</p> <p>[What happens to matters or disputes between private parties that go to arbitration before a chief, pursuant to the Chieftaincy Act?]</p>

III. Historical Background of Constitutional Justice in West Africa

Development of Judicial Systems	
<p>Has the judicial system / the system of judicial review (and the relevant institutions) changed in comparison to the one included in the independence constitution? If so in what respects? Is there an autonomous constitutional review in the country (only focusing on the constitutional question of a case)? If so, since when?</p>	<p>The current (1992) constitution is Ghana's fifth written constitution since independence. The country's first constitution (1957), which brought her independence under a constitutional monarchy, was replaced in 1960 by the first republican constitution. The last three constitutions (1960, 1969, 1979) were each abrogated following successful military <i>coups d'état</i> (1966, 1972, 1981). The status of the judiciary and judicial review has varied depending on the regime and constitution in place.</p> <p>The 1957 constitution vested the legislative power of the state in Parliament, subject to certain substantive and procedural limitations. The power of judicial review was conferred on the</p>

⁴ For more information see Davies & Dagbanja (2009)

Supreme Court under Article 31(5) of the constitution: “The Supreme Court shall have original jurisdiction in all proceedings in which the validity of any law is called in question and if any such question arises in any lower court, the proceedings shall be stayed and the issue transferred to the Supreme Court for decision.”

This model of judicial review, in which exclusive original jurisdiction to determine the constitutionality of legislation is vested in the apex court, has remained a feature of Ghanaian constitutional design.

The scope of judicial review under the 1957 constitution was quite limited, as the constitution specified only a small number of substantive and procedural grounds upon which a law could be invalidated. There were only the following three substantive limitations: No law could “make persons of any racial community liable to disabilities to which persons of other such communities are not liable”; except for restrictions imposed for the preservation of public order, morality or health, no law could “deprive any person of his freedom of conscience or the right to freely profess, practice or propagate any religion”; and the taking of private property was subject to a right of adequate, judicially-determined compensation. The main procedural limitations on legislative power took the form of a requirement that legislation receive the approval of sub-national or regional organs if it pertained to the status and functions of chiefs, alteration of regional boundaries and names of regions, the powers of regional assemblies, or amendments and other modifications to the constitution.

As originally designed, Parliament under the 1957 Constitution was a “non-sovereign” legislature, as its power to legislate was subject to the above-mentioned procedural and substantive limitations which were enforceable via judicial review. However, following a series of duly enacted constitutional amendments, ending with the passage in 1958 of the *Constitution (Repeal of Restrictions) Act (No. 38)*, there was no longer a provision of the constitution that was “entrenched” or protected *de jure* against repeal or amendment by ordinary legislation. Every provision of the constitution thus became like any ordinary piece of legislation which Parliament could amend or repeal through the ordinary legislative process and by simple majority. Judicial review pursuant to article 31(5) remained a theoretical possibility, but that provision itself could now be repealed by ordinary legislation. The *Constitution (Amendment) Act, No. 7 (1959)* abolished the Judicial Service Commission, which body previously advised the Governor-General in the appointment of superior court judges. Thereafter all judges of the superior courts were appointed on the advice of the Prime Minister. The *Constituent Assembly and Plebiscite Act, No. 1 (1960)* conferred on the National Assembly the power to “resolve itself from time to time into a Constituent Assembly” with full powers to draft a new constitution.

The 1960 Constitution, Art 42(2), conferred on the Supreme Court exclusive original jurisdiction to determine questions of the constitutionality of legislation. Article 55(4) extended this power of judicial review to “legislative instruments” which the First

President was empowered to make under Article 55.

The scope of judicial review under the 1960 Constitution was tested in the famous case of *Re Akoto and Seven Others*, involving an appeal by persons detained without trial under the Preventive Detention Act, 1958. Appellants argued that the P.D.A. "is in excess of the powers conferred on Parliament by the Constitution . . . with respect to Article 13(1) of the Constitution, or is contrary to the solemn declaration of fundamental principles made by the President on assumption of office." The Supreme Court dismissed the appeal, holding that the provisions of the 1960 Constitution relied upon by the appellants did not confer rights or impose substantive restrictions on legislative or presidential conduct that could be enforced by the courts. Since no other provision outside Article 13(1) appeared to confer rights or a private cause of action on individuals, the decision in *Re Akoto* practically emptied the judicial review power of substantive content as far as protecting personal liberty was concerned. According to the Supreme Court in *Re Akoto*, the appropriate forum for appellants to seek a remedy was the ballot box, not the courts.

Certain amendments to the 1960 constitution enacted in 1964 severely undermined the independence of the judiciary and the institution of judicial review. Originally, judges of the superior courts could be removed from office only on grounds of stated misbehavior or infirmity of body or mind, upon a resolution carried by not less than two-thirds of the members of Parliament. The 1964 amendment added the following proviso: "Provided that the President may at any time for reasons which to him appear sufficient remove from office a Judge of the Supreme Court or a Judge of the High Court." A second amendment also repealed the provision which stated that, "The salary of a Judge of a Superior Court shall not be determined by the National Assembly and shall not be diminished while he remains in office."

The **1969 Constitution** retained the practice of conferring on the Supreme Court original jurisdiction to determine the constitutionality of legislation. Unlike the 1960 and 1957 constitutions, the 1969 Constitution contained wide-ranging, express limitations on legislative and executive power, both substantive and procedural, including certain specific prohibitions on legislative power and an extensive justiciable bill of rights. The constitution also conferred on "a person who alleges that an enactment or anything contained in or done under the authority of that or any enactment is inconsistent with, or in contravention of, any provision of the Constitution," the right to bring an action in the Supreme Court for a declaration to the effect. The High Court, the court of first instance in the three-tier structure of superior courts, was vested with power under Article 28 to hear complaints from, and provide appropriate redress for, persons who alleged a violation of any of the fundamental rights guaranteed in Articles 12 through 27, with a right of appeal to a Court of Appeal and, further, to the Supreme Court. For all other cases alleging a constitutional violation not involving a provision of the chapter on rights, exclusive original jurisdiction rested with the Supreme Court. In light of the experience under the 197 and 1960

	<p>constitutions, the 1969 constitution contained robust safeguards for the independence of the judiciary, which provisions were firmly entrenched against legislative repeal or amendment.</p> <p>The framework and provisions for judicial review established in the 1969 constitution were reproduced verbatim in the 1979 Constitution. The same provisions have been carried over into current (1992) Constitution.</p> <p>In general, the prospect of judicial review of the constitutionality of legislation is made untenable when a military junta assumes power after overthrowing a constitutionally installed government in a <i>coup d'état</i>. Each of Ghana's past military regimes (1966, 1972, 1978, 1979, 1981) has installed itself in office, upon a successful coup d'état, by means of a <i>Proclamation</i>, which legal instrument simultaneously "suspends" and replaces the extant constitution as the supreme law of the land. Pursuant to the Proclamation, all legislative and executive authority in the state is reposed or vested in a named military council, which thus constitutes itself as the lawful government. Each such Proclamation has, however, provided for the regular courts to "continue in existence with the same powers, duties and functions under the existing law subject to [the] Proclamation," although the military regime also typically establishes by decree "tribunals" or special "courts" outside the regular judiciary to try special offences and ousts the regular courts of jurisdiction over specified matters. Despite this legal apparatus designed to install a regime based on legislative supremacy and thereby disallow constitutional judicial review, there were isolated cases of courts during the era of military government entertaining challenges to certain decrees of the ruling council and declaring them invalid on grounds that the decree in question lacked one or more of the formal attributes of validity enumerated in the relevant Proclamation. In those instances, the ruling council typically re-enacted the decree after correcting the defect in form identified by the court.</p>
--	---

(Political Control)

IV. Different Models of Constitutional Justice

1. Different Judicial Review Institutions

What kind of judicial institutions are available in the respective country	
<p>Which institution is considered "the highest court" in the country?</p>	<p>Art. 129 (1) of the Constitution states that the Supreme Court is the final court of appeal and has such appellate and other jurisdiction as may be conferred on it by the Constitution or by any other law. Clause 2 of the same Article furthermore declares that the Supreme Court is not bound to follow the decisions of any other court.</p> <p><u>Similarly:</u> Ghana Courts Act Sec (1): <i>"The Supreme Court shall be the final court of appeal and shall have such appellate and other jurisdiction as may be conferred on it by the Constitution or by any other law."</i></p> <p>Ghana Courts Act Sec (3): <i>"The Supreme Court may, while treating its own previous decisions as normally binding, depart from a</i></p>

	<i>previous decision when it appears to it right to do so; and all other courts shall be bound to follow the decisions of the Supreme Court on questions of law."</i>
Does the "highest court" in the country also stand at the top of the regular court system? Or is it a separate institution?	Yes, the Supreme Court is an integral part of the regular court system and sits at the top of the multi-tiered court system. Article 129 of the Constitution pronounces the Supreme Court the final court of appeal .
Are there various highest courts in the country dependent on the issue to be addressed (e.g. highest court of administration, highest tax court)	Specialized "subject matter" courts may be established either as divisions of the High Court by the Chief Justice or as inferior courts by legislation. Decisions of these courts are however subject to appeal, terminating in the Supreme Court, if necessary. The Court of Appeal is, however, the "highest court" or final appellate court in two instances. First, Article 48 of the Constitution empowers the Chief Justice to constitute a three-person tribunal to hear and determine a matter brought by "a person aggrieved by a decision of the Electoral Commission in respect of a demarcation of a boundary." The decision of the tribunal may be further appealed to the Court of Appeal, whose decision shall be final. Second, the Court of Appeal has final appellate jurisdiction in disputes concerning the validity of a person's election as a member of Parliament, which matter shall be heard and determined in the first instance by the High Court.
Which courts can question the constitutionality of acts (act administrative) or of laws (act legislative / statutory provisions / law organic)?	Art 1 (2) in combination with Art 130 (1) of the Constitution establishes the power of judicial review of legislation. <i>Art 1 (2): "The Constitution shall be the supreme law of Ghana and any other law found to be inconsistent with any provision of this Constitution should, to the extent of the inconsistency, be void."</i> <i>Art. 130 (1): ". . . the Supreme Court shall have exclusive original jurisdiction in -</i> <i>(a) all matters relating to the enforcement or interpretation of this Constitution; and</i> <i>(b) all matters arising as to whether an enactment was made in excess of the powers conferred on Parliament or any other authority or person by law or under this Constitution."</i> However, the exclusive original jurisdiction of the Supreme Court in all constitutional matters is qualified by the provision in Art 130(1) and Art 33 that, a person who "alleges that a provision of this Constitution on the fundamental human rights and freedoms has been, or is likely to be contravened in relation to him" may seek redress in the High Court. The decision of the High Court in the matter may be appealed to the Court of Appeal with a right of further appeal to the Supreme Court.
Does the country have a judicial commission / judicial council (self-governing body of the judiciary), etc.	Yes. An eighteen-member Judicial Council chaired by the Chief Justice is established under Art 153 of the Constitution.

2. Systems of Control

If a lower court assumes that a regulation relevant to the case before it violates the Constitution, what can it do?

Nothing, no power to question the constitutionality of the law/regulation.	See below.
If the court has serious doubts about the constitutionality of the law/regulation related to a specific case, it might pause the proceedings and request a statement of constitutionality from another institution (constitutional court, constitutional council, etc.), which may declare the regulation/law for unconstitutional. What is the referral procedure in this case?	The Constitution in Art 130 (2) and Section 3 (2) of the Ghana Courts Act provide that where an issue that relates to the enforcement or interpretation of the constitution arises in any proceeding in a court other than the Supreme Court, that court shall stay the proceedings and refer the question of law involved to the Supreme Court for determination ; and the court in which the question arose shall dispose of the case in accordance with the decision of the Supreme Court.
The lower court may declare the regulation (administrative acts/legislative acts / statutes / law organic) to be inapplicable in the specific context.	No.
The lower court declares the regulation/law to be unconstitutional.	No.
Any other action	Stay proceedings and refer the question to the Supreme Court for determination.

- [a. Diffuse System of Constitutional Review: The Supreme Court
- b. Concentrated System of Review: The Constitutional Court
- c. Hybrid Systems of Constitutional Review]

V. Some Relevant Aspects of Judicial Independence

- 1. Independence of the Judiciary vs. Independence from the Judiciary – the Judiciary as Legislature
- 2. The Administration of the Highest Court and its Budget

Administration of the Judiciary	
Which body / institution is administering the "highest court"?	<p>According to Art 125 (4) of the Constitution, "The Chief Justice shall, subject to this Constitution, be the Head of the Judiciary and shall be responsible for the administration and supervision of the Judiciary."</p> <p>The Judicial Council is charged, under Art 154(1)(b) to "assist the Chief Justice in the performance of his duties with a view to ensuring efficiency and effective realization of justice."</p> <p>The Chief Justice is empowered, under Art 159, to make regulations in the form of a "constitutional instrument" for the "efficient performance of the functions of the Judicial Service and the Judicial Council," "acting in accordance with the advice of the Judicial Council and with the approval of the President."</p> <p>In the day-to-day administration of the Judicial Service, the Chief Justice is assisted by a Judicial Secretary who is appointed by the Chief Justice, acting on the advice of the Judicial Council, subject to the approval of the President.</p>

	Judicial Secretary, the Director of Finance and the Director of Audit. ⁵
Is the Ministry of Justice involved in the administration of the "highest court"? If so, to what extent? Or is it administered by the judiciary (self-governing body)?	No. Art 127 (1) of the Constitution states that the judiciary , in both its judicial and administrative functions, including financial administration, is subject only to this Constitution and shall not be subject to the control or direction of any person or authority. However, the Attorney General, who is, by convention, also the Minister of Justice is an ex-officio member of the Judicial Council.
Is there a body within the Judiciary / highest court that is responsible for administering the resources? To whom is this body accountable? Is there any kind of external oversight?	See above. Funds voted for the Judiciary by Parliament are administered by the Chief Justice as Head of the Judiciary "without the interference of any person or authority" other than for purposes of audit by the Auditor-General.

What kind of role does the judiciary / the constitutional court have in the process of drafting / approving its budget	
What kind of involvement does the "highest court" have in devising its budget (who originally submits its budget)?	Pursuant to Art 179(3), estimates of the administrative expenses of the Judiciary, which are chargeable on the Consolidated Fund, and estimates for the capital expenditure of the Judiciary for the forthcoming financial year are prepared by the Chief Justice, in consultation with the Judicial Service, and must be submitted to the President at least two months before the end of each financial year. The President is required to refer the Judiciary's budget estimates to Parliament for its approval, with comments, if any, but without revision, by the President.
Who might have the right to alter the budget (of the highest court) within the approval procedure? Can the highest court effectively ask for more resources to fulfill its duties adequately?	The relevant provision of the Constitution reads: <i>"179 (3) The Chief Justice shall, in consultation with the Judicial Council, cause to be submitted to the President at least two months before the end of each financial year, and thereafter as and when the need arises</i> <i>(a) the estimates of administrative expenses of the Judiciary charged on the Consolidated Fund under article 127 of this Constitution; and</i> <i>(b) estimates of development expenditure of the Judiciary.</i> <i>(4) The President shall, at the time specified in clause (1) of this article, or thereafter, as and when submitted to him under clause (3) of this article, cause the estimated referred to in clause (3) of this article to be laid before Parliament.</i> <i>(5) The estimates shall be laid before Parliament under clause (4) by the President without revision but with any recommendations that the Government may have on them.</i> <i>(6) The development expenditure of the Judiciary, if approved by Parliament, shall be a charge on the Consolidated Fund."</i>

⁵ Information given by Justice Jones Dotse.

	Parliament frequently alters the budget estimates submitted by the Chief Justice on behalf of the Judiciary. Some people are of the opinion that the cut of the proposed budget of the Judiciary by Parliament is unconstitutional. However, this matter has not been litigated.
In how far do court statistics (case workloads, etc.) play a role in the determination of the budget	Statistics maintained by the Judicial Service, including data on case workloads, are commonly used as a basis and guide in the preparation of the budget of the Judiciary.
Is the budget (of the highest court) an integral part of the overall budget or is it separated?	It is an integral part of the overall Budget. Art 127 (4) of the Constitution states: <i>“The administrative expenses of the judiciary, including all salaries, allowances, gratuities and pensions payable to our in respect of, persons serving in the judiciary, shall be charged on the Consolidated Fund.”</i>

3. Judicial Commission / Judicial Council

Judicial Commission / Judicial Council	
Is there any institution like a Judicial Commission / Judicial Council (see also IV.1= self-governing body)?	Yes , there is a Judicial Council established by Art. 153 of the Constitution.
If so, what are the tasks of the Judicial Commission / Judicial Council? (might be a considerable discrepancy between common law approach and civil law approach)	According to Art 154. (1) of the Constitution, the functions of the Judicial Council are - (a) to propose for the consideration of Government, judicial reforms to improve the level of administration of justice and efficiency in the Judiciary; (b) to be a forum for consideration and discussion of matters relating to the discharge of the functions of the Judiciary and thereby assist the Chief Justice in the performance of his duties with a view to ensuring efficiency and effective realization of justice; and (c) to perform any other functions conferred on it by or under this Constitution or any other law not inconsistent with this Constitution. (2) The Judicial Council may establish such committees as it considers necessary to which it shall refer matters relating to the Judiciary.
What are the criteria of eligibility for membership?	Membership is defined in accordance with Art 153 of the Constitution as follows: There shall be a Judicial Council which shall comprise the following persons - (a) the Chief Justice who shall be Chairman ; (b) the Attorney-General ; (c) a Justice of the Supreme Court nominated by the Justices of the Supreme court; (d) a Justice of the Court of Appeal nominated by the Justices of the Court of Appeal; (e) a Justice of the High court nominated by the Justices of the High Court; (f) two representatives of the Ghana Bar Association one of whom shall be a person of not less than twelve years' standing as

	<p>a lawyer.</p> <p>(g) a representative of the Chairmen of Regional Tribunals nominated by the Chairmen;</p> <p>(h) a representative of the lower courts or tribunals;</p> <p>(i) the Judge Advocate-General of the Ghana Armed Forces;</p> <p>(j) the Head of the Legal Directorate of the Police Service;</p> <p>(k) the Editor of the Ghana Law Reports;</p> <p>(l) a representative of the Judicial Service Staff Association nominated by the Association;</p> <p>(m) a chief nominated by the National House of Chiefs; and</p> <p>(n) four other persons who are not lawyers appointed by the President</p>
How is the Judicial Commission / Judicial Council composed?	See above.
Do ex-officio members have the same authorities like other members?	Yes.
Who selects members of the Judicial Commission / Judicial Council?	See above. Nine of the eighteen members are nominated by the organizations or constituencies they represent; the President selects four persons who are not lawyers; the rest (5), including the Chief Justice and the Attorney-General, are ex-officio members.
What kind of relation exists between the “highest court” and the Judicial Commission / Judicial Council?	<p>The Chief Justice, who also presides over the Supreme Court, is the chairman of the Judicial Council. One member of the Council is also a Justice of the Supreme Court nominated by the Justices of the Supreme Court.</p> <p>Art. 154 (b) attributes the following function to the Judicial Council: It is to be a forum for consideration and discussion of matters relating to the discharge of the functions of the Judiciary and thereby assist the Chief Justice in the performance of his duties with a view to ensuring efficiency and effective realization of justice.</p>

4. Challenges of Neutrality and Impartiality

VI. Composition

Composition of Constitutional Courts / Supreme Courts	
<p>Eligibility: (a) minimum age / (b) maximum age / (c) legal education / (d) special legal qualification (e.g. sitting judge; being an expert in one legal system (for example Sharia law)/ (e) years of professional experience / (f) limitations (no party membership, no other positions while sitting in the court) / (g) other requirements</p>	<p>Art. 128 (4) of the Constitution provides that, “A person shall not be qualified for appointment as a Justice of the Supreme Court unless he is of high moral character and proven integrity and is of not less than fifteen years' standing as a lawyer.”</p> <p>A case brought in 1995 by the Ghana bar association, seeking to have the appointment of a Chief Justice nullified on the grounds that the appointee that did meet the “high moral character and proven integrity” standard, was dismissed by the Supreme Court, with a majority of the Court holding that the determination of the appointee’s “moral” qualification was a matter left for the appointing authorities (namely, the President, the Council of State, and Parliament) to consider and determine.</p>

	<p>Justices of the Supreme Court must retire “on attaining the age of seventy years”.</p> <p>A person who otherwise meets the minimum qualification for appointment to the Supreme Court need not be a sitting judge in order to be appointed as such.</p> <p>Judicial office is incompatible with membership of Parliament or office in the executive branch. However, there is a long tradition of sitting judges being appointed by the President to chair ad hoc commissions of inquiry set up under Article 278 of the Constitution. Such appointments do not offend the Constitution, as Art 278 (3) expressly restricts appointment as chairman of a commission of inquiry or sole commissioner to sitting or past Justices of the Superior Courts or a person qualified to be appointed a Justice of the Superior Court or a person who possess special expertise or knowledge in the matters to be investigated.</p>
<p>Selection of Constitutional Court / Supreme Court Judges: all judges selected in the same manner? / who / which institution is involved in the selection process?/ Is there a complete replacement of judges or a partial replacement</p>	<p>Pursuant to Art 144 of the Constitution, (1) the Chief Justice is appointed by the President acting in consultation with the Council of State and with the approval of Parliament; (2) the other Supreme Court Justices shall be appointed by the President acting on the advice of the Judicial Council, in consultation with the Council of State and with the approval of Parliament; and (3) Justices of the Court of Appeal and of the High Court and Chairmen of Regional Tribunals are appointed by the President acting on the advice of the Judicial Council.</p> <p>Appointments are made to the Supreme Court when a vacancy occurs, usually caused by the retirement or death of a Justice of the Court. However, there is no constitutionally or statutorily stated maximum number of Justices who must comprise the Supreme Court, the Court of Appeal, or the High Court. The Constitution provides only that the Supreme Court shall comprise at least the Chief Justice and nine other Justices.</p>
<p>Selection of Constitutional Court / Supreme Court Judges: if selected in different processes: who / which institutions are involved in the respective processes?</p>	<p>See above.</p>
<p>How many institutions are involved in the selection process?</p>	<p>In the case of the Chief Justice 3: President, Council of State and Parliament.</p> <p>In the case of the other Justices of the Supreme Court 4: President, Judicial Council, Council of State and Parliament.</p> <p>See above.</p>
<p>Sequence of the selection process (recommendation, advise; election, consultation; appointment; cooption)</p>	<p><u>In case of the Chief Justice:</u> Appointed by the President in consultation with the Council of State and with approval of Parliament (<i>Art 144 (1) C.R.G.</i>).</p>

	<p><u>In case of other Justices of the Supreme Court:</u> Appointed by the President, “acting on the advice of Judicial Council” and in consultation with Council of State and with approval of parliament (Art 144 (2) C.R.G).</p> <p>Due to a lack of transparency or publicity in the sequence of the appointment (other than the approval by Parliament), it is not clear who initiates the appointment. In particular, it is not clear whether the President, after consulting the Council of State, submits a nomination for the “advice” of the Judicial Council or whether it is the Judicial Council that makes the initial nomination. The common belief is that the President makes the nomination.</p>
<p>What are the terms of office</p>	<p>Art. 145 (1) states that a Justice of a Superior Court or a Chairman of a Regional Tribunal may retire at any time after attaining the age of sixty years.</p> <p>(2) A Justice of a superior court or a Chairman of a Regional Tribunal shall vacate his office -</p> <p>(a) in the case of a Justice of the Supreme Court or the Court of Appeal, on attaining the age of seventy years; or</p> <p>(b) in the case of a Justice of the High Court or a Chairman of a Regional Tribunal, on attaining the age of sixty-five years;</p>
<p>Is a re-selection possible?</p>	<p>Judges of the Supreme Court are appointed and stay judges until the age of seventy. They may only be removed for reasons of misconduct or incompetence or on medical grounds after going through a multi-step removal procedure provided for in the Constitution.</p> <p>Although the matter has not been litigated or decided authoritatively, the common understanding is that a Justice who has been removed from office in accordance with the constitutionally specified process and grounds for removal is not eligible for re-appointment to the bench, unless the removal is judicially reversed as having been done wrongfully.</p>
<p>Is the representation of minorities guaranteed (are ethnic, linguistic, religious differences to be considered)? How?</p>	<p>There is no such legal provision which guarantees the representation of minorities on the Supreme Court.</p> <p>Currently the Chief Justice and a fair number of the Justices of the Supreme Court are women. There is no known problem or grievance related to underrepresentation of ethno-linguistic or religious groups in the Supreme Court.</p>
<p>Is the opposition involved in the selection process?</p>	<p>The appointment of the Chief Justice and other Justices of the Supreme Court must receive the prior approval of Parliament, which is typically a multi-party body. However, parliamentary approval is by a simple majority, and while it is possible for the majority in Parliament to be constituted by a political party or coalition of parties other than the party of the President, the experience so far is that the President’s party constitutes a majority of Members of Parliament, occasionally in coalition with other parties or independents.</p> <p>In the history of the Fourth Republic, there has been only one case in which a nominated Judge was denied by Parliament to be appointed Supreme Court Judge. Although nominated by the</p>

	ruling party, after his presentation in Parliament, the Judge was deemed “unfit”/“unqualified” by the majority of members of parliament.
--	--

- [1. Eligibility for Appointment as a Constitutional Court Judge / Supreme Court Judge
2. Selection of Judges of the Constitutional or Supreme Court
3. Terms of Office
4. Representation of Minorities]

VII. Competences

Introduction Judicial Review:

As a precondition for judicial review, **the Constitution of Ghana is defined as the supreme law of the land (Art 1 (2))**. In particular, judicial review of legislative action has been vested in the Ghana Supreme Court by article **130(1)(b) of the Constitution**. Under this article, the Supreme Court has exclusive original jurisdiction to declare any enactment or legislation as null and void on the grounds that the legislation in question has been made in excess of the powers conferred on Parliament or any other authority or person by law or under the Constitution. Additionally, **Art 2 (1)** states that a person who alleges that an enactment or anything contained in or done under the authority of that or any other enactment; or any act or omission of any person is inconsistent with, or is in contravention of a provision of this Constitution, may bring an action in the **Supreme Court** for a declaration to that effect.

1. Preliminary Review

Preliminary Review (reviewing the constitutionality of a bill before it becomes law)	
Available?	<p>Art. 93(2) of the Constitution provides that the legislative power of Ghana shall be exercised in accordance with the Constitution.</p> <p>Preliminary Review, i.e. judicial review of bills that have not been passed into law, cannot be reviewed in this particular sense.⁶ However, where a bill concerns the Judiciary or the administration of Justice, the relevant committee of Parliament or the Attorney-General (at the drafting stage) will normally seek and consider the opinion or comment of the Judicial Council before passing the bill into law.⁷</p>
Who can trigger the procedure (or is it part of the legislative process) (who has standing)? What is required to take action?	-
At which state of the legislative process can the preliminary review be triggered?	-
Applicable to all bills / drafts?	-
Also consultative opinions available?	The Judicial Council and Special Committees may be consulted for their opinion when during the drafting of the bill or at the committee stage in Parliament.

2. Abstract Review

Abstract Review	
Available?	

⁶ Information acquired through interview with Supreme Court Judge Jones Dotse

⁷ More research may be required here

	<p>Abstract Review in the sense of “Abstrakte Normenkontrolle” is not specifically available.</p> <p>Nevertheless, Art 2 (1) of the Constitution reads that a person who alleges that (a) an enactment or anything contained in or done under the authority of that or any other enactment; or (b) any act or omission of any person is inconsistent with, or is in contravention of a provision of this Constitution, may bring an action in the Supreme Court for a declaration to that effect.</p> <p>Despite the reference to a “person,” the Ghana Supreme Court has limited the right to sue under Art 2 (1) to “citizens” of Ghana, including artificial persons incorporated or registered under the laws of Ghana. (Non-citizens can still seek redress in the High Court, pursuant to Art 33, if their constitutionally guaranteed rights or freedoms are infringed or threatened). But the Ghana Supreme Court has interpreted Art 2 (1) broadly to allow a citizen to bring an action in relation to constitutional matters (enactments or acts in conflict with the constitution) without having to prove or show sufficient personal interest in the case (such as in Nigeria).</p> <p>An “abstract review” in the sense of judicial review of the constitutionality of legislation without having a specific case or violation arising out of the enforcement of the legislation may be brought before the Supreme Court by any citizen of Ghana / Corporation / NGO. (see: <i>New Patriotic Party v Attorney-General</i> (Ciba case))</p>
<p>Who can trigger the procedure (who has standing)? What is required to take action?</p>	<p>Under Art 2 (1) a “person” has <i>locus standi</i>. According to the interpretation of the Supreme Court, the “person” needs to be a Ghanaian citizen and also includes legal persons, e.g. corporate bodies or NGOs. The matter addressed must be of constitutional relevance.</p>
<p>Applicable to all laws (or are there any restrictions: (organic laws?)?)</p>	<p>Applicable to all laws, but also extends to an act or omission of any person concerning a matter governed by the Constitution.</p>
<p>What kind of judgments may be rendered (nullification; directions to the legislature to fix the unconstitutional parts of a law within a specific period of time; others?)</p>	<p>The person alleging that an enactment or an act or omission of any person is unconstitutional, pursuant to Art 2 (1), may seek “a declaration” from the Supreme Court to that effect. However, under Art 2 (2), the Supreme Court shall “make such orders and give such directions as it may consider appropriate for giving effect, or enabling effect to be given, to the declaration so made.”</p>

3. Specific or Incidental Review

Incidental Review	
<p>Available (are courts authorized to review the constitutionality of laws?)</p>	<p>Yes, in accordance with Art 2 (1) and 130 (1) of the Constitution.</p>
<p>What happens if the court is of the view that a law relevant to the case at hand is unconstitutional? Can the court not apply that law or declare it unconstitutional?</p>	<p>Art 130 (2) of the Constitution provides that, “Where an issue that relates to a matter or question referred to in subsection (1) of this section arises in any proceedings in a court other than the Supreme Court, that court shall stay the proceedings and refer the question of law involved to the Supreme Court for determination; and the</p>

	<i>court in which the question arose shall dispose of the case in accordance with the decision of the Supreme Court.”</i>
Is the doctrine of “stare decisis” legally applied (precedent)?	Yes it is. Art 129 (3) of the Constitution states that “ <i>all other courts shall be bound to follow the decisions of the Supreme Court on questions of law.</i> ” However, the Supreme Court “may, while treating its own previous decisions as normally binding, depart from a previous decision when it appears to it right to do so.”
Are there restrictions to incidental review (testing the constitutionality of a regulation / law as part of deciding the case at hand)?	Not as such. There are, however, ouster clauses in the Constitution and certain limits as to the legal enforcement of rights. These are further discussed in point “limits of constitutional review” below.

4. Direct Action before the Constitutional or Supreme Court (individual complaint)

Direct action	
Available?	Yes it is. E.g. <i>Sam (No. 2) v. Attorney-General</i>
Who can trigger the procedure (who has standing)?	According to Art 2. (1) of the Constitution declares that “ a person who alleges that - <ul style="list-style-type: none"> (a) an enactment or anything contained in or done under the authority of that or any other enactment; or (b) any act or omission of any person; is inconsistent with, or is in contravention of a provision of this Constitution, may bring an action in the Supreme Court for declaration to that effect.” <p>The meaning of “a person” was closely dealt with in <i>New Patriotic Party v Attorney-General (Ciba case)</i> where the court decided (4:1) that a “person” must be a citizen but may be a natural or legal person. Corporate bodies that therefore also have <i>locus standi</i> under Article 2 of the Constitution.</p> <p>Direct action is only possible in cases of constitutional matters (under Art. 2 C.R.G.). If e.g. a person, including a non-citizen, seeks to enforce his or her fundamental rights that action must be brought in the High Court.</p>
What is required to take action (i.e. exhaust the access to ordinary courts first)?	For constitutional matters, according to Art. 2(1) of the Constitution, any person (who is Ghanaian), may bring an action if he or she “alleges that (a) an enactment or anything contained in or done under the authority of that or any other enactment; or (b) any act or omission of any person,” is inconsistent with, or is in contravention of a provision of the Constitution.
Are there restrictions to the right of individual complaint can highest courts decide whether or not they take a case? If so, what are the criteria)?	The Supreme Court may deny individual complaint in cases only if it determines that the matter does not raise a constitutional issue or the plaintiff is not a Ghanaian national.

5. Limits on the Review of Constitutionality

Limits of Review	
<p>Are there explicit limitations to the review of the constitutionality (for example international treaties, laws approved by referendum, laws that were valid before the constitution came into force, legislation past under emergency power, limitation to manifestly unconstitutional acts)?</p>	<p>Certain indemnity clauses explicitly limit the review of constitutionality:</p> <p><u>Ouster clause in section 34(3) of the Transitional Provisions of the Constitution, 1992:</u></p> <p>First Schedule Sec 34 (1) (1) of the Constitution states that no member of the Provisional National Defense Council, Provisional National defense Council Secretary, or other appointees of the Provisional National Defense Council can be held liable for any act or omission during the administration of the Provisional National Defense Council.</p> <p>(2) It is not lawful for any court or tribunal to entertain any action or take any decision or make any order or grant any remedy or relief in any proceedings instituted against the Government of Ghana or any person acting under the authority of the Government of Ghana whether before or after the coming into force of this Constitution or against any person or persons acting in concert or individually to assist or bring about the change in Government which took place on the twenty-fourth day of February 1966 on the thirteenth day of January, 1972, on the fourth day of June 1979 and on the thirty-first day of December 1981 in respect of any act or omission relating to or consequent upon—(a) the overthrow of the government in power before the formation of the National Liberation Council, the National Redemption Council, the Supreme Military Council, the Armed Forces Revolutionary Council, and the Provisional National Defense Council; or (b) the suspension or abrogation of the Constitutions of 1960, 1969 and 1979; or (c) the establishment of the National Liberation Council, the National Redemption Council, the Supreme Military Council which took office on the ninth day of October, 1975, the Supreme Military Council established on the fifth day of July, 1978, the Armed Forces Revolutionary Council, or the Provisional National Defense Council; or (d) the establishment of this Constitution.”</p> <p>The doctrine of non-justiciable political questions also applies.⁸</p>

6. Review of Constitutional Amendments (formal regularity and substance)

Review of Constitutional amendments	
<p>Is it possible to review amendments to the constitution itself?</p>	<p>Yes it is.</p> <p>Since constitutional amendments must take place in accordance with a process specified in the Constitution, culminating in the passage of an Act of Parliament, any aspect of the process and the resulting Act may be subject to challenge and judicial review.</p> <p>Moreover, since Art 299 and Section 37 of the Transitional Provisions specified in the First Schedule to the Constitution provide that the indemnity clauses contained in sections 34 and 35</p>

⁸ For more details on this issue and the general ambit of constitutional review see: NPP v AG (31 December case) cited in: Seith Yeboa Bimpong-Buta “The Role of the Supreme Court in the Development of Constitutional law in Ghana” Dissertation, University of South Africa.

	of the First Schedule are unamendable, any amendment affecting those provisions may be subject to judicial review.
If so, is the review limited to a formal review of the process followed for amendment? or is a review on the substance of the constitution also permitted?	Both are permitted.
Does the constitution contain immutable clauses (provision that are excluded from constitutional amendment)?	Sec 37 of the First Schedule of the Constitution states that notwithstanding anything in Chapter 25 of the Constitution, Parliament has no power to amend section 37 or sections 34 and 35 of the First Schedule , which refer to the change of Government under the military regime (see above).
Who can trigger the procedure (who has standing)? What is required to take action?	Any citizen (see above, ref. Art 2(1) of Constitution).

7. Unconstitutional Omission

Unconstitutional Omission	
Is it possible to take action against constitutional obligations that haven't been implemented?	<p>Art 2 of the Constitution entails not only acts of persons but also omissions of persons:</p> <p><i>"Art 2 (1) A person who alleges that -</i> <i>(b) any act or omission of any person is inconsistent with, or is in contravention of a provision of this Constitution, may bring an action in the Supreme Court for a declaration to that effect."</i></p> <p>The Directive Principles of State Policy contained in Chapter 6, which oblige and commit the State to certain policy objectives, were for once regarded as non-justiciable, following the view of the Committee of Experts on the Draft Constitution of 1992. However the current position, based on the opinions of Bamford-Addo JSC in <i>New Patriotic Party v Attorney-General</i> (31st December Case) [1993-94] 2 GLR 35, Justice Date-Bah in <i>Ghana Lotto Operators Association & Others v National Lottery Authority</i>,⁹ is that the Directive Principles are justiciable and may be legally enforced by a court.¹⁰ It is therefore accepted by the Supreme Court¹¹ that an omission of state obligations included in the Directive Principles is generally justiciable. Certain provisions of Chapter 6 are nevertheless seen as aims, which, due to insufficient resources, can only be achieved progressively (such as providing educational facilities for every child) and are therefore not enforceable by courts.</p>
Who can trigger the procedure (who has standing)? What is required to take action?	Any citizen (see point on standing above).
What kind of judgments may be rendered (instruction to the legislature / executive to take action (within a specific period of time); declaration that a law only	All judgements are possible.

⁹ Cited in Quashigah, Kofi "The 1992 Constitution of the Republic of Ghana" p.9.

¹⁰ See Quashigah, *ibid*.

¹¹ According to Justice Jones Dotse

insufficiently implements a constitutional obligation; court “implements” the obligation by rendering a specific right to the claimant; others)?	
--	--

8. Conflicts between State Bodies

Conflicts between State Bodies	
Does the court have jurisdiction to decide whether or not a certain task falls within the authority of a state body or to interpret the limits of authority also in relation to other bodies, be it horizontally (between different institutions at the national level) or vertically (between national institutions and institutions from the province / local institutions)?	By virtue of Art 23 Chapter 5 of the Constitution, administrative bodies and administrative officials “ <i>shall act fairly and reasonably and comply with the requirements imposed on them by law and persons aggrieved by the exercise of such acts and decisions shall have the right to seek redress before a court or other tribunal.</i> ” Where jurisdictional conflicts between state bodies, whether horizontally or vertically, arise from the allocation of powers under the Constitution, the Supreme Court has exclusive original jurisdiction to hear and determine such cases. The High Court has original jurisdiction to hear cases of conflicts between state bodies that arises from statute.
Who can trigger the procedure (who has standing)? What is required to take action (how)?	If the dispute arises from conflicting interpretations of the Constitution, any citizen, including a legal person, can bring an action before the Supreme Court. If the disputes arise from conflicting statutory interpretations, then the question as to who may be a plaintiff in such cases would be provided for in the relevant statute. Generally, any person with interest may seek seek redress before a court (if it is not of a constitutional matter).

9. Elections

Elections	
Does the Court have electoral competence/jurisdiction? What is the scope of that competence/jurisdiction: presidential, legislative or all types of elections? What kind of issues does the court have power over: declaring results, resolving disputes over election results, candidate eligibility, voter roll, etc?	Yes it does have jurisdiction over electoral disputes of Presidential elections as specified in Article 64 of the Constitution.
Who can trigger the procedure (who has standing)? What is required to take action?	Pursuant to Art 64 (1), the validity of the election of the President may be challenged only by a citizen of Ghana who may present a petition for the purpose to the Supreme Court within twenty-one days after the declaration of the result of the election in respect of which the petition is presented. So far, only a losing presidential candidate and political party has invoked Art 64 (1) to challenge the validity of a presidential election.
If the court is not empowered, is there another institution that settles electoral disputes?	-

10. Fundamental Rights

Fundamental Rights (see also individual complaint)	
Are (all?) alleged human rights abuses subject to review before a court?	Yes. Under articles 33(1), 130(1) and 140(2) of the Constitution, a

	<p>person who alleges a breach of the fundamental human rights and freedoms as enshrined in chapter 5 of the Constitution, may apply to a <u>High Court</u> for redress.¹²</p> <p>Sec 15(1)(d) of the Courts Act, 1993 (Act 459), as amended by the Courts (Amendment) Act, 2002 (Act 620), vests the High Court with “jurisdiction to enforce the Fundamental Human Rights and Freedoms guaranteed by the Constitution.”</p> <p>There are fundamental human rights (outlined in Chapter 5) and Directive State Principles (Chapter 6) which also contain certain fundamental rights.</p> <p>The Committee of Experts on the Draft Constitution of 1992 stated that the Directive Principles of State Policy are in themselves not justiciable and enforceable.¹³ However, the Supreme Court is of the view that some provisions of the Directive Principles, which can be held to be rights in themselves, namely, article 37(2) (a) and (3), a social objective, read together with article 21 (1)(e), a fundamental human rights provision, i.e. freedom of association, could be said to be an enforceable right.¹⁴</p>
<p>Is there any other kind of institution where aggrieved individuals may turn to (human rights commission, Ombudsperson)? How is its institutional relation to the (highest) courts?</p>	<p>Yes, there is a Commission on Human Rights and Administrative Justice (CHRAJ) established by an Act of Parliament in accordance with Art 216-230 of the Constitution.</p> <p>According to Section 7 (a) and (c) of Act 456¹⁵, the function of the CHRAJ, amongst others, is to investigate complaints concerning practices by persons, private enterprises and other institutions where those complaints allege violations of fundamental rights and freedoms under the Constitution. CHRAJ is also empowered to investigate complaints of abuse of power and unfair treatment of any person by a public officer in the exercise of his official duties.¹⁶</p> <p>The powers of CHRAJ are the following (for relation to courts see iii in particular):</p> <p><i>(d) to take appropriate action to call for the remedying, correction and reversal of instances specified in paragraphs (a), (b) and (c) of this subsection through such means as are fair, proper and effective, including:</i></p> <p><i>(i) negotiation and compromise between the parties concerned;</i></p> <p><i>(ii) causing the complaint and its finding on it to be reported to the superior of an offending person;</i></p> <p><i>(iii) bringing proceedings in a competent court for a remedy to secure the termination of the offending action or conduct, or the abandonment or alteration of the offending procedures; and</i></p>

¹² In Human Rights matters, the High Court has exclusive original jurisdiction, in *Edusei (No 2) v Attorney-General* (cited in *Quashigah*), the Supreme Court refused to take on a human rights case as a court of first instance.

¹³ Paragraph 95 of the 1991 Report of the Committee of Experts on the Constitution, 1992

¹⁴ Information given my Justice Jones Dotse

¹⁵ Commission on Human Rights and Administrative Justice Act, 1993 (Act 456).

¹⁶ For more detail see: http://www.chraighana.com/?page_id=27

	<i>(iv) bringing proceedings to restrain the enforcement of such legislation or regulation by challenging its validity if the offending action or conduct is sought to be justified by subordinate legislation or regulation which is unreasonable or otherwise ultra vires;</i>
Who can trigger the procedure (who has standing: also NGOs / consumer protection organizations on behalf of individuals)? What is required to take action (how)?	<p>Under articles 33(1), 130(1) and 140(2) of the Constitution, a person, which in this instance includes a non-citizen, who alleges a breach of the fundamental human rights and freedoms may apply to a High Court for redress.</p> <p>An NGO only has standing, if the matter concerns the interpretation of the constitution (constitutional matter). Otherwise, a breach or special interest (violation) has to be proven by the plaintiff. This obligation is derived from the wording of “in relation to him” in Art. 33 (1) “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.”</p> <p>The “Latrine case”¹⁷ is an example where a Lawyer sued on behalf of “Night Soil Carriers” as the issue required the interpretation of the Constitution.</p>
With regard to social rights, does the highest court in the country have jurisdiction to offer less than attributed by lower courts (<i>reformation in peius</i>) (example: right to water in the constitution, but how many litres/day as a minimum threshold: If lower court admits 30 l/d, but the complainant wants 40 l/d and appeals can the highest court also overturn the lower court to the negative, only offering 25 l)?	No information or precedent available.

11. Other Powers of Supreme Courts / Constitutional Courts

Other powers	
Conduct of referenda	A referendum is required when amending entrenched provisions of the Constitution, as defined in Chapter 25 of the Constitution. Art 290 (4) prescribes that after the bill has been read the first time in Parliament it shall not be proceeded with further unless it has been submitted to a referendum held throughout Ghana and at least forty percent of the persons entitled to vote, voted at the referendum and at least seventy-five percent of the persons who voted cast their votes in favour of the passing of the bill.
Determine constitutionality and dissolution of political parties	Yes , in accordance to Art. 55 of the Constitution. Cases would go directly to the Supreme Court. No such case has however, occurred in Ghana so far.

¹⁷ *Adjei-Ampofo v. Accra Metropolitan Assembly & Attorney-General* (No.1)

<p>impeachment procedures for the president</p>	<p>According to Art. 69(1) of the Constitution the President is liable to be removed from office if he wilfully violates any provision of the Constitution, inclusive of the provisions relating to fundamental human rights and freedoms.</p> <p>The Constitution reads in Art. 69: (1) <i>The President shall be removed from office if he is found, in accordance with the provisions of this article -</i> <i>(a) to have acted in willful violation of the oath of allegiance and the presidential oath set out in the Second Schedule to, or in willful violation of any other provision of, this Constitution;</i></p> <p><i>(2) For the purposes of the removal from office of the President, a notice in writing - (a) signed by not less than one-third of all the members of Parliament, and (b) stating that the conduct or the physical or mental capacity of the President be investigated on any of the grounds specified in clause (1) of this article, shall be given to the Speaker who shall immediately inform the Chief Justice and deliver the notice to him copied to the President.</i></p> <p><i>(4) Subject to clause (5) of this article, the Chief Justice shall, by constitutional instrument, immediately convene a tribunal consisting of the Chief Justice as Chairman and the four most senior Justices of the Supreme Court and the tribunal shall inquire, in camera, whether there is a prima facie case for the removal of the President.</i></p>
<p>(binding) interpretation of the constitution</p>	<p>Yes.</p>
<p>Others?</p>	

VIII. Standing

On standing in cases of constitutional matter see Motion by BERNARD ANBATAAYELA MORNAH¹⁸
 See also: NPP v AG (Ciba Case)

1. Who (see under VII.)

Table Structure

2. How (see under VII.)

Table Structure

IX. Form and Effects of Judgments (Authority of the Judgments) of the highest court

Authority of Judgments	
<p>Is a judgment written together or rather exists of various parts, individually by each judge?</p>	<p>Each judge writes judgment with one justice writing the lead judgment for the Justices in the majority.</p>
<p>If judgments are written together, is it possible to identify single judges (in general or through dissenting/concurrent opinions)?</p>	<p>Yes, it is possible to identify single judges.</p>
<p>Do the judgments have <i>erga omnes</i> or</p>	<p>Judgments have <i>Erga omnes</i> effect when the case has a public</p>

¹⁸ <http://danquahinstitute.org/docs/REVIEW%20APPLICATION.pdf>

<i>inter partes</i> effects (with regard to VIII. 2-4; 7-8)?	interest. E.g. if a case is of constitutional matter.
Do the judgments have effects for the future only (<i>ex-nunc</i>), do they have even retroactive effects (<i>ex-tunc</i>) or is the effect deferred in order to give the legislation time to adjust the legislation to the court's decision.	No, Art 107 (b) of the Constitution states that Parliament has no power to pass any law which operates retrospectively to impose any limitations on, or to adversely affect the personal rights and liberties of any person or to impose a burden, obligation or liability on any person except in the case of a law enacted under articles 178 or 182 (which refer to funds of the republic). <i>Comment Prof. Prempeh: Not sure. It depends. Generally, if the Court invalidates a piece of criminal law, the decision would apply retroactively to quash the convictions of persons convicted (unconstitutionally) under that law.</i>
What legal authority does the judgment have to the relevant groups (below) considering that they have been part of the process?	Judgments have same effects on everyone, including the President. In this regard, Art 2 (4) states that to refuse to obey or carry out a direction by the Supreme Court constitutes a high crime under the Constitution and constitutes, in the case of the President or the Vice-President, a ground for removal from office.
In general, who (see below) is affected how by the judgments of the Constitutional Court?	Everyone.

1. On Citizens
2. On Administrations
3. On other Judicial Institutions
4. On Political Institutions
5. On Military]

X. Control of the Constitutional Jurisdictions

Control of the Constitutional Jurisdiction	
Political control (see selection of judges; terms of office)	The constitutional separation of powers is somewhat comprised, as the Council of State has a lot of power in the selection and removal of the Chief Justice (see below). Most members of the Council of State are appointed by the president. See Art. 89 of the Constitution. By virtue of Art 144 (1) of the Constitution, the Chief Justice shall be appointed by the President acting in consultation with the Council of State and with the approval of Parliament . The Chief Justice, in turn, has extensive power in regard to the management of the Supreme Court (and its members), including the power to select not fewer than five Justices to constitute a panel of the Court to hear a case in the original or appellate jurisdiction of the Court.
Removal / dismissal of highest judges (at all / only by judicial decision within the judiciary / by external institutions?)	In accordance with Art. 146 C.R.G. a Justice of the Superior Court cannot be removed from office except for stated misbehavior or incompetence or on ground of inability to perform the functions of his office arising from infirmity of body or mind . Art 146 (6) holds that where a petition for the removal of the Chief Justice is given to the President , he acts in consultation with the Council of State and appoints a committee consisting of two

	<p>Justices of the Supreme Court, and three other persons who are not members of the Council of State, nor members of Parliament, nor lawyers.</p> <p>This committee inquiries into the petition and recommends to the President whether the Chief Justice ought to be removed from office.</p>
What are the criteria for the removal of highest judges (e.g. proven legal misbehavior)	Stated misbehavior or incompetence or on ground of inability to perform the functions of his office arising from infirmity of body or mind (Art 146 C.R.G)
May decisions of the highest court be overruled by another institution (legislature)? What are the requirements?	<p>Constitutionally, Parliament has no power to pass any law to alter the decision or judgement of any court as between the parties subject to that decision or judgement (Art 107 (a)).</p> <p>However, as Justice Dotse explained, Parliament may pass a law which speaks against (and thereby overturns) a decision of the Supreme Court. Such may be the case in the near future with a bill concerning the property rights of spouses in Ghana. The Supreme Court has decided in a recent case, that after a divorce, the properties are split 50/50 – see Art 22 (1) and (2). There is, however, a strong lobby at the moment which may affect the passing of a bill which does not assure 50 % of the property to the woman after divorce. This would be at odds with the previous SC decision.</p> <p>The bill will not have retroactive effect and may again be altered by a SC decision if the case is brought before it.</p>
Amending the constitution in light of a decision of the highest court.	Yes. The constitution can be amended prospectively in reaction to a decision of the Supreme Court interpreting a provision of the Constitution.

- [1. Independence vs. Accountability
- 2. Political Control
- 3. Constitutional Amendment
- 4. Removal / Impeachment of Judges
- 5. Overruling of Decisions]

XI. Conclusion

Bibliography

Literature / Reports

AfriMAP and The Open Society Initiative for West Africa and The Institute for Democratic Governance “Ghana – Justice Sector and the Rule of Law” published by Open Society Initiative West Africa in 2007.

Bennion, Francis (1962) “Constitutional Law of Ghana – Part I, the Republican Constitution”

Bimpong-Buta (2005) “The Role of the Supreme Court in the Development of Constitutional Law in Ghana”

Commonwealth Observer Group, report on “Ghana Presidential and Parliamentary Elections”, 7 December 2012.

Crook & Asante & Brobbey (2010) Working Paper - Africa Power & Politics “Popular Concepts of Justice and Fairness in Ghana”

Davies & Dagbanja (2009) “ The Role and Future of Customary Tort Law in Ghana”

FES “The Law-making process in Ghana – Structures and Procedures” Brochure, Friedrich-Ebert-Stiftung

Gyimah-Boadi & Victor Brobbey (2012) “Countries at the Crossroads 2012: Ghana”

Quashigah Kofi “The 1992 Constitution of the Republic of Ghana” (date unknown)

Prempeh, K.H. (2006) “*Marbury* in Africa: Judicial Review and the Challenge of Constitutionalism in Contemporary Africa” in *Tulane Law Review* Vol. 80:1

Still to add...

Enactments

1992 Constitution of the Republic of Ghana

1969 and 1979 Constitutions of the Republic of Ghana

Ghana Courts Act 1993 (Act 459)

Courts (Amendment) Act, 2002 (Act 620)

Ghana Chieftaincy Act, 1971 (Act 370)

State Proceedings Act of 1998 (Act 555)

Commission on Human Rights and Administrative Justice Act, 1993 (Act 456)

Domestic Violence Act, 2007 (Act 732)

Case Law

Ghana

Adjei-Ampofo v. Accra Metropolitan Assembly & Attorney-General (No.1) [2007-2008] 1 SCGLR 610

Amidu v Electoral Commission & Assembly

Ghana Bar Association v Attorney-General (Abban Case)

Lotto Operators Association & Others v National Lottery Authority (2007-2008) SCGLR 1088

New Patriotic Party v Attorney-General (Ciba case) [1996-97] SCGLR 729

New Patriotic Party v Attorney-General (31st December Case) [1993-94] 2 GLR 35

NPP v IGP (1993)

Sam (No. 2) v. Attorney-General [2000] SCGLR 305

Tsatsu Tsikata v. Attorney-General [Civil Motion No. 11/2002] in June 2002

UK

A and Others v Secretary of State for the Home Department [2004] UKHL 56

Her Majesty's Treasury v Mohammed Jabar Ahmed and Others [2010] UKSC 2

Thoburn v Sunderland City Council [2002] 3 WLR 247

US

Marbury v Madison [1803] 5 U.S. 137