

Percorsi costituzionali

2/3.2011 Alla ricerca del buongoverno

Tommaso Edoardo Frosini
Il buongoverno è un mito?

Angelo Panebianco
Partiti forti, esecutivi stabili

Antonio Ruggeri
L'art. 94 della Costituzione vivente:
«Il governo deve avere la fiducia dei mercati»

Mario Esposito
La metamorfosi costituzionale nella formazione del governo Monti

Ida Nicotra
Il principio di leale collaborazione istituzionale nella Presidenza Napolitano

Elena Orlandi
Moral suasion del Presidente della Repubblica e funzione legislativa

Giuseppe de Vergottini
Sicurezza internazionale: un correttivo presidenziale

Elena Ferioli
La "funzione di governo" nelle revisioni costituzionali degli ordinamenti europei

Michele Belletti
Razionalizzazione degli esecutivi regionali e "armonia" con la Costituzione

Čarna Pištan
I conflitti tra Presidente e Primo ministro nelle forme di governo dell'Est Europa

Marina Calamo Specchia
L'Esecutivo della V Repubblica e la doppia anima del semipresenzialismo

Valeria Piergigli
L'Esecutivo federale belga: crisi di una istituzione o crisi dello Stato?

Mario Perini
Evoluzioni o rivoluzioni dell'Esecutivo nel Regno Unito?

Antonio Torres de Morales
El gobierno en la Constitución española

Giacomo Di Federico
Responsabilità civile dei magistrati e diritto dell'Unione europea

Leonardo Pierdominici
Private prison on trial: la Corte Suprema d'Israele prosegue la "rivoluzione"?

Sara Pennicino
Eccellenza e promozione delle classi svantaggiate nel sistema universitario indiano

Luigi Melica
Il Principato di Salerno tra referendum e Corte costituzionale

Justin Frosini
A constitutional paradox? Ghana's peaceful democratic transition

Guido Guidi
Carenza di fattori identitari nazionali

Copertina di Ettore Festa, HaunagDesign. Nell'illustrazione un'immagine dal film "En attendant", Richard Negre, 2008

Percorsi costituzionali

2/3.2011 Alla ricerca del buongoverno

Percorsi costituzionali

fMC
Fondazione Magna Carta

2/3.2011 Alla ricerca del buongoverno

CEDAM

CEDAM

Euro 38.00



JUSTIN FROSINI

A CONSTITUTIONAL PARADOX? GHANA'S PEACEFUL DEMOCRATIC TRANSITION

SUMMARY: 1. Premise: A Beacon of Democracy in Africa? □ 2. Historical Background. □ 3 The Constitution of 1992. □ 4. The Constitution in Action. □ 4.1. *The 1992 Presidential and Parliamentary Elections.* □ 4.2. *The 2000 Presidential and Parliamentary Elections.* □ 4.3. *The 2008 Presidential and Parliamentary Elections.* □ 5. The Reasons for this Peaceful Transition. □ 5.1. *The Constitutional Factors.* □ 5.2. *The Non-Constitutional Factors.* □ 6. A Look to the Future: Two Decades Later Time to Amend the Constitution?

1. Premise: A Beacon of Democracy in Africa?

□The beacon of democracy in Africa□ □the shining star of democracy on the African continent□ these are just two of the many expressions used to refer to Ghana its history of free and fair elections over the past twenty years, resulting in the peaceful transfer of power between parties both in 2000 and in 2008.*¹ As we shall see below, only once have the election re-

*I am deeply grateful to H.E. Tullio Guma, Ambassador of Italy to Ghana: without his intervention it would not have been possible to set up a series of meetings with some of Ghana's most important institutions and research centres during a field trip to Accra that took place in September 2011.

This article is based on research for a much larger project on Constitutional Design and Conflict Management in Africa and, in particular, makes reference to the constitutional aspects of a paper presented at the University of Texas at Austin in November 2011, see J.O. Frosini, *Constitutional Design and Conflict Management in Ghana. The Dog that Doesn't Bite, but Sometimes Barks* □, □Constitutional Design and Conflict Management in Africa□ Austin, Texas, 15th November 2011, <http://ccaps.strausscenter.org/research/constitutional-design-and-conflict-management>.

sults been rejected, when, in 1992, the opposition parties refused to accept that the incumbent Rawlings had won the presidential vote and as a result refused to participate in the parliamentary elections.

Ghana remains one of the few countries in Africa that has been able to successfully transfer from military authoritarian rule to democratic rule and has been able to carry out numerous multiparty elections without reverting to widespread violence or governmental takeovers.

Prior to the 2008 elections, there was some concern within the country and throughout the international community as to whether Ghana would be able to continue its run of successful elections, given the shaky record of the region and the increased incentive to gain power following the discovery of oil reserves off the Western coast of Ghana which are expected to yield significant revenue over the coming years and the preoccupation still exists today i.e. less than a year from the presidential elections which will be held in November of this year.

From a certain perspective (and hence the title of this article) Ghana might be considered a "constitutional paradox" given that, as we shall see below, the 1992 Constitution introduced a form of government characterised by hyper-presidentialism and a form of state that consists of a strong territorial centralisation.

Extrapolated from a case study on Ghana for a much larger research project on Constitutional Design and Conflict Management in Africa,² this article will first provide a short history of Ghana since 1957 (i.e. when the Gold Coast became the first country in Africa to obtain independence) then going on to outline the main features of the 1992 Constitution. The article will proceed by addressing the three most important "constitutional moments" of the last two decades i.e. the presidential and parliamentary elections of 1992, 2000 and 2008. The final part of this contribution will be devoted to highlighting the constitutional and non-constitutional factors that have contributed to the success of Ghana's democratic transition and underlining what

¹ L. Whitfield, Change for a Better Ghana: Party Competition, Institutionalization, and Alternation in Ghana's 2008 Elections, in "African Affairs" 108, pp. 621-625.

² See J.O. Frosini, *op. cit.*, <http://ccaps.strausscenter.org/research/constitutional-design-and-conflict-management>.

parts of the Constitution ought to be amended in the light of the work of Ghana's Constitution Review Commission.

2. Historical Background

Upon declaring independence in 1957, Ghana enacted the so-called Monarchical Constitution, which basically followed the British model combining constitutional monarchy and parliamentary democracy.³ The Monarchical Constitution was amended several times in the following years, including the Constitutional Repeal of Restrictions Act 1958, which changed amendment procedures, and the Constitutional Amendment Act 1959, which dissolved the Regional Assemblies.

In 1960, under a new constitution, Ghana became a sovereign unitary Republic and a presidential form of government was introduced.

The President was allowed to act in his own discretion, without advice from any other person (Art. 8), and was therefore not subject to the Ministers. He was more similar to the President of the United States, since he was responsible to the people rather than the parliament. However, unlike the United States, there was no developed system of checks and balances or separation of the executive and legislature branches. The President could also dissolve the National Assembly (but then had to submit himself for re-election or retire thereafter), but he could not be unseated by the legislature. The President was also given the right to an absolute veto.

Ministers were also members of the legislative body; which was another distinction from the US prototype. They assisted the President in exercising executive power and the Cabinet was not collectively responsible to the parliament.

Generally speaking, the constitution attempted to allow for the intermingling of English common law and autochthonous customary law. Despite its superficial division of powers, Trevor Jones characterises the constitution as "a painted back-

³ For a detailed description of specific changes made, including the role of the Supreme Court, and the relationship between the cabinet and the parliament see E. Schwelb, *The Republican Constitution of Ghana* in "The American Journal of Comparative Law" 1960 and F. Bennion, *The Constitutional Law of Ghana*, Butterworths, 1962.

drop against which the political game was played with only an occasional nod in its direction⁴.

In February 1966, while President Nkrumah (the founding father of Ghana) was on a state visit to North Vietnam and China, his government was overthrown in a military coup led by Emmanuel Kwasi Kotoka and the National Liberation Council (NLC).

As John Kraus points out: the CPP⁵, parliament, constitution, and all auxiliary party organizations were dissolved. In order to reduce any remaining supporting attitudes, expose the old regime, in particular break the myth surrounding Nkrumah, prepare for legal prosecution of CPP leaders, primarily for corruption, and, thereby, firmly legitimize its seizure of power, the NLC immediately authorized a large number of judicial commissions of enquiry into the old regime.⁶

The second major phase was rule by the military, but it was not rule by the military alone. The soldiers surrounded themselves with civil servants as well as corps of intellectual who had earned the respect of those officers who looked up to them and sought guidance and ideas.

The third phase, the return to parliamentary government, was designed to prevent cabinet dictatorship. Fulfilling the requirements of British practice as previously established in Ghana, the pattern was revived, but without a very effective party system.⁷

In 1967 Brigadier General Afrifa⁸ declared: "We want to build a new Ghana [] We will stand against anything undemocratic. I believe that men are born free. Democracy based on the freedom of the individual is more acceptable than any form of totalitarianism. We are against fascism and communism [] I am a great admirer of the British way of life, its legal system, the Magna Carta, the Petition of Rights and the Bill of Rights. These are institutions on which the civil liberties of the

⁴ T. Jones, *Ghana's First Republic 1960-1966*, Methuen & Co Ltd, London, 1976, p. 28.

⁵ i.e. The Convention People's Party, see <http://conventionpeoplesparty.org>.

⁶ J. Kraus, *Arms and Politics in Ghana* in C.E. Wech, (ed.) *Soldier and State in Africa*, Northwestern Press, Evanston, 1970, p. 189.

⁷ D.E. Apter, *Ghana in Transition*, Princeton University Press, New Jersey: 1972, p. 370.

⁸ Head of state of Ghana and leader of the military government in 1969 and then Chairman of the Presidential Commission between 1969 and 1970.

people are founded. The British Constitution safeguards not only the rule of law but also the freedom of the press, of thought, of action within the law, and of the individual. It is these things that make Britain the home of democracy⁹

It is left for debate whether over the following twelve years this aim was accomplished, but in any case in 1979 Flt. Lt. Jerry John Rawlings took control of Ghana for a brief period, after which Hilla Limann was elected President representing the People's National Party, only to be deposed in another coup staged by Rawlings on 31st December, 1981 who then went on to govern Ghana under military rule until the Democratic Constitution was approved in 1992.¹⁰

3. The Constitution of 1992

Following the serious economic crisis that afflicted Ghana in the 1980s¹¹, in 1991 Rawlings announced that "our eyes are now firmly set on the final phase of our journey as a provisional government and on the road towards establishing for Ghana a new constitutional order"¹² Indeed, both strong internal and external pressures led to the movement away from Jerry Rawlings' no-party electoral regime towards a multiparty democracy and on 10th May 1991 the Government released a White Paper that provided for the establishment of a Committee of Experts to draft constitutional proposals, using the National Commission on Democracy (NCD) report and 1957, 1960, 1969, and 1979 constitutions as guidelines and source documents.¹³

The Constitutional Commission,¹⁴ a constitution-making

⁹ D.E Apter, *op. cit.*, p. 390.

¹⁰ On the reasons that led Rawlings to accept a democratic constitution, see J. Wiseman, *The New Struggle for Democracy in Africa*, Avebury, Aldershot, 1996.

¹¹ See J.O. Frosini, *op. cit.*, <http://ccaps.strausscenter.org/research/constitutional-design-and-conflict-management>.

¹² E. Gyimah-Boadi, *Notes on Ghana's Current Transition to Constitutional Rule*, in *Africa Today*, 38.4, 5, 1991, p. 5.

¹³ E. Gyimah-Boadi, *op. cit.*, pp. 5-6.

¹⁴ According to Michael Bratton and Nicolas van de Walle "Jerry Rawlings packed the constitutional commission with his own supporters, stretched out the constitutional drafting deadline, and inserted clauses into the final document favorable to his Peoples National Defense Council" see M. Bratton, N. van de Walle,

body, took over a year to deliberate about the constitutional design to be created by the 1992 constitution eventually seeking to create a hybrid parliamentary/presidential system in order to try to prevent some of the failures which Ghana had experienced in its past attempts at democratic rule.¹⁵ As we shall see, however, the form of government developed into a fully-fledged presidential system.

The Constitution was put forth via referendum to the Ghanaian people on April 28, 1992 and was accepted with overwhelming endorsement from Rawlings party and opposition groups within Ghana: 92% of the population voted in favour.¹⁶

4. The 1992 Constitution in Action

4.1. *The 1992 Presidential and Parliamentary Elections*

Following the approval of the new democratic constitution Rawlings ran as the presidential candidate for the National Democratic Congress (NDC)-National Convention Party (NCP) alliance as well as the Egle Party while his main opponent was the New Patriotic Party (NPP) candidate, Prof. Adu Boahen.¹⁷

Ghana's transition to democracy was no easy feat, indeed the first elections under the new constitution were characterised by the fact that the opposition parties rejected the results of the 1992 presidential elections.

They did this on three main grounds.

First of all, the democratisation process and electoral timetable was dictated by Rawlings's party, the PNDC (Provisional National Defence Council); secondly the electoral playing field tilted towards Rawlings as he succeeded in campaigning before he and the others were officially able to announce their candidacy and also because he was able to use official resources to assist his party's campaign; third although the ban on party

Democratic Experiments in Africa - Regime Transitions in Comparative Perspective, Cambridge University Press, Cambridge 1997, p. 113.

¹⁵ S. Lindberg, Y. Zhou, *Co-optation Despite Democratization in Ghana*, in J. Barkan (ed.), *Legislative Power in Emerging African Democracies*, Lynne Rienner Publishers, Boulder-London, 2009, 147-175.

¹⁶ R. Jeffries, C. Thomas, op. cit., p. 337.

¹⁷ See R. Jeffries, C. Thomas, *The Ghanaian Elections of 1992*, in *African Affairs* 92, 1993, pp. 334-335.

politics was lifted on 1st May 1992 the opposition parties had to wait two months before they could register, which left them with only three months to campaign before the presidential election.¹⁸

With the complicity or at least negligence of the Interim National Electoral Commission (INEC), there was massive rigging of election-day balloting and vote-counting, but despite these accusations, the 1992 elections were found to be "free and fair" by the majority of election observers and the international community.¹⁹

The official results were thus announced and it emerged clearly that Rawlings had won the election with 58.3% of the vote, therefore negating the need for a runoff election²⁰ as he had obtained more than 50% of the vote. It is interesting to underline that Rawlings gained 93.3% of the vote in the Volta Region.

Adu Boahen, the next closest candidate, received 30.4% of the vote, however, soon after the results were announced, the opposition parties called for them to be held off until complaints of irregularities were investigated.²¹

There can be no doubt that the Presidential elections were a shock to the country. In fact, demonstrations and riots occurred and three bombs exploded in Accra, however, without in any way ignoring these serious occurrences, it should be underlined that widespread violence did not break out.

On 13th November 1992 the opposition parties announced that they were withdrawing from the parliamentary elections²² unless they were supervised by a "genuinely independent electoral commission employing a new voters' register and voters' identity cards"

Despite the boycott by the opposition parties the elections were held on 29th December and were contested by the three pro-Rawlings parties: the NDC won 189 seats out of 200, the NCP won 8 seats, and the Egle party won 1, with 2 independ-

¹⁸ R. Jeffries, C. Thomas, *op. cit.*, p. 339.

¹⁹ R. Jeffries, C. Thomas, *op. cit.*, p. 338.

²⁰ To be elected President one needs to obtain an absolute majority of the vote.

²¹ R. Jeffries, C. Thomas, *op. cit.*, pp. 354-356.

²² It is very important to note that in 1992, unlike the subsequent elections of 1996, 2000, 2004 and 2008, the presidential and parliamentary elections were not held on the same day.

ents also winning a seat each. Turnout was extremely low at 29%.²³

It has been estimated that if the opposition parties were to have contested the parliamentary elections, then, based on their performance in the presidential election, they would have won around 70 seats and would have therefore played a significant role in the government instead of being on the outside.²⁴

One might affirm the fact that while the elections were probably not "free and fair" (despite the statements made by the international community) they were certainly not just "show" (or sham) elections.

Alea iacta est: Ghana had started out on the long path towards democracy. The new constitutional design, though with some failings and under the strong influence of Rawlings, had fundamentally played its mediating role. Rawlings was still in power, but at least now he was democratically elected and indeed eight years later a shock, that will prove extremely positive for Ghana's transition to democracy, then took place.

4.2. *The 2000 Presidential and Parliamentary Elections*

The presidential and parliamentary elections of 2000 were of particular importance to establishing the legitimacy of the Ghanaian constitution and represented a further step towards democratic consolidation through the peaceful alternation of power from Rawlings, who had served out his two terms in office, as provided for by the 1992 constitution.²⁵

Indeed, the shock occurred when runoff elections were required due to the fact that neither John Agyekum Kufour of NPP nor John Evans Atta Mills of NDC won more than 50% of the vote. In the first round, Kufour won 48% of the vote and Mills won 45%. Kufour was able to carry this lead into the second round of elections when he earned 56.9% of the vote.

²³ R. Jeffries, C. Thomas, *op. cit.*, p. 363.

²⁴ R. Jeffries, C. Thomas, *op. cit.*, p. 364.

²⁵ The fact that Rawlings did not attempt to amend the Constitution in order to allow him to run for a third term is in itself significant especially if one makes a comparison with democratic transitions elsewhere: for example, re-election has been defined as an "obsession" for many leaders in Latin America see J.O. Frosini, L. Pegoraro, *Constitutional Courts in Latin America: A Testing Ground for New Parameters of Classification?*, in "Journal of Comparative Law" 3, 2, 2008, p. 61.

The 2000 elections were also important because Ghana experienced a shift in power away from the heretofore dominant political party, the NDC, and saw the election of an NPP candidate for President and significant gains in the parliament. In fact, in the parliamentary elections, NPP was able to win 100 of the parliament's 200 seats, while NDC's numbers decreased from 133 in the previous parliament to 92. The rest of the seats were filled by independents and smaller party candidates who had backed Kufour during the presidential runoff.²⁶

What was the 2000 electoral outcome? Well first of all Rawlings's term-limited exit with no attempt on his part to tamper with the Constitution and subsequently the defeat of his party and his handpicked successor at the polls. Indeed, after being in power continuously since 1982, first in military form and then in civilian form, Rawlings had campaigned on "continuity," the opposition on change, and Rawlings, using his stronghold in the military command, had warned Ghanaian voters not to compromise the peace the country had enjoyed by changing the guard, however, the Ghanaians did not buy the "apr's moi le deluge" threat thus opening the way to an alternation in power (so important in the success of democratic transitions).

4.3. *The 2008 Presidential and Parliamentary Elections*

Similar to the elections of 2000, the presidential and parliamentary elections in 2008 marked another successful turnover of power from the incumbent party to the opposition party, as John Kufour of the NPP handed his office over to John Evans Atta Mills, the leader of the NDC.

These elections were closely contested in the first round, with no candidate winning more than 50% of the vote. The incumbent NPP party's candidate, Nana Akufo-Addo, led the first round of voting with 49.1% while the NDC candidate, John Evans Atta Mills, received 47.9%. In the run-off election, however, Mills and the NDC turned this result around and in a very close second round, received 50.23% of the vote to Akufo-Addo's 49.77%. These were Ghana's closest elections to date.

²⁶ E. Gyimah-Boadi, *A Peaceful Turnover in Ghana*, in "Journal of Democracy" 12.2, 2001, pp. 103-104.

The parliamentary elections indicated a similar closeness, with neither of the two major parties winning a clear parliamentary majority of 116 seats. The NDC took 114 of the 230 seats and NPP won 107 seats, while the rest were divided among independent and smaller-party MPs. It should be pointed out that the global economic crisis and the discovery of oil had a huge part to play in the closeness of the elections.

Leaders of the NPP, surprised at the result of the runoff presidential election, filed a motion with the Accra Fast Track High Court to prevent the Electoral Commission from declaring the results as final until the claims of NDC electoral malpractices in the Volta region could be investigated. This motion failed and the NPP looked to continue its efforts despite public calls for them to accept the results. Eventually President Kufour, the incumbent NPP President, released a statement calling for everyone to accept the election results as declared by the Electoral Commission and demonstrated that he was willing to hand over power to the NDC candidate, Atta Mills, on January 7, 2009, as required by the Constitution.²⁷

One would be mistaken to make the claim that Ghana's constitutional design was the only mediating factor that avoided a widespread violent response to this shock (i.e. another turnover of power). In this case the decision (perhaps obtorto collo) of incumbent Kufour to ask the electors of his party's candidate Akufo-Addo to concede defeat rather than persist in contesting the validity of the elections contributed enormously to avoiding the situation from degenerating and from a certain standpoint was also an important sign of democratic maturity. Of course there is, however a "sliding doors" question to be answered: would the outcome have been so peaceful if the elections had resulted in a divided government (or what the French would term cohabitation)?

5. The Reasons for this Peaceful Transition

So why, despite a Constitution that was the result of a compromise with the then dictator Jerry Rawlings and that is characterised by a significant concentration of powers in the hands of the President and strong territorial centralism, has

²⁷ L. Whitfield, *op. cit.*, pp. 624-625.

Ghana become, as correspondent of the Financial Times, William Wallis, recently put it "one of only a handful of African countries to experience two peaceful and constitutional transfers"²⁸

5.1. *The Constitutional Factors*

Post-1992 Ghana does have a constitutional design with many positive features.

First of all, the term limits. In 2000 and 2008 alternation in government was possible because the incumbent presidents could not stand for a third term. Again two "what if" questions need to be posed: would Kufour have won in 2000 if he had been campaigning against Rawlings, rather than Atta Mills? And would the latter have been elected in 2008 if he had to campaign against the opponent he had already lost against eight years earlier? Whatever the answer to these questions there can be no doubt that this limit has had the positive consequence that terms of office are quite short and neither of the two main parties is out of office for too long.

Second, Ghana's presidential system has so far ensured an ethno-regional representation in the cabinet and executive (regardless of the ruling party's electoral performance or support in a given region) thus compensating for the distortions that typically arise with a first-past-the-post electoral system such as the one used in Ghana to elect Parliament.

Third, constitutional guarantees are in place thus ensuring the protection of media freedom and pluralism.

Fourth, overall Ghana has an independent court system where judicial review works. This allows opposition parties an alternative forum to challenge Government. This was clearly the case of the 1992 presidential elections where the opposition talked of a "Stolen Verdict" and consequently boycotted the parliamentary elections. This meant that between 1993-1996 de facto Ghana had a one-party system yet through successful constitutional review the opposition was able to maintain extra-parliamentary pressure and have an influence in national poli-

²⁸ W. Wallis, *Politics frustrates pace of change*, in "Financial Times, Special Report" 15th December 2011, p. 1.

tics, thus coming back into the game in 1996 and then winning the elections in 2000.

Fifth, Ghana has an independent electoral commission that according to many is to be considered a model in terms of electoral management bodies in West Africa and further afield. It should be noted, that the operational independence of the commission is recognised despite the fact that the method of appointment of the members is not impartial. Moreover, in the aftermath of the 1992 opposition boycott, in 1994 the commission instituted the Inter-Party Advisory Committee (IPAC) in order to improve the trust, confidence and working relationships between the Commission and registered political parties and to enhance transparency in its operations. As the official website of the Electoral Commission states:

IPAC provided an innovative mechanism for the Electoral Commission to meet representatives of political parties as well as donors that supported the electoral process. They also discussed issues concerning election preparations. Furthermore, IPAC discussed confidence building measures like the issue of photo identity cards, provision of transparent ballot boxes and holding of presidential and parliamentary elections on the same day to avoid the Band-wagon Syndrome. IPAC also advocated the need to involve the political parties in many stages of the political process.²⁹

5.2. The Non-Constitutional Factors

While as comparative constitutionalists our attention should be given to the legal mechanisms in place, one cannot ignore, however, that there are other factors that have contributed to this outcome. Indeed the following non-constitutional design factors should be underlined.

First, Ghana has had a strong two-party tradition, with the two sides almost evenly matched.³⁰ Ghana's political system is not, however, frozen given the fact that the country is character-

²⁹ <http://www.ec.gov.gh/node/10>.

³⁰ One could argue that this should not be considered a "non-constitutional design factor" given the fact that the two-party political system is undoubtedly upheld and maintained thanks to the first-past-the-post electoral system that is adopted for election of members of parliament.

ised by fluid majorities and shifting electoral coalitions which have certainly favoured alternation in government since 1992. Furthermore, still with regard to Ghana's political system, it has been seen that there is the possibility of 'life outside politics' thus reducing the problem of 'life-long political professionalism' that characterises many other countries not only in Africa.

Second, with regard to the demographic characteristics of Ghana, it is important to note that there is no single ethnic majority. Of course there can be no doubt that the Akans are culturally and linguistically the most dominant, but they are not politically monolithic or self-contained therefore this contributes to the fact that in Ghana, unlike other countries in Africa and beyond, there are no permanent winners and losers. Moreover, the last few presidential elections have been characterised by North/South ticket pairing (Muslim/Christian).

Third, there has been an astute use of disinterested of 'outsider' Chiefs to mediate protracted local conflicts outside their own jurisdictions.

Fourth, Ghana has acquired a longstanding experience with refugee and disaster management and therefore failures and difficulties of the past have led to the creation of new specialised bodies such as the The Ghana Refugee Board³¹ and the National Disaster Management Organisation (NADMO).³² In other words lessons have been learnt and changes have been made to the constitutional design itself.

Fifth, Ghanaians, especially the Akans, have a tradition of choosing 'flight' over 'fight'. Indeed, in the seventies and eighties there was a middle/lower-middle class brain drain i.e. what one might define a 'private solution to public problems'.

Sixth, in Ghana there appears to be 'military regime exhaustion'. In fact, today the majority of Ghanaians seem to have an antipathy towards military intervention in other words they believe that 'the Armed Forces have had their day'. This is accompanied by the military's own acceptance of civilian control.

Finally, there is a general impression that the Ghanaians like to be thought of as exceptional and peaceable, therefore Ghanaian exceptionalism has become a sort of self-fulfilling prophesy.

³¹ http://mint.gov.gh/index.php?option=com_content&task=view&id=32&Itemid=43

³² <http://www.nadmo.gov.gh/>

6. A Look to the Future: Two Decades Later Time to Amend the Constitution?

So what does the future hold for Ghana and can this West African country be considered a model for other regions in Africa? With regard to the second part of the question there is no easy answer. Much ink has been spilt debating the pros and cons of legal transplanting and therefore it would seem preferable to refrain from inferring policy prescriptions for other African countries.³³ Just one example to highlight this problem: Ghana is one of the few African countries with a well established independent National Election Commission,³⁴ but does this imply that it should be transplanted elsewhere? Does the independence and authoritativeness of the commission derive from its constitutional design or does it depend on other factors? It has already been underlined that the selection of the members of the commission is not impartial and yet, as Winrich Khne underlines, the commission Chairman Kwado Afari-Gyan, has become a very popular person in Ghana due to his and the Commission's role in successfully conducting a series of elections after years of military rule and coups.³⁵ The impression is that context seems to play a fundamental role and that, persisting with the medical metaphor, transplanting the Ghana Election Commission elsewhere in Africa might (the conditional here is mandatory) result in rejection. Similar considerations could be made with regard to other positive elements of Ghana constitutional design.

Regardless of whether Ghana can and/or ought to be considered a model for other countries in Africa, the question is whether peace is durable in Ghanaian itself and whether the country's constitutional design will continue to play an important mediating role.

It should be highlighted that there are calls from several quarters to amend the Constitution. Indeed, with Constitutional Instrument 2010 (C.I.) 64 a Constitution Review Commission (CRC) was set up as a Commission of Inquiry to conduct a con-

³³ Among the copious literature concerning legal transplanting see: A. Watson, *Legal Transplants*, Scottish Academic Press, Edinburgh, 1974.

³⁴ W. Khne, *The Role of Elections in Emerging Democracies and Post-Conflict Countries. Key Issues, Lessons Learned and Dilemmas*, Friedrich-Ebert-Stiftung, Berlin, 2010, p. 6.

³⁵ W. Khne, *op. cit.*, p. 6.

sultative review of the operation of the 1992 Constitution. As stated by the Commission itself: several levels of consultations and activities had been undertaken to fulfill the first of the three-prong mandate. These activities included consultations with Ghanaians at the individual, Community, District, Regional, Special Category and Diasporan levels to elicit their opinions and concerns on the operation of the 1992 Constitution.³⁶

Then in March 2011, a truly historic event took place. For the first time in Ghana's history, a conference to review an operational Constitution took place. Nearly three thousand Ghanaians from all strata of society met in Accra and deliberated on the various submissions made during the Constitution Review exercise.³⁷ As this article goes to print the Final Report is about to be submitted to President Atta Mills. The contents of the report have been kept reserved in order, on one hand, to avoid press speculation and, on the other, to prevent constitutional reform from becoming a battleground for the two main parties in the 2012 Presidential elections. Indeed many observers agree that amendments to the Constitution will not be approved before 2013.

Regardless of the Final Report, one can certainly affirm that there are undoubtedly certain aspects of Ghana's constitutional design that could be ameliorated.

First and foremost, the powers of the President should be reduced through a better functioning system of checks and balances. At present Ghana is characterised by a radical spoils system and zero-sum majoritarianism. In the opinion of who is writing, the majority system and the two-party set-up should not be put aside, but the system needs greater separation of powers both horizontally and vertically.

With regard to horizontal separation of powers, one reform might be to have an all party parliamentary committee appoint the members of the Election Commission rather than the President and the same could be said for many other important institutional appointments.

With regard to vertical separation of powers and as underlined previously, from an institutional standpoint, Ghana is territorially extremely centralised (testimony of this is the fact that

³⁶See <http://www.crc.gov.gh/?q=page/national-constitution-review-conference>

³⁷See <http://www.crc.gov.gh/?q=page/national-constitution-review-conference>

the President appoints all(!) the local mayors and a third of the members of the local councils). Indeed, decentralisation and local government reform (for example with the introduction of elected mayors) would almost certainly put an end to the excessive concentration of powers of the President and his men, but would probably also attenuate the "winner takes all, the loser can go to hell" mentality that accompanies presidential elections. Indeed, with devolution of powers the party in opposition to the central government in Accra would still be the ruling party in other areas of the country at the devolved level, thus constantly participating in the political game rather anxiously awaiting another presidential election to claim "revenge".

A particular issue that should also be addressed is that of having clear rules put in place in order to deal with the prospect of divided government: although this has not yet occurred, as seen above, the country went very close to this prospect in 2008 and many observers believe the same may happen in the elections at the end of this year.

Last, but not least, the problem of malapportionment in drawing of constituency boundaries (with partisan dimensions) needs to be addressed as this is beginning to fuel electoral grievance and could be considered a prospective future shock. Here the United Kingdom, Ghana's former colonial ruler, might be a source of inspiration following the approval of the Parliamentary Voting System and Constituencies Act 2011 (PVSCA), which will require the constituency boundaries of the House of Commons to be redrawn so that the number of electors is spread more evenly across parliamentary seats.³⁸

In conclusion, Ghana undoubtedly represents an interesting case study with regard to democratic transitions. Having said this there is the possibility that this successful transition could go "off track". The 2012 presidential and parliamentary elections look set to be fiercely fought once again and there is the strong likelihood of another result that is "too close to call" with the consequential risk that the widespread violence that did not break out in 2008 will do so in November, however, who writes is optimistic that this will not occur.

Finally Ghana must make every effort to ensure that the discovery of offshore oil and gas does not prove to be a curse

³⁸ Under the new British rules, the average electorate per constituency in the UK has been set at 76,641, and each constituency must be within 5% of that quota.

but, on the contrary a well-deserved blessing, for a people that has made enormous efforts to consolidate its democratic system and appears "eager to remain master of its own destiny"³⁹.

Abstract

Extrapolated from a case study on Ghana for a much larger research project on Constitutional Design and Conflict Management in Africa, this article will first provide a short history of Ghana since 1957 (i.e. when the Gold Coast became the first country in Africa to obtain independence) then going on to outline the main features of the 1992 Constitution. The article will proceed by addressing the three most important "constitutional moments" of the last two decades i.e. the presidential and parliamentary elections of 1992, 2000 and 2008. The final part of this contribution will be devoted to highlighting the constitutional and non-constitutional factors that the author believes have contributed to the success of Ghana's democratic transition and underlining what parts of the Constitution ought to be amended in the light of the work of Ghana's Constitution Review Commission.

Estrapolato da uno studio ben pi  ampio inerente al Constitutional Design and Conflict Management in Africa, questo articolo inizia fornendo una breve storia del Ghana a partire dal 1957 (vale a dire l'anno in cui la Costa d'Oro diventa il primo Paese africano ad ottenere l'indipendenza) per poi delineare le caratteristiche principali della Costituzione ghanese del 1992. Lo scritto prosegue descrivendo i tre principali "momenti costituzionali" degli ultimi due decenni ossia le elezioni presidenziali e parlamentari del 1992, 2000 e 2008. La parte finale del contributo si focalizza sui fattori costituzionali ed extra costituzionali che l'autore ritiene abbiano contribuito al successo della transizione democratica in Ghana indicando altres  le parti della Carta costituzionale che dovrebbero essere modificate alla luce dei lavori della Constitution Review Commission ghanese.

³⁹ W. Wallis, *Nation eager to remain master of its own destiny*, in "Financial Times, Special Report" 15th December 2011, p. 4.