

FOUNDERS WEEK 2021: 1992 CONSTITUTION: FITNESS FOR PURPOSE IN THE 21ST CENTURY

SUB THEME 2: THE 1992 CONSTITUTION: IN SEARCH OF PURPOSEFUL REFORMS FOR THE 21ST CENTURY

PROMOTING LOCAL GOVERNANCE, DECENTRALIZATION AND DEMOCRATIC ENGAGEMENT

BY ESTHER OFEI-ABOAGYE (PhD)

COVERAGE

1. The Need to Decentralize Local Governance
2. Key Issues and Challenges Arising From The 1992 Constitution
3. Required Reforms in Local Governance and Decentralization
 - a. New Models for Effective, Well-Resourced Local Governments
 - b. Considerations for Political Reform
 - c. Considerations for Technocratic Structures
 - d. Considerations for Revenue Issues
 - e. Promoting Democratic Engagement
4. Election of Chief Executives and Multiparty Competition in Local Governance
5. The Role of Chieftaincy in Local Government
6. Conclusions

Concepts

- The National Decentralization Policy and Strategy (2020-2024) defines local governance as “an interactive process of exercising decentralized power, authority and functions within the law by the state and non-state actors. The process of local governance involves the participation of citizens, civil society organizations, traditional authorities, private sector and district assemblies in local development” (Republic of Ghana, 2019).

Concepts II

- Local governments are administrative bodies for small geographic areas with a constitutional mandate for delivering various devolved functions of the national government to the citizens.
- Thapa (2020) describes local government as “the door-step government to local people”
- Therefore, local authorities are responsible to local people; with executive, judicial and legislative roles to ensure meaningful, popular participation in managing their lives.

Concepts III (National Decentralization Policy 2020-2024)

Decentralization involves the transfer of functions, powers, authority and resources by the Central Government to Regional Coordinating Councils (RCCs) and Assemblies in a coordinated manner, within the context of the principle of subsidiarity. Therefore:

- National level: Ministerial realignment and restructuring
- Regional level: de-concentration
- District level: devolution
- Sub-district and local government sub-structures: delegation

Concepts IV

- Democratic engagement interpreted as the practice of citizens' agency in political processes through democratic mechanisms and principles.
- A government's democratic engagement efforts would aim at enabling all eligible citizens, equal participation directly and indirectly, in the political and developmental activities of a particular society.
- Sometimes a distinction is made between participation and engagement, engagement involving the participant to make an investment in the process. Therefore, citizens applying skills, knowledge and commitments to contribute to public life through the democratic political processes.

The Need to Decentralize Local Governance

Four years of the assembly system (1988 to 1992) provided a model with the potential to promote democracy and development at work to, for, and with the citizenry.

The totality of functioning localities and well-performing local authorities within a larger national development agenda was expected to result in overall national development.

It was justified also by a range of reasons based on different perspectives.

It had the potential for being:

- a vehicle for popular participation for in decisions affecting day-to-day living;
- a mechanism for responsive local level development for their realities
- a stimulator of local economies and revenue to reduce pressure on central government resources;
- a strategy for opening up neglected areas of the country for development;
- a practice ground for citizens' capacity development in governance, civic and political activity,
- an avenue to harness capacities of people who would ordinarily not have voluntarily participated in political processes;

- An opportunity to strengthen bonds between people living together to leverage the economic and social resources to promote a common destiny; and
- A trajectory of growth for localities through proactive choices, innovation and creativity
- A response to international pressures for democracy.

Constitutional Response:

Article 35, Clause 6d: **Administrative** and **financial** decentralization to facilitate meaningful democracy offering all possible opportunities to the citizenry to participate in decision-making at every level of national life and in government.

Articles 241 to 251: Creation, constitution, management and functioning of local authorities

Chapter 20: Requisite Features of the System (Article 242 (2))

- Legislation to transfer functions, powers, responsibilities and resources in a coordinated manner
- Mandate and resources to ensure capacities of LAs for performance and localization of development activities
- sound financial bases for LAs with adequate and reliable sources of revenue
- Accountability of local government functionaries to LAs and the people as far as possible
- opportunities for local people to participate in their governance

Article 254: “Parliament shall enact laws and take steps necessary for further decentralization of the administrative functions and projects of Central Government but shall not exercise any control over the District Assemblies that is incompatible with their decentralized status or otherwise contrary to law”.

Only 2 Articles, 255 and 256, devoted to regional administration

How successful have the efforts over the past 28 years to operationalize the vision of effective, self-financing, representative, democratic and developmental local authorities been?

- Evolution of the system with incremental reforms largely through passage of legislation, guidelines and periodic reviews
- Formulation of decentralization policies and action plans from the reviews: 2010-2014; 2015-2019; 2020-2024
- Some achievements in opening up the country for development and investment
- Development projects initiated through DACF, CG and IGF and Development partner resources

- Structures for service delivery established
- Local level collaboration for governance and some civic awareness
- Medium term plans have been produced, annual operating plans and budgets executed
- Some departments created and staff are at post and working
- Development projects have been initiated through funding from the District
- Assembly members have been elected/appointed

However, the local government system envisaged by the 1992 Constitution and the purposes for which it was instituted are yet to be realized.

- Incomplete administrative and financial decentralization which has not facilitated democratic participation
- Staff of LG departments cannot be hired and fired by the local authority and are certainly not paid by them.
- Deficits in accessible, efficient and equitable service delivery
- Challenges in achieving participation that was automatically assumed would happen
- Inability to keep up with local economic development, public-private partnerships, social inclusion and social accountability

Constitution: Issues and Challenges

Issues raised by the Constitutional Review Commission (CRC) process of 2010/2011:

- Re-conceptualization of decentralization
- Definition of a district; demarcation of MMDAs;
- Common Fund Allocations including Constituency/MP allocations;
- The role of RCCs;
- Appointment of MMDCEs;
- Conditions of service for assembly members;
- Election and tenure of Presiding Members;
- Emoluments for Members of Assemblies, Unit Committees and Town/Zonal/Area Councils: provisions for monthly allowances? Consolidated Fund or Locally Generated Funds (IGF)?

In particular, around MMDAs:

- Should the Constitution retain the non-partisan character of assembly elections?
- Should the MMDAs be made hundred percent (100%) elective?
- Should the Constitution be amended to scrap the thirty percent (30%) government appointees or should the appointed quota be reserved for identifiable groups?
- Should the Constitution be amended to remove Members of Parliament as members of assemblies?
- GoG's White Paper on CRC recommendations; but stalling of CR process
- Efforts to address some issues in decentralization policy documents; others through legislation and regulations

- Local Government (Departments of District Assemblies) (Commencement) Instrument (LI 1961) integrating district departments (2009)
- Local Government (Urban, Zonal and Town Councils and Unit Committees) (Establishment) Instrument, 2010, L.I. 1967
- Local Government (Sub-Metropolitan District Councils of Metropolitan Assemblies) (Establishment, Composition and Functions) Instrument, 2015, L.I. 2223

2016: Passage of Act 936 (Amendment in Act 940) which

- repealed DACF (Act 455), LG Act (Act 462) and LGS Act (Act 656);
- amended sections of National Development Planning Act (Act 480); Internal Audit Agency Act (Act 658); Electronic Communication Act (Act 755) and Registration of Births and Deaths Act (Act 301)

Present Scenario

- A partisan national political structure operating a “non-partisan” local government system.
- 1993: 10 regions and 110 assemblies: 3 Metropolitan, 4 Municipal and 103 Districts
- 2021:16 regions and 261 assemblies: 6 Metropolitan, 108 Municipal and 147 Districts

Governed by Act 936 as well as provisions under

- Act 914 amending the Public Procurement Act, Act 663,
- Act 921 being the Public Financial Management Act
- LI 2232 The National Development Planning (System) Regulations
- Land Use and Spatial Planning Authority (LUSPA) Act 925
- Transformation of some sub-metropolitan councils in Accra, Cape Coast, Kumasi, Tamale, Tema and Sekondi-Takoradi into municipalities (2018)

Current Agenda for Decentralization:

The Decentralization Policy and Strategy (2020 to 2024) with 6 policy thrusts namely

- political decentralization
- administrative decentralization
- decentralized planning
- fiscal decentralization
- local economic development and
- popular participation

**Potential Reforms in Local
Governance and Decentralization to
Respond to the Constitutional
Features**

Legislation to transfer functions, powers, responsibilities and resources in a coordinated manner

- Amending legislation around the Schedule B Departments of Assemblies has not been achieved; legislation around Health, Education and other services and implications
- Integrating staff of services, LUSPA (Town and Country Planning), Roads, Births and Deaths into the LGS
- Legislation around assembly/district boundaries
- Resolving issues around assembly bye-laws: gazette, educate, apply, sanction etc
- Affirmative action in LG composition as a tool for equitable representation
- Appropriateness of some national legislation for local level functioning eg Procurement Law, provisions for PPP etc ease and feasibility of audit committees

Mandate and resources to ensure capacities of LAs for performance and localization of development activities

- Consistent and timely capacity building for all categories of staff as well as politicians
- Harmonizing capacity building initiatives
- Ensuring that assemblies have their full quota of staff of appropriate qualification especially for more vulnerable districts
- Strategic thinking culture, street level bureaucracy and absence of resources to fulfil planned actions
- Investment in capacities of local people to contribute to human resource base available to the district eg scholarships in critical technical and professional areas
- Absence of a coherent social agenda of individual assemblies – social protection, youth development, attention to the aged, PWDs
- Attention to gender issues in LG administration

Sound financial bases for LAs with adequate and reliable sources of revenue

- Slow fiscal decentralization: providing sufficient funds for assigned functions and the inter-governmental fiscal framework
- Perceptions of low capacities of LGs in internal controls and public financial management
- Low locally/internally generated revenue capacities
- Better coordination of local economy and synergistic LED
- Better capacities for public-private partnerships and investment
- Challenges with DACF
- Need for asymmetric approaches to borrowing, CF, development funding, retention and utilization of tax proceeds
- Need for guidelines around joint-development initiatives and inter-district/regional level economic initiatives
- Management of natural resource constraints – land issues, utilization of mineral resources, tourism etc
- Creation of economic opportunities for local artisans and service providers and attention to gender issues

Accountability of local government functionaries to LAs and the people as far as possible

- Triple allegiances of CEs (the President, the Party, the People)
- Dual allegiances of staff (National and Regional Sector Agencies and Offices)
- Potential conflicts between CE, CD, MP and PMs
- Inability of Traditional Authorities and Opinion Leaders to provide an accountable interface
- Lack of coordinated effort between departments (activation of inter-sectoral collaboration) leading to duplication or gaps
- Inadequate attention to gender issues and capacities for social inclusion in engaging citizenry

Opportunities for local people to participate in their governance

- Strengthening the demand side of accountability/ability of citizens to exercise their rights
- Cynicism of citizenry towards change
- Low levels of volunteerism and perceptions about relevance of inputs: Inability of assembly to demonstrate relevance to the people
- Need to operationalize the provisions in Act 936 sections 40-48
- Low levels of awareness of grievance and complaints handling channels available and social charters
- Low appetite of some staff for accountability to the citizenry
- Functioning and resourcing of sub-structures (UZTAs)
- Attention to gender and social inclusion in opportunities for participation and responsiveness to needs

Leadership

- Strategic, developmental leadership (political, administrative and technical)
- Accountability and democratic leadership/issues around election versus appointment
- Capacity for collaboration with other leaders in local governance environment (political, administrative and civic)
- Change management and team building capacities
- Performance contracting and application of sanctions
- Issues of representation, feedback, calibre and the performance of assembly members
- The place of traditional authority in the assembly system and management of localities

Clarity in the Role of the Regions

- Efforts in Act 936 to clarify the mandate, resourcing and relationships within the region and with other levels of administration
- Relationships between RMs, CEs in regional capitals and municipalities
- Functionality of RCCs – RM, CEs, PMs, Chiefs, Departmental Heads
- Acceptance of the RCCs as part of the LG Service as prescribed by law

New Models for Effective, Well-Resourced Local Governments ?

or

Incremental Nips and Tucks?

Over the three decades of implementation of the assembly system, the world has changed and Ghana's local governance must be more responsive and relevant. If local authorities proceed the way they are, they are in the danger of becoming irrelevant.

Esther's two-pesewas worth

The Changing Context

- Impact of internationalization and the requirement for global standards of performance, changing markets for goods and services
- Expectations of Ghanaians, residents, investors and their rights
- Increasing urbanization, migration and the challenge of making cities vehicles of economic, social and cultural development. Cities must be livable, equitable, healthy and environmentally conscious.
- Citizens' access to information and more discerning demands for services;
- International development standards as articulated in the SDGs and the African 2063 agenda;
- Imperative of climate change and natural resources management
- Emerging and changing nature of security threats including health pandemics - COVID
- New patterns of partnership – the heterogeneity of private sector and civil society; changing
- Human capital: rights obligations
- Population dynamics and diversity: optimizing youth resources and reaping demographic dividends; ensuring social inclusion and equitable access of all; gender mainstreaming and responsiveness to special needs.

Considerations for Political Reform

A political model is required which

- increases accountability and obligation;
- reduces impunity and opportunities for corruption
- more effective representation and feedback
- working complaints, grievance and redress systems;
- encourages citizens' pro-active engagement of authorities
- provides and applies checks and balances; and
- a system that throws up the best suited for public office and
- can mobilize and galvanize the best ideas for resource mobilization and allocation.

Considerations for Technocratic Structures

- The creation of a dedicated local government service has been realized with the requisite job standards, schemes and conditions of service. But further work is required towards a work environment in which
- staff members are motivated and have opportunities for self-development to keep abreast with technological trends and standards in their professional fields
- have opportunities to be innovative and are rewarded for their creativity and responsiveness.
- Performance is linked to rewards and based on proper assessment.
- loyalty of staff in LG service is driven by interpreting and implementing technical standards in ways that are appropriate to the localities they are employed to serve in and have clear accountabilities to this end.

Considerations for Technocratic Structures

- Some legislative action is necessary to achieve the desired administrative cohesion. However,
- re-orienting the district administration to provide more seamless, coordinated action and complementary services is possible
- Integration of efforts by
 - operationalizing inter-departmental and inter-service collaboration and
 - establishing working-together protocols
- As a matter of urgency, some structural issues must be resolved within the framework of the existing law, such as the circumstances of the Departments responsible for social development.

- Further decentralization of HRM to the district levels while strengthening performance management and complaints/grievance processes to protect staff
- Strengthening use of technology for working, analysis, communication, reporting, record-keeping and service delivery
- Taking advantage of technological options to provide better opportunities for self-development, capacity-building and working
- Clear opportunities, compensation and meaningful rewards for those in “unattractive” locations
- Clarifying staff progression pathways and strengthening decent work including support for families.

Considerations for Revenue Issues

- The constitution envisaged that local authorities should have reliable funding sources and be able to mobilize and optimize local sources of revenue.
- The criteria for creation of the districts include the potential for economic viability.
- Assemblies are required to take responsibility for the overall development of their localities and legislation indicates sources of revenue and coordination of economic activities.
- However, revenue mobilization by assemblies has fallen far short of expectation – often below 30% of total finances of local authorities.

- Over the years, various efforts to stimulate local revenue generation have included exploring
- Private sector engagement to promote more efficient collection;
- Monitoring to reduce opportunities for corruption by revenue collectors;
- Digitization of records and valuation of properties
- Adoption of e-payment processes
- Collaboration with artisans and producer groups
- Public education and accountability mechanisms including revenue collection boards etc

How can these be improved?

- Review of revenue assignments between central and local levels
- Expedited action on guidelines and support for borrowing for local authorities
- Bottom-up approaches to private sector investment (currently, heavy hand of the Central Government does not stimulate pro-activity and local ownership)
- More creative and intentional support for local entrepreneurs at the district level –coaching, market linkages etc
- Infrastructural support for local operators – serviced facilities identified in collaboration with the would-be beneficiaries
- Clear demonstration of equity and transparency in schemes to support local entrepreneurs and initiatives
- Rigorous accountability in the use of locally generated resources
- Availability of valuation and other technical services on a more consistent basis to assemblies
- Better communication to support collection of taxes, levies and other obligations

Promoting Democratic Engagement

Act 936 provides for a range of measures:

- Section 26 provides for the Public Relations and Complaints Committee and clarifies its membership and functions and includes key CSO representatives
- Section 40 places onus on the assembly to enable residents and stakeholders in the activities of assemblies and sub-structures.
- Sections 40-48 provide for deliberations on by-laws and fee-fixing resolutions using mass media, notice boards before commencement of proceedings; representation to the assembly and its sub-committees;
- as well as communication and advocacy roles

- Section 42 outlines modalities and platforms for participation
- Section 43 provides for petitioning rights and channels of stakeholders a
- Section 44 obligates assemblies to acknowledge receipt of petitions and timelines for responses
- Section 45 requires the DCE to report on the [efforts, nature and extent of] participation in Assembly's activities to the General Assembly
- Section 46 outlines communication obligations of Assemblies and mechanisms to facilitate communication and access to information and wide outreach
- Section 47 provides residents access on request to information held by the Assembly and its Departments subject to legal limitations
- Section 48 provides for inclusion and integration of minorities and marginalized groups and related principles

- An LG must ensure that its systems of engagement are sufficiently accessible, secure and inclusive
- The processes must enable individuals to make a difference to the functioning and development of the locality
- It must be worth the citizens' while to participate in engagements and to engage; and their inputs must be acknowledged;
- The opportunity cost of their time, must be rewarded by clear changes and results
- Attention paid not only to the mechanisms, but the relationships, locations and other influencing factors on access and responsiveness

Election of Chief Executives & Multiparty Competition In Local Governance (???)

Demands for further competitiveness, accountability and possibly, an acknowledgement of partisanship in local governance

- Processes initiated in 2018 to amend Articles 55 (3) and 243 (1) of the Constitution
- Resistance from key stakeholder groups in Parliament and Traditional Authorities
- Manifestoes of political parties to revisit in their manifestoes albeit different areas of emphasis
- NPP: focus on direct and popular election of CEs; legalizing participation of political parties in local government; devolving more power and resources;
- NDC: election of Chief Executives and implementation of the responses to the CRC recommendations: ie an amendment of Article 243 (1) and a public election of a short-list of candidates

- Subsequent efforts led by NGOs/CSOs to re-open discussions and build broad consensus
- Post-election survey by CDD indicates over 76% of Ghanaians support the idea of elected CEs.
- 71% want it conducted on a non-partisan basis
- How do we ameliorate partisan influences on assembly processes? What do we do with assembly members – elect all of them?
- How do we ensure representation of “underserved” interests/interest group representation – catered for through appointed memberships?
- Should we adopt a phased approach to implementation? If so, phased in what terms, ways?

The Role of Chieftaincy in Local Government

- The historical role of traditional authorities and legacy of traditional governance in local administration
- The continuing relevance of traditional authority structures in mobilization, control of natural resources, moral suasion, social control and arbitration amongst others
- The level of influence, mandate and tenure
- Chieftaincy institution reinventing itself for relevance – social development, environmental management, developmental linkages etc
- Checkered history of co-existence with local authorities – direct versus indirect controls and involvement

- Traditional authorities have expressed concerns about
 - Inadequacy of current provisions for their involvement: consulted on selection of appointed members; representation as appointed members; and RCCs;
 - Inadequate information and accountability from CEs and LG officials on development initiatives
 - Breaches of custom and socio-cultural protocols
 - Undermining of traditional authority
 - Lack of harmonization between functions of unit committees and traditional authorities' mandates
- Efforts at developing guidelines to manage relationships between local and traditional authorities have not gained traction
- Is it political will?
 - How will the provision of the 1992 constitution in Article 276 (1) prohibiting chiefs from “active party politics” apply in the local government arena?

Conclusion

- The 1992 Constitution was intended to provide a new direction of hope for the nation of Ghana. The processes that informed its crafting, brought on board lessons learned from three and a half decades of independence and international development efforts.
- Thirty years later, the model for local governance certainly needs retooling to achieve the vision of effective, self-financing, representative, democratic and developmental local authorities.
- The range of corrective measures demands an overhaul and bold action rather than incremental changes.
- The commonalities and consensus issues that emerge from the views of the Ghanaian people must be taken on board eschewing arbitrariness, partisan expediency and short-term gains from this venture to secure the “governments at the door-steps of the people”.