

People's Access to Information and the Constitution of the Republic of Ghana

Key Provisions

The Constitution of Ghana places a significant amount of emphasis on the need for transparency and accountability in governance. Several provisions have been enshrined in the Constitution to ensure flow of information to the people of Ghana. This is in addition to the express recognition of access to information as a fundamental right of all persons in Ghana. Given below is a quick compilation of various constitutional provisions that –

- a) require public authorities and actors to furnish information to an individual or persons directly or
- b) have a bearing on the constitutional imperatives of transparency and accountability.

#	Chapter / Theme / Article
<u>Preamble:</u>	
1	<p>The Preamble beds down 'probity' and 'accountability' amongst the defining values of the constitutional framework. Engendering these values requires creation of information flows to people about policies and decisions of all public authorities.</p> <p><i>"We the People of Ghana,</i></p> <p><i>IN EXERCISE</i> of our natural and inalienable right to establish a framework of government which shall secure for ourselves and posterity the blessings of liberty, equality of opportunity and prosperity...</p> <p><i>AND IN SOLEMN</i> declaration and affirmation of our commitment to;</p> <p><i>Freedom, Justice, Probity and Accountability;</i></p> <p><i>DO HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION."</i></p>
<u>Chapter 4: The Laws of Ghana</u>	
2	<p><u>The Laws of Ghana:</u></p> <p>Article 11(7) places an obligation on all authorities (individuals and bodies) established under the Constitution to publish all orders, rules and regulations in the Gazette.</p> <p><i>"(7) Any Order, Rule or Regulation made by a person or authority under a power conferred by this Constitution or any other law shall...</i></p> <p><i>(b) be published in the Gazette on the day it is laid before Parliament..."</i></p>
<u>Chapter 5: Fundamental Human Rights and Freedoms</u>	
3	<p><u>Protection of Personal Liberty:</u></p> <p>Under Article 14(2), any person who is arrested or detained by law enforcement authorities has the right to know the reasons for his arrest or detention.</p> <p><i>"(2) A person who is arrested, restricted or detained shall be informed immediately, in a language that he understands, of the reasons for his arrest, restriction or detention and of his right to a lawyer of his choice."</i></p>
4	<u>Fair Trial:</u>

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	<p>Article 19(2)(d) requires that every person who is charged of an offence be informed about the nature of offence of which he/she is charged.</p> <p><i>"(2) A person charged with a criminal offence shall... (d) be informed immediately in a language that he understands, and in detail; of the nature of the offence charged;"</i></p>
5	<p><u>Fair Trial:</u> Article 19(2)(h) requires that every person under trial be permitted to have an interpreter free of cost at the trial if he/she cannot understand the language used at the trial.</p> <p><i>"(2) A person charged with a criminal offence shall... (h) be permitted to have, without payment by him, the assistance of an interpreter where he cannot understand the language used at the trial;..."</i></p>
6	<p><u>Fair Trial:</u> Article 19(4) states that every person found guilty of an offence in the course of a trial is entitled to a copy of the judgement and any record that is part of the judicial proceedings on request and within a time limit.</p> <p><i>"(4) Whenever a person is tried for a criminal offence the accused person or a person authorised by him shall, if he so requires, be given, within a reasonable time not exceeding six months after judgement, a copy of any record of the proceedings made by or on behalf of the court for the use of the accused person."</i></p>
7	<p><u>Fair Trial:</u> Article 19(14) requires that all trials for criminal offences be held in public unless the court decides otherwise in specific cases. This is another instance of transparency in judicial proceedings.</p> <p><i>"(14) Except as may be otherwise ordered by the adjudicating authority in the interest of public morality, public safety, or public order the proceedings of any such adjudicating authority shall be in public."</i></p>
8	<p><u>Protection from Deprivation of Property:</u> Article 29(1)(b) requires the State to declare the necessity of acquiring property before it is acquired and such a statement must also contain reasonable justification for causing hardship to the person who has a right or interest over the property.</p> <p><i>"(1) No property of any description or interest in or right over any property shall be compulsorily taken possession of or acquired by the State unless the following conditions are satisfied... (b) the necessity for the acquisition is clearly stated and is such as to provide reasonable justification for causing any hardship that may result to any person who has an interest in or right over the property."</i></p>
9	<p><u>General Fundamental Freedoms:</u> <u>Right to Information:</u> Article 21(1)(f) guarantees every person a general right to information.</p> <p><i>"(1) All persons shall have the right to... (f) information, subject to such qualifications and laws as are necessary in a democratic society;"</i></p>
10	<p><u>Persons detained under Emergency Law:</u> Article 32(1) requires that a person detained or restricted under an Emergency law be given within 24 hours a written statement containing details of grounds on which that</p>

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	<p>person has been detained. Members of the family of the person detained must be informed of the detention within 24 hours and they should be allowed to meet the person detained. Furthermore, the State is required to publish in the Gazette details of every person detained or restricted under the Emergency law within 10 days of such detention or restriction.</p> <p><i>“(1) Where a person is restricted or detained by virtue of a law made pursuant to a declaration of a state of emergency, the following provisions shall apply -</i></p> <p><i>(a) he shall as soon as practicable, and in any case not later than twenty-four hours after the commencement of the restriction or detention, be furnished with a statement in writing specifying in detail the grounds upon which he is restricted or detained and the statement shall be read or interpreted to the person restricted or detained;</i></p> <p><i>(b) the spouse, parent, child or other available next of kin of the person restricted or detained shall be informed of the detention or restriction within twenty-four hours after the commencement of the detention or restriction and be permitted access to the person at the earliest practicable opportunity, and in any case within twenty-four hours after the commencement of the restriction or detention;</i></p> <p><i>(c) not more than ten days after the commencement of his restriction or detention, a notification shall be published in the Gazette and in the media stating that he had been restricted or detained and giving particulars of the provision of law under which his restriction or detention is authorised and the grounds of his restriction or detention;”</i></p>
11	<p><u>Persons detained under Emergency Law:</u></p> <p>Article 32(4) requires the Minister of State to publish every month in the Gazette and in the media a list of all persons detained or restricted under the Emergency Law along with their addresses. Similarly a list of all cases reviewed by the Tribunal and the action taken on the basis of their decisions must also be published in the Gazette and the media.</p> <p><i>“(4) Notwithstanding clause (3) of this article, the Minister referred to in that clause shall publish every month in the Gazette and in the media.</i></p> <p><i>(a) the number and the names and addresses of the persons restricted or detained;</i></p> <p><i>(b) the number of cases reviewed by the tribunal; and</i></p> <p><i>(c) the number of cases in which the authority which ordered the restriction or detention has acted in accordance with the decisions of the tribunal appointed under this article.”</i></p>
<u>Chapter 5: Directive Principles of State Policy</u>	
12	<p><u>Political Objectives:</u></p> <p>Article 35(6)(d) requires the State to promote people's participation in the decision-making processes of government at the level of regions and districts. People's participation in government requires that they be provided information about the government and its decision-making processes.</p> <p><i>“(6) Towards the achievement of the objectives stated in clause (5) of this article, the State shall take appropriate measures to...</i></p> <p><i>(d) make democracy a reality by decentralizing the administrative and financial machinery of government to the regions and districts and by affording all possible opportunities to the people to participate in decision-making at every level in national life and in government...”</i></p>
13	<p><u>Economic Objectives:</u></p> <p>Article 36(8) calls upon the State to recognise that all managers of public, stool, skin and family lands carry a social obligation and that they manage these lands as fiduciaries (trust-based relationship). Hence such managers are accountable to the</p>

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	<p>people. People cannot enforce accountability meaningfully unless they have information about the actions and decisions of the managers of such lands.</p> <p><i>"8) The State shall recognise that ownership and possession of land carry a social obligation to serve the larger community and, in particular, the State shall recognise that the managers of public, stool, skin and family lands are fiduciaries charged with the obligation to discharge their functions for the benefit respectively of the people of Ghana, of the stool, skin, or family concerned and are accountable as fiduciaries in this regard."</i></p>
14	<p><u>Economic Objectives:</u> Article 36(11) requires the State to encourage worker participation in the decision-making processes at the place of work. Participation is possible only when workers can seek and obtain information about the decision-making processes prior to the making of such decisions.</p> <p><i>"(11) The State shall encourage the participation of workers in the decision-making process at the work place."</i></p>
15	<p><u>Social Objectives:</u> Article 37(1) directs the State to enact appropriate laws to enable people to participate in the processes of decision-making related to development. These laws should also assure adequate access to officials and agencies of the State for people. Transparency in the working of public officials, State agencies and the formulation of development policies is indispensable to the fulfilment of this objective.</p> <p><i>"(2) The State shall enact appropriate laws to ensure -</i></p> <p><i>(a) the enjoyment of rights of effective participation in development processes including rights of people to form their own associations free from state interference and to use them to promote and protect their interests in relation to development processes, rights of access to agencies and officials of the State necessary in order to realise effective participation in development processes; freedom to form organizations to engage in self-help and income generating projects; and freedom to raise funds to support those activities;"</i></p>
16	<p><u>Duties of a Citizen:</u> Article 41(f) states that it is the duty of every citizen to expose and combat wastage and misuse of public funds and property. This is closely connected to the value of accountability espoused in the Preamble. People will be able to perform this duty effectively only if they have access to all information relating to the spending of public funds.</p> <p><i>"(f) to protect and preserve public property and expose and combat misuse and waste of public funds and property;"</i></p>
<p><u>Chapter 7: Representation of the People</u></p>	
17	<p><u>Voting at Elections and Referenda:</u> Article 49(3) requires that the results of a public election and a referendum be announced publicly at the polling station.</p> <p><i>"(3) The presiding officer, the candidates or their representatives and, in the case of a referendum, the parties contesting or their agents and the polling agents if any, shall then sign a declaration stating -</i></p> <p><i>(a) the polling station; and</i></p> <p><i>(b) the number of votes cast in favour of each candidate or question: and the presiding officer shall, there and then, announce the result of the voting at the polling station before communicating them to the returning officer."</i></p>

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18	<p>Organisation of Political Parties: Article 55(14) requires all political parties to publicly declare their revenues and assets and the sources of such revenues and assets. They are also required to inform the people of their audited accounts every year.</p> <p><i>“(14) Political parties shall be required by law-</i> <i>(a) to declare to the public their revenues and assets and the sources of those revenues and assets; and</i> <i>(b) to publish to the public annually their audited accounts.”</i></p>
<p><u>Chapter 10: The Legislature</u></p>	
19	<p>Article 106(2) requires that all Bills be published in the Gazette at least 14 days before they are introduced in Parliament. Bills related to taxes or payments out of the Consolidated Fund or debt due to the Government of Ghana are exempt from this requirement.</p> <p><i>“(2) No bill, other than such a bill as is referred to in paragraph (a) of article 108 of this Constitution, shall be introduced in parliament unless ...</i> <i>(b) it has been published in the Gazette at least fourteen days before the date of its introduction in Parliament.”</i></p>
<p><u>Chapter 13: Finance</u></p>	
20	<p>Statistical Service: According to Article 186(2), the Government Statistician has a duty to publish socio-economic data on Ghana.</p> <p><i>“The Government Statistician under the supervision of the Statistical Service Board, shall be responsible for the collection, compilation, analysis and publication of socio-economic data on Ghana and shall perform such other functions as may be prescribed by or under an Act of Parliament.”</i></p>
<p><u>Chapter 20: Decentralisation and Local Government</u></p>	
21	<p>Local Government: According to Article 240(2)(e), Ghana shall have a decentralised system of local government and administration. People are required to be provided adequate opportunities to participate in their local government in order to ensure greater accountability of the authorities. People's participation requires the creation of mechanisms that will ensure timely access to information about local government and its decision-making processes.</p> <p><i>“(2) The system of decentralized local government shall have the following features...</i> <i>(e) to ensure the accountability of local government authorities, people in particular local government areas shall, as far as practicable, be afforded the opportunity to participate effectively in their governance.”</i></p>
<p><u>Chapter 21: Lands and Natural Resources</u></p>	
22	<p>Stool and Skin Lands and Property: Article 267(7) requires the Administrator of Stool Lands and the Regional Land Commission to consult with the stools and other traditional authorities regarding the administration and development of stool lands and make available to them all relevant information and data.</p>

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“(7) The Administrator of Stool Lands and the Regional Lands Commission shall consult with the stools and other traditional authorities in all matters relating to the administration and development of stool land and shall make available to them all relevant information and data.”

Chapter 23: Commissions of Inquiry

23 Functions of Commission of Inquiry:

Article 280(3) requires the President of Ghana to make public the report of a commission of inquiry along with a White Paper within six months of the report being submitted. However if the report is not required to be published then the President is must issue a written statement giving reasons as to why the report is not being made public [Article 280(4)].

“(3) The President shall, subject to clause (4) of this article cause to be published the report of a commission of inquiry together with the White Paper on it within six months after the date of the submission of the report by the commission.

(4) Where the report of a commission of inquiry is not to be published, the President shall issue a statement to that effect giving reasons why the report is not to be published.”

24 Inquiry Procedure:

Article 281(1) requires that all proceedings of a commission of inquiry be conducted in public unless otherwise ordered by the commission in the interest of public morality, public safety or public order.

“(1) Except as may be otherwise ordered by the commission in the interest of public morality, public safety or public order, the proceedings of a commission of inquiry shall be held in public.”

Chapter 25: Amendment to the Constitution

25 Amendment of Entrenched Provisions:

According to Article 290(3), a proposal to amend the entrenched provisions of the Constitution will not be introduced in Parliament unless the Bill has been published in the Gazette at least six month in advance. These provisions relate to fundamental rights and freedoms, elections, the legislature, the executive, the judiciary, freedom and independence of the media, chieftaincy, CHRAJ, police service, decentralisation and local government and a few other specified topics. This ensures provision of ample time for debating the pros and cons of the amendment proposal.

“(3) The bill shall be published in the Gazette but shall not be introduced into Parliament until the expiry of six months after the publication in the Gazette under this clause.”

26 Amendment of non-entrenched Provisions:

According to Article 291(1), a proposal to amend any provision of the Constitution other than entrenched provisions will not be introduced in Parliament unless the Bill has been published twice in the Gazette. There must be a gap of at least three months between the first and second publication of the proposal and the second publication must be at least ten days prior to the date of its introduction in Parliament.

“(1) A bill to amend a provision of this Constitution which is not an entrenched provision shall not be introduced into Parliament unless-

(a) it has been published twice in the Gazette with the second publication being made at least three months after the first; and

(b) at least ten days have passed after the second publication.”

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