# CONSTITUTIONAL LAW OF GHANA

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# PART I - THE REPUBLICAN CONSTITUTION

## CHAPTER 1

## CONSTITUTIONAL EVOLUTION

The Republic of Ghana lies midway along the Guinea coast of West Africa, being bounded on three sides by former French territories and on the south by the Atlantic Ocean. To the west lies the Ivory Coast Republic, to the north the Voltaic Republic (formerly Upper Volta) and to the east the Republic of Togo. The territories of Ghana consist of those formerly comprised in the Gold Coast Colony, Ashanti, the Northern Territories of the Gold Coast, and Togoland under United Kingdom Trusteeship. The name Ghana was adopted when, on 6th March, 1957, the country became independent of British rule. The name was taken from the ancient negro empire of Ghana in the South-Western Soudan, from which a proportion of the inhabitants of present-day Ghana are believed to derive their ancestry. Ghana became a republic within the Commonwealth on 1st July, 1960.

Although the republican constitution contains a number of original features and represents a clean break with the past, it inevitably perpetuates by way of organic development much of the former constitutional system. It cannot therefore be understood without reference to the growth of the institutions of government which took place during the years preceding the emergence of Ghana as an independent republic. The purpose of the present chapter is to trace briefly the course of this development, beginning with the assumption of jurisdiction by the British Crown in 1821.[1] The history of the four centuries preceding this event is one of great confusion and shifting of populations, in which the tribal systems were being modified by wars and invasions among the Africans themselves and also by the activities of traders from almost every European country. The indigenous constitutional systems are a study in themselves and are beyond

[1] For the earlier history, and the general background to the constitutional developments here discussed, see Claridge, *A History of the Gold Coast and Ashanti*, London, 1915; Ward, *A History of the Gold Coast*, London, 1948; *The Cambridge History of the British Empire*. For the later background see F. M. Bourret, *Ghana—the Road to Independence*, 1919-1957, London, 1960.

the scope of the present work. Our concern now is with a type of constitutional law which, while it recognises indigenous customs and has certain similarities with them, is in written form and derives from institutions and modes of legislation unknown to customary law. From this point of view the story begins with the first attempts of the British to provide a system of government in the Gold Coast. Before these were made the British, like the Dutch, Danish and other Europeans, were present merely as traders and missionaries. The British administration, as it developed and as its boundaries were gradually extended to the whole of the territory now known as Ghana, had the effect of welding into one political unit diverse ethnical groups who without its influence might well have remained separate and would certainly not have been subject to what is now the constitutional law of Ghana. The account of constitutional development given here will be a factual one, describing the changes that actually occurred without going very deeply into the reasons for them, the background conditions, or the controversies which have surrounded them.

### 1. THE EARLY PERIOD OF BRITISH RULE, 1821-1874

From 1821 to 1874 the British possessions on the Gold Coast were, apart from the period 1850 to 1866 (when they were treated as a separate entity), under the control of the Governor of Sierra Leone. His powers were, however, in suspense from 1828 to 1843, when the administration was carried on by a Committee of Merchants in London.

Before 1821 the government of the British trading forts and settlements on the Gold Coast had been vested in the Company of Merchants trading to Africa, as successors to the Royal African Company of England.[1] The most important forts were those at Cape Coast, Dixcove, Accra (Fort James) and Anomabu, and these were kept up by the Crown after 1821. Other forts and settlements, such as those at Winneba, Wida and Apollonia were then abandoned.[2] Interspersed with the British forts there were at this time other fortified depots belonging to the Dutch and the Danish, and used for the protection of their trading activities on the Gold Coast. The administration of the Company of Merchants

[1] 23 Geo. 2, c. 31; 25 Geo. 2. c. 40; 23 Geo. 3, c. 65.

[2] Report from the Select Committee on Africa (Western Coast) 1865 (No. 412), p. 39.

had been carried on under a Governor-in-Chief who, with the seven Governors of the more important forts and the Accountant, formed an administrative council. In all, about forty-five Europeans and four hundred and fifty Africans were employed by the Company.[1] Since the slave trade had become illegal for British subjects in 1807,[2] the Company of Merchants had had neither the funds required for maintaining the British forts nor any incentive to maintain them; and a government subsidy had become necessary for that purpose. Allegations were made that this subsidy was misused and that the Company was failing to prevent illicit slave trading. Accordingly an Act was passed[3] by which on 3rd July, 1821, the Company was dissolved and its forts and other possessions vested in the Crown. The Crown was also given power to declare these possessions, and any others on the West Coast of Africa between the latitudes of 20° North and 20° South " which now do or at any time hereafter shall or may belong to His Majesty " to be annexed to or made dependencies on the Colony of Sierra Leone and made subject to its laws.

**The Committee of Merchants**

The power conferred by the new Act was exercised within a few months when, by letters patent issued under the Great Seal on 17th October, 1821, George IV ordered the existing and future possessions of the Crown on the West Coast of Africa within the latitudes mentioned in the Act to be annexed to and made dependencies on the Colony of Sierra Leone. The Governor of Sierra Leone, Sir Charles McCarthy, arrived in Cape Coast on 28th March, 1822 to assume the government.* There followed a period of war and confusion, in which McCarthy was killed in battle with the Ashantis and which was not brought to a close until a peace treaty was signed with the Ashantis in 1831 following their defeat at the battle of Dodowa in 1826. In the meantime the British Government had handed over the administration of the territories in 1828 to a Committee of Merchants selected by the British Government.[8] Local administration was carried on

[1] Claridge. *op. at.*, I, pp. 332-333.
[2] 47 Geo. 3, Sess. I, c. 36.
[3] West Africa Act, **1821.**
[4] Claridge, *op. cit.*, I, p. 334.
[5] The reason for this transfer was " the difficulty of maintaining troops in health in that quarter and the enormous expense which would have been incurred in placing the forts in a fit state for defence ": evidence given to House of Commons Select Committee in 1834, cited in J. J. Crooks, *Records relating to the Gold Coast Settlements from 1750 to 1874*, Dublin, 1923, p. 249.

by a President appointed by the Committee, assisted by a council of merchants resident at Cape Coast Castle. An annual subsidy of £4,000 was paid by the British Government. Although theoretically restricted to the forts themselves, the powers thus vested in the Committee of Merchants came to be used on a *de facto* basis in the neighbouring areas. This development was largely due to the administrative and judicial abilities of Captain George Maclean who was appointed President in 1830. By the treaty with the Ashantis in 1831, under which they gave up any claim to suzerainty over the coastal tribes, Maclean had secured the protection and extension of trading activities and peace between Ashanti and the coastal areas.[1] In the more settled conditions which then prevailed, British justice came to be administered among the inhabitants of these areas in a manner which, in the words of Maclean himself, " has had the happiest effect in maintaining peace, encouraging agriculture and commerce, and promoting the civilization of the natives ".[2] He went on to add in perhaps exaggerated terms: " Let but the local government deny or cease to administer even-handed justice to the population for a single day, and the whole country would again become a scene of warfare, rapine and oppression." The British Government declined, however, to regularise this *de facto* jurisdiction until pressed to do so by a Parliamentary Select Committee which reported in 1842. This Committee recommended that the Government of the British forts upon the Gold Coast be resumed by the Crown, and that all dependance on the Government of Sierra Leone should cease, that the forts abandoned in 1828 when the government was handed over to the Committee of Merchants should be reoccupied as helpful in suppressing the slave trade, and that the irregular judicial jurisdiction *de facto* exercised by Maclean and the magistrates at the forts " should be better defined and understood ". This latter aim was to be achieved by means of agreements with the local chiefs and by the appointment of a judicial officer who, in administering justice to the African population, should follow the principles, while not being restricted to the technicalities, of English law and should be allowed a large discretion. The Select Committee expressed the view that the relationship of the chiefs and their peoples to the British Crown should be:

[1] For the text of the treaty see Sarbah, *Fanti National Constitution*, London, 1906, p. 153.
[2] Cited Sarbah, *op. cit.*, p. 95.

*"* not the allegiance of subjects, to which we have no right to pretend, and which it would entail an inconvenient responsibility to possess, but the deference of weaker powers to a stronger and more enlightened neighbour, whose protection and counsel they seek, and to whom they are bound by certain definite obligations."[1]

**Resumption of Crown Government**

The recommendations of the Select Committee were acted upon, and in 1843 the Crown resumed the government. It did not immediately follow the advice to sever the dependency on Sierra Leone and for a further seven years the Gold Coast settlements were under the control of the Governor of Sierra Leone. A Lieutenant-Governor was appointed for the Gold Coast and Maclean was made Judicial Assessor and Stipendiary Magistrate to carry out, in exercise of his powers as a justice of the peace, the functions suggested for a " judicial officer " by the Select Committee.[2]

The civil establishment was completed by a chaplain, a surgeon, a secretary to the Lieutenant-Governor, a clerk to the Judicial Assessor, and the Commandant at Accra.[3] A Colonial Secretary was added in 1845.[4]

**British Settlements and Foreign Jurisdiction Acts**

In **1843** two Acts were passed by the British Parliament which enabled the administration of such territories as those on the Gold Coast to be placed on a regular footing. The first of these Acts, the British Settlements Act, 1843,[5] enabled Orders in Council to be made providing for the establishment of laws, institutions and ordinances for the peace, order and good government of " Her Majesty's subjects and others " within the settlements on the African coast. The power thus given could be

[1] *Report from the Select Comtmttee on the West Coast of Africa,* August, 1842, pp. iv-vi.

[2] The functions of the Judicial Assessor were exercised *outside* the forts and settlements. " It is to be carefully noted that this external jurisdiction was given distinct from the jurisdiction *inside* the forts, where Captain Maclean and the other magistrates had the ordinary powers of magistrates ": Brandford Griffith, *A Note on the History of the British Courts in the Gold Coast Colony, with a brief account of the Changes in the Constitution of the Colony,* Accra, 1936, p. 13.

[3] Dispatch from Lord Stanley to Lieut.-Governor Hill, 16th December, 1843, given in Crooks, *op. cit.,* p. 285.

[1] Crooks, *op. cit.,* p. 304.

[5] 6 & 7 Vict. c. 13; repealed and re-enacted by the British Settlements ct, 1887.

delegated by royal commissions or instructions to three or more persons within a particular settlement. The second Act, the Foreign Jurisdiction Act, 1843,[1] authorised the exercise of political powers acquired by agreement or usage in territories which had not become part of Her Majesty's dominions by cession or conquest. On 3rd September, 1844, an Order in Council was made under these Acts requiring judicial authorities in the Gold Coast, when exercising jurisdiction among the indigenous inhabitants, to observe such of the local customs as were compatible with the principles of the law of England, and in default of such customs to proceed in all things as nearly as may be according to the law of England. It was also provided that native offenders might be brought for trial and punished at Cape Coast Castle, or else taken to Sierra Leone, in order to satisfy the requirements of s. 5 of the Foreign Jurisdiction Act, 1843.[2]

**The Bond of 1844**

Commander H. W. Hill, the Lieutenant-Governor, lost no time in reaching the sort of agreement with the local chiefs that the Select Committee had envisaged and thus, on 6th March, 1844, the famous Fanti Bond was signed. By this brief document the chiefs acknowledged the power and jurisdiction which had been *de facto* exercised in their territories adjacent to the British forts and settlements, and declared that " the first objects of law are the protection of individuals and of property " and that human sacrifices, panyarring or the kidnapping of hostages for debt, and other barbarous customs " are abominations and contrary to law ". They agreed that serious crimes should be tried by the Queen's judicial officers sitting with the chiefs, " moulding the customs of the country to the general principles of British law ".[3]

**Constitution of 1850**

The numbers of the local population which by 1846 acknowledged British jurisdiction amounted to not less than 275,000, scattered over a territory of about 6,000 square miles.[4] This was added to in 1850, when the Danish King ceded the forts of

[1] 6 & 7 Vict. c. 94; repealed and re-enacted by the Foreign Jurisdiction Act, 1890.

[2] See Brandford Griffith, *op. cit.*, pp. 12-13.

[3] For the text of the Bond see Claridge, *of. cit.*, I., p. 452.

[4] Report of Lieut.-Gov. Winniett, 20th February, 1847, cited Crooks, *op. cit.*, p. 305.

Christiansborg, Augustaborg Fredensborg, Kongensteen and Prindsensteen, together with various houses and plantations, to the British Crown for a payment of £10,000.* In the same year the forts and settlements on the Gold Coast once again ceased to be dependencies of the Colony of Sierra Leone, the British Government belatedly following the advice of the Select Committee of 1842. This marked a considerable constitutional advance, with the Gold Coast being given its own Governor and both a Legislative Council and an Executive Council. Thus institutions were set up which, over a period of a hundred and ten years, were to evolve into the President, National Assembly and Cabinet of today. The change was effected by a Royal Charter dated 24th January, 1850, and made under the British Settlements Act, and which revoked the letters patent of 17th October, **1821.**

**The Legislative Council**

The Legislative Council consisted of the Governor and at least two other persons designated by Royal Instructions or warrants. By an exercise of the powers of delegation conferred by the Act, the Legislative Council was required to make:

> " all such laws, institutions and ordinances as may from time to time be necessary for the peace, order and good government of our subjects and others within the said present or future forts and settlements in the Gold Coast "

subject to rules and regulations made by Order in Council and to the right of the Crown to disallow any such ordinances in whole or in part, and with a saving for the future exercise of legislative power by Act of Parliament or Order in Council.

Royal Instructions issued at the time of the appointment of Governor Hill on 1st April, 1851, designated as members of the Legislative Council in addition to the Governor, the Judicial Assessor, the Collector of Customs and two merchants. In 1853 the Collector of Customs was replaced by the officer holding the post of Colonial Secretary.[2] The Instructions continued by laying down rules for the conduct of the Legislative Council. The Governor was to preside, and the quorum was to be three. Standing Orders were to be established. No law was

[1] Convention signed 17th August, 1850, and presented to Parliament in 1851.

[2] Royal Instructions, 12th February, 1853.

to be passed or question debated unless proposed by the Governor, though other matters might be recorded in the minutes with a statement of reasons by the member concerned. Ordinances were to be styled " Ordinances enacted by the Governor of our Forts and Settlements on the Gold Coast, with the Advice and Consent of the Legislative Council thereof " and were to be drawn up " in a simple and compendious form, avoiding, as far as may be, all prolixity and tautology ". The Governor was required to withhold assent to any Ordinance which was repugnant to any Act of Parliament or to the Royal Charter or Royal Instructions, or which interfered with Christian worship, diminished the public revenue, authorised money to be raised by lotteries, permitted divorce, provided for a gift to the Governor, prejudiced private property, taxed the trade or shipping of the United Kingdom in a manner from which other traders would be exempt, or subjected persons not of European birth or descent to disabilities which were not imposed on Europeans. Apart from Ordinances for raising the annual financial supplies or otherwise providing for matters where delay would cause serious injury or inconvenience, no Ordinance was to come into effect until the Royal pleasure had been made known.

**The Executive Council**

The Royal Charter of 1850 authorised the Governor to summon an Executive Council to assist him in the administration of the government. The Royal Instructions of 1851 provided that, in addition to the Governor, the Executive Council was to consist only of the Judicial Assessor and the Collector of Customs, the latter being replaced in 1853 by the Colonial Secretary. Where additional advice was needed on a particular matter extraordinary members could be co-opted by the Governor. Again, rules were laid down for the conduct of the Executive Council. The Governor was to preside and the quorum was to be three. Except in trivial matters the executive powers of the Governor were only to be exercised by the advice and consent of the Executive Council, unless the case was one of emergency, or unless consultation might cause material prejudice to the Crown. This rule was, however, qualified by a provision which enabled the Governor to act in disregard of the opposition of the Executive Council provided the matter was reported to the Secretary of State in London. As with the Legislative Council, no matter could be discussed unless it had been proposed by the Governor, although other members

could require points they wished to make to be entered in the minutes.

The Royal Charter also empowered the Governor to make grants of Crown land for public or private purposes, and to constitute and appoint j udges, commissioners of oyer and terminer, justices of the peace and other judicial officers, and remit punishments and grant pardons. By the Royal Instructions he was required, to the utmost of his power, to:

> " promote religion and education among the native inhabitants . . . and that you do especially take care to protect them in their persons, and in the free enjoyment of their possessions, and that you do by all lawful means prevent and restrain all violence and injustice, which may in any manner be practised or attempted against them, and that you take such measures as may appear to you to be necessary for their conversion to the Christian faith, and for their advancement in civilisation."

Poll Tax Ordinance

Although the Gold Coast territories were thus provided with a system of civil government it was still not clear how far it could be taken to extend to the local population. The Act of 1843 under which the Royal Charter was made was limited to the " forts and settlements " and this limitation of course extended to the Charter, although its effect was uncertain. The Bond of 1844 contained no such agreement to yield legislative power as would have formed the basis for an Order in Council under the Foreign Jurisdiction Act. Since it soon became clear that the duties imposed on the Governor in relation to the local inhabitants would require the expenditure of greater sums than could be obtained from the abortive customs duties and the British Government subsidies, the question of whether there was power to tax the local inhabitants arose in an acute form. Whatever the legal powers of the Governor and Legislative Council might be, it was clear that the yield from any tax was likely to be small unless the co-operation of the chiefs was obtained. Accordingly, on 19th April, 1852, the Governor, Major S. J. Hill, summoned a meeting at Cape Coast Castle of " the chiefs and headmen of the countries upon the Gold Coast under British protection ". It was resolved:

> 1. That the meeting " constitutes itself into a Legislative Assembly, with full powers to enact such laws as it shall seem fit for the better government of those countries ".

2. That the meeting be recognized by Her Majesty's Government as legally constituted, that it be called the Legislative Assembly of native chiefs upon the Gold Coast, that it be presided over, assembled, prorogued and adjourned by the Governor, and that its enactments, when sanctioned and approved of by the Governor, shall immediately become the law of the country, subject to Her Majesty's approval, and " be held binding upon the whole of the population being under the protection of the British Government ". Having assumed its law-making functions, the meeting went on to impose upon the local inhabitants an annual poll tax of one shilling sterling for the support of the Government. In consideration of annual stipends to be paid by the Government, the chiefs agreed to give " their cordial assistance and the full weight of their authority " in supporting the measure. Taxes could be sued for and obstruction was made an offence punishable by imprisonment or fine, one half of any fine to be paid to the local chief. The revenue was to be devoted to the public good, the education of the people, the general improvement and extension of the judicial system, and the improvement of communications and medical services. The resolutions were confirmed by the Governor. [1]

The poll tax was not a success. Until 1861, when it ceased to be collected, the total gross yield was only £30,000, an average of just over £3,000 a year, from which many expenses had to be deducted. Nor did the Legislative Assembly of native chiefs flourish; in fact it never met again.[2]

**Establishment of Supreme Court**

By the Supreme Court Ordinance, a regular Ordinance made in 1853 by the Governor with the advice and consent of the Legislative Council, the Supreme Court of Her Majesty's Forts and Settlements on the Gold Coast was established. It was to be presided over by a Chief Justice, being an English, Irish or Scottish barrister, and was given a civil and criminal jurisdiction within the forts and settlements equivalent to that of the Courts of Queen's Bench, Common Pleas and Exchequer at Westminster. It was also given Admiralty jurisdiction, but no jurisdiction in

[1] Poll Tax Ordinance, 1852.

[2] Clandge, *op. cit.,* I, pp. 481, 495. A similar assembly met at Accra shortly afterwards, which also imposed a poll tax; see the recital to the Poll Tax Ordinance of 10th May, 1858.

equity.[1] J. C. Fitzpatrick, the Judicial Assessor, was appointed by the Ordinance as the first Chief Justice, holding both posts until his resignation the following year.[2] Provision was made for an appeal to the Governor and Legislative Council from decisions of the Judicial Assessor.

In 1856 the areas in the Gold Coast under British protection were given formal recognition, under the name of the " protected territories ", by an Order in Council made under the British Settlements and Foreign Jurisdiction Acts. This provided somewhat obscurely that, in respect of civil or criminal matters (including in particular bankruptcy and insolvency) arising within the protected territories and in regard to which there was a *de facto* British jurisdiction exercisable " without the co-operation of any native chief or authority ", the Supreme Court and magistrates were to have the same jurisdiction as if the matter had arisen within one of the forts. Where the jurisdiction could only be exercised with the co-operation of a native chief or authority, as in the trial of cases under the Bond of 1844, it remained within the province of the Judicial Assessor. The Governor was given power to regulate by Ordinance the exercise of this jurisdiction, provided that equitable regard was paid to local customs; and rules were laid down for the administration of estates of deceased persons within the protected territories. In the same year the Chief Justice and the officer commanding the newly-created Gold Coast Corps were made members of the Legislative Council, the membership being completed by the Colonial Secretary. The same persons also formed the Executive Council.[3]

**First Attempt at Municipal Government**

Sir Benjamin Pine made the first attempt to introduce municipal government into the Gold Coast with an Ordinance passed on 10th May, 1858. This provided for the creation of municipalities governed by an elected council headed by a mayor and having power to levy a rate in substitution for the poll tax. The council was given powers in relation to highways and markets and the creation of a police force, while the mayor was required to hold a

[1] This omission was remedied by an Ordinance passed on 3rd February. 1857.

[2] The two posts continued to be held by the same person, and by 1865 had ceased to be distinct'. Brandford Griffith, *op. at.*, p. 15.

[3] Royal Instructions, 28th October, 1856.

court for hearing cases arising within the limits of the town. **The** Ordinance was applied to Cape Coast and James Town, Accra, but was repealed on 7th January, 1861. The preamble to the repealing Ordinance[1] stated:

> " It has been found by experience that in the existing state of the said towns and of those in Her Majesty's Settlements on the Gold Coast generally, the satisfactory working of such elective municipal institutions is impracticable, particularly in consequence of the co-existence of the courts of the native kings or chiefs, from the want of a sufficient proportion of educated residents able to understand and willing to assist in their operation, from the impossibility of raising a revenue. . . . The effect of the establishment of them has been to produce serious quarrels, disturbances, and ill-will between different classes of the people. . . . With a few individual exceptions, the people of both towns earnestly desire that such municipalities should be discontinued. ..."

**Constitution of 1866**

In 1865, following the tumults of the Ashanti War of 1863, when three Ashanti armies invaded the British protectorate and ravaged some of its most fertile districts, the British Government, faced with the choice of sending out a large army to assume control of Ashanti or vitually abandoning the Gold Coast, appointed another Select Committee of the House of Commons to advise on the matter. The Committee favoured the latter alternative. After reporting that, apart from the original four forts and the ceded Danish forts, a protectorate was assumed by the British over the tribes between the forts and the kingdom of Ashanti, the limits of actual British territory being " wholly indefinite and uncertain ', the Committee observed that the assumption of further posts east of the Volta had been recommended and that " the present policy inevitably leads to extension ". They went on:

> " The Dutch—the only other European power remaining on this coast besides the English—hold forts intermixed with the English, and interfering with their government. Negotiations have been entered into, without result, for better mutual relations."[2]

The Committee recommended that the Gold Coast protectorate

[x] No. 1 of 1861.

[2] Report from the Select Committee on Africa (Western Coast), 26th June, 1865 (No. 412), p. xi.

should only be retained " while the chiefs may be as speedily as possible made to do without it ", and that in the meantime the Gold Coast together with Lagos and Gambia should be reunited under Sierra Leone, the development of the steamship having greatly increased the speed of communications since the previous Committee had advised against such a union in 1842. All further extension of territory or assumption of government in West Africa " should be peremptorily prohibited and carefully prevented "[1]

The recommendations were soon acted upon. By a Commission dated 19th February, 1866, the Charter of 1850 was revoked and the Gold Coast, together with Sierra Leone, Lagos and the Gambia, were united under " the Government of our West Africa Settlements ". The existing Gold Coast Ordinances were however preserved, as also was the Legislative Council, although the Executive Council ceased to exist. The permanent members of the Legislative Council were to be the Administrator of the Government (who replaced the Governor), the collector of customs (who performed the duties of the Colonial Secretary) and the officer acting as magistrate.[2] The Supreme Court was also abolished in 1866 and replaced by " the Court of Civil and Criminal Justice " presided over by a chief magistrate.[3] The Order in Council of 1856 remained unrevoked and the Judicial Assessor and other magistrates continued to exercise jurisdiction outside the forts. However, the policy of restricting the extension of British territory led to a sharp rebuke from the Colonial Office when, in September, 1865, a notice was issued by the local Administration stating that all territory within a cannon shot (or five miles) of each fort belonged exclusively to Great Britain.[4]

**Departure of the Dutch**

Difficulty continued to be caused to the British administration by the existence on the Gold Coast of Dutch forts and settlements intermingled with those of the British. Since the Dutch declined to co-operate in the imposition of customs duties this led in particular to the practical impossibility of raising customs

[1] The 1865 *Report*, p. xv. A frown was directed at the Judicial Assessor of the time: " The judicial assessor does not fulfil the first intention of the office, assisting the chiefs in administering justice, but supersedes their authority by decisions according to his own sole judgment."

[2] Royal Instructions, 20th February, 1866, para. 21.

[3] Gold Coast Ordinance No. 7 of 1866.

[4] Cited Crooks, *op. tit.*, pp. 371, 374.

revenue, which otherwise would have been the most convenient and productive form of taxation. In 1860 the Dutch agreed to an exchange which would have transferred their territories east of Cape Coast to the British, and the British territories west of Cape Coast to the Dutch. Objections raised by the local population under British protection in the west to transferring their allegiance to the Dutch led to the abandonment of the scheme. It was however revived and carried through by a Convention signed on 5th March, 1867. The transfers took place, but gave rise to much unrest and to the formation of the Fanti Confederation in an attempt to preserve the unity and security of the coastal tribes. The Constitution of the Confederation, which was drawn up at Mankesim in October and November, 1871, provided an ambitious scheme for mutual defence and the development of communications, education and other services. Legislative powers (including powers of taxation) were also included. The British administration, which had not been consulted, reacted unfavourably, and the scheme came to nothing.[1]

The unrest following the exchange of territory having convinced the Dutch that their position had become untenable, a Convention was signed at the Hague on 25th February, 1871, whereby the King of the Netherlands transferred to the British Crown " all the rights of sovereignty, jurisdiction and property which he possesses on the Coast of Guinea ".[2] No payment was made for the territorial possessions, but a fair price was paid for the Dutch stores and other movables.[3] This new acquisition of territory conflicted with the policy, still in force, of not extending British power on the Gold Coast. In their instructions to the Governor of Sierra Leone, who arrived to carry out the transfer in April, 1872, the British Government stated that their objects in negotiating the treaty were " not the acquisition of territory or the extension of British power, but the maintenance of tranquillity and the promotion of peaceful commerce on the Coast ".* It was ironical that the inclusion in the treaty of Elmina, to which

[1] See Claridge, *op. cit.*, I, Ch. 32; for text of the Constitution see Sarbah, *Fanti National Constitution*, London, 1906, pp. 199-209; see also Casely Hayford, *Gold Coast Native Institutions*, London, 1903, pp. 182-193.

[2] The Dutch territories included the castle and fort at Elmina and forts at Axim, Dixcove, Sekondi, Shama and Butri—Claridge, *op. cit.*, I, 630. For text of the treaty see Crooks, *op. cit.*, p. 393.

[3] The Dutch received in return certain concessions in the island of Sumatra.

[4] Cited Claridge, *op. cit.*, I, p. 627.

the Ashantis laid strong claim, was the principal cause of the Sixth Ashanti War, which itself led to the taking over of the entire coastal area by the British and the creation in 1874 of the Gold Coast Colony.

**Creation of Gold** Coast Colony

The war began on 22nd January, 1873, when the mam Ashanti army crossed the River Pra. It ended, after a determined assault by Sir Garnet Wolseley and an army reinforced by troops from England, with the defeat of the Ashantis and the drawing up of the Treaty of Fomena on 13th February, 1874, by which the Asantehene renounced his claim to Elmina and all other coastal territories.[1] Having at last achieved the position of sole European power on the Gold Coast, and having, at considerable cost in life and resources, at last brought about the decisive defeat of the Ashantis, the British Government, disregarding those who still pleaded for the abandonment of this troublesome region, decided that further temporizing was impossible. By a Royal Charter signed on 24th July, 1874, the Gold Coast and Lagos were separated from Sierra Leone and together constituted a separate colony under the title of the Gold Coast Colony.

## 2. BRITISH ASSUMPTION OF TERRITORIES, 1874-1914

During the period from 1874 to 1914 all the territories now comprised in the Republic of Ghana came under the control of the British Crown.

**Constitution of 1874**

The Royal Charter of 24th July, 1874, issued under the British Settlements Act, revoked the Commission of 19th February, 1866, so far as it applied to the Gold Coast and Lagos, and constituted these territories a separate colony under the title of the Gold Coast Colony. In addition to Lagos, which had been annexed by the British in 1861 so that the slave-smuggling there could be suppressed, the territory of the new colony was to comprise " all places, settlements and territories which may at any time belong to us in Western Africa " between 5° West and 2° East longitude. In providing for a Governor, Legislative Council and Executive Council, the Charter repeated with little

[1] For text see Claridge, *op. cit.*, II, p. 152. **B**

variation the terms of the Charter of 1850.[x] The powers of the Legislative Council now, however, derived not merely from the Charter, but also from the Colonial Laws Validity Act, 1865. This provided that no law made by the legislature of a colony should be void or inoperative on the ground of repugnancy to the common law or to any Act of the Imperial Parliament which did not apply to the colony by express words or necessary intendment. The Act also made it clear that Royal Instructions to the Governor could not fetter his power to assent to legislation, and gave to the colonial legislature full power within its jurisdiction to alter the constitution of the legislature and to establish, reconstitute and abolish courts of justice.

The new Charter was proclaimed at Government House, Cape Coast, on 11th September, 1874, and on that day the former Administrator, George Strahan, assumed office as Governor and Commander-in-Chief.[2] On 19th March, 1877, the seat of Government was moved from Cape Coast to Accra, where it has remained.[3] This move had been decided on as far back as 1851, when Governor Hill obtained Lord Grey's permission for it on a number of grounds. These included the more central position of Accra in the British protectorate as it then existed, the need to develop in the eastern areas educational, judicial and other facilities (which could be better done under the eye of the Governor), the need to subdue the tribes in the Accra region, and the superiority of Accra over Cape Coast "in a sanitary point of view ".[4]

The first two Ordinances made by the new colony prohibited slave-trading and declared all persons then held in slavery to be free. This applied both to slaves held in captivity by slave dealers and also to those treated as slaves under customary law, though in the latter case freedom was only conferred on persons born after 5th November, 1874.[5]

### Re-establishment of Supreme Court

The Supreme Court of the Gold Coast was re-established by

[1] See pp. 8 *et seq. ante.*

[2] Despatch by Governor Strahan to the Earl of Carnavon, 11th September, 1874 (Ghana National Archives, Accra).

[3] *Gold Coast Gazette,* 31st March, 1877 (notice dated 8th March).

[4] Despatch of 26th November, 1851 (Ghana National Archives, Accra). Governor Hill remarked that Cape Coast was originally chosen only because the Governor's personal accommodation was better there.

[6] Gold Coast Slave-dealing Abolition Ordinance, 1874 (No. *I);* Gold Coast Emancipation Ordinance, 1874 (No. 2).

the Supreme Court Ordinance, 1876, which constituted it the Supreme Court of Judicature for the Gold Coast Colony " and for the Territories thereto near or adjacent wherein Her Majesty may at any time before or after the commencement of this Ordinance have acquired powers and jurisdiction ". The court consisted of the Chief Justice and not more than four puisne judges, and it was provided that the Full Court (which was to consist of the Chief Justice and one or two puisne judges) should be a court of appeal with sittings in Accra and Lagos. A Divisional Court of the Supreme Court was required to sit in each of the three Provinces into which the area of jurisdiction was divided.[1] The Supreme Court was given the same jurisdiction, except for the Admiralty jurisdiction, as the recently-created High Court of Justice in England, and was also authorised to exercise the Lord Chancellor's powers of guardianship of infants and lunatics. The Ordinance further provided that district commissioners were to be *ex officio* Commissioners of the Supreme Court, each Commissioner exercising the powers of a judge of the Supreme Court within his own district as well as those of a bench of magistrates. A notable provision was the duty imposed on the court to promote reconciliation of differences among persons over whom it had jurisdiction, and to " encourage and facilitate the settlement in an amicable way, and without recourse to litigation, of matters in difference between them ". This duty extended not only to civil disputes but criminal matters " not amounting to felony and not aggravated in degree ". The Ordinance abolished the post of Judicial Assessor and transferred to the Supreme Court the jurisdiction formerly exercised by him in the Protectorate.[2] The Petitions of Right Ordinance, 1877 (No. 12) enabled claims against the Government to be pursued in the Supreme Court. Provision for appeals from the Supreme Court to the Privy Council was contained in an Order in Council also made in 1877. The administration of justice in the native tribunals was regulated by the Gold Coast Native Jurisdiction Ordinance, 1883 (No. 5) (which replaced No. 8 of 1878). This Ordinance constituted native tribunals in the areas to which it was applied by proclamation. The tribunals consisted of the head chiefs of

[1] The Provinces came to be treated as established for general purposes, and not merely for those of the Supreme Court.

[2] For the application by the Ordinance of the rules of English law, and the difficulties which arose over the relationship between them and local customary law, see Chap. 10, *post.*

divisions, the chiefs of sub-divisions or villages, and their respective councillors. They exercised both civil and criminal jurisdiction. Land and succession cases could be tried, and also personal suits in which " the debt, damage, or demand does not exceed seven ounces of gold or twenty-five pounds sterling ".[1] Appeals lay to the Supreme Court. The Ordinance also empowered divisional chiefs to make byelaws relating to roads, water supply, fisheries, forests, mines and other matters. This included power to suppress the worship of any fetish " which it is pretended has power to protect offenders, or to injure persons giving information of the commission of offences ". Chiefs were also given certain ministerial powers as " convervators of the peace " and agents for the local administration of Ordinances. The Governor was enabled to dismiss or suspend any chief who had abused his power or was otherwise unfit for office. The Chiefs Ordinance, 1904 (No. 4), introduced the important principle of government recognition of chiefs, which still applies today.[2] Where he was satisfied that a chief had been installed or destooled in accordance with customary law, the Governor was empowered to give a certificate to that effect. The certificate was conclusive in all courts. Although introduced merely as a measure to facilitate proof of installation or destoolment, this clearly gave the Government a powerful instrument of control over chiefs, and in time it came to be used as such.

A civil police force was established by the Police Ordinance, 1894, police duties having previously been carried out mainly by military detachments.[3]

**Town Councils Ordinance, 1894**

Another attempt was made to establish local government in the townships with the enactment of the Town Councils Ordinance, 1894 (No. 17).[4] The Ordinance, which was applied to Accra, Cape Coast and Sekondi, provided for four of the eight members of each council to be nominated by the Governor. The remainder were to be elected by voters owning or occupying houses with

[1] This language is still to be found in the law relating to local courts, the successors to native tribunals, but the limit is now £G100' Courts Act, 1960 (C.A. 9), s. 98 (1) (f).

[2] See p. 178, *post.*

[3] See W. H. Gillespie, *The Gold Coast Police, 1844-1938,* Accra, 1955. The 1894 Ordinance was consolidated in 1921 and 1922, the 1922 version (No. 10) forming the basis for the present Police Service Ordinance (Cap. 37).

[4] The first attempt had been made in 1858; see p. 13, *ante.*

an annual value of £2 or more, but where the number of candidates was insufficient the Governor could nominate qualified electors to make up the number. The council was given various detailed functions and the general function of doing " such acts as may be necessary for the conservancy of the town and the preservation of the public health therein ". Power was conferred to levy a house rate up to five per cent, of the annual value. Persons using vehicles within the town limits were required to take out a wheel licence on payment of an annual fee ranging from five shillings to two pounds. Other sources of revenue included licences for spirits, auction sales and dogs, and fines for various criminal offences.

**Concessions Ordinance**

Towards the end of the nineteenth century efforts were made by the Gold Coast Government to deal with the growing problem of the indiscriminate granting of land concessions to expatriates. An attempt in 1894 to do this by vesting all waste lands, forests and minerals in the Crown aroused great opposition and was dropped. Even the less extreme Public Lands Bill proved unacceptable, and indeed brought about the formation of the Gold Coast Aborigines' Rights Protection Society, so the Government contented themselves with the passage in 1900 of the Concessions Ordinance (No. 14). This required details of all concessions to be notified to the Supreme Court and published in the *Gazette.* Without the leave of the court, no proceedings could be taken to enforce the concession unless it had been certified as valid by the court, which had power to modify its terms. In relation to mining, timber, rubber and other products of the soil, the area of land which could be granted to any one person or company was strictly limited. Expatriates could not engage in mining without a licence issued by the Governor. A five per cent, duty was imposed on all profits made from concessions.[1]

**Constitutional Adjustments**

In 1886 a charter was granted to the Royal Niger Company, which took over the administration of the British colony at Lagos. Letters Patent were accordingly issued by which, on 13th January, 1886, Lagos ceased to form part of the Gold Coast Colony. In

[1] For criticisms of the effectiveness of the Concessions Ordinance (which in a modified form is still in force) see Lord Hailev, *An African Survey* (1938 Edn.), p. 777.

the following year an Order in Council was made under the Foreign Jurisdiction Act empowering the Gold Coast Legislative Council to legislate for territories adjoining the Colony which had been brought under British protection.[1] The first African member of the Legislative Council, John Sarbah, was appointed in 1888.

By Royal Instructions issued on 11th March, 1895, it was provided that apart from the Governor the Executive Council should consist of the Lieutenant-Governor of the Colony (if any), the senior officer in command of regular troops in the Colony, and the Colonial Secretary, Attorney-General and Treasurer, together with such additional persons as might be appointed by royal authority. The *ex officio* members of the Legislative Council were the same as for the Executive Council, with the addition of the Chief Justice.[2] Provision was made for the royal appointment of additional persons holding offices in the Colony, who, together with the *ex officio* members, were to be styled " official members ". In addition provision was made for the royal appointment of persons not holding offices, who were to be styled " unofficial members ".

**Relations with Ashanti**

The time was now drawing near for the British Government to take a decisive step in the acquisition of territory. The defeat of the Ashantis in 1874 had caused a temporary break-up of the Ashanti Confederacy. It was largely a military union, and military defeat robbed it of its main purpose. However, the British still preferred to pursue a policy of non-intervention and within a few years most of the states which had thrown off allegiance to the Asantehene had rejoined the Confederacy. While favouring non-intervention, the British were prepared to extend their protection to those who wanted it, and a number of tribes from Ashanti were brought within the Colony, either by extension of its still undefined boundaries or through the emigration of the people's concerned. Things might have continued in this indecisive fashion it the Colony had not been threatened with encirclement by other European powers. *On* the Ivory Coast the French were extending their influence inland following the treaty with Gyaman

[1] Order in Council of 29th December, 1887.

[2] The Chief Justice ceased to be a member of the Legislative Council in

in **1888,** while in **1885** the Germans established a settlement in Togoland.

In 1890 the British offered the Asantehene a treaty under which Ashanti would come under British protection, but this **was** refused. In 1896, however, a force was sent out from Britain and Kumasi was again occupied. The Asantehene, Agyeman Prempeh (Kwaku Dua III), was exiled to the Seychelles. Most of the chiefs of Ashanti accepted treaties of protection offered by the British, and a British Resident was appointed in Kumasi.[1] Treaties of friendship and protection were also made with the Kings of Dagomba (12th August, 1892) and Mamprusi (12th January, 1897), whose territories lay to the north of Ashanti.[2] In 1900 there occurred the celebrated incident in which the Governor, Sir Frederic Hodgson, demanded the Golden Stool while visiting Kumasi. At the conclusion of the Seventh Ashanti War, which immediately followed, the British Government decided to temporize no longer. On 26th September, 1901, three Orders in Council were made by which the Crown annexed Ashanti and the territories to the south which had not previously been brought within the Gold Coast Colony, and also declared a protectorate over the Northern Territories.[3] The initial decision to declare Ashanti merely a protectorate was varied in favour of annexation on the entreaty of the Chief Justice, Sir William Brandford Griffith.[4]

**Constitution of 1901**

The Gold Coast Order in Council, 1901, which was made under the royal prerogative, for the first time laid down the geographical boundaries of the Colony and declared annexed such of the territories included in the new boundaries as did not already form part of His Majesty's dominions. The annexed territories

[1] The following treaties of friendship and protection made between Queen Victoria and various Ashanti Kings are to be found in the National Archives, Accra: Sefwi (18th February, 1887); Kwahu (5th May, 1888); Attabubu (25th November, 1890); Juaben (10th February, 1896). A full list of treaties made between the British and the local chiefs is given in Appendix V to the *Gold Coast Handbook* of 1924.

[2] These treaties are also kept in the National Archives.

[3] A further Order in Council made on the same day validated legislation made in accordance with a local law which had attempted to extend the Colony to all areas in which *de facto* jurisdiction was exercised; see Brandford Griffith, *op. cit.*, pp. 21-23.

[4] See *The Far Horizon* by Sir W. Brandford Griffith, Ilfracombe, *pub.* A. H. Stockwell, 1951, pp. 176-180.

were made part and parcel of the Colony and all existing laws were applied to them. The Order came into force on 1st January, 1902, but was amended by the substitution of more precise boundaries by the Gold Coast Boundaries Order in Council, 1906.[1]

The Ashanti Order in Council, 1901, was also made under the royal prerogative and recited that the territories of Ashanti had been conquered by His Majesty's forces and that it was expedient that they should be annexed. The Order declared that they should form part of His Majesty's dominions and should be known as Ashanti. The word " colony " was not used but the effect of the Order, which came into force on 1st January, 1902, was to give Ashanti the status of a Crown colony. The administration of Ashanti was entrusted to a Chief Commissioner acting under the direction of the Governor of the Gold Coast, the latter being given power, on his own initiative and without the advice of the Gold Coast Legislative Council, to make Ordinances for the peace, order and good government of Ashanti. Ordinances so made had to be submitted to London for royal assent, disallowance or other direction. The first Ordinance was the Ashanti Administration Ordinance, 1902, which divided Ashanti into four districts, set up a Chief Commissioner's Court and district courts, regulated the functioning of native courts and applied a number of Gold Coast Ordinances to Ashanti.

The Northern Territories Order in Council, 1901, was made under the Foreign Jurisdiction Act and also came into force on 1st January, 1902. It converted the area between the eighth parallel (which formed the northern boundary of Ashanti) and the French frontier into a protectorate to be known as the Northern Territories of the Gold Coast.[2] From the standpoint of administration the position of the Northern Territories was identical to that of Ashanti—indeed the wording of the two Orders in Council after the opening paragraphs was identical. The Northern Territories Administration Ordinance, 1902, also followed the same lines as that made for Ashanti.

The Ashanti Order in Council, 1906, and the Northern Territories Order in Council, 1906, adjusted the boundary between Ashanti and the Northern Territories, bringing into Ashanti and annexing to the Crown certain areas to the north of the eighth

[1] This came into force on 1st January, 1907, and was not subsequently amended.

[2] The Northern Territories were not annexed until 1957; see p. 61, *post.*

parallel. They also modified in other respects the boundaries of Ashanti and the Northern Territories.

**Occupation of Togoland**

Within a few days after the outbreak of the First World War on 4th August, 1914, Gold Coast forces invaded the neighbouring German colony of Togoland and brought about its surrender before the month was out. This operation, carried through with the assistance of French troops from Dahomey, was completed at a cost to Gold Coast funds of approximately £60,000.[1] The main force employed was the Gold Coast Regiment, which had been created in **1901. In** that year the colonial military forces in West Africa were amalgamated to form the West African Frontier Force, and the former Gold Coast Constabulary was made a unit of the new Force under the name of the Gold Coast Regiment.[2] The word Royal was added to the name of the Force in 1929.[3]

Pending the making of final arrangements for the future of Togoland at the end of the war, the British and French agreed an interim boundary line and established, provisional governments to administer their respective territories.[4] The British administration continued in one form or another until Ghana became independent in 1957. The occupation of Togoland marked the close of the period of British territorial expansion in the Gold Coast. No further territories were acquired, and the Colony and **its** dependencies settled down to a long period of colonial government.

## 3. COLONIAL GOVERNMENT, 1914-1945

Sir Hugh Clifford was appointed Governor of the Colony[5] on 26th December, 1912. He immediately determined to make himself familiar with the land and its people, and spent much

[1] Leg. Co. Deb. (1914-15). 6.

[2] *Gold Coast Handbook* (1924), p. 350. For the earlier history of the Gold Coast military forces see *ibid*., pp. 349-350.

[3] Ordinance No. 25 of 1929.

[4] Leg. Co. Deb. (1914-15), 5. For the later arrangements, made under the auspices of the League of Nations, see p. 28, *post.*

[5] In the remainder of this chapter " the Colony " will be used to indicate the Gold Coast Colony proper, and " the Gold Coast " to indicate the Colony plus its dependencies of Ashanti, Northern Territories and Togoland.

time in his early days travelling all over the Colony and interviewing chiefs and others. He found that the great development of the cocoa-producing industry since the turn of the century was causing important social changes. In an address to the Legislative Council, he said:

> " It is impossible for any thinking person to travel throughout the Gold Coast today and to examine the affairs of the Colony with any measure of sympathy without being struck with the tremendous social revolution which is in progress in our midst. This has been brought about by the phenomenal development of the cocoa industry which has been carried out by the natives themselves and which has brought with it all sorts of luxuries and has placed all sorts of things, never dreamed of by their fore-fathers, within the reach of the poorest among us."[1]

**Constitution of 1916**

Clifford drew the conclusion that constitutional changes were called for, and that the administration should have at its command a much larger measure of advice from far more varied sources than was hitherto available. This did not mean that there was to be any relaxation of the system of Government control:

> " His Majesty's Government holds strongly, and I personally fully share the opinion, that the present stage of peaceful development of the Gold Coast still requires the maintenance of the Crown Colony system of government, which is of a paternal rather than of a democratic character."[2]

Clifford according!}' made representations to the Secretary of State for the Colonies requesting an enlargement of the Legislative Council, which then consisted of five official members and four unofficial members. The official members were the Governor himself and the Colonial Secretary, the Attorney-General, the Treasurer and the Principal Medical Officer. The unofficial members consisted of two Europeans respectively representing the merchants and the mining industry, and two Africans. One of these was T. Hutton-Mills, who represented the educated classes in the Colony, and the other was E. Mate Kole, the Konor of Eastern Krobo, who represented the chiefs and people of the Colony.[3] The British Government accepted Clifford's view and the **next**

!Leg. Co. Deb. (1916-17). 16.
[2] Leg. Co. Deb. (1916-17), 19.
[3] *Ibid.*, 16-17.

step in constitutional advance was taken. On 25th September, 1916, the existing Constitution, which was established by the Letters Patent of 13th January, 1886, as amplified by Royal Instructions issued on the same date and Additional Instructions issued on subsequent dates, was revoked.[1] The new Letters Patent and Royal Instructions, which were dated 20th September, 1916, and came into force five days later, effected little alteration except the enlargement of the Legislative Council. The membership of this was increased from nine to twenty-two. The official members added were the Secretary for Native Affairs (native affairs being in Clifford's opinion the most important matters which should engage the attention of the Government), the Comptroller of Customs, the Director of Public Works and the General Manager of Railways (three technical officers whose advice was needed), and the three Provincial Commissioners, as " impartial spokesmen of the Provinces ". On the unofficial side a third European, an official of the Bank of British West Africa, was added to represent the general European interest. Also added were three paramount chiefs drawn from different parts of the Colony. These were Nana Ofori Atta (the Omanhene of Akim Abuakwa), Nana Amonoo V (the Omanhene of Anamabu) and Awame Sri II (the Fia of Awuna Ga), who were chosen to represent the peoples speaking Twi, Fanti, and Ewe respectively. Finally E. J. P. Brown and J. E. Casely Hayford were added as unofficial members to speak for the political interests of the Central Province and the Western Province respectively. At the first meeting of the new council the Governor said that the selection had been made " with a single aim, namely to obtain the best spokesmen ". He added:

> " There has been no attempt to pack this Council with Government partisans. On the contrary we desire to have on it men who will freely represent to us the feelings, wishes and needs of the communities they are appointed to represent; and we are welcoming among us today so many new members, in order that

[1] During the period of British rule in Ghana important constitutional changes were always made by revoking the existing Constitution, embodied in Letters Patent or an Order in Council as amplified by Royal Instructions, and substituting a new one. Thus in form the continuity of institutions such as the Governorship and the Legislative Council was broken at fairly frequent intervals. There was also the disadvantage that the detailed changes made were difficult to distinguish. The procedure was followed throughout the British Empire. For an explanation of it in detail see Wight, *British Colonial Constitutions, 1947*, Oxford, pp. 94 *el seq.*

> the range of advice at the disposal of the Government may be largely extended."[1]

Clifford regarded this enlargement of the Legislative Council as the most important local event that occurred during his term of office as Governor.[2] He was succeeded on 1st September, 1919, by Sir Gordon Guggisberg, who remained in office until 1927 and introduced many notable reforms. In the sphere of constitutional law the most important development took place in 1926, when provincial councils were established in the Colony and a new Constitution came into force. Guggisberg also introduced important changes in native administration.

**The Togoland Mandate**

During this period the British occupation of the western part of the former German colony of Togoland was regularised. In the peace treaty signed at Versailles on 28th June, 1919, Germany renounced all rights over Togoland in favour of the Allied powers.[3] A fortnight later, on 10th July, 1919, a Franco-British Declaration laid down in detail the frontier between the two divisions of Togoland and on 20th July, 1922, a mandate to administer the part of Togoland lying to the west of this frontier was conferred upon the British Crown under Article 22 of the Covenant of the League of Nations.[4] Since its capture in **1914,** laws had been made for the British sphere of Togoland by proclamation. Until 1920 these proclamations were made by the officer commanding the British forces in Togoland; thereafter they were made by the Governor of the Gold Coast. After the British Sphere of Togoland Order in Council, 1923, came into operation laws were made by Ordinance as in the case of the other dependencies. The first of these was the Administration Ordinance. The British sphere of Togoland was divided into two sections, of which the northern was administered as part of the Northern Territories Protectorate and the southern as part of the Colony, this being expressly permitted by Article 9 of the Mandate. Although the Franco-British boundary was so drawn as to reunite tribes in the north

[1] Leg. Co. Deb. (1916-17), 18.
[2] Leg. Co. Deb. (1918-19), 55.
[3] *Laws of the Gold Coast* (1936), IV, p. 105.
[4] The Mandate and Declaration are set out in *Laivs of the Gold Coast* (1936), IV, pp. 88 *et seq.* and also on pp. 472 *et seq.* of the *Gold Coast Band-book,* 1924. The boundary was modified in 1929; see p. 128, *post.* For Article 22 of the Covenant see *Laws of the Gold Coast* (1936), IV, p. 105.

who had been split between the Northern Territories and German Togoland, in the south it had the effect of dividing the Ewes into separate communities—a fact which has caused discontent down to the present day-

**Attempt to improve Municipal Government**

A committee was set up by Guggisberg in 1921 to consider and report upon the organisation of municipal government in the Colony. They found that the town councils in Accra, Sekondi and Cape Coast set up under the 1894 Ordinance[1] had fulfilled the purposes for which they were created but were hampered by lack of funds.[2] Complaints were made against the Ordinance because it imposed direct taxation (although feeling against this was diminishing) and because the president of each council (who was nominated by the Governor) had a casting vote which gave the Government a majority and turned the town councils into a branch of the Government. The Municipal Corporations Ordinance, 1924, which resulted from the committee's report, was designed to give autonomy to the townships, and the councillors nominated by the Government were to be limited to one-third of the total. Powers of direct taxation were not however reduced; on the contrary the maximum rate was doubled to become one-fifth of the annual value of premises. This proved the undoing of the measure. When it was proposed to apply it to Accra in 1925 a storm of protest was aroused, notwithstanding that it had been supported by the African members of the Legislative Council representing Accra, Sekondi and Cape Coast. These towns therefore remained under the 1894 Ordinance, and the 1924 Ordinance was never applied. Guggisberg described this as " the only real disappointment which 1 have had as your Governor ".[3] It interfered to some extent with his plans for a new, partly-elective, Legislative Council and these had to be modified slightly.

**Constitution of 1925**

Guggisberg had formed the view, in pursuit of the policy of indirect rule, that the native institutions required strengthening. To this end several attempts (which finally succeeded) were made

[1] See p. 20, *ante.*
[2] Leg. Co. Deb. **(1924-25), 261.**
[s] *Review of the Events of 1920-26 and the Prospects of 1927-28.* Accra. 1927, p. **14.** '

to pass a new Native Administration Ordinance.[1] Another step in this direction was the creation of Provincial Councils. Guggis-berg saw these as:

> "... the breakwaters defending our native constitutions, institutions and customs against the disintegrating waves of western civilization. They are the chief means by which the nationality of the Africans of the Gold Coast will be built up out of the many scattered tribes. . . . "~

The Provincial Councils were created by the instrument which provided for an enlarged, partly-elected Legislative Council. This was the Gold Coast Colony (Legislative Council) Order in Council, 1925, which was made on 8th April, 1925, and came into force on 15th April in the following year.[3] It marked a considerable advance in that it gave the Colony elected representation for the first time. The new Legislative Council consisted of the Governor, together with fifteen official and fourteen unofficial members. The official members were divided into *ex officio* members, of whom there were thirteen, and nominated official members. The *ex officio* members were:

the five senior members of the Executive Council;
the Comptroller of Customs;
the Director of Public Works;
the General Manager of the Railway;
the Commissioners of the three Provinces;
the Surveyor-General; and
the Director of Education.

The unofficial members consisted of the following:

three provincial members elected by the Eastern Provincial Council; two provincial members elected by the Central Provincial Council; one provincial member elected by the Western Provincial Council; three municipal members elected by the voters of Accra, Cape Coast and Sekondi respectively; a European mercantile member elected by representatives of firms belonging to a recognised chamber of commerce;

[1] See p. 32, *post.*
[2] *Review of the Events of 1920-26 and the Prospects of 1927-28,* p. 23.
[3] Proclamation No. 3 of 1926.

a European mining member elected by the Gold Coast **Chamber of** Mines; and three Europeans nominated by the Governor.

The Provincial Councils were established by s. 15 of the Order in Council, which provided that each Council was to consist of the persons who were recognised by the Governor as head chiefs (that is paramount chiefs) and who had their headquarters within the Province. Apart from their elective functions, the Councils were to have such other functions as might be conferred by Ordinance. In addition to these statutory functions:

> "... the Provincial Councils fulfil three very valuable objects: they give the head chiefs and their Councillors the opportunity of uniting for the preservation of their national institutions, of consulting together on subjects to the common welfare of their respective peoples, and, finally, of examining and advising Government on any proposed legislation affecting the people."[1]

The Eastern and Central Provincial Councils duly met and elected their representatives to the Legislative Council, but the Western Province proved a disappointment to the Governor. The Council there refused to elect a representative, the gap being filled by the Governor's nomination of Nana Ofori Atta, who would otherwise **have lost his** seat. Difficulty also arose from the unexpected opposition to the application of the Municipal Councils Ordinance. The Order in Council originally provided that a municipal member was only to be *elected* if the new Ordinance had been applied to his township; otherwise he was to be nominated by the Governor. This meant that the first municipal members had to be nominated; but the restriction was shortly afterwards removed by an amending Order.[2]

The constitutional changes were completed by the issue on 23rd May, **1925, of** new Letters Patent and Royal Instructions, which revoked the **1916** Constitution. Apart from alterations made necessary by the new provisions for the Legislative Council, these made **no** change in the previous position.

[1] Guggisberg, *Review of the Events of 1920-26, etc.,* p. 15. The Provincial Councils came to play an important role as a link between the Government and the rural population. They frequently met m joint session, ami a standing committee of the Joint Provincial Councils was later established. In 1944 it consisted of twelve paramount chiefs drawn from the three councils (Leg. Co. Deb. (1944, No. 2), 49) and was formally recognized bv s. 29 of the Native Authority (Colony) Ordinance. 1944 (No. 21).

[2] The Gold Coast Colony (Legislative Council) Order in Council, 1927.

**Native Administration Ordinance**

**In** 1927, shortly before the end of Governor Guggisberg's tenure of office, the Native Administration Ordinance was passed. This was a comprehensive measure, consolidating the Native Jurisdiction Ordinance, 1883, and later Ordinances affecting chieftaincy, but also making a number of important changes. Similar Bills had been introduced into the Legislative Council by the Government in 1919 and 1922, but had been withdrawn owing to strong opposition from the unofficial members. The 1927 Bill was drawn up at meetings of paramount chiefs in 1925 and 1926 and was introduced as an unofficial member's Bill by Nana Ofori Atta. The Ordinance contained detailed provisions as to the election and destoolment of chiefs and the jurisdiction of native tribunals. It protected the office of chieftaincy by rendering it an offence to undermine or usurp the authority of a chief. It restored the position of the state councils and made clear their authority (to the exclusion of the Supreme Court) to determine constitutional disputes affecting chieftaincy. The Governor's power to depose a chief for misconduct was not reproduced, and the provisions as to recognition of installation and destoolment were modified. The Ordinance also laid down additional functions for the new Provincial Councils, which mainly concerned the settlement of inter-state disputes. The power conferred on the paramount chiefs to make byelaws was supplemented in 1931 by an amendment which enabled stool treasuries to be established, and expenditure from stool revenues to be controlled, by means of such byelaws.[1] The way was thus open for what Lord Hailey called " the most essential feature in indirect rule ",[2] but few states established treasuries and, in the absence of any power of taxation, income would in any case have remained irregular. Such power was at last given by the Native Administration Treasuries Ordinance, 1939 (No. 16), which also enabled Provincial Commissioners to order the establishment of treasuries and in default gave the Governor power to establish them himself and to control their management.

**Judicial Reforms**

A step towards unification of the administration of the Colony and its dependencies was taken in 1935, when for the first time

[1] Ordinance No. 23 of 1931.

-*An African Survey* (1938 Edn.), p. 471

it became possible to legislate for the Colony, Ashanti and the Northern Territories by one Ordinance.[1] This did not alter the position under which legislation for the Colony required the advice and consent of the Legislative Council, whereas the Governor alone could legislate for the dependencies. One of the first laws to be made under this useful provision was a re-enactment of the Courts Ordinance of 1876, which was thus extended to the whole of the Gold Coast.[2] A number of changes were made in accordance with the Government's new policy that:

> " as far as it is consistent with financial needs, justice should be administered by qualified lawyers, and it is only when those qualified lawyers cannot be found that it should be administered by those not qualified."[3]

District commissioners' courts were replaced by magistrates' courts, the magistrates being lawyers where possible. District magistrates and district commissioners ceased to form part of the Supreme Court. The judges of the Supreme Courts of Nigeria, Sierra Leone and the Gambia were made *ex officio* judges of the Gold Coast Supreme Court.

Improved facilities for appeals from the Supreme Court came into being with the establishment in 1928 of the West African Court of Appeal. This meant that such appeals did not have to go direct to the Privy Council in London, although the Privy Council was not removed as a final appeal tribunal. The West African Court of Appeal consisted of the judges of the Gold Coast Supreme Court and of the other superior courts in the British colonies and protectorates in West Africa from which appeals lay. Jurisdiction was left to be regulated by the law of the individual territories, which also had to bear the expenses of the court.[4] Appeals to the Privy Council were dealt with by the West African (Appeal to Privy Council) Order in Council, 1930,[B] which gave an appeal as of right where the matter in dispute was valued at £500 or more, and an appeal by leave of the court below in other cases of general or public importance.

[1] The Gold Coast Ordinances Order in Council, 1934, which came into force on 1st January, 1935.
[2] Courts Ordinance, 1935 (No. 7).
[3] Leg. Co. Deb. (1935), 29.
[4] West African Court of Appeal Orders in Council, 1928-35, Consolidated *(Laws of the Gold Coast* (1936), IV, p. 190). In the Gold Coast jurisdiction was regulated by the West African Court of Appeal Ordinance, 1935 (No. 11); see *Laws of the Gold Coast* (1936). I, p. 231.
[5] *Laws of the Gold Coast* (1936), IV, p. 232.

**Law of Sedition**

In 1934 a change in the law governing sedition aroused considerable opposition. Sedition was dealt with by the Criminal Code, a comprehensive collection of penal provisions which displaced the common law (although largely reproducing its effect) and which had been in force since 1892. It did not prohibit the importation or possession of seditious matter, and the Government became alarmed when, in the early 1930s, literature began to be imported into the Gold Coast which advocated the overthrow of British rule.[1] The Bill to close these loopholes aroused protests from the African unofficial members. They did not object to being governed by the same law as prevailed in the United Kingdom, but mere possession of seditious matter was not there an offence and on this ground the opposition centred. Sir Ofori Atta (as he had by then become) said:

> " If I am intelligent enough to read a newspaper which is not good and I send it to, say, my brother the Omanhene of Winneba for him to be allured by it and I am caught, then, I have done something. But if I merely have it in my possession without making use of it, why should I be subject to the trouble and torment of going to court to defend myself? "[2]

The African unofficial members voted against the Bill, but it became law as the Criminal Code (Amendment) Ordinance, 1934 (No. 21). This was one of the rare occasions when legislation was forced through by the Government against the unanimous opposition of the African members.[3]

**Restoration of the Asantehene**

In the following year new constitutional provisions came into force for Ashanti and the Northern Territories. The Orders in Council of 1901 and 1906, together with the accompanying Royal Instructions, were revoked and replaced by new provisions.[4] These made little change, although the Executive Council for the Colony was deemed also to be the Executive Council for the two dependencies, and was required to be consulted by the Governor when enacting legislation. By another instrument the Chief

[1] *Gold Coast Gazelle*, 21st February. 1934.
[2] Leg. Co. Deb. (1934), 145.
[3] Another, which occurred at the same time, concerned the Waterworks Ordinance, 1934 (No. 20): Leg. Co. Deb. (1934), 113.
[4] Ashanti Order in Council, 1934, and Royal Instructions; Northern Territories Order in Council, 1934, and Royal Instructions,

Commissioners for Ashanti and the Northern Territories were added to the Executive Council.[1] The new provisions came into force on 1st January, 1935, and coincided with the restoration of the Ashanti Confederacy and the designation of Osei Agyeman Prempeh II as the first Asantehene under the British Government, which took place on the last day of the month.[2] At the same time Native Authority and Native Courts Ordinances were passed for Ashanti,[3] and the Ashanti Confederacy Council was reconstituted.[4] A Native Authority Ordinance had been passed for the Northern Territories in 1932,[5] and a Native Courts Ordinance was passed in 1935[6]. A Native Administration Ordinance had also been passed for the southern section of British Togoland in 1932.[7]

**Developments during the Second World War**

Constitutional development did not cease during the Second World War. Soon after his appointment as Governor in November, 1941, Sir Alan Burns suggested to the Colonial Office that the time had come for the appointment of Africans to the Executive Council. Accordingly, in October, 1942, Sir Ofori Atta and Mr. K. A. Korsah[8] were appointed for three-year terms as unofficial members of the Executive Council.[9] Self-government for the municipalities at last arrived with the enactment in the years 1943-1945 of separate Town Council Ordinances for Accra, Kumasi, Cape Coast and Sekondi-Takoradi.[10] These introduced elected majorities on the town councils and provided for universal adult suffrage. Like Guggisberg before him, Sir Alan Burns was, as he told the Legislative Council, " very keen on the establishment of Town Councils ", as he considered that " the experience to be gained by electors and members in Town Councils where there is an elected majority, and in Native Administrations, is the best training for self-government on a larger scale".[11] Like

'Additional Instructions dated 23rd November, 1934. By the Gold Coast Colony (Legislative Council) Amendment Order in Council, 1934, the two Chief Commissioners were excluded from the Legislative Council.

[2] See the speech of the Governor at Kumasi, *Gold Coast Gazette,* 31st January, 1935.

[3] Ordinances Nos. 1 and 2 of 1935.

[4] Ashanti Confederacy Council Order 1935 (Order No. 1).

[6] No. 2 of 1932. "No. 31 of 1935. 'No. 1 of 1932.

[8] Now Sir Arku Korsah, Chief Justice of Ghana.

[9] *Gold Coast Gazette,* 3rd October, 1942.

[10] No. 18 of 1943 (Kumasi); No. 26 of 1943 (Accra); No. 18 of 1944 (Cape Coast); No. 29 of 1945 (Sekondi-Takoradi).

"Leg. Co. Deb. (1944, No. 2), 81.

Guggisberg also, he was disappointed by the people's response. Out of 14,000 potential voters in Kumasi, only 828 troubled to vote in the first municipal election, and figures elsewhere were similar.[1]

Reforms were also needed in native administration. The 1927 Ordinance had been found defective, particularly in regard to native courts, and in 1944, acting on the report of the Blackall Committee, the Government secured the passing of the Native Courts (Colony) Ordinance (No. 22). This marked a revolutionary change. Instead of the old customary law tribunals, consisting of the chief sitting with his sub-chiefs, headmen, linguists and councillors, the Governor was given power to set up entirely new courts and to appoint their members as he thought fit. The new courts were divided into four grades, their jurisdiction varying accordingly. No court could be established unless the native authority's finances were sufficient to provide for the remuneration of the members of the court and its registrar. A Judicial Adviser was appointed to act as " guide, philosopher and friend " to the new courts and to review their decisions.[2] A new land court was created as a division of the Supreme Court to hear appeals from native court decisions in land cases.[3]

A large part of the Native Administration Ordinance being thus rendered obsolete, the remainder of it was replaced by the Native Authority (Colony) Ordinance, 1944 (No. 21), which also made considerable changes. The Governor was empowered to appoint one or more chiefs, native councils or other persons as a native authority for any area and to order it to be subordinate to any other native authority. The native authorities were given power to exercise a large number of functions usually regarded as falling within the province of local government, with default powers being given to the Provincial Commissioner. In an attempt to reduce stool disputes, the Governor was empowered to exclude persons from their tribal area. State Councils were allowed to retain their power to deal with stool disputes and, subject to the control of the Governor, were authorised to declare and modify rules of customary law. The sources of revenue of native authorities (including rates and also fees from the new native courts) were defined, and finance committees were required to be

[1] Leg. Co. Deb. (1944, No. 2), 82.
[2] *Ibid.*, 68.
[3] Ordinance No. 23 of 1944.

set up.[1] Power was given to establish native authority police. In form, if not intention, the two Ordinances marked the end of tribal administration under the old processes of customary law. In 1943 income tax was introduced into the Gold Coast for the first time. The people's objection to direct taxation was inveterate and, as happened when an attempt was made in 1931 to bring in the tax, the Bill was opposed in the Legislative Council on the ground that there should be no taxation without full electoral representation. Conditions had altered however, and major constitutional changes wete in the air. Representations for constitutional reform made by the Joint Provincial Council had been forwarded to London with the Governor's approval, and the Secretary of State was shortly to visit the Gold Coast to discuss the matter. In this atmosphere the opposition was not pressed and the Bill became law as the Income Tax Ordinance, 1943 (No. 27). Thus another source of revenue was added, but in importance it has not approached import and export duties, always the country's financial standby.

## 4. ATTAINING NATIONHOOD, 1946-1960

### Constitution of 1946

The Colony and Ashanti achieved representative government[2] with the coming into force on 29th March, 1946, of the Burns Constitution, the first of five Constitutions that were to follow in rapid succession during the ensuing fifteen years.[3] By this the operation of the Legislative Council was extended to Ashanti, the elected members were increased from eleven to eighteen, the *ex officio* members were reduced from thirteen to six, and the nominated members were increased from two to six. The elected members therefore had a majority of six over the official and nominated members.[4] This did not of course mean that the

[1] The Governor promised to give annual grants based on the amount raised in rates, and the amount spent on general development, by each native authority (Leg. Co. Deb. (1944, No. 2), 56).

[2] Representative government is regarded as existing when a colony has a legislative body of which at least one-half of the members are elected by inhabitants of the colony: Colonial Laws Validity Act, 1865, s. 1. The Gold Coast was the first British territory in Africa to have an elected majority of Africans in its legislature.

[3] The Orders in Council, Letters Patent and Royal Instructions making up the new Constitution were published in a supplement to the *Gold Coast Gazette* on 11th March, 1946.

[4] Gold Coast Colony and Ashanti (Legislative Council) Order in Council, 1946, ss. 4 and 5. The Governor was President of the Council but had no vote.

elected members could prevent the passage of legislation against the wish of the Governor. The latter was given reserved powers which enabled him, if he considered it expedient to do so in the interests of public order, public faith or good government, to declare effective any Bill or motion which had failed to pass the Legislative Council. Any member who objected to the declaration could require his objection to be forwarded to the Secretary of State for the Colonies, who had power to revoke the declaration or, if it related to a Bill which had received the Governor's assent, to signify that the Bill was disallowed.[1] The legislative powers of the Imperial Parliament and of the Crown in Council remained unimpaired.[2]

The elected members comprised nine provincial members elected for the Eastern and Western Provinces[3] by the Joint Provincial Council, four Ashanti members elected by the Ashanti Confederacy Council, and five municipal members of whom two were elected for Accra and one each for Cape Coast, Sekondi-Takoradi and Kumasi. The *ex officio* members were the Colonial Secretary, the Chief Commissioners of the Colony, Ashanti and the Northern Territories, the Attorney-General and the Financial Secretary. Of the six nominated members three were Africans, making a total of twenty-one African members out of thirty. The term of office of the elected and nominated members was four years.

The Order in Council introduced a number of features which had become necessary owing to the representative nature of the new Legislative Council and which in one form or another continue to apply to the present-day National Assembly. One of these was the provision prohibiting consideration of any matter which would dispose of public funds, or impose or alter taxation, without the sanction of the Governor.[4] Others were provisions

[1] Gold Coast Colony and Ashanti (Legislative Council) Order in Council, 1946, ss. 38. 40.

[2] *Ibid.*, s. 49.

[3] The Central Province was abolished on 1st April, 1946.

[4] Section 34. See now the National Assembly Act, 1961 (Act 86), s. 18. Section 34 of the 1946 Order in Council gave rise to some misunderstanding, and was justified by the Governor as follows: " It is a well-recognized principle in democratic institutions, and a long-established rule of the British House of Commons, that financial Bills or motions can only be considered by Parliament if they have been put forward by the Govern ment. It would obviously be impossible for any Government to prepare a considered Budget if financial proposals from other sources could be put forward." (Leg. Co. Deb. (1946, No. 2) 9).

dealing with disqualification of members, voting, meetings and sessions, and prorogation and dissolution.

The transformation of the Executive Council into the present Cabinet consisting (apart from the President) of Ministers who are Members of Parliament advanced a stage in 1946 with the appointment to the Executive Council of three African members of the Legislative Council, namely Nana Tsibu Darku, Mr. C. W. Tachie-Menson and Dr. I. B. Asafu-Adjaye, one of the Ashanti members. *

**Togoland Trusteeship**

The year 1946 also saw a change in the status of British Togo-land. Article 75 of the United Nations Charter, which was signed on 26th April, 1945, provided for the establishment of an international trusteeship system for the administration and supervision of certain under-developed territories, and by Article 77 of the Charter this system could be applied to territories formerly administered under mandate from the League of Nations. An agreement for the administration of British Togoland as a trust territory by the United Kingdom Government was approved by the General Assembly of the United Nations on 13th December, 1946.

The operation of this agreement was regulated by the Togoland Under United Kingdom Trusteeship Order in Council, 1949, which largely preserved the existing system of administration. A Southern Togoland Council, consisting of representatives of native authorities, was established in 1949 and empowered to elect an additional member to the Legislative Council.[2]

**Disturbances of 28th February, 1948**

Martin Wight remarked of colonies in the stage of constitutional development that the Gold Coast had now reached:

> " A representative legislature, deriving its strength from the popular forces behind it, tends to assert its will increasingly against the executive. There usually follows a period of extreme constitutional difficulty, marked by conflicts and deadlocks between the two powers. An irresponsible legislature confronts an immovable executive,"[3]

[1] Leg. Co. Deb. (1946, No. 2) 7.
[2] Native Authority (Southern Section of Togoland Under United King dom Trusteeship) Ordinance, 1949; Gold Coast Colony and Ashanti (Legislative Council) (Amendment No. 2) Order in Council, 1949.
[3] *British Colonial Constitutions 1947,* p. 32.

A period of extreme constitutional difficulty certainly followed in the Gold Coast, but it was due less to the formal structure of the Burns Constitution than to the political movement for independence which now began to gather strength. We are here concerned only with developments in constitutional law, and it is beyond our scope to venture on the great political events of this time, which are extensively documented elsewhere. It is sufficient to say therefore that the impetus for the next step in constitutional advance came from the civil disturbances of 28th February, 1948, and succeeding days, which led to twenty-nine deaths and two hundred and thirty-seven injuries in Accra, Kumasi, Koforidua, Nsawam and Akuse.[1] An investigating commission under the chairmanship of Mr. Aiken Watson, K.C., found a large number of political, social and economic causes for these disturbances.[2] Among the political causes given were the following:

> " A feeling of political frustration among the educated Africans who saw no prospect of ever experiencing political power under existing conditions and who regarded the 1946 Constitution as mere window-dressing designed to cover but not to advance their natural aspirations."
>
> " A failure of the Government to realise that, with the spread of liberal ideas, increasing literacy and a closer contact with political developments in other parts of the world,[3] the star of rule through the chiefs was on the wane."

The commission found that the Burns Constitution, though well-intentioned, was conceived in the light of pre-war conditions and was out of date before it was promulgated. The Legislative Council, although predominantly African, was merely a debating chamber, while the native authorities still largely consisted of the old tribal oligarchies and gave no opportunity for the advancement of the new generation of politicians. Since (towns apart) election to the Legislative Council was by the chiefs " who naturally elect for the most part members of their own caste " almost all the African governmental authorities tended to stifle the expression of popular will and ambition. The commission concluded that a substantial measure of constitutional reform was necessary to meet the legitimate aspirations of the indigenous

[1] *Report of the Commission of Enquiry into Disturbances in the Gold Coast*, 1948 (Colonial No. 231), Appendix 8

[2] The *Report*, pp. 7-8.

[3] India, Pakistan, Burma and Ceylon had recently become independent of British rule.

population, and went on to make detailed recommendations.[1]

**The Coussey Committee**

The British Government took the view that the recommendations of the Aiken Watson Committee should first be considered by representatives of the public in the Gold Coast itself.[2] A committee of forty prominent Gold Coast Africans was accordingly set up under the chairmanship of Mr. Justice Coussey and reported on 17th August, 1949.[3] Their proposals provided for the establishment on a fully representative basis of all bodies responsible for the government of the Gold Coast from the smallest local council to the central bodies where policy was determined for the country as a whole. Local authorities were to have elected majorities, while retaining some traditional elements. Regional councils would be elected, while at the centre a Legislative Assembly was proposed. Nearly all the members of this would be elected either directly or indirectly by popular vote. The Executive Council would be reconstituted, and would become responsible for the formulation of policy. The Governor's reserved powers would not be capable of being used (except in emergency) without the approval of the Executive Council or the Secretary of State.

**Constitution of 1951**

The British Government, in a despatch to the Governor dated 14th October, 1949, reacted favourably to the recommendations of the Coussey Committee, though criticising them in detail.[4] A new Constitution was accordingly prepared, and came into force on 1st January, 1951. The main instrument was the Gold Coast (Constitution) Order in Council, 1950, which for the first time applied uniform constitutional provisions to all the territories now included in Ghana. The old Executive Council was completely reconstituted, and the Legislative Council made way **for** a Legislative Assembly consisting almost entirely of elected Africans.[5] For the first time, elected representatives of all the

[1] The *Report*, pp. 27-29.
[2] Colonial No. 232, p. 7.
[3] Colonial No. 248.
[4] Colonial No. 250.
[5] The Legislative Council existed for just 100 years. For a detailed account of its functioning see Martin Wight, *The Gold Coast Legislative Council,*

four territories now included in Ghana met together in a law-making body.

*Executive Council.—The* Executive Council was designated as " the principal instrument of policy ", and the Governor was required to act in accordance with its advice except where expressly empowered to act in his own discretion.[1] The Coussey Committee had recommended that the Executive Council should be collectively responsible to the Legislature, and had stated that to make the Council responsible to the Governor would not be acceptable. The British Government pointed out however that, since it was agreed that the Governor was to retain ultimate responsibility for the administration, the Council must remain responsible to him although it would also in effect be answerable to the Assembly on matters relating to the departments entrusted to the members of the Council.[2] The Executive Council consisted of the Governor as President and a number of Ministers, the first time this term had been used in Ghana.[3] There were three *ex officio* Ministers, namely the Chief Secretary, the Attorney-General and the Financial Secretary, and not less than eight representative Ministers appointed by the Governor from among the members of the Legislative Assembly and approved by that body.[4] The Legislative Assembly could bring about the dismissal of any representative Minister.[5] Acting in his discretion, the Governor could charge a Minister with the responsibility for any department or subject, and he was then styled a Minister with portfolio.[6] The Executive Council were required to elect one of their number to be Leader of Government Business in the Legislative Assembly.[7] They could also advise the Governor to appoint, from among the members of the Legislative Assembly, Ministerial Secretaries to assist the Ministers in the exercise of their duties. Each Ministry was provided with an official head, to be known as the Permanent Secretary.[8] An official was also to be appointed by the Governor as Governor's Secretary and Secretary to the Executive Council.[9]

[1] Gold Coast (Constitution) Order in Council, 1950, ss. 5, 6.
2 Colonial No. 250, p. 7.
[3] Gold Coast (Constitution) Order in Council, 1950, s. 23. The wording of this section produced the effect that the Governor himself was to be styled a Minister, but this was presumably unintended.
[4] *Ibid.*, ss. 4, 7, 8. [6] Section 9. « Sections 22, 23. [7] Section 15.
[8] Section 27. The word " Ministry " was not defined, and its meaning remained indefinite until the passing of the Civil Service Act, 1960; see pp. 180 *et seq., post.*
[9] Section 29.

*Legislative Assembly.*—The Legislative Assembly consisted of the Speaker, the three *ex officio* Ministers, three representatives of chambers of commerce, three representatives of the Chamber of Mines, and seventy-five elected members.[1]

The elected members were classified as follows :[2]

(i) 37 *representing the Gold Coast Colony:*[3] *(a)* 12 territorial members:

11 members elected by the Joint Provincial Council: 3 representing the Central group of native authorities, 2 the Eastern Akan group, 2 the Ewe group, 2 the Ga-Adangme group and 2 the Western group;

1 member elected by the Southern Togoland Council;

*(b)* 21 rural members elected by electoral colleges chosen by universal suffrage;*

(c) 4 municipal members directly elected by universal adult suffrage, of whom Accra returned two and Cape Coast and Sekondi-Kakoradi one each.

(ii) 19 *representing Ashanti:*

*(a)* 6 territorial members elected by the Asanteman Council ;[5]

*(b)* 12 rural members elected by electoral colleges chosen by universal adult suffrage;

(c) 1 municipal member directly elected by universal adult suffrage for Kumasi.

(iii) 19 *representing the Northern Territories.*—These were elected by an electoral college consisting of the members of

[1] Only two out of the six commercial and mining members had a vote (s. 56).

[2] Section 40. The electoral provisions were based on the report of a select committee of the Legislative Council (the Ewart Report).

[3] In fact this group included a member representing Southern Togoland. The error was corrected in 1952.

[4] For the first elections the electoral law was made by an Ordinance passed by the old Legislative Council. Power to pass the Ordinance (the Elections (Legislative Assembly) Ordinance, 1950) was conferred by the Gold Coast (Constitution) (Electoral Provisions) Order in Council, 1950.

[6] The names of the Ashanti Confederacy and its Council were changed in 1950 to the traditional names of Asanteman and Asanteman Council respectively. Ashanti Confederacy Council (Amendment) Order, 1950 (No. 147).

**the** Northern Territories Council and persons nominated by the six district councils.

The Governor, with the advice and consent of the Legislative Assembly, was given power to make laws for the peace, order and good government of the whole of the Gold Coast. The power was limited in various ways. No law could make persons of any racial community liable to disabilities to which persons of other such communities were not made liable. Nor could the Togoland trusteeship agreement be infringed.[1] In addition to the 1946 restriction on the introduction of financial Bills, the Governor, acting in his discretion, was given control over Bills affecting public officers or removing from his discretion the final decision of questions relating to the office of Chiefs.[2] The reserved powers of the Governor were similar to those in the previous constitution but, except in emergency, could be exercised only with the consent of the Executive Council or the Secretary of State.[3] The Crown's power of disallowance was retained.[4]

Part VI of the Order in Council provided for the administration of the Public Service, which was placed under the control of the Governor acting in his discretion. A Public Service Commission was set up to advise the Governor on appointments, promotions, discipline and other matters.[5] Control over the establishment of the Civil Service remained with the Assembly, to be exercised by voting on the Estimates.

In the general election which followed the coming into force of the new Constitution, 34 of the 38 seats open to popular vote were won by the Convention People's Party, which had been founded by Dr. Kwame Nkrumah in June, 1949. The United Gold Coast Convention, which had been founded in **1947,** won three seats, and the remaining seat was won by an independent.[6] Dr. Nkrumah, who described the new Constitution as " bogus and fraudulent ", nevertheless decided to work under it as he felt it would serve as a stepping-stone to self-government.[7] He and five other C.P.P. members were appointed to the Executive Council

[1] Section 50. Further restrictions of the usual type were laid down in the accompanying Royal Instructions.

[!] Section 57. [3] Section 58. * Section 60.

[5] Rubin and Murray *(The Constitution and Government of Ghana* (London, 1961), p. 117) are thus mistaken in treating the Public Service Commission as established in 1957; as also in assuming that it continues to exist, it having in fact been abolished on the establishment of the Republic in 1960.

• *Colonial Office Report on the Gold Coast for 1951,* p. 3.

' Kwame Nkrumah: / *Speak of Freedom* (London. 1961), p. 23.

as representative Ministers together with a representative of Ashanti and one from the Northern Territories. The Council elected Dr. Nkrumah as Leader of Government Business.

**Local Government**

The recommendations of the Coussey Committee regarding local government were implemented by the Local Government Ordinance, 1951 (No. 29), which survived until its replacement by the Local Government Act, 1961 (Act 54). The Ordinance, which applied to the whole of the Gold Coast except the four municipalities, enabled the Government to set up district, urban and local councils with a chief as president. Except where it was found impracticable, one-third of the members of each urban and local council were to be traditional members appointed by State Councils or similar bodies while the remainder were to be representative members elected by adult suffrage. A similar proportion was required for the district councils, but election was by the corresponding members of the urban and local councils within the district. The councils were required generally to maintain order and good government within their areas and could be given a wide variety of detailed functions.[1] Power to levy rates was given without financial limit. Where a local authority was set up it replaced the native authority and the laws relating to the latter were repealed *pro tanto.* A Minister of Local Government was appointed to supervise the administration of the Ordinance.

A uniform law was provided for the municipalities by the Municipal Councils Ordinance, 1953 (No. 9) (now embodied in the Act of 1961), which replaced the town councils of Accra, Kumasi, Cape Coast and Sekondi/Takoradi by municipal councils. In these areas the traditional membership was made only about one-seventh of the whole, the remainder being elected by popular vote.[2]

The provisions of the Native Authority (Colony) Ordinance relating to local administration having been superseded by the Local Government Ordinance, most of the remainder were re-enacted by the State Councils (Colony and Southern Togoland)

'Section 58 of Ordinance No. 29 of 1951, which listed the detailed functions, had no less than 82 paragraphs covering such matters as agriculture, animals, buildings, education, forestry, land, famine relief, liquor, markets, public health, public order, registration of persons, roads, and trade and industry. See now the Local Government Act, 1961 (Act 54), Sch. I, which has 108 paragraphs.

[2] Accra and Kumasi have recently been raised to the status of cities.

Ordinance, 1952 (No. 8). This did not however reproduce the power to recognise chiefs and to make removal orders excluding deposed chiefs and others from specified areas.[1] In introducing the Bill, the Minister of Local Government said:

> " Local government is, I hope, now reaching a position of stabilization in the Gold Coast. Before many months have passed the position will be that, on the one hand the day-to-day matters which form the general subject of local administration will have become the concern of bodies which are largely elected by popular vote; while on the other hand customary usages and practices will still remain an important element in the social structure of the local community. ... It is, therefore, the object of this Bill to preserve for the traditional authorities in the Colony and Togoland the powers and functions relating to these customary matters which they alone can properly exercise."[2]

The Ordinance also created the Trans-Volta Togoland Region, which consisted of the Southern Section of Togoland under United Kingdom Trusteeship together with the states of Anlo and Peki and specified Ewe divisions.

**Creation of office of Prime Minister**

In 1952 a number of detailed amendments were made to the Constitution. The office of Prime Minister was created in substitution for that of Leader of Government Business.[3] The Prime Minister had to be a member of the Legislative Assembly. He was proposed by the Governor and approved by the Assembly, and by virtue of his appointment was a representative member of the Executive Council or, as it was now authorised to be called, the Cabinet.[4] If the Prime Minister's office became vacant, those of the other representative Ministers would become vacant also and would thus, in accordance with British practice, be at the disposition of the incoming Prime Minister.[5] Changes were also made in the provisions regulating the election of the territorial members of the Assembly. The two members representing the

[1] Native Authority (Colony) Ordinance, 1944 (No. **21),** ss. **15-19. The** power was revived in 1959; see p. 72, *post.*

[2] Leg. Ass. Deb. (1952, No. 1), I, 233. Similar Ordinances were passed in 1952 for Ashanti (No. 4) and the Northern Territories (No. 5).

[3] Gold Coast (Constitution) (Amendment) Order in Council, 1952 (S.I. 1952 No. 455), s. 5. The office of Prime Minister existed for eight years, during the whole of which time it was held by Dr. Nkrumah. It was abolished on 1st July, 1960.

[4] *Ibid.,* s. 3.

[5] *Ibid.,* s. 8.

Ewe group in the Colony, along with the Southern Togoland member, were to be elected by an electoral college consisting of persons chosen by the traditional members of local authorities within the Trans-Volta/Togoland Region.[1] Consequential changes were made in the membership of the Joint Provincial Council.

**Discussions on Constitutional Reform**

In October, 1952, following a visit by the Secretary of State for the Colonies, the Prime Minister made a statement in the Assembly on constitutional reform. He said that it was clear from his discussions with the Secretary of State that if the Gold Coast were to achieve full self-government the Gold Coast Government must take the initiative and lay before the British Government proposals worked out after consultations with the chiefs and people. To enable this to be done he invited interested bodies and persons to send in their suggestions and while refraining at that stage from putting forward positive views of his own since " it would, in the opinion of the Government, be quite wrong for the preliminary discussions to be influenced by a declaration of Government policy ", he outlined some of the features of the Constitution which needed consideration. These included the presence of *ex officio* Ministers in the Cabinet, the procedure for appointing the Prime Minister and other representative Ministers, the composition of the Assembly and whether there should be a second chamber, the powers of the Governor in matters affecting chieftaincy, and the position of the Public Service.[2] The results of this invitation, together with the Government's provisional recommendations, were given in a white paper published in June, 1953.' Over a quarter of a million copies of the Prime Minister's statement had been distributed, and representations were submitted by 131 councils, political parties and other groups.[4] A remarkable measure of agreement was shown on the details of constitutional advance, and the Government's proposals were framed accordingly. They did not, however, support the majority opinion in favour of the creation of a second chamber of the legislature. After a four-day debate,

[1] Gold Coast (Constitution) (Amendment) (No. 2) Order in Council, 1952 (S.I. 1952, No. 1039). s. 8. A Trans-Volta/Togoland Council, replacing the Southern Togoland Council, was set up by Ordinance No. 16 of 1952.
[2] Leg. Ass. Deb. (1952, No. 3), 500 *et seq.*
[3] *The Government's Proposals for Constitutional Reform,* Accra, 1953.
[4] *Ibid.,* p. 5.

the Legislative Assembly approved the proposals and passed a motion authorising the Government to ask the British Government:

> "... to amend as a matter of urgency the Gold Coast (Constitution) Order in Council, 1950, in such a way as to provide *inter alia* that the Legislative Assembly shall be composed of members directly elected by secret ballot, and that all Members of the Cabinet shall be Members of the Assembly and directly responsible to it."[1]

The motion also, as a separate matter, authorised a request to the British Government that " as soon as the necessary constitutional and administrative arrangements for independence are made " an Act should be passed declaring the Gold Coast a sovereign and independent state within the Commonwealth. As the Prime Minister remarked in the course of the debate, " We prefer self-government with danger to servitude in tranquillity ".[2]

**Constitution of 1954**

The British Government accepted the proposals and on 5th May, 1954, the major part of the Gold Coast (Constitution) Order in Council, 1954 (S.I. 1954 No. 551), came into operation. This repeated many features of the previous Constitution and also for the first time in a Gold Coast Constitution included detailed provisions as to the judiciary and public finance. The principal changes were as follows.

*The Executive.*—The Governor ceased to be a member of the Cabinet, which was made responsible to the Assembly and consisted of not less than eight Members of the Assembly appointed on the advice of the Prime Minister. This followed British constitutional convention, which was expressly applied to the appointment and dismissal of all Ministers, including the Prime Minister.[3] The Cabinet was precluded from exercising functions in relation to defence (including internal security) and external affairs (including Togoland under United Kingdom trusteeship), which were reserved to the Governor.[4] The Governor

[1] Leg. Ass. Deb. (1953, No. 2), 262.

[2] Leg. Ass. Deb. (1953, No. 2), 273. The motion is known in Ghana as the Motion of Destiny.

[3] Gold Coast (Constitution) Order in Council, 1954, s. 7.

[4] *Ibid.*, ss. 5, 17. The office of Chief Secretary was abolished and the affairs of his Ministry, the Ministry of Defence and External Affairs (which was also abolished) were transferred to the Governor's department—*Gold Coast Handbook* (1954), p. 3.

had power to summon and attend a special Cabinet meeting when he thought fit.[1] Portfolios were assigned to Ministers by the Prime Minister instead of the Governor.[2] Since the Attorney-General ceased to be a Minister his responsibility for the initiation, conduct and discontinuance of prosecutions (which was put outside Ministerial control) was laid down by the Constitution.[3]

*Legislative Assembly.*—The Assembly consisted of the Speaker and 104 members, all elected by universal adult suffrage, as follows:

39 rural members for the Colony (other than the Trans-Volta/Togoland Region); 13 rural members for the Trans-Volta/Togoland Region; 19 rural members for Ashanti; 26 rural members for the Northern Territories and Northern Togoland; 3 municipal members for Accra;
1 municipal member for Cape Coast;
2 municipal members for Kumasi;
1 municipal member for Sekondi-Takoradi.[4]

The restriction on the introduction of Bills affecting chieftaincy was removed, but a similar restriction was imposed in relation to Bills dealing with defence or external affairs.[5] The Governor had power to insist on the introduction of any Bill, and retained his reserved powers in cases where a Bill was not passed.[6] Express power was given to pass laws regulating the privileges of the Assembly, but these were not to exceed those enjoyed by the

[1] Section 13. [3] Section 16.
[3] Section 18.
[4] Sections 24, 28. Power to provide for the elections had been granted by the Gold Coast (Constitution) (Amendment) Order in Council, 1953 (S.I. 1953 No. 1565) and had been exercised by the passing of the Electoral Provisions Ordinance, 1953 (Xo. 33), which is still in force.
[6] A restriction added in 1955 precluded the passing of any law enabling property to be acquired compulsorily without adequate compensation: Gold Coast Constitution (Amendment) Order in Council, 1955 (S.I. 1955 No. 1218).
[6] The Gold Coast Government had not asked for the removal of these powers, which had not been used: *The Government's Proposals for Constitutional Reform,* p. 15.

British House of Commons.[1] The life of the Assembly was limited to four years.[2]

*Judicature.*—A Judicial Service Commission was set up consisting of the Chief Justice and two other judges, the Attorney-General and the Chairman of the Public Service Commission. After 31st July, 1955, apart from the Chief Justice, who was appointed on the advice of the Prime Minister, judges and judicial officers were appointed on the advice of the Judicial Service Commission, which also had disciplinary control over judicial officers. A judge of the Supreme Court was not removable except on an address of the Assembly, carried by not less than two-thirds of the members, praying for his removal on the ground of misbehaviour or infirmity of body or mind. Interference with the Commission was made an offence punishable with imprisonment.[3]

*Finance.*—For the first time, details of financial procedure were inserted in the Constitution. Sections 65 and 66, which were repeated in the 1957 Constitution and thus remained in force until the inauguration of the republic, laid down the procedure for authorising and meeting expenditure, which was largely that followed for many years previously in the Gold Coast. The Minister of Finance was required to prepare annual estimates of revenue and expenditure which, when approved by the Cabinet, were to be laid before the Assembly. The expenditure estimates, except those relating to the public debt or other expenditure charged on the national assets, were to be submitted to the vote of the Assembly by means of an Appropriation Bill. Excess expenditure was to be covered by a Supplementary Appropriation Bill. The Assembly could reject any head of the estimates but could not vote to increase or reduce expenditure or to alter its destination. Expenditure could not be met unless it had been authorised by resolution of the Assembly or one of its Committees " or by any law ". Where, however, the Appropriation Bill had not become law by the beginning of the financial year, the Minister of Finance, with Cabinet approval, could authorise expenditure on any

[1] The power was exercised by the passing of the Legislative Assembly (Powers and Privileges) Ordinance, 1956 (No. 20). This was replaced by the National Assembly Act, 1959 (No. 78) which in turn was replaced by the National Assembly Act, 1961 (Act 86).

[2] Gold Coast (Constitution) Order in Council, 1954, s. 50 (2).

[3] See Part VII of the Gold Coast (Constitution) Order in Council, 1954.

service up to one quarter of the amount voted for that service in the previous year.[1]

Section 67 established the office of the Auditor-General, who was appointed by the Governor after consultation with the Prime Minister and was given the same security of tenure as the Judges.

The Order in Council was accompanied by the usual Letters Patent constituting the office of Governor and Commander-in-Chief of the Colony and Ashanti[2] and Royal Instructions to the Governor.[3] The latter modified the obligation of the Governor to act on the advice of his Ministers and his power to assent to Ordinances within the usual restricted classes. The general election under the new Constitution was held in June, 1954, and resulted in victory for the Government party, the C.P.P., which won 71 out of the 104 seats. 12 seats were won by the Northern People's Party and 16 by Independents, the remaining five being divided between the Togoland Congress, the Ghana Congress Party, the Moslem Association Party and the Anlo Youth Organisation.[4] The Northern People's Party was recognised as the Official Opposition, its leader being paid a salary as such.

**The Questions of Federation and a Second Chamber**

Later in the year a movement arose in Ashanti which posed two major constitutional questions requiring settlement before independence was achieved. Was the future Constitution to be federal or unitary? Should a second house of the legislature be established? The movement began through the dissatisfaction of the Ashanti cocoa farmers with the minimum price fixed by the Cocoa Duty and Development Funds (Amendment) Ordinance, 1954 (No. 25). Since nearly half the country's cocoa was produced in Ashanti many of the inhabitants there felt that they were entitled to a greater share in its proceeds and that this could only be obtained by a federal system under which Ashanti would have some measure of autonomy. In September, 1954, the National Liberation Movement was launched in Kumasi with the support of the Asanteman Council and nearly all the Opposition parties.

[1] For the alterations made to this procedure in 1960 see pp. 155 *et seq., post.*
[2] L.N. 216 of 1954.
[3] L.N. 217 of 1954.
[4] *Colonial Office Report on the Gold Coast,* 1954, p. 7.

A pamphlet setting out the constitutional proposals of the Movement was published about the middle of the following year.[1] This called for the setting up of a Constituent Assembly to draft a federal Constitution, the argument advanced being:

> " There is not enough consciousness of national identity to make possible easy and at the same time democratic unitary government. In the absence of this consciousness the safest course is to ensure that not all the powers of government are concentrated at the centre, but that a substantial part of them is retained in the component territories where people have learnt the habits and attitudes of living together for some time."

The Government decided to appoint a select committee of the Assembly to examine the question of a federal system of government and also the related question of an upper chamber. The Opposition declined to participate on the ground that the matter should have been dealt with by a Constituent Assembly. The committee adopted Dr. Wheare's statement that:

> " Federal government exists when the powers of government of a community are divided substantially according to the principle that there is a single independent authority for the whole area in respect of some matters and that there are independent regional authorities for other matters, each set of authorities being co-ordinate with and not subordinate to the others within its own prescribed powers."[2]

Bearing this in mind the committee stated that their basis of determining the argument was that the features of a unitary system are simple while those of a federal system are complicated and that " for the abandonment of the simple in favour of the complicated, very cogent reasons should be advanced". This cogency was found to be lacking, and the committee felt that:

> " the cost of running many regional governments in addition to a central government, and many regional legislatures in addition to a central legislature would be huge and out of all proportion to any advantage federation might have."[3]

Other difficulties were the absence of sufficient skilled Africans even to run a unitary system, and the " vexatiousness " of such

[1] 61. *Proposals for a Federal Constitution for an Independent Gold Coast and Togoland by movements and parties other than the Convention People's Party* (undated), p. 6.
[2] *Report from the Select Committee on Federal System of Government and Second Chamber for the Gold Coast,* Accra, 1955, para. 35.
[3] *Ibid.,* para. 42.

problems as the allocation of national revenue, the subjection of the citizen to two sets of laws and two systems of taxation, and the likelihood of inter-regional jealousies.[1]

An upper chamber was also rejected, the committee adopting the arguments against it which had been advanced by the Coussey Committee. These were:

1. The probability of friction between paramount chiefs and people if the former were confined to a Second Chamber.
2. The added expenditure in setting up an additional council for chiefs and elder statesmen, involving, as it would, the journey to and stay at Accra of a great number of chiefs, with their attendants, for long sessions.
3. The stagnation in the affairs of states caused by the absence of their chiefs.
4. The effect on the number and quality of members available for the lower chamber.
5. That once a Second Chamber was established it would be extremely difficult to disestablish it should it later be found unnecessary, and the status of chiefs might be destroyed in the process.[2]

The only arguments on the other side which found favour with the select committee were that an upper house would enable emotional issues to be considered in a calmer atmosphere and that, to some extent at any rate, it might serve a useful function in revising legislation.[3] These were clearly insufficient to tip the baiance, though the committee did think the question should be examined again after independence.[4] The report was adopted by the Assembly after the Opposition had staged a walk-out. At the same time the Government announced that they had decided to invite an outside constitutional expert to frame proposals for a measure of devolution to the regions.[5] The expert invited was Sir Frederick Bourne, a former Governor of East Bengal.

The controversy was exacerbated when the powers of the Asanteman Council over local constitutional matters were curtailed later in 1955 by amendments to the State Councils (Ashanti) Ordinance, 1952 (No. 4).[6] These gave an appeal to the

^he 1955 *Report*, paras. 34, 43.
[2] *Ibid.*, para. 49.
[8] *Ibid.*, paras. 61, 63, 77.
[4] *Ibid.*, para. 78.
[5] Leg. Ass. Deb. (1955, No. 2), s. 359.
[6] The amendments were made by Ordinance No. 38 of 1955.

Governor against decisions of the Asanteman Council or a State Council in all cases and not merely, as previously, in cases involving a paramount chief. This right of appeal covered cases decided since the beginning of 1954, there having been a number of destoolments of chiefs unfavourable to the National Liberation Movement. Furthermore the Governor was empowered to withdraw a case from the Asanteman Council or a State Council and decide it himself if he thought fit.[1] A similar extension of the rights of appeal was made in the south by the State Councils (Colony and Southern Togoland) (Amendment) Ordinance, 1955 (No. 37).

**The Bourne proposals**

In September, 1955, the constitutional adviser, Sir Frederick Bourne, arrived in the Gold Coast. He received no co-operation from the National Liberation Movement, who were incensed by the timing of the legislation curtailing the powers of the paramount chiefs in Ashanti. He therefore failed in the most important object of his mission, namely to reconcile the opposing viewpoints of Government and Opposition on the question of federation.[2] However, his detailed recommendations on regional administration pointed the way to the ultimate settlement of the controversy. They may be summarised as follows:

1. The boundaries of the Regions should be clearly denned and not subsequently altered without the consent of the local inhabitants.

2. A Regional Assembly should be established for each Region in which district councils had been set up for the whole Region, provided the majority of district councils desired it.

3. The objects of a Regional Assembly would be:
   *(a)* to afford an effective link between Regions and the central Government and thereby to remove any danger of excessive centralisation;
   *(b)* to provide for the formation and ventilation of local opinion on matters of national importance;
   *(c)* to procure the use of local knowledge and experience to ensure that legislation was devised and implemented, and projects involving expenditure in the Region

[1] In these matters the Governor would of course be required to act on the advice of the Cabinet.

[2] *Report of the Constitutional Adviser,* Accra, 1955, p. 1.

designed, and the required money provided, in a manner suited to the circumstances of the Region concerned.

4. Supreme legislative power would remain at the centre, but the Regional Assemblies would be given such delegated powers as were needed for them to fulfil their objects.[1]

5. A Regional Assembly should consist of all backbench members of the Legislative Assembly elected for the Region, together with an equal or greater number of members of district and municipal councils. Local residents could be co-opted.

6. No Bill affecting the traditional functions or privileges of chiefs should be passed by the Legislative Assembly unless:

(a) the chiefs had been consulted, and

*(b)* their comments had been circulated to the members of the Legislative Assembly, and considered by them on non-party lines.

7. Each Regional Assembly would consult, and receive advice from, councils of chiefs within the Region.

**The Achimota Conference**

The Prime Minister convened a conference to consider the Bourne Report and matters arising from it. It was hoped that this would be an all-party conference, at which the matters dividing the Government and the N.L.M. could be thrashed out. This hope was disappointed, and the opposition parties refused to join the conference or express their views to it. The conference had its first meeting at Achimota on 16th February, 1956, and found itself in broad agreement with the Bourne proposals. It was, however, felt that Regional Assemblies should be set up simultaneously in all Regions and that it should not therefore be a condition precedent that district councils had been established throughout the Region.[2] Disagreement was also expressed with the proposal that members of the Legislative Assembly should be

[1] Sir Frederick Bourne remarked that this " is the reverse of the system recommended in the X.L.M.'s Federal Scheme, whereby the Centre's powers are to be prescribed and all residuary powers are to rest with the units. This extreme form of Federation would, I believe, slow down development and introduce an intolerable handicap to the administration of the country ": *Report,* para. 5.

[2] There were no district councils in the Western Region and only two in the Eastern Region.

*ex officio* members of the Regional Assemblies. The conference recommended that a House of Chiefs should be set up in each Region, in addition to a Regional Assembly. The House of Chiefs would be empowered to advise, and initiate policy, on matters relating to African social customs and customary law, including constitutional matters affecting chieftaincy. It would also have certain delaying powers over any Bill affecting its functions. The Joint Provincial Council would function as the House of Chiefs for the Eastern and Western Regions.[1]

In a statement published in April, 1956, the Government accepted with minor variations the Bourne Report as modified by the Achimota Conference and set out their proposals for the independence of the Gold Coast under the name of Ghana.[2] To meet the British Government's requirements that these proposals should be shown to have the support of the majority of the population before the necessary legislation was introduced, the Gold Coast Government agreed to hold a general election on the basis of the proposals.[3] The proposals were approved by the Assembly on 22nd May, 1956, after a debate in which the Opposition refused to take part.[4] The Opposition leader had stated that the proposals could be used by the Government as an election manifesto, but should not be debated in the Assembly.[5]

**The Togoland Plebiscite**

Meanwhile the way had been cleared for the inclusion of Togoland under United Kingdom Trusteeship in the new state of Ghana by the result of a plebiscite held earlier in the month. A considerable controversy had developed over the future constitutional status of the territory. Two main views were held. On the one hand the Gold Coast Government, supported by the Opposition and also by the British Government, wanted it to be made part of Ghana. On the other hand the Togoland Congress Party, the All-Ewe Conference, and ancillary groups desired that it should be established under separate administration as a

[1] *Report of the Achimota Conference,* Accra, 1956.
[2] *Constitutional Proposals for Gold Coast Independence and Statement on the Report of the Constitutional Adviser and the Report of the Achimota Conference,* Accra, 1956.
[3] Leg. Ass. Deb. (1956-57, No. 1), 3^L
[4] *Ibid.,* 227.
[5] *Ibid.,* 65. For a defence of the Opposition's boycott of the various constitutional proceedings at this period see Leg. Ass. Deb. (Official Report—First Series, Vol. 2), pp. 92-94.

preliminary to allowing the inhabitants to choose whether (1) to federate with the Gold Coast or (2) to unite with an independent French Togoland, with the territories thus united to be federated eventually with the Gold Coast. A special mission was despatched by the United Nations Trusteeship Council in 1955 to report on the constitutional future of British and French Togoland. The mission reported that there was a clear division of opinion in British Togoland, which could only be accurately measured by a plebiscite. They recommended that this should be held, and that the questions should be:

> "1. Do you want the integration of Togoland under British administration with an independent Gold Coast?
> 2. Do you want the separation of Togoland under British administration from the Gold Coast and its continuance under trusteeship, pending the ultimate determination of its political future? "[1]

The plebiscite was held on 9th May, 1956, and resulted in an overall majority in favour of the first question. There were 93,095 votes (58 per cent.) in favour of integration with the Gold Coast and 67,492 votes (42 per cent.) in favour of separation in accordance with the second alternative.[2] A majority vote in favour of separation was recorded in only two of the six districts.[3] On 13th December, 1956, the General Assembly of the United Nations expressed its approval of the union of Togoland under British administration with an independent Gold Coast, and resolved that, on the date on which the Gold Coast became independent and union with the trust territory took place, the trusteeship agreement should cease to be in force, " the objectives of trusteeship having been achieved ". On 6th March, 1957, therefore, the trusteeship agreement ceased to be in force and the competence of the United Nations in respect of the former British Togoland came to an end.[4]

**General Election of 1956**

The Gold Coast general election was held in **July, 1956,** and resulted in a decisive victory for the C.P. P., although its candidates

[1] *Special Report on the Togoland Reunification Problem* (Trusteeship Council Official Records: Fifth Special Session, Supplement No. 2), p. 15.
[2] United Nations, *Annual Report of the Secretary-General, 1956-1957.* p. 102.
[3] *Annual Report of the Secretary-General, 1956-1957,* p. 103.
[4] *Ibid.*

were returned in only a minority of the seats in Ashanti and the Northern Territories. The state of the parties was:

Covention People's Party—72 seats
Northern People's Party—15 seats
National Liberation Movement—12 seats Togoland Congress—2 seats
Moslem Association Party—1 seat
Federation of Youth Organisations—1 seat Independent—1 seat.[1]

**Negotiations for Independence**

In spite of its success in the election, the Government did not give up its attempts to secure the agreement of the opposition parties and groups to its constitutional proposals. The latter at last agreed to embark on discussions with the Government, and these began on 16th October, 1956.[2] The Government's final proposals, revised in the light of the discussions, were published as a white paper at the beginning of November.[3] After a three-day debate, they received the approval of the Legislative Assembly by 70 votes to 25.[4] Since the original proposals had received the approval of the electorate, the Government had not felt able to depart from them to any substantial degree. Some small concessions had been made, but there remained three major points, as well as a number of minor ones, on which disagreement persisted. The major opposition proposals which were rejected by the Government were as follows:

1. That there should be a Council of State, consisting of the Governor General, the four Heads of the Traditional Regions, the Prime Minister, the Leader of the Opposition and the Attorney-General. Its function would be to advise the Governor-General on the appointment and conditions of service of judges and public officers, the settlement of local constitutional disputes, and other matters. The idea was rejected by the Government as impractical, and also undemocratic since the Council would in certain fields be above the Cabinet and not answerable to the elected representatives of the people.

[1] Leg. Ass. Deb. (1956-57, Official Report—First Series), Vol. 1, pp. i-iv.
[2] Leg. Ass. Deb. (1956-57, Official Report—First Series), Vol. 2, p. 249.
[3] *The Government's Revised Constitutional Proposals for Gold Coast Independence,* Accra, 1956.
[4] Leg. Ass. Deb. (1956-57, Official Report—First Series), Vol. 2, p. 243.

2. That there should be a Second Chamber of Parliament, composed of members elected by the four territorial Houses of Chiefs, members appointed by the Government and members appointed on the advice of the Council of State. Although reluctant, for the reasons set out earlier,[1] to have a bicameral legislature, the Government offered to do so if the proposal for regional Houses of Chiefs was abandoned. This compromise was refused by the four territorial Councils of Chiefs.

3. That the Regions should have a measure of autonomy equivalent to that enjoyed by Northern Ireland, and that the Ashanti Region should remain undivided. The Government, supported by the territorial councils other than the Asanteman Council, believed that regional devolution should be implemented gradually and that Regional Assemblies should have powers similar to those of the London County Council. They also favoured the demand of the Brongs for a separate Region.[2]

On the day following the conclusion of the debate, the Prime Minister announced that the Government, having considered the speeches made, had decided to recommend to the British Government that the new Constitution should be based on the White Paper as approved by the Assembly.[3] The British Government had declined to do more than make the alterations in the existing Constitution which were necessary to confer Independence, with certain additional provisions (such as those relating to regional devolution) which were closely bound up with preceding political events.[4] This decision meant that the comprehensive code of fundamental rights, which both the Opposition and the Government expressed a desire to have inserted, had to be omitted from the new Constitution.[5] On the mechanics of Independence, the Government and the opposition parties and groups had agreed the following statement of principle:

> " Following the experience of the working of Parliamentary institutions, the Government believes that the advance to independence within the Commonwealth by the Gold Coast can be effected by the modification of our existing Constitution

[1] P. 53, *ante.*
[2] Part I of the Appendix to the White Paper sets out the proposals and objections in some detail, as also does the Prime Minister's speech in the Assembly debate *(loc. at.,* pp. 13-70).
[3] *Loc. at.,* p. 248.
[4] See the despatch from the Secretary of State quoted *loc. cit.,* p. 32.
[5] *Loc. cit.,* p. 31.

and by the adoption of conventions which have grown up in **the** United Kingdom."[1]

The statement went on to list the necessary legislative measures. Apart from a new Constitution Order in Council, Letters Patent and Royal Instructions, these included " an Act of the United Kingdom Parliament which would alter the law of the United Kingdom and confer on the Gold Coast Legislature those law-making powers which could not be conferred by Order in Council".

**The Ghana Independence Act**

The Ghana Independence Act, 1957[2] received the Royal Assent on 7th February, 1957. The long title described it as

> " An act to make provision for, and in connection with, the attainment by the Gold Coast of fully responsible status within the British Commonwealth of Nations."

The Act, which followed the general pattern of the Ceylon Independence Act, 1947, began by stating that the territories included in the Gold Coast were to form part of Her Majesty's dominions under the name of Ghana as from 6th March, 1957, which was the anniversary of the making of the Bond of 1844.[3] The reasons for adopting this name were given by the Prime Minister in the debate on the White Paper.[4] Dr. Nkrumah said:

> " There are many objections to continuing the name of ' Gold Coast '. It was, in the first place, not the traditional name of the country as a whole but merely the name given in the seventeenth century by the French, and afterwards by the Dutch, to the coastal strip of the present Colony. When we become independent it is most essential that no appearance is given of an)' one portion of the country dominating any other part and on those grounds alone it would be better to choose a name which was not closely associated with one particular region. Secondly, the name ' Gold Coast ' is only the English version of the name. It is translated by different words in each of the vernaculars of the country. There is a similar international difficulty. . . . The Government considers it very undesirable that the Gold Coast should begin its independent international life with as many names as there are languages represented in the United Nations."

[1] White Paper, 1, 12.

[2] Set out in Appendix A, p. 465, *post.*

[3] See p. 8, *ante.* Provision was made enabling some other date to be appointed, but was not used.

[1] Leg. Ass. Deb. (1956-57, Official Report—First Series), Vol. 2, pp. 42-

The name Ghana had been mooted for some years as a desirable alternative to the Gold Coast, and had been used in the title of one of the opposition parties, the Ghana Congress Party. The original suggestion for its adoption has been attributed to Dr. J. B. Danquah.[1]

In an earlier part of his speech, Dr. Nkrumah said:

> " The name ' Ghana ' is rooted deeply in ancient African history, especially in the history of the western portion of Africa known as the Western Sudan, ft kindles in the imagination of modern West African youth the grandeur and the achievements of a great mediaeval civilisation which our ancestors developed many centuries before the European penetration and subsequent domination of Africa began. According to tradition the various peoples or tribal groups in the Gold Coast were originally members of the great Ghana Empire that developed in the "Western Sudan during the mediaeval period. For the one thousand years that the Ghana Empire existed, it spread over a wide expanse of territory in the Western Sudan. . . . We take pride in the name, not out of romanticism but as an inspiration for the future."[2]

The effect of the opening words of the Ghana Independence Act was to place all the four territories on an equal footing as the dominions of Her Majesty in her capacity as Queen of Ghana.[3] Since neither the Northern Territories nor British Togoland previously formed part of Her Majesty's dominions, this provision had the technical effect of annexing those territories, an effect which was necessary for the creation of a unified Ghana.[4] Section 1 of the Act went on to renounce, in language derived from s. 4 of the Statute of Westminster, the legislative powers of the United Kingdom Parliament in relation to Ghana, and to confer on the Parliament of Ghana the legislative powers set out in the First Schedule.[5] The application of existing law was, however, preserved. The section also renounced the executive powers of the

[1] J. D. Fage, *Ghana, A Historical Interpretation,* University of Wisconsin, 1959, p. 83.

[2] Leg. Ass. Deb. (1956-57, Official Report—First Series), Vol. 2, p. 42.

[3] This title was formally established on 27th July, 1957, by the Royal Style and Titles Act, 1957 (No. 13). By this the Parliament of Ghana approved the adoption, for use in relation to Ghana, of the following style and titles: " Elizabeth the Second, Queen of Ghana and of Her other Realms and Territories, Head of the Commonwealth." The Act was repealed on the establishment of the Republic by the Constitution (Consequential Provisions) Act, 1960 (C.A. 8), s. 22.

[4] See an anonymous article in 1 J.A.L. 99. which contains a useful analysis of this and other provisions of the Independence Act.

[5] For a discussion of the First Schedule, see pp. 74, *et scq., post.*

British Government in relation to Ghana, these presumably including the power of United Kingdom Ministers to advise Her Majesty on the exercise of the Royal prerogative and on the exercise of such functions as the making of Orders in Council under the British Settlements Acts and the Foreign Jurisdiction Acts.[1]

Constitution of 1957

The Ghana (Constitution) Order in Council, 1957 (S.I. 1957 No. 277; L.N. 47) the main provisions of which came into force on 6th March, 1957, embodied the new Constitution of independent Ghana, apart from the legislative powers contained in the First Schedule to the Independence Act. In many ways it repeated the provisions of the previous Constitution. The most important new features were as follows.

*The Executive.* The Governor was replaced by a Governor-General, whose office was created by Letters Patent dated 22nd February, 1957,[2] and who, like the Governor, was also Commander-in-Chief of the armed forces. Except where otherwise provided by law, all powers, authorities and functions vested in the Queen or the Governor-General were to be exercised in accordance with the constitutional conventions applicable to the exercise of similar powers, authorities and functions in the United Kingdom by Her Majesty.[3] The executive power of Ghana was vested in the Queen and could be exercised by the Queen or by the Governor-General as her representative.[4] In most cases, following British convention, the executive power would be exercised in accordance with advice tendered by the Queen's Ministers in Ghana, in other words the Cabinet. The previous limitations on the powers of the Cabinet were of course removed, and it was charged with the general direction and control of the Government of Ghana and made responsible to Parliament.[5] The Prime Minister was appointed by the Governor-General in his discretion, but British convention would require him to appoint the leader of the largest party in the Assembly. Other Ministers were appointed and dismissed on the advice of the Prime Minister.[6] If the Assembly passed a motion of no confidence in the Government, the Governor-General was required to dismiss

[1] Ghana Independence Act, 1957, s. 1 (6).
[2] L.N. 57.
[3] Ghana (Constitution) Order in Council, 1957, s. 4 (2)
[4] *Ibid.*, s. 6.
[5] *Ibid.*, s. 7 (1).
[6] Ghana (Constitution) Order in Council, 1957, s. 7 (2), (3).

the Prime Minister unless advised by him to dissolve the Assembly.[1] A minor change was that Ministerial Secretaries were renamed Parliamentary Secretaries.[2]

*Parliament.*—The term " Parliament " had not previously been used in relation to Ghana. The Legislative Assembly was renamed the National Assembly, and Parliament consisted of the Queen and the National Assembly, on the model of the British Constitution.[3] The number of Members remained unchanged at 104, and the existing Members retained their seats.[4] The territorial allocation of seats was not specified. Provision was, however, made for for the establishment of a delimitation commission and for the delimitation of electoral districts on the principle that each district should possess a more or less equal number of inhabitants. Voting was to be by secret ballot on the basis of adult suffrage.[5] The legislative powers were considerably enlarged, the Governor's reserved powers of course disappearing. The limitations as to laws imposing disabilities on racial grounds or providing for the compulsory acquisition of property remained,[6] and a further limitation was added to protect freedom of conscience and religion.[7] Elaborate restrictions were also placed on legislation affecting chieftaincy or regional devolution. No Bill for amending the Constitution could become law unless it had been supported by the votes of at least two-thirds of the total number of Members of Parliament, and in certain cases by two-thirds of the Regional Assemblies also.[8] This restriction had been contemplated by para. 6 of the First Schedule to the Ghana Independence Act. Subject to these restrictions, a Bill which had passed the Assembly was required to be presented to the Governor-General " who may assent thereto in Her Majesty's name or refuse such assent."[9] On

[1] Ghana (Constitution) Order in Council, 1957, s. 7 (4).
[2] *Ibid.*, ss. 16, 72 (2). This is of some interest, as the previous name was reverted to in 1960.
[3] *Ibid.*, s. 20.
[4] *Ibid.*, s. 73.
[5] *Ibid.*, ss. 69, 70.
[6] *Ibid.*, ss. 31 (2), 34.
[7] *Ibid.*, s. 31 (3).
[8] *Ibid.*, s. 32. Amendments in relation to the boundaries of the Regions were excepted, but these were governed by other restrictions.
[9] *Ibid.*, s. 42 (2). The British conventions which of course applied to the giving or withholding of assent, probably precludes its being withheld, and certainly precludes its being withheld otherwise than on the advice of Ministers.

receiving assent the Bill became an Act of Parliament, the term "Ordinance" being abandoned.[1] The maximum life of the Assembly was extended from four years to five.[2]

*Regions and Regional Assemblies.*—Ghana was divided into five Regions. The Western and Trans-Volta/Togoland Regions remained as before. The former Eastern and Accra Regions were merged into a new Eastern Region, while Ashanti was designated the Ashanti Region and the Northern Territories and Northern Togoland became the Northern Region.[3] Alterations to the areas of any Regions required the approval of the Regional Assemblies affected; and where 10,000 or more registered electors were involved, or a new Region was to be created, a referendum was required.[4]

A Regional Assembly was required to be established for each Region by Act of Parliament and to be given functions relating to local government, agriculture, education, communications, health, public works, town and country planning, housing, police and other matters.[5] Until the necessary legislation was passed, the Members of Parliament from each Region were constituted an Interim Regional Assembly, with power *to* advise Ministers on matters affecting the Region and to set up a Police Relations Committee with the object of encouraging good relations between the police and the public.[6] A Regional Constitutional Commission was required to be established, with a judge as chairman, to enquire into and report on the devolution to Regional Assemblies of the functions to be entrusted to them, the composition of the Assemblies, the executive, legislative, financial and advisory powers to be exercised by them, the funds required to meet their expenditure, and the form of the legislation necessary to give effect to the Commission's recommendations. As soon as practicable after the submission of the Commission's report, the Minister responsible for local government was required to introduce into the Assembly legislation to *give* effect to the recommendations of the Commission.[7]

The concluding story of the Regional Assemblies may be given

[1] *Ibid.*, s. 42 (3).
[2] *Ibid.*, s. 47 (3).
[3] *Ibid.*, s. 63 (1).
[4] *Ibid.*, s. 33.
[5] *Ibid.*, s. 64.
[6] *Ibid.*, ss. 85, *86.*
[1] *Ibid.*, s. 87.

here. Notice of the appointment of the Commission, under the chairmanship of Mr. Justice Van Lare, was given in the *Ghana Gazette* on 4th June, 1957, and the Commission delivered a voluminous report, including a draft Bill of 134 clauses, on 14th April, 1958.[1] They recommended that each Assembly should consist of members directly elected by the Parliamentary electors within the Region, the number of members being twice the number of Members of Parliament representing the Region.[2] The executive functions of the Assemblies were to be of a detailed and comprehensive character, constituting a major interposition between the Government and the local authorities. Indeed many of the Minister of Local Government's functions, including the approval of local authority estimates, rates, grants, loans, contracts and byelaws, were to be transferred to the Assemblies,[3] while they were also to have numerous functions previously entrusted to local authorities.

In a White Paper giving their views on the report, the Government stated that

> " it would be wasteful, cumbersome and altogether unsound, administratively, to have in the proposed local government structure another tier, in the form of Regional Assemblies."

Although obliged by the Constitution to introduce the Bill in the form drawn up by the Commission, the Government would move amendments to convert the Assemblies into merely advisory bodies.[4] This intention was carried out; and the Bill as amended became law as the Regional Assemblies Act, 1958 (No. 25) and came into operation on 3rd September, 1958.[5] The elections were held on 16th and 21st October, 1958 and, since the Opposition refused to take part, C.P.P. candidates were returned in all seats except the half-dozen won by Independents.[6] The reason for the Opposition boycott was stated in the National Assembly by Mr. J. A. Braimah as follows:

> " We did not take part in the Regional Assemblies because the Government had so mutilated the Regional Assemblies

[1] *Report to His Excellency the Governor-General by the Regional Constitu tional Commission,* Accra, 1958.
[2] *Ibid.,* paras. 24, 29. The Trans-Volta/Togoland Regional Assembly was given rather more members so that it would have enough to function efficiently *(ibid.,* paras. 30, 31).
[3] Report of the Regional Constitutional Commission, p. 226,
[4] White Paper No. 4 of 1958.
[3] L.N. 287 of 1958.
[6] *Ghana Gazette,* 27th October, 1958.

> Bill which was drafted by the Regional Constitutional Commission that those effective powers on which we all agreed and solemnly pledged to support had not been given to the Regional Assemblies."[1]

The only effective act achieved by the Regional Assemblies was the giving of approval, under s. 32 of the Constitution, to a Bill (which is discussed below) abolishing the restrictions on the amendment of the Constitution. Soon after this, on 14th March, 1959, the Regional Assemblies Act was repealed. All the Regional Assemblies were dissolved and it was provided that no further elections to them should be held.[2] In moving the second reading of the Bill bringing this about, the Prime Minister gave his reasons very briefly, as follows:

> " the Government are convinced that Regional Assemblies are an unnecessary complication in the machinery of Government and constitute a waste of money and manpower."[3]

*Chieftaincy.*—The Constitution contained a provision stating that " the office of Chiefs in Ghana, as existing by customary law and usage, is hereby guaranteed."[4] A House of Chiefs was required to be established by Act of Parliament for each Region, and was given the right to offer advice to any Minister, and to consider any matter referred to it by a Minister or the Assembly. It could also make a declaration of the customary law relating to any subject in force in any part of the area of its authority.[5] In all the Regions except Ashanti, where the Asantehene was Head, the House of Chiefs was given power to elect the Head of the Region.[6] Where a Bill was introduced into the Assembly which affected the traditional functions or privileges of a chief, the Speaker was required to refer it to the appropriate House of Chiefs and to defer the second reading for three months so as to give time for the House of Chiefs to make its views known.[7]

A further safeguard for Chiefs was provided by the section relating to local constitutional disputes.[8] On the establishment of Houses of Chiefs, provision was required to be made by Act of

[1] Pari. Deb., Official Report, Vol. 12, p. 18.
[2] Constitution (Amendment) Act, 1959 (No. 7), ss. 10 11
[3] Pari. Deb., Official Report, Vol. 14, p. 161.
[4] Ghana (Constitution) Order in Council, 1957, s. 66.
[5] *Ibid.*, s. 67. Houses of Chiefs were established by the Houses of Chiefs Act, 1958 (No. 20).
[6] Houses of Chiefs Act, 1958 (No. 2), s. 35.
[7] Ghana (Constitution) Order in Council, 1957, s. 35
[8] *Ibid.*, s. 68.

Parliament for the determination of such disputes by a state council (or in the case of a paramount chief in Ashanti, by a committee of the Ashanti House of Chiefs), with a final appeal through the appropriate House of Chiefs to an appeal commissioner appointed by the Judicial Service Commission.[1] This involved a reversal of the changes made in 1955, which had aroused so much controversy.[2]

*Courts of Justice.*—Section 54(2) of the Constitution contemplated the existence of a Court of Appeal. This was created by an Ordinance dividing the Supreme Court into the High Court of Justice and the Court of Appeal with effect from 6th March, 1957.[3] By another Ordinance, which came into force at the same time, detailed provisions were made for the jurisdiction of the new Court of Appeal, and the right of recourse to the West African Court of Appeal (which was regarded as inconsistent with independence) was abolished.[4] The jurisdiction of the Judicial Committee of the Privy Council was, for the time being, allowed to continue. Section 54 of the Constitution gave the new Justices of Appeal the same security of tenure as was enjoyed by other Supreme Court judges. In an attempt to overcome the shortage of High Court judges without dilution, an Act of the following year created the office of Commissioner of Assize and Civil Pleas.[5] The Commissioners were appointed on limited engagements and could exercise the same jurisdiction as High Court judges except that they were excluded from the most important types of case. The experiment was not found successful, and was abandoned in 1960.

*Citizenship.*—The arrival of independence made necessary the new concept of Ghana citizenship. Although persons born in the Colony or Ashanti were normally citizens of the United Kingdom and Colonies by virtue of the British Nationality Act, 1948, this of course ceased to be the case for persons born after independence.[6] Persons born in the former Northern Territories or British

[1] Effect was given to this requirement by the Houses of Chiefs Act, 1958 (No. 20). Pending the establishment of Houses of Chiefs, s. 88 of the Constitution gave an appeal direct to an appeal commissioner.

[2] See p. 53, *ante*.

[3] Courts (Amendment) Ordinance, 1957 (No. 17), s. 2. The status of the judges of other West African territories as members of the Supreme Court was abolished by s. 3.

[4] Court of Appeal Ordinance, 1957 (No. 35). See also the Courts (Amend ment) Act, 1957 (No. 8).

[5] Commissioners of Assize and Civil Pleas Act, 1958 (No. 12).

[6] Ghana Independence Act. 1957, s. 2.

Togoland would also cease to enjoy the status of British protected persons.[1] Since it was felt that citizenship was essentially a matter to be decided by the new Parliament of Ghana, the Constitution did not deal with it except incidentally.[2] However the first Act to be passed by the Parliament of Ghana was the Ghana Nationality and Citizenship Act, 1957, which provided for citizenship by birth, descent, registration and naturalisation and contained transitional provisions under which persons born in Ghana before Independence, or otherwise having connections with Ghana, were granted citizenship.[3] The Act also embodied the " common form " Commonwealth clause, under which a citizen of Ghana or of any other Member of the Commonwealth was recognized in the law of Ghana as having the status of a Commonwealth citizen.[4]

*Membership of the Commonwealth.*—**The** Constitution, **following** the usual practice elsewhere, did not refer to Ghana's membership of the Commonwealth. On the attainment of independence Ghana became eligible for full membership, and in their constitutional proposals the Government had indicated that this would be sought. As mentioned above, the Ghana Independence Act had in its long title contemplated that Ghana would remain within the Commonwealth and this was confirmed by a statement made in the House of Commons by the British Prime Minister, Mr. Harold Macmillan, on 21st February, 1957.[5] This included the following passage:

> " I am glad to be able to say that after consultation with other Commonwealth Prime Ministers they have all agreed that Ghana shall, as from 6th March, be recognised as a Member of the Commonwealth."

*Membership of the United Nations.*—***On* 8th March, 1957—** two days after independence—Ghana became a member of the United Nations Organisation.

**Amendments to 1957 Constitution**

During the period before the inauguration of the Republic the Constitution was subjected to numerous amendments. Many of these arose because certain of the constitutional provisions which

[1] Ghana Independence Act, 1957, s. 2.
[2] See the definition of " citizen of Ghana " in s. 1 (1).
[3] For an analysis of the citizenship provisions of the Independence Act see 1 J.A.L., 103 *et seq.* For an account of the present law of Ghana citizenship, see pp. 187 *et seq., post.*
[4] Ghana Nationality and Citizenship Act, 1957, Part V.
[5] U.K. Parliamentary Debates (Commons), Vol. 564, col. 605.

were regarded as necessary in the republican era, but not of sufficient importance to find their way into the republican Constitution, were re-enacted with modifications in the National Assembly **Act, 1959** (No. **78)** and the Ministers of Ghana Act, 1959 (No. 77). Other amendments were more substantial. The abolition of the Regional Assemblies has been described above. Before their disappearance they were used to secure the enactment of a Bill removing the restrictions on the making of amendments to the Constitution. This Bill, which became law on 18th December, **1958** as the Constitution (Repeal of Restrictions) Act, 1958 (No. 38), provided for the repeal of para. 6 of the First Schedule to the Ghana Independence Act and of ss. 32, 33 and 35 of the Constitution. In the passage of the Bill, the full procedure required by s. 32 of the Constitution was followed for the first and last time.[1] The Government had no difficulty in obtaining the required two-thirds majority in the National Assembly and, since they had a majority in each of the Regional Assemblies, these all gave the necessary approval. The reasons for the Bill were given by the Prime Minister as follows:

> "It is the belief of the Government that in a developing society such as Ghana the law must be both certain and flexible. Experience has shown that the present Constitution is defective and obscure in many respects. It is, for example, difficult to say, with certainty, whether any particular Act of Parliament may or may not indirectly amend the Constitution. ... I wish now to inform the House, quite frankly, that my Government accepted the Constitution as drawn up in the United Kingdom with the gravest misgivings. We were, however, faced with a situation where independence might well have been delayed had we refused to accept the text which was presented to us."[2]

The Prime Minister added that the overwhelming support for the Government in the country made it unnecessary to retain the elaborate procedure of referring constitutional Bills to the Regions. Justifying the repeal of s. 35, which required Bills affecting chieftaincy to be referred to Houses of Chiefs after introduction, the Prime Minister said that the wording of the section made it difficult to determine the Bills which should in law be referred to Houses of Chiefs. He also felt that consultation

[1] The only previous amendment to the Constitution had been an indirect one occasioned by the establishment of the Contingencies Fund (Con tingencies Fund Act, 1958 (No. 18), s. 4). This however only required a two-thirds majority in the National Assembly.

[2] Pari. Deb., Official Report, Vol. 12, p. 5.

with the chiefs was better carried out at an early stage in **the** drafting of a Bill. To Opposition objections that the repeals would mean that the Constitution could thereafter be amended by an ordinary Act of Parliament rushed through in one day, Mr. Kofi Baako retorted that the same position obtained in Britain.[1]

Apart from those already mentioned, the following amendments were made to the Constitution before its repeal in 1960:

1. Sections 25 and 26 (which related to disqualification for membership of the National Assembly) were amended by providing that a person should be disqualified for election to the Assembly, or, if already a member, should lose his seat, if he had been subjected to preventive detention. A member would also lose his seat if he were absent without the Speaker's consent from twenty consecutive sittings of the Assembly, or if in the course of the proceedings of the Assembly he publicly declared his intention of systematically refraining from attending its proceedings.[2]

2. The provisions relating to the resignation of Ministers and Parliamentary Secretaries were amended to counter the practice of forestalling dismissal by tendering resignation. The amendments provided that a resignation would not be effective unless accepted by the Prime Minister.[3]

3. The Judicial Service Commission established under s. 55 was dissolved. Thereafter all judges of the Supreme Court and appeal commissioners were appointed on the advice of the Prime Minister. The power to appoint and exercise disciplinary control over judicial officers became exercisable on the advice of the Chief Justice, given after consultation with the Prime Minister.[4]

4. The functions of the Public Service Commission were curtailed by bringing all foreign service posts and an additional

[1] Pari. Deb., Official Report, Vol. 12, p. 25.

[2] National Assembly (Disqualification) Act, 1959 (No. 16). The last two amendments were directed at the Opposition's practice of boycotting the Assembly. The amendments are now embodied in the National Assembly Act, 1961 (Act 86), ss. 1, 2.

[3] Ministerial Offices (Resignation) Act, 1959 (No. 42). The amendment relating to Ministers is now embodied in the Republican Constitution (art. 17(c)). Parliamentary Secretaries have disappeared. Their successors, Deputy Ministers, are appointed under the President's general powers and not under express statutory provision.

[4] Constitution (Amendment) Act, 1959 (No. 7), ss, 5-7,

number of senior home sendee posts under the control of the Prime Minister. The latter posts included that of the Attorney-General, who was also required to act on the direction of the Prime Minister in relation to prosecutions for offences against the safety of the State.[1]

5. Section 63 was amended by the creation of the Brong-Ahafo Region, which was formed out of the northern part of the Ashanti Region and a small area taken from the Northern Region.[2] Another change was the renaming of the Trans-Volta/Togoland Region, which became the Volta Region.[3]

6. The provisions relating to Houses of Chiefs, namely ss. 63(2), 67 and 68 (except sub-s. (4)), were repealed. Certain of them had become spent or superfluous on the enactment of the Houses of Chiefs Act, 1958 (No. 20). The repeal of the remainder made it possible to restore the position under which the Government could control the final determination of local constitutional disputes. This was done by an amendment giving the Governor-General power to confirm, vary or refuse to confirm the findings of an appeal commissioner.[1]

Apart from the amendments mentioned in paragraph 6 above, a number of other changes affecting chieftaincy were made at this time. The four territorial Councils were considered to have been rendered superfluous by the establishment of Houses of Chiefs and were accordingly abolished.[5] In moving the second reading of the Bill abolishing the Joint Provincial Council, Mr. A. E. A. Ofori Atta said:

> " Hon. Members will not wish the ending of this notable institution to pass without some appreciation of the services which it has performed for the benefit, not only of the area from which its members are drawn, but of the country as a whole. The Joint Provincial Council has a long history: during its lifetime it has contributed much sound and safe advice to successive Governments, and has played a prominent part in the development of the country. I should like, Mr. Speaker, to express the gratitude of the Government, and of the country, to those members of the Council who have given so much of

[1] Constitution (Amendment) Act, 1959 (No. 7), ss. 3, 4, 9.
[2] Brong-Ahafo Region Act, 1959 (No. 18).
[3] Volta Region Act, 1959 (No. 47).
[4] Houses of Chiefs (Amendment) Act, 1959 (No. 8), ss. 11, 17.
[6] Councils (Northern Territories and Trans-Volta/Togoland) Dissolution Act, 1958 (No. 31); Joint Provincial Council (Dissolution) Act, 1958 (No. 51). The Asanteman Council was abolished by the Houses of Chiefs Act, 1958 (No. 20), s. 47.

their time for the benefit of their fellow-countrymen, and to express the hope and conviction that these same members although now sitting in two Houses, will continue to help and support the Government."[1] Another change was the removal of traditional members from the local and municipal councils, making those bodies fully elective.[2] Again, the continued prevalence of stool disputes led to the passing of the Chiefs (Recognition) Act, 1959 (No. 11) (as amended by No. 48 of 1959). This restored the concept of Government recognition of chiefs, which had disappeared with the repeal of the Native Authority Ordinances.[3] It provided that no enstool-ment or destoolment of a chief after 18th December, 1958 was to have any effect unless recognized by the Governor-General. It also empowered the Governor-General to direct any person not to exercise or purport to exercise the functions of a chief and not to reside within a given area, thus reviving the idea of removal orders.[4] Legislation was also passed strengthening Government control over stool lands and other stool property.[5] During this period a number of other Acts were passed on matters usually classified under the heading of constitutional law. In the main these Acts dealt with various aspects of state security, and had important consequences for personal freedom. Since they remain part of the current law they are discussed in the chapter dealing with this subject.[6] Mention should also be made of the Bank of Ghana Ordinance, 1957 (No. 34), which established a central bank under the name of the Bank of Ghana and created the Ghana pound, at parity with sterling, as the unit of currency. The Bank was set up with the aid of the Bank of England and was seen by Dr. Nkrumah as " the foundation on which the superstructure of our economic independence would be built ".[7]

[1] Pari. Deb., Official Report, Vol. 12, pp. 616-617.

[2] Local Government (Amendment) Act, 1959 (No. 14), s. 2; Municipal Councils (Abolition of Traditional Members) Act, 1959 (No. 15).

[3] See p. 46, *ante.*

[4] See p. 46, *ante.*

[5] Ashanti Stool Lands Act, 1958 (No. 28); Stool Lands Control Act, 1959 (No. 79); Stool Property (Recovery and Validation) Act 1959 (No. 31) (as amended by No. 51 of 1959).

[6] See Chap. 5, *post.* The Acts included the Emergency Powers Act, 1957 (No. 28), the Preventive Detention Act, 1958 (No. 17), the Sedition Act, 1959 (No. 64) and the Treason Act, 1959 (No. 73). Other important constitutional Acts were the Deportation Act, 1957 (No. 14) and the Immigration Act, 1957 (No. 15), which are dealt with in Chap. 4, *post.*

[7] I Speak of Freedom, p. 111.

**Announcement of the Republic**

On 16th December, 1959 Dr. Nkrumah announced in the course of a debate on foreign policy that his Government proposed to introduce a new Constitution in the following year. After remarking that Ghana was a monarchy with the same Head of State as the United Kingdom, he went on:

> "It is essential that we make it absolutely clear that this does not mean in any way that Ghana is dependent upon any other country whatsoever. . . . I wish, to emphasise this point because our present constitutional position is often misunderstood, and responsible political leaders abroad have even suggested that our membership of the Commonwealth fetters in some way our independence. This is not so. . . . Perhaps one of the reasons for the misunderstanding arises through the fact that our present Constitution was not enacted by the Ghana Parliament but was enacted by the United Kingdom Government at the time of Ghana's independence after consultation with the Ghana Government.
>
> I am sure the whole House will agree with me that the time has now come for the people of Ghana to devise for themselves a new Constitution best suited to the needs of Ghana. The technical work on this has already commenced and various consultations in regard to it are now taking place."[1]

The Prime Minister did not at that stage disclose that it was intended to convert Ghana into a republic, but his statement was generally assumed to point to this. The means by which the republican Constitution came into existence are described in the next chapter.

[1] Pari. Deb., Official Report. Vol. 17, pp. 637-638.