

# Genesis of Ghana's First Republican Constitution

by Francis Bennion

*Fourth and Final Version*

## Introductory

Ghana's first Republican Constitution was enacted on 29 June 1960 and came into operation on 1 July 1960.<sup>1</sup> The Constitution was prepared under the supervision of the then Attorney General of Ghana, Geoffrey Bing QC, an Englishman who had been Labour MP for Hornchurch in Essex 1945-1955. Practising at the English Bar, Bing built up a small practice in West Africa where he met Dr Kwame Nkrumah, leader of the main party in the Gold Coast (later Ghana). In 1955 Nkrumah's programme for independence was ready for action and he urgently needed a legal and constitutional adviser. Bing, having lost his parliamentary seat, was appointed to this office in 1957 and thus became involved in many of the country's problems. Bing described his Ghana experiences in his memoir *Reap the Whirlwind*<sup>2</sup>.

My book *The Constitutional Law of Ghana* was published by Butterworths in 1962<sup>3</sup>. In the preface I said:

'I wrote this book during my spare time while acting as technical adviser to the Government of Ghana on the preparation of legislation during the period 1959-1961. The introduction of the Republic . . . made necessary a complete recasting of the law of Ghana, with consequent difficulty for those who had to teach, learn and administer it. To help in this situation I set out to explain some of the new laws I had helped to prepare. I am not qualified to comment on the political background, nor would it be right for me to do so. My aim has been to expound the provisions of the law as they exist, and to supply some technical help for practitioners, teachers and students who may feel themselves overwhelmed by the recent spate of legislation.'

During my time in Ghana I was on secondment from the Office of Parliamentary Counsel in London, where British Government legislation is drafted. In 1956 I had been similarly seconded to the Government of Pakistan to oversee the drafting of their first Republican constitution.

Bing's book has the following comment<sup>4</sup>:

'It must have been apparent to anyone who made any scientific study of the matter that African countries coming to Independence would have to reshape their laws and that they had no technicians with which to do it. Yet the Parliamentary Counsel Office in Britain . . . was never expanded to meet this obvious need. We were particularly lucky in Ghana in that, having applied first, we obtained under technical aid two leading draftsmen, A. N. Stainton<sup>5</sup> and, after he left, Francis Bennion'.

On the actual drafting of the Constitution and related enactments, Bing's book has this somewhat inaccurate passage<sup>6</sup>:

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<sup>1</sup> Constitution, p. 1. References to 'Constitution' in this Note refer to the first Republican Constitution as printed by the Government Printer, Accra.

<sup>2</sup> Macgibbon & Kee 1968. In this Note the book is referred to as *Bing*.

<sup>3</sup> In this Note the book is referred to as *Bennion*.

<sup>4</sup> *Bing*, p. 320.

<sup>5</sup> Later Sir Anthony Stainton KCB, First Parliamentary Counsel.

<sup>6</sup> *Bing*, pp. 211-212.

‘I had not of course drafted the Constitution myself, nor any of the mass of legislation with which it necessarily had to be accomplished. The draftsmen were experts, some Ghanaian, some from other countries such as Britain, Ceylon and Ireland, but they all had embarked on this arduous and difficult job as members of my department . . .’

The precise detail was as follows. I drafted the Constitution myself, and also the Constitution and Plebiscite Act 1960<sup>7</sup>, the Constitutional Plebiscite Order,<sup>8</sup> the Constitution (Consequential Provisions) Act 1960<sup>9</sup>, the Acts of Parliament Act 1960<sup>10</sup>, the Cabinet and Ministers Act 1960<sup>11</sup> and the Courts Act 1960<sup>12</sup>. The Irishman Vincent Grogan drafted the Interpretation Act 1960<sup>13</sup>. Other incidental constitutional enactments were drafted by Ghanians. The official from Sri Lanka (formerly Ceylon) referred to was Sagarajasingham Namasivayam. He wrote a drafting manual, *The Drafting of Legislation*<sup>14</sup> and was later appointed First Parliamentary Counsel in Ghana. He was followed by V.C.R.A.C. Crabbe, who wrote *Legislative Drafting*<sup>15</sup> and later became a Ghanaian judge.

The occasion for my writing this Note some half century after the events it describes is a request I received from Stefan Skupien, who is working for a Ph.D on Ghana’s constitutional history. He wished me to answer twelve questions on the genesis of Ghana’s first Republican Constitution. Of course this is very difficult to do after the lapse of half a century but I shall do my best.

### **Skupien’s questions.**

#### 1. The constitution-making process.

- a) Who was part of the advising team for the 1960-Constitution? How open was the process?
- b) Was there any intervention by the Colonial Office at that time?
- c) How much time was reserved for the drafting of the constitution?
- d) From which moment on were you included in the process? (Your preface only discloses your participation in general legislation and its reform due to the new constitution from 1959-1960.)

#### 2. Transfer of concepts.

- a) You have been part of the experts advising on the 1956 constitution of Pakistan. To which extent has this influenced your expertise in 1960s Ghana?
- b) Which were the conceptual outlines that Nkrumah gave for the new republican constitution?
- c) Who else was part of the advise? Was there any contribution by the Colonial Office at that time?
- d) Which role did constitutional developments in Nigeria (since 1959) or other parts of the commonwealth play? (Patterson (2007) refers to the call for an explicit Bill of Rights within the constitution, a fact Ghana did not provide for in 1957 nor in 1960)
- e) To which political/constitutional experience did the drafting-team refer explicitly or implicitly?

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<sup>7</sup> See *Bennion*, p. xviii.

<sup>8</sup> See *Bennion*, pp. 88-90.

<sup>9</sup> See *Bennion*, p. xix.

<sup>10</sup> See *Bennion*, p. xvii.

<sup>11</sup> See *Bennion*, p. xviii.

<sup>12</sup> See *Bennion*, pp. xxi, 500-502.

<sup>13</sup> See *Bennion* pp. 273-279.

<sup>14</sup> Ghana Universities Press, Accra 1968.

<sup>15</sup> Routledge 1993.

### 3. Omissions if compared with contemporary constitution-making

- a) Was there conceptual debate? If yes, what alternatives were formulated especially to the unitary and presidential nature of the constitution?
- b) Which influence have had alternative concepts of the executive within the negotiation? Where did they originate from?
- c) Why wasn't there a much more detailed bill of rights included in the new constitution? (The early commentaries drew my attention to time constraints of the drafting process. Would you agree to that interpretation?)

#### **My answers to Skupien's questions.**

##### *1. The constitution-making process.*

- a) *Who was part of the advising team for the 1960-Constitution? How open was the process?*

The core of advisors was within the Cabinet, that is the leadership (Dzenkle Dzewu, Saki Sheck, Kojo Botsio etc.) of the socialist Convention Peoples Party (CPP). This was founded by Nkrumah on 12 June 1949. It was the governing party from 1951 to 1966. The Constitution-making process was closed and secretive.

- b) *Was there any intervention by the Colonial Office at that time?*

No.

- c) *How much time was reserved for the drafting of the constitution?*

About a year.

- d) *From which moment on were you included in the process? (Your preface only discloses your participation in general legislation and its reform due to the new constitution from 1959-1960.)*

I was included in the process from my arrival in Ghana in 1959. The first I knew of CPP thinking and planning, led by Nkrumah, was when I received from the Attorney General Geoffrey Bing (the AG) instructions for the drafting of the Constitution on one side of a single sheet of paper. The only firm instruction was that there should not be an operative, enforceable bill of rights. The AG told me to provide a substitute. I gathered that this should have as far as possible the appearance of a bill of rights but should on no account be justiciable as such (that is it should not be enforceable by the court). I accordingly produced what ended up as Article 13 (Declaration of Fundamental Principles).

##### *2. Transfer of concepts.*

- a) *You have been part of the experts advising on the 1956 constitution of Pakistan. To which extent has this influenced your expertise in 1960s Ghana?*

On arrival in Pakistan I found that it had been decided to produce a Constitution modelled on the voluminous Government of India Act 1935. Under this India was to become a federation if more than 50 per cent of the Princely States joined it, which they did. Provincial autonomy was granted, the ministers of provincial governments being responsible to the legislature. The power of the legislature was increased but the right to vote remained limited (only 14 per cent people had voting rights). The Viceroy became more powerful and was not to be responsible to the legislature. In the subsequent elections, the Congress won an absolute majority of seats in six provinces. In three provinces, it emerged as the single largest party. The Muslim League won only 109 out of 482 seats reserved for the Muslims. The election results made it clear that the people had rejected the communal parties. The Congress formed its own ministries in seven out of the eleven provinces. In two others, it formed coalition governments. Only in two provinces were there non-Congress ministries. Indian conditions were entirely different from those of Ghana. On Independence a partition took place under which British India was split into East Pakistan (later divided into the separate countries of

Bangladesh and East Pakistan) and the present India. Because of these differences my Pakistan experiences did not influence my task in 1960s Ghana.

b) *Which were the conceptual outlines that Nkrumah gave for the new republican constitution?*

Study of the Constitution will indicate the answer here. In particular the following Articles indicate the thinking of Nkrumah: 2, 6, 8, 10, 13, 44, 55.

c) *Who else was part of the advise?*

No one that I know of.

d) *Was there any contribution by the Colonial Office at that time?*

No.

d) *Which role did constitutional developments in Nigeria (since 1959) or other parts of the commonwealth play? (Patterson (2007) refers to the call for an explicit Bill of Rights within the constitution, a fact Ghana did not provide for in 1957 nor in 1960)*

By *Patterson (2007)* I take it you mean to refer to the Parkinson book.<sup>16</sup> In the chapter on Ghana this says that the achievement of independence in 1957 involved ‘a rushed and haphazard constitution-making process as the Colonial Office struggled to develop coherent policies on decolonization against the backdrop of African nationalism’<sup>17</sup>. The CPP wished to have a bill of rights included in the Independence Constitution<sup>18</sup>. However the Colonial Office refused this because ‘there was insufficient time prior to independence to reach agreement with the political parties on a satisfactory model’.<sup>19</sup> When it came to the first Republican Constitution, the CPP wanted the appearance of a Bill of Rights without the substance.<sup>20</sup> Somewhat inconsistently, they also called for a Constitution which would be ‘in a tongue understood of the people’.<sup>21</sup> The CPP Cabinet ‘wanted a Constitution which the people could understand, which, as Dr Nkrumah said, “could be taught even in the schools”, around which loyalty could grow and which could become an accepted institution. For any of this, it had, at least, to be intelligible to the educated lay reader.’<sup>22</sup>

e) *To which political/constitutional experience did the drafting-team refer explicitly or implicitly?*

This is too vague.

### 3. *Omissions if compared with contemporary constitution-making*

a) *Was there conceptual debate? If yes, what alternatives were formulated especially to the unitary and presidential nature of the constitution?*

This is too vague.

b) *Which influence have had alternative concepts of the executive within the negotiation? Where did they originate from?*

This is too vague.

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<sup>16</sup> Charles O. H. Parkinson, *Bills of Rights and Decolonization: The emergence of domestic human rights instruments in Britain’s overseas territories* (Oxford University Press, 2007). In this Note the book is referred to as *Parkinson*.

<sup>17</sup> *Parkinson*, p. 103.

<sup>18</sup> See *Bing*, p. 185.

<sup>19</sup> *Parkinson*, p. 104.

<sup>20</sup> See above.

<sup>21</sup> ‘It is a thing plainly repugnant to the word of God and the custom of the primitive Church, to have public prayer in the Church, or to minister the sacraments in a tongue not understood of the people.’ (Articles of Religion, Art. xxiv.)

<sup>22</sup> *Bing*, p. 185.

*c) Why wasn't there a much more detailed bill of rights included in the new constitution? (The early commentaries drew my attention to time constraints of the drafting process. Would you agree to that interpretation?)*

See above.

Later questions:

*Under 2d) you wrote that only a pro forma Bill of Rights should be included in the Constitution. I would like to sharpen the reference to Nigeria: Before leaving London for Accra were you aware and if yes, involved in the debate around the new Nigerian Constitution? My answer: No.*

*Within the deliberations of the Ghanaian constitutional commission, where there any references to Nigeria's deliberations? Or where there any concessions to public opposition such as Danquah and others, who have previously demanded minority rights and a more federal structure of the new state? (This somehow repeats 2e) of my questions. My answer: Not that I know of. Bear in mind that I was not present at any of the many Cabinet discussions on the Constitution, nor were they directly reported to me as such.*

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## References:

None