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# All That You Can't Leave Behind: Making and Administering Laws in the Select Government Localities of Komenda, Cape Coast, and Accra

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# All That You Can't Leave Behind

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*Making and Administering Laws in the Select  
Government Localities of Komenda, Cape Coast, and  
Accra*

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SIT Ghana: Fall 2009

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# Acknowledgments

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# Abstract

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This paper is an attempt to understand how laws are created and maintained on the local level in Komenda, Cape Coast, and Accra. It explains how bylaws are created in those localities through the use of the General Assemblies. The paper then examines the judicial system in those same areas. Komenda uses an Arbitration Committee. Cape Coast and Accra both have a Circuit Court and a High Court. After detailing how the legislative and court system function, the paper compares and contrasts the different ways that the legislative and judicial branches are executed.

# Introduction

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As a student in the United States, I have been taught about the United States government for as long as I can remember. The President is in charge of the Executive Branch, Congress and the House of Representatives are in charge of the Legislative Branch, and the Supreme Court heads the Judicial Branch. I have learned about how laws are passed and how laws are vetoed. I know why people go to court and how the judicial system works in its entirety. I learned how many people there are in the in both houses of Congress and the specific reasons for those numbers. I especially remember learning about checks and balances that the founding fathers put into the Constitution so that no branch of the government could seize control of the others.

As a Political Science major and Legal Studies minor, the classes that I primarily take involve a more in-depth study of the American legal system. I know that American Law is heavily influenced by English Common Law, which uses precedents to decide court cases as opposed to the Justinian system, which comes from Justinian's Code. Justinian's Code was a list of all the laws in Justinian's domain so when the court was convened, judges just looked up the law in the code and pronounced their judgment. English Common Law is a little more interactive because it involves knowing the law, researching how the law was applied in a similar set of circumstances, and finally the judge (or the jury) weighs the evidence and the arguments and decides on a verdict. I find this process to be incredibly interesting because of how involved it is and how lawyers and judges not only have to know laws but they also have to know previous cases and be able to demonstrate the similarities or differences between the cases, depending on what the lawyer is attempting to prove.

The amount of time I spent studying the American legal system made me highly interested in studying other legal systems that have similar backgrounds but have had time to change from the shared history. The United States and Ghana were both colonized primarily by the British. The United States declared its independence in 1775 and Ghana became independent in 1957. Since the US still retains its use of English Common Law, I thought that perhaps Ghana would still utilize some British legal customs as well and before I got to Ghana I thought I wanted to see those influences. After I first got to Ghana, I saw the British influence in religion, education, writing, speech, and myriads of other places. The British presence fifty years after independence made me more interested to see how the courts worked.

This research project is an attempt to discover how the legislative and judicial branches of Ghanaian government function at the local level. The localities that I

chose for my project are Komenda, Cape Coast, and Accra. Komenda has an internal Arbitration Committee but, for legislative bylaws relies on its membership in the KEEA (Komenda, Edina, Eguafo, Abrem) Municipal Assembly. As a small fishing community I thought that this would be one end of the legislative spectrum. I also thought that it would have a small court system which would contrast nicely with what I thought would be a large court system in Accra. Cape Coast has a Circuit Court and a High Court which handle all the court cases within the Metropolis. It also has its own General Assembly to create bylaws that are specific to the area. Cape Coast is interesting because it is the smallest metropolis in Ghana. I originally thought it would provide a mid-point between Accra and Komenda; and for many reasons it does but it is still classified as a metropolis. Accra is also a metropolis and its assembly is called the AMA (Accra Metropolitan Assembly). Accra, as the capital of Ghana houses multiple courts including a High Court and a Circuit Court, just like Cape Coast. Accra has the largest population of all the cities in Ghana which leads to some interesting comparisons between it and Cape Coast. It also relies on a General Assembly to create bylaws that are important to the metropolis.

# Background

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The central government of Ghana has existed in its current state since 1992. This constitution was passed with an extremely high ratification rate. The branches of government that it creates are the Legislature whose duties are performed by Parliament, the Judiciary: those powers are carried out by the judicial service within Ghana but the highest court in Ghana is the Supreme Court, and the President carries out the duties of the Executive.

## *The Legislature*

According to the Constitution, the role of Parliament is to create laws that are necessary for the country to function. Parliament consists of “no less than 140 members” who are elected every four years. After four years, that Parliament is “dissolved” and a new election is held and then the new Parliament is called in<sup>1</sup>. The same Members of Parliament may serve again if they win the election within their district. In order to qualify to be a Member of Parliament a Ghanaian citizen must be a registered voter and at least 21 years old<sup>2</sup>. There are also many factors that disqualify a person from becoming a member of Parliament including: if the person “is a member of the Police Service, the Prisons Service, the Armed Forces, the Judicial Service, the Legal Service, the Civil Service, the Audit Service, the Parliamentary Service, the Statistical Service, the Fire Service, the Customs, Excise and Preventive Service, the Immigration Service, or the Internal Revenue Service.” Or, if the person is a chief<sup>3</sup>. This first list of factors that disqualify a candidate is a method of avoiding a situation where a conflict of interest might develop. All of the offices listed above are areas that are heavily influenced by the decisions of Parliament and it would be unfair to assume that the person in question could remain objective not only for their sake but for the sake of their colleagues as well. The question of whether or not a candidate is a chief is important because it is a reflection of Ghanaian culture on a document that is heavily influenced by Western Europe and the United States. In some districts, the chiefs are allowed to create their own bylaws without the consent of the assembly<sup>4</sup> which means that they can operate outside the established procedures; this can also lead to a conflict of interest (ex: a chief voting against a law that would render a law he had made illegal).

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<sup>1</sup> Constitution of Ghana. Chapter Ten: The Legislature. Articles 92 and 113

<sup>2</sup> Ibid. Article 94

<sup>3</sup> Ibid. Article 94

<sup>4</sup> Interview with Hon. Veronica Nelson, Municipal Chief Executive of the KEEA District. Notes in possession of author. Informed consent form in possession of author.

Once Parliament has been convened, a Speaker of Parliament is elected from the members. Parliament is constitutionally mandated to meet at least once a year and the time between sessions must not be greater than 12 months<sup>5</sup>. The Speaker's job is to act as the spokesperson of Parliament and to preside in Parliament; it is constitutionally impossible to do any business in Parliament if there is no Speaker (the sole exception to the rule is the election of a new Speaker)<sup>6</sup>. The Speaker assumes the job responsibilities of the President if the President and Vice-President are incapacitated. When someone is elected to be the Speaker of Parliament, he or she must vacate their seat in Parliament and an election is held in that district for a new Member of Parliament. The Speaker does not vote except in the case where there is a tie vote, in which case the Speaker acts as the tie-breaker. There are also two Deputy Speakers of Parliament who must be from the different political parties and elected by the sitting Members of Parliament. The Deputy Speakers must be from different political parties because when the Speaker is elected he automatically vacates his seat in Parliament. The Deputy Speakers still hold their seats in Parliament and to have both Deputy Speakers come from the same political party would shift the balance of power in an unfair manner. The election of the Deputy Speakers must occur at the first setting of Parliament after the seat has been vacated. This is so important because in the event that the Speaker is absent, one of the Deputy Speakers assumes the Speaker's responsibilities<sup>7</sup>.

In order for Parliament to function, there needs to be a quorum which is the minimum amount of Members that can be in attendance and Parliament can still function. In the case of the Ghanaian Parliament, 1/3 of the total members must be in attendance for a quorum to exist. In order to vote on an issue, however, 1/2 of the members must be present<sup>8</sup>.

Parliament does legislative work through the creation of bills which are then signed into law by the President. Whenever a bill is suggested it must be accompanied by a memo outlining which law it is to replace, why the current law is inadequate, and how the new law would remedy those inadequacies. After that is presented to Parliament it is sent to the appropriate committee. Each Member of Parliament is required to serve on at least one committee<sup>9</sup> and those committees should try and reflect the spectrum of opinions present in Parliament. After the committee has time to examine the bill, it is again presented to Parliament and then Parliament deliberates on the bill. If the bill passes through Parliament, it is sent to the President who can either sign it, or veto it. If the President chooses to veto the bill, Parliament can override the veto with a 2/3 vote.

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<sup>5</sup> Constitution of Ghana. Chapter Ten: The Legislature. Article 112

<sup>6</sup> Constitution of Ghana. Chapter Ten: The Legislature. Article 95

<sup>7</sup> Ibid. Article 96

<sup>8</sup> Ibid. Articles 102 and 104

<sup>9</sup> Ibid. Article 103

The legislative branch is one of the three main branches of government that forms an intrinsic part of western governments such as the United States and Great Britain. The Ghanaian Parliament reflects these values and also reflects the culture of Ghana. This shows that Ghana did not simply duplicate the processes of western governments but instead the localities of Ghana chose to create a legislative branch that closely mirrored Britain.

## *The Judiciary*

The role of the Judiciary is to interpret the Constitution and to decide the constitutionality of legislative actions or actions of the citizens of Ghana. The most important aspect of the Ghanaian judicial branch is that it is “independent and subject only to the constitution.”<sup>10</sup> This means that no other branch of government can veto a decision of the judicial branch. This is an attempt to avoid corruption and it also creates a branch of government that is only accountable to the constitution and not to the people as well. The Supreme Court is the highest court in Ghana and has its court house in Accra and the rest of the judiciary consists of the Court of Appeal, the High Court, the Regional Tribunals, and any other lower court that Parliament establishes<sup>11</sup>.

The Supreme Court of Ghana is the highest court in the land and “shall be the final court of appeal and shall have such appellate and other jurisdiction as may be conferred on it by this Constitution or by any other law.”<sup>12</sup> It is comprised of the Chief Justice and no less than nine other Justices. In order for the court to function, at least five Justices have to be present. If the case arises that the Chief Justice is absent, the most senior Justice assumes the responsibilities of the Chief. The process to become a Justice on the Supreme Court is similar to the system used by the United States. In order to qualify as a candidate to become a Justice a person must have been a lawyer for at least 15 years and must be of “high moral character.”<sup>13</sup> The Supreme Court Justices are appointed by the President who must first consult with the Judicial Council, the Council of State; and the President must have the approval of Parliament. The Chief Justice is also appointed by the President but in this case, the President only has to consult with the Council of State and have the approval of Parliament.

The Supreme Court primarily handles cases of appeal. The original case can go to the Court of Appeal and then be sent to the Supreme Court if the defendant appeals the decision of the Court of Appeal. Or, if the case had been started at a low court (such as a Circuit Court) and involves a “substantial question of law or is of

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<sup>10</sup>Constitution of Ghana: Chapter Eleven: The Judiciary. Article 125

<sup>11</sup> Ibid. Article 126

<sup>12</sup> Ibid. Article 129

<sup>13</sup> Ibid. Article 128

significant public interest”<sup>14</sup> the Court of Appeal may grant leave for the case to go straight to the Supreme Court. The Supreme Court may also hear any case that files an application to appeal to the Court. This does not mean that all cases that appeal to the Supreme Court are heard by it because that system is impractical; the Court usually chooses to hear cases that are of public interest or involve an important question of law. One unique aspect of the Supreme Court is that it is not bound by the decisions of lower courts or even by its own previous decisions. It may choose to not follow precedent whenever it feels that it is the right action. This ability to rewrite its previous decisions shows the tremendous faith that the Constitution places in the judgment of those that constitute the Supreme Court. The Supreme Court of Ghana is an extremely important entity because its job is to determine the constitutionality of: laws passed, decisions made by other courts; and it also is the interpreter of the Constitution.

The Supreme Court works in close conjunction with the Court of Appeal since the Court of Appeal is the court before a case goes to the Supreme Court, and they both deal solely with appeal cases; meaning that a case is first heard in a lower court and then is appealed to a higher level. A major difference, however, between the Court of Appeal and the Supreme Court is that the Court of Appeal must abide by the precedent that it sets in previous cases. The Court of Appeal consists of: “the Chief Justice, no less than ten Justices of the Court of Appeal”, and any other Justices of the Superior Judicature that the Chief Justice requests. To become a member of the Court of Appeal, the applicant must have been a lawyer for 12 years and must be of “high moral character and proven integrity.”<sup>15</sup> In order for the court to function, it is made up of three of the ten appointed Justices and the Chief Justice. Justices are appointed to the Court of Appeal by the President, who is advised by the Judicial Council.

Cases that have gone to the High Court or to the Regional Tribunal and that are appealed are under the jurisdiction of the Court of Appeal. This also leads to an interesting clause in the Constitution that says that the Court of Appeal has the powers of whichever court the appeal came from. This is a necessary clause because the Court of Appeal needs to have the powers to examine and then render a judgment about a case from a court that has different powers than the Court of Appeal. By giving the Court of Appeal the same powers as that court it avoids a situation in which two different Courts are examining one case using two different methods. Instead, it manages to preserve the universality of the court system.

The High Court is another court system that is created under the Ghanaian constitution. It is comprised of the Chief Justice, at least twenty justices of the High Court, and any other justice of the Superior Court that the Chief Justice may request<sup>16</sup>.

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<sup>14</sup> Ibid. Article 131

<sup>15</sup> Constitution of Ghana. Chapter Eleven: The Judiciary. Article 136

<sup>16</sup> Ibid. Article 139

To be a Justice in the High Court, a person must have been a lawyer for at least ten years and must be of “high moral character and proven integrity.”<sup>17</sup> The Judge who sits in a particular court has a wide discretion in terms of how the court is run. When the court is in session, it may be comprised of a single Justice of the Court, a single Justice and a jury, a single Justice with assessors, or, in cases of high treason, three Justices of the Court<sup>18</sup>. This discretion is primarily dictated by the type of case in front of the High Court. For example, cases that include a jury are usually cases of “armed robbery, murder, and manslaughter.”<sup>19</sup> In Ghana, juries are formed primarily from organizations. The Court sends letters to the organizations and then the organizations send the jury duty letters to specific people. Those people have to be available to serve on a jury from the start date listed in the letter to the end date listed in the letter. When a case that requires a jury arises, the court clerk pulls seven names from a box and one of those seven people is chosen to be the foreperson. An important thing to recognize about being on a jury is that once a person’s name is pulled, it does not disqualify them from serving on another case<sup>20</sup>. Cases that make use of only a single justice are, but not limited to, land disputes or bail hearings<sup>21</sup>.

The High Court has original and appellate jurisdiction in all matters and particularly civil and criminal cases<sup>22</sup>. It also has jurisdiction in cases involving fundamental Human Rights and Freedoms that are guaranteed by the Constitution. One limitation to the High Court is that when it tries a case of high treason or treason is that it cannot convict the defendant of anything other than treason. As a supervisory court, the High Court has the power to issue orders to lower courts or lower adjudicating authority in order to secure that authority.

There are also Regional Tribunals established in each region of Ghana. Regional Tribunals consist of the Chief Justice, a Chairman, and members designated by the Chief Justice<sup>23</sup>. When the tribunal is convened, the panel must consist of the Chairman, and at least two other members. The Chief Justice consults with the Regional Coordinating Council and then appoints people to the Regional Tribunal. The jurisdiction of the Regional Tribunal is dictated by Parliament and normally tries cases against the State and public interest. The Regional Tribunal also can act as an appellate court. When this happens, the case comes from a lower tribunal and the Regional Tribunal has “all the powers, authority and jurisdiction vested in the tribunal from which the appeal is

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<sup>17</sup> Ibid. Article 139

<sup>18</sup> Ibid. Article 139

<sup>19</sup> Interview with Anthony McCarthy. Notes in possession of author. Informed consent form in possession of author

<sup>20</sup> Ibid

<sup>21</sup> Observation of High Court in both Accra and Cape Coast. Notes in possession of author

<sup>22</sup> Constitution of Ghana. Chapter Eleven: The Judiciary. Article 140

<sup>23</sup> Ibid. Article 142

brought.”<sup>24</sup> Since this clause is also present in the Court of Appeal, it shows how important it is for a court that handles appeals to be able to have the same powers as the court from which the appeal originated.

The Judicial branch of government is governed by the Judicial Council. The Judicial Council exists to propose judicial reforms, to be a forum for discussion to help the Chief Justice discharge his or her duties in the most efficient way possible, and to do anything else that the Constitution requires of the judicial branch<sup>25</sup>. It consists of the “Chief Justice, Attorney General, a Justice of the Supreme Court, a Justice of the Court of Appeal, a Justice of the High Court, two representatives of the Ghana Bar Association (one of them must have been a lawyer for at least twelve years), a representative of the Chairmen of the Regional Tribunal, a representative of the lower courts, the Judge Advocate-General of the Ghana Armed Forces, the Head of the Legal Directorate of the Police Service, the Editor of the Ghana Law Reports, a representative of the Judicial Service Staff Association, a chief, and four other people who are not lawyers.”<sup>26</sup>The Judicial Council is made up of many people from varied backgrounds and that represent all the different aspects of the Judiciary, including those who are not agents of the Judiciary but rather those who are primarily affected by the law. This is important to recognize because it shows the great lengths that the writers of the Constitution went to in order to make sure that the greatest number of people had a voice in the creation of a more effective Judiciary

## *The Executive*

The President of the Republic of Ghana is currently John Atta-Mills. He is the Head of State and Head of Government and Commander-in Chief of the Armed Forces of Ghana<sup>27</sup>. In order to become the President of Ghana, one must be a natural-born citizen of Ghana, at least 40 years old, and must fulfill all the qualifications to be a Member of Parliament. The citizen who aspires to be President needs to be nominated for election by a document which “is signed by him, is signed not by less than two persons who are registered voters in the area of authority of each district assembly, designates a person to serve as Vice-President, and is delivered to the Electoral Commission on or before nomination day.”<sup>28</sup> The Electoral Commission is comprised of “a Chairman, two deputy Chairmen, and four other members.”<sup>29</sup> In order to become a member of the Electoral Commission one must be qualified to become a Member of Parliament. The job of the Electoral Commission is to compile the list of registered

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<sup>24</sup> Ibid. Article 143

<sup>25</sup> Ibid. Article 154

<sup>26</sup> Ibid. Article 153

<sup>27</sup> Constitution of Ghana. Chapter Eight: The Executive. Article 57

<sup>28</sup> Constitution of Ghana. Chapter Eight: The Executive. Article 63

<sup>29</sup> Constitution of Ghana. Chapter Seven: Representation of the People. Article 43

voters<sup>30</sup>, determine the electoral boundaries for local and national elections, to conduct all public elections, and to educate people on the electoral process.

When the election happens, a candidate needs more than 50% of the total number of valid votes in order to win. If the circumstances arise that there are more than two candidates and no candidate achieves the required percentage of votes, there is another election 21 days later. The candidates in the second election are the candidates who achieved the two highest numbers in the first election<sup>31</sup>.

The term of the Ghanaian President is four years. A President cannot hold the office for more than two terms. During the term, the President should not hold any other office of profit or "hold the office of chancellor or head of any university in Ghana." This is so that the President can focus on his primary job and so that he cannot be given incentives by any company for pushing forward certain proposals. The President is assisted by the Cabinet which aids the President in the "determination of general policy of the Government;"<sup>32</sup> it is comprised of the President, Vice-President, and between ten and nineteen Ministers of State. The National Security Council also assists the President and is made up of the President, Vice-President, Ministers dealing in defense and foreign affairs, Chief of Defense, and various other departments. The function of the National Security Council is to "safeguard the internal and external security of Ghana, ensuring the collection of information relating to the security of Ghana" and the integration of that information into policies.<sup>33</sup>

The Council of State exists to advise the President in his duty. It must meet at least four times a year. Those appointed to the Council consist of "one person who has previously held the office of Chief Justice, one person who has previous held the office of Chief of Defense Staff, one person who has previously held the office of Inspector General, the President of the National House of Chiefs, one representative from each region of Ghana, and eleven other members appointed by the President."<sup>34</sup> The Council of State can consider amendments to bills passed by Parliament if the President so requests. If the Council of State chooses not to add an amendment, it has to send the bill back to the President with a statement saying as much. If the Council chooses to amend the bill, it must attach a memorandum stating the proposed amendment to the President. This Council is special because it operates outside of the Cabinet which has a similar purpose. It is also important to notice that the majority of the members previously held the office which means that these people successfully discharged their duties and now have the experience and wisdom to help the President. This is a group of advisors

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<sup>30</sup> In order to be a registered voter in Ghana, one must be a citizen of Ghana and be 18 years old or above.

<sup>31</sup> Constitution of Ghana. Chapter Eight: The Executive. Article 63

<sup>32</sup> Ibid. Article 76

<sup>33</sup> Ibid. Article 84

<sup>34</sup> Constitution of Ghana. Chapter Nine: The Council of State. Article 89

that the President is in charge of appointing and the Council can offer new opinions on issues and either relieve some of the pressure from the President or help him see the same situation from another point of view; both of which are incredibly helpful in a high pressure job.

The role of the President encompasses the domestic and international policies of Ghana. The President is in charge of appointing people to represent Ghana abroad. The President also appoints the “Commissioner for Human Rights and Administrative Justice, the Auditor-General, the governing bodies of public corporations, and the members of the Electoral Commission” among other things.<sup>35</sup> Domestically, the President has the power to grant pardons or to substitute a less severe form of punishment. Internationally, the President may execute treaties in the name of Ghana; but those acts are subject to ratification by an Act of Parliament.

The Attorney-General (AG) is also part of the Executive Branch. The AG is a Minister of State and the principal legal advisor to the Government. The AG is also responsible for prosecutions of criminal and civil offenses on behalf of the Republic of Ghana. The Attorney-General is an important member of many committees as well because of the legal nature of the position and its incorporation into the Executive Branch. The last clause in the Constitution that deals with the AG states that he or she “shall have audience in all courts in Ghana.” This is an important clause because it shows that the AG position encompasses the lower courts and the higher courts which is different from the majority of the courts in the judicial branch which can only deal on a single level of the law.

## *Local Government*

The Constitution of Ghana provides for a system of decentralized local government. The point of the local government being decentralized is so that the localities can run themselves without unnecessary interference from the central government. The Constitution says that the District Assembly is the highest political authority in the district.<sup>36</sup> The District Assembly consists of one person from each local government electoral area within the district, the Members of Parliament from the localities that are in the area, the District Chief Executive, and other members appointed by the President in consultation with the traditional authorities and other interest groups in the district. While the phrase “District Assembly” is used in the constitution, District Assemblies are either Metropolitan (with a population over 250,000), Municipal (with a population over 95,000), or District (with a population over 75,000).<sup>37</sup>

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<sup>35</sup> Constitution of Ghana. Chapter Eight: The Executive. Article 70

<sup>36</sup> Constitution of Ghana. Chapter Twenty: Decentralization and Local Government. Article 241

<sup>37</sup> “District Assemblies” Found on Ghanahomepage. Bibliographic information included in Bibliography

# Methodology

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For this research project, I relied heavily on primary source materials. When I first narrowed down my topic I knew that I wanted to talk to the people who are in charge of creating bylaws, and at the same time the people who were in charge of the localities that I wanted to study. I found that interviewing the Chief Executives of those areas would fulfill both of those goals. Part of my research project also demanded that I learn how the court system in Ghana worked. To fulfill this goal, I relied heavily on observations that I made while I attended court sessions. I also used some secondary source materials when I was learning about the Ghanaian Central Government. It was important to understand the central government as well because the central government is heavily influenced by the local governments. Also, even though some courtrooms exist in certain cities or towns, they are part of the central government set forth by the Ghanaian Constitution and the best place to study their creation is the constitution.

## Interviews

Uncle Ebo told me where to find the Municipal Chief Executive of the KEEA which is based in Elmina. I headed towards Elmina and secured an interview with the Honorable Reverend Veronica Nelson, the Municipal Chief Executive. I needed the cooperation of the Coordinating Director in order to schedule the interview. The cooperation wasn't difficult to get although it did require waiting in line for a long time. The questions that were asked are listed below:

- Name?
- Title? How long have you been the MCE?
- Previous job(s)?
- Special training for the MCE?
- What does the Municipal Chief Executive position entail?
- How do you create bylaws?
- How do you get ideas for bylaws?
- How are bylaws passed (and thus rendered active)?
- Which other positions in government do you work closely with?
- Which laws do you think are most important to the communities you represent? Why?
- Is there a lot of bureaucracy involved in local government?
- Do you often have citizen input? How?
- How do you get news of the newly created bylaws out to the people?

How do you become the DCE?<sup>38</sup>

I also interviewed Mr. Nicholas Appiah of the Komenda Arbitration Committee (KAC). Once again, Uncle Ebo was instrumental in scheduling the interview. I chose Mr. Appiah because he is the head of the KAC and I would not need a translator for the interview. I wanted an interview because I knew that the KAC does not function as a traditional court and I wanted some background information before I observed a session. The questions that I posed to Mr. Appiah are listed below:

Name?  
Title?  
Previous job(s)?  
How do you become a judiciary?  
Special training?  
Do you work closely with any other people? What are their titles?  
How does the judicial system work in Komenda?  
How much power do you have? Are you the judge and jury?  
What kinds of laws do people most frequently violate?  
Is it possible to sit in on a judiciary session? Tomorrow?<sup>39</sup>

I also interviewed the Honorable Anthony Aikins, the Metropolitan Chief Executive of Cape Coast. I was able to arrange the interview directly with the Metropolitan Chief Executive. I received an incredible amount of cooperation from the office of the Chief Executive. They gave me an interview time and when the MCE was held up, the Coordinating Director answered all of the procedural questions until the MCE arrived. The questions that I asked Peter Dery, the Coordinating Director, and the Metropolitan Chief Executive are listed below:

Name?  
Title?  
Previous job(s)?  
How long have you been the MCE?  
Special Training for MCE?  
What does the Metropolitan Chief Executive position entail?  
How do you create bylaws?  
How do you get ideas for bylaws?  
How are bylaws passed (and thus rendered active)?  
What other positions in government do you work closely with?  
Which communities do you represent? Is it only Cape Coast?  
Which laws or types of laws do you think are most important? Why?

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<sup>38</sup> Interview Questions for KEEA MCE. Created by author.

<sup>39</sup> Interview Questions for Komenda Arbitration Committee member. Created by author.

How do you become MCE?  
Is there a lot of bureaucracy involved with your position?  
Do you often have citizen input? How?  
How do you get news of newly created laws out to the people?  
How does the judicial system work in Cape Coast?  
Is it possible to go sit in on a session? When? Where?  
Is there jury duty in Cape Coast? How are you called for it? Rules associated with it?<sup>40</sup>

With regards to the court system, I knew that sometimes juries were involved. When I was at the High Court, I did not see any jury cases so I had an interview with Anthony McCarthy who has served on juries. He was very obliging and I received a large amount of cooperation from him. The one question I asked Mr. McCarthy was: How do juries in Ghana work?

In Accra, I found the Accra Metropolitan Assembly (AMA) in an attempt to interview the Mayor. When I found the building and the correct office to address my needs, I found the staff to be incredibly cooperative. Even though everyone in the building was extremely busy they still helped me to meet with someone, the Deputy Director of the Administration who would answer my questions about the Mayor's position. The questions I asked Ben Armah are listed below:

Name?  
Title?  
Previous job(s)?  
How do you become the Mayor of Accra?  
What are your job responsibilities?  
Which people in government do you work most closely with?  
How are bylaws passed? (How are they created) (the ENTIRE process)  
Special training to become the mayor?  
How do you get ideas for bylaws? Is there citizen input?  
Which laws are most important to your community (in your opinion)?  
Is there a lot of bureaucracy involved in government?<sup>41</sup>

## Observations

My first group of observations came when I observed the KAC. I went to a session on Tuesday morning because that is when the sessions are scheduled. Raymond Tsiquaye was instrumental in helping me understand what was happening during the session because it was conducted entirely in Fante. The observations I made were

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<sup>40</sup> Interview Questions for Metropolitan Chief Executive of Cape Coast. Created by author.

<sup>41</sup> Questions for Accra Metropolitan Chief Executive. Created by author.

primarily about the procedures of the committee. I made observations about the types of cases that were brought to the KAC and how the Committee dealt with those cases.

When I went to the Cape Coast Circuit Court, I was surprised that I could take notes during the proceedings. So, I observed the layout of the court, the procedures of the court, and some of the cases that came before the court; when I left the courtroom I wrote down everything that I observed. The same issue occurred at the Cape Coast High Court. Since I could not take notes, I had to rely on my memory.

In Accra, my first view of the court complex was an observation that I relied heavily on because it gave me some first impressions of the court system which were later reinforced by my presence in the court. Just like Cape Coast, I was unable to take notes in the courtroom. I used the same process for taking notes in the Circuit Court and High Court of Accra as I did in Cape Coast and I recorded all my observations after I had finished my time in court. Overall the process worked well because many cases do not proceed on the day they are scheduled and are adjourned so I was able to remember the cases that did move forward without much difficulty.

## Secondary Sources

The research that I did was mainly founded on interviews and observations. I did use the Ghanaian Constitution to help me understand the organization and function of the central government. This was very helpful and I read the chapters that dealt with the Legislative branch, the Executive branch, the judicial branch, and the Council of State. In addition, if I did not understand something I had to look it up. I wanted to learn more about the assemblies that I learned about via the Chief Executives and I found a very helpful website dealing with that information.

## Data Analysis

The data that I collected was primarily made up of answers to interview questions and the results of the observations that I made. Therefore, the analysis of that data is structured in a form that demonstrates the similarities and differences between a municipal area, a small metropolis, and a large metropolis.

## Limitations of the Study

There are many limitations to this study, some of them were created on purpose and others could not be helped. One of the limitations of the study is that the three localities I chose are all located in southern Ghana. The localities that exist in the south are extremely different from the towns in the north in terms of administration, technological access, and the way of life is different. By choosing to conduct my

research only in the south, I neglected the north and any differences in the creation of laws and the administration of justice that exist. This was done on purpose because I did not want to introduce a myriad of other factors and create a situation that was too complicated because of the different processes that exist. Also, I wanted the localities that I studied to have similar characteristics with the only main difference being the size of the city or town. Therefore, it made sense that geographical location was one of the similarities.

Another limitation was time. Four weeks may seem like a long time but in reality it is extremely quick. This limited the amount of time I could spend observing the judicial system and holding interviews. If there was more time I would have liked to be able to go to different courtrooms and see how different justices use the same laws. It is difficult to create an adequate idea of a process when only one group of observations is used. The time factor made it difficult to view cases that used a jury. By the time I learned when the High Court case was going to use a jury in Cape Coast, I was already in Accra.

The availability of interviewees was also somewhat of a limitation. The people in government that I chose to interview were all very busy because of the demanding nature of their jobs. For example, the High Court and Circuit Court are in session everyday and it is impractical to try and set up an interview with a Justice.

# Komenda

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Komenda is a small fishing community located a ½ hour away from Cape Coast. The primary occupations of the inhabitants are fishermen and farmers. As of the 2000 census, the population of Komenda was 12,000 people<sup>42</sup>. Since there are so few people in Komenda and it does not meet the population requirement, it belongs to the Komenda, Edina, Eguafo, Abrem (KEEA) district<sup>43</sup>. Legislatively, the assembly is based in Elmina.

The Municipal Chief Executive of the KEEA district is the Honorable Reverend Veronica Essuman Nelson. She has held the position for the past seven months. Before being appointed by the President, she was involved with the Ghana Education Service, and was the Deputy Regional Director of Education. The job of the Municipal Chief Executive is to be representative of the President in the area and controls the municipality and decentralized agencies and communities under it.<sup>44</sup> After the appointment to the position is made and is then confirmed by a 2/3 vote of the Assembly, there is a one week orientation and then throughout the tenure there are workshops which the Chief Executive must attend. But other than that, there is no other training for the position. The Honorable Reverend Nelson works closely with the Regional Minister who is her direct boss, and the Central Regional Development Committee. In addition, the position requires interacting with all aspects of the government so the Municipal Chief Executive must be close with all parts of government. The position of the Municipal Chief Executive is very much related to the assembly because even though the MunCE is appointed by the President he or she is still accountable to the people. Also, there is lots of bureaucracy involved in the government because the MunCE has to contact different parts of government to get their work done. Also, the Municipal Chief Executive works very closely with the house leader of the assembly who is the representative of the people. This relationship is very important because is a check on the Executive's power. If the MunCE does something without the approval of the leader of the house, and the public doesn't like it; then he or she is accountable to the fact that the voice of the people said no. One way that the Municipal Chief Executive connects with the public through "People's Concern" which is where the Municipal Chief Executive actually goes to the different towns in order to hear their concerns or thoughts.

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<sup>42</sup> Komenda Lecture by Uncle Ebo Sam on 9/21/09. Notes in possession of author.

<sup>43</sup> Sign outside of the KEEA Assembly

<sup>44</sup> Interview with Hon Rev Nelson on 11/10/09. Notes in possession of author.

Bylaws for the KEEA district are created at the assembly sitting. The General Assembly is made up of government appointed member and elected members; the total number of members is 52. The Assembly meetings are open to the public but the public cannot vote in the proceedings. There is a leader of the house who is an elected member of the General Assembly. Anyone in the assembly can propose laws. And then the assembly works together to refine the law. Once the law is in proper legal terms it is voted upon by the assembly and a simple majority puts the law into effect<sup>45</sup>. The information about the laws gets out via information vans which make sure the public knows about the laws. The National Center for Civic Education educates and sensitizes people to what the law is actually about. Bylaws in the district are made to benefit the Assembly, so that they can do their job more effectively and efficiently, and the public. Right now, the most important bylaws in the KEEA district deal with sanitation and discipline<sup>46</sup>. Sanitation laws are important because trash cleanup is a major problem in Ghana and there is litter on the streets, in the gutters, in schoolyards, etc. Litter poisons the environment and the people so it definitely benefits the people to create laws that try and increase sanitation. An example of a bylaw that was created is that the fish market had a lot of business and a lot of people moved there from the central market. However, when people moved to the fish market it clogged roads and created lots of traffic. The assembly passed a bylaw moving the sellers from the fish market back to the central market and the traffic was relieved.

The KEEA assembly has a very accommodating relationship with the traditional chiefs of the municipality. There are four traditional chiefs in the municipality representing the Elmina Traditional Council, the Komenda Traditional Council, the Eguafu Traditional Council, and the Abrem Traditional Council. The traditional chiefs can make laws within their community and do not need the approval of the assembly to do so. This is primarily because the laws they make do not affect the whole municipality. However, the traditional chiefs must inform the Assembly of the laws just so there is a record. There are hundreds of "sub-chiefs" operating under the traditional chiefs. The sub-chiefs need the approval of the assembly or the traditional chiefs in order to create a law. The freedom that the procedures of the Assembly give to the traditional chiefs shows the importance of traditional chiefs within Ghanaian culture. It demonstrates that this part of the law was not copied from the West but instead shows the incorporation of items of importance to Ghanaians into a country that is trying to retain its traditional values and still become more modern.

The Komenda Arbitration Committee is made up of five members appointed by the Chief. The reason that there are five members is because there are five electoral areas in Komenda: Amotoe, Sasem, Anomako, Zongo/Lowcost Area, and Bakano. The committee meets on Tuesdays unless there is a large caseload, in which case they

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<sup>45</sup> Interview with Hon Rev Nelson

<sup>46</sup> Interview with Hon Rev Nelson

meet on Fridays as well. Mr. Nicholas Appiah is an elder of the Chief and a Member of the Arbitration Committee of the Chief's Palace. There is no special training needed to be a member of the Arbitration Committee<sup>47</sup>. Since there is no special training this means that the decisions of the Komenda Arbitration Committee are more morality based than legal based. This means that the Arbitration Committee does not hear cases that are true legal disputes and those cases would wait until the Magistrate comes from Cape Coast.<sup>48</sup>

The procedure of the Arbitration Committee is similar to a court; the biggest difference is that the proceedings are conducted entirely in Fante. In order for a dispute to be heard by the Committee, people bring complaints against each other to the Committee. Before the proceedings commence, the members of the Committee meet with those attending to learn what the dispute concerns and decide an order for the complaints to be heard<sup>49</sup>. When the appropriate time comes, the accused and the accuser are both summoned to the Chief's palace. The charges against the accused are read and the accused has a chance to plead guilty or not guilty. The biggest punishment that the Arbitration Committee can deliver is a monetary fine. If the accused pleads guilty, he or she is usually made to pay a fine or another act of retribution. If the accused pleads not guilty, the process continues. With a not-guilty plea, both sides give evidence to support their side of the case. Afterwards the Committee decides whether the person is guilty or not guilty. This is done by deliberation and then a simple vote where majority rules.<sup>50</sup>

The types of cases that the Komenda Arbitration Committee hears are: land disputes, cases of insulting behavior, cases involving defamation of character, curses, and cases involving a breach of the peace. On Tuesday, November 9, 2009 there were three main cases. The first case had been before the KAC for two years. It involves two men and one of the men owes the other 50 Ghana Cedis. The accused showed up to court but the accuser did not. When the accused tried to make his case, the Committee would not let him talk because the accuser was not there, and the accused never answers the summons of the KAC. The verdict of the case was that the two parties would both be summoned on Friday. The accused was also warned that if he ignored any more summons than he would be brought to the magistrate<sup>51</sup>.

The next case involved a marital dispute. A husband and a wife were quarrelling and then the families got involved. The KAC agreed that the families should try and work it out themselves before involving the Komenda Arbitration Committee. As more of the story was presented, the wife is sick and the wife's father had paid the hospital bill.

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<sup>47</sup> Interview with Mr. Nicholas Appiah on 11/9/09. Notes in possession of author.

<sup>48</sup> Ibid

<sup>49</sup> Interview with Mr. Nicholas Appiah. Notes in possession of author

<sup>50</sup> Ibid

<sup>51</sup> Observations at KAC done by author on 11/10/09. Translations by Raymond Henry Tsiquaye.

This meant that the husband owed his father in law the balance of the bill. The husband was planning on divorcing his wife and said that he will bring the money to the divorce hearing. The moral emphasis of the Committee was shown when they said that it was inappropriate to talk about a divorce while the wife is in the hospital. The Committee's decision was that the husband would give the balance of the bill before the divorce date.

The third case involved a woman and her child and an elderly man. The woman and her child had caused offense to the man and the Committee determined that she should pay him 25 Ghana Cedis. The case had been active for six months because the woman had not paid the man. At that hearing, the man said that he would like to forget the whole thing to avoid trouble. He said it was because he felt like forgiving her. The verdict was that since the man was the Chief's uncle, the KAC would have to consult the Chief and if the Chief said it was okay to forget about the incident then they would forget about the incident. This also shows the moral sensitivities of the court because in Ghanaian culture, elders are respected and the Committee was reluctantly to completely forgive the two people just because the man wanted to.

The cases above show that the Komenda Arbitration Committee is not a court of law but rather a committee of morality. In the view of the Committee, there are right actions and there are wrong actions. If someone is guilty of committing a wrong action then they are forced to pay some form of retribution. Once the retribution is made, the matter is over. While this type of court is not western in design the next tier involving the magistrate is western. This also shows how traditional Ghanaian life is integrated into modern times.

Since the central government is created by local government, there have to be some commonalities between the two. The KEEA district assembly fulfills the role of Parliament. Laws are created for the people by elected representatives of the people. Judicially, there are few similarities that the Komenda Arbitration Committee has to the judicial branch of government. In relation to the Supreme Court, both systems employ more than one arbiter; and that creates a situation where the majority of the group decides what the truth is and the corresponding justice. Executively, the Municipal Chief Executive acts very much like the President. This is not surprising since she is the representative of the President at the local level. One difference is that the MCE is in power until she is replaced whereas the President is elected. Both the President and the MCE have to work within the bureaucracy of their positions to achieve their goals and neither can work against their legislative branches without consequences.

# Cape Coast

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Cape Coast has the smallest population of any metropolis in Ghana which is 139,000 people. The Cape Coast Metropolitan Assembly is made up of the General Assembly and the Executive Committee. The General Assembly is the highest political and administrative authority of Cape Coast. It has to meet at least four times a year. The Executive Committee is responsible for the performance of the executive and coordinating functions of the Metropolitan Assembly. It is comprised of 61 Assembly Members and is headed by the Metropolitan Chief Executive. 70% of the Metropolitan Assembly is elected and 30% are appointed<sup>52</sup>. The Metropolitan Chief Executive is currently the Honorable Anthony Egyir Aikins. He has political, executive, and administrative powers. The MCE is responsible for the performance of the executive and administrative functions of the assembly. The MCE is also responsible for the implementation of decisions designed by the assembly<sup>53</sup>. Another job that the Metropolitan Chief Executive fulfills is he ensures government programs and policies are implemented and that the assembly's plans work with those of the government. Finally, the MCE is in charge of community development with the goal of improving living conditions and creating law and order which lead to more community security<sup>54</sup>. After the MCE is appointed by the President and confirmed by a 2/3 vote of the Assembly, there is a two to three week orientation at a local government training institute.

At the CCMA, bylaws are created through the Assembly, much like at the KEEA Assembly. Cape Coast, however, utilizes sub-committees that prepare and discuss the potential laws at the Executive Committee level, and from there it proceeds to the General Assembly. There are five mandatory sub-committees apart from the Executive Committee and they are: "development planning, social services, works, justice and security, and finance and administration."<sup>55</sup> Once the bylaw is agreed upon by the General Assembly by at least a 2/3 majority, it is given to the Regional Coordinating Council. It is then seen by the Minister of Justice, who is the Attorney General, and then is placed into legal terms. It is then passed onto the Minister of Local Government. If it passes all those stages, the bill becomes a new bylaw.<sup>56</sup> The majority of the ideas for new bylaws come from the Assembly but the community has a chance for input. The

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<sup>52</sup> Interview with Peter Dery, Metropolitan Coordinating Director

<sup>53</sup> Poster at CCMA

<sup>54</sup> Interview with Peter Dery

<sup>55</sup> "Know Your Assembly Members" from [Ghanadistricts.gov.gh](http://Ghanadistricts.gov.gh). Bibliographic data in Bibliography

<sup>56</sup> Interview with Peter Dery

Assembly members are also responsible for meeting with their constituents before the Assembly meeting so he or she can get input from the people that they represent. The most important bylaws in the Cape Coast area deal with traffic, sanitation, physical development, security, and education. Recently, the Assembly passed a bylaw that says that no students can be out between the hours of 8PM and 12 AM because that is when students should either be studying or sleeping.

The job of MCE involves a lot of bureaucracy. The MCE has to work very closely with the Presiding Member of the Assembly who serves as a check to the powers of the Chief Executive. The Presiding Member presides over all Assembly meetings and the MCE is a member of the Assembly<sup>57</sup>. The Presiding Member is also the Chairman of the Public Relations and Complaints Committee. These two positions make it so that the MCE is not in charge of the legislative branch of local government and the person who is in charge of the legislative branch is also the committee that deals with complaints that can be directed towards the MCE. The Metropolitan Chief Executive also works closely with the Member of Parliament, the Honorable Regional Minister, the Minister of Local Government, and the Regional Internal Auditor. The MCE also has to uphold the interests of his party.

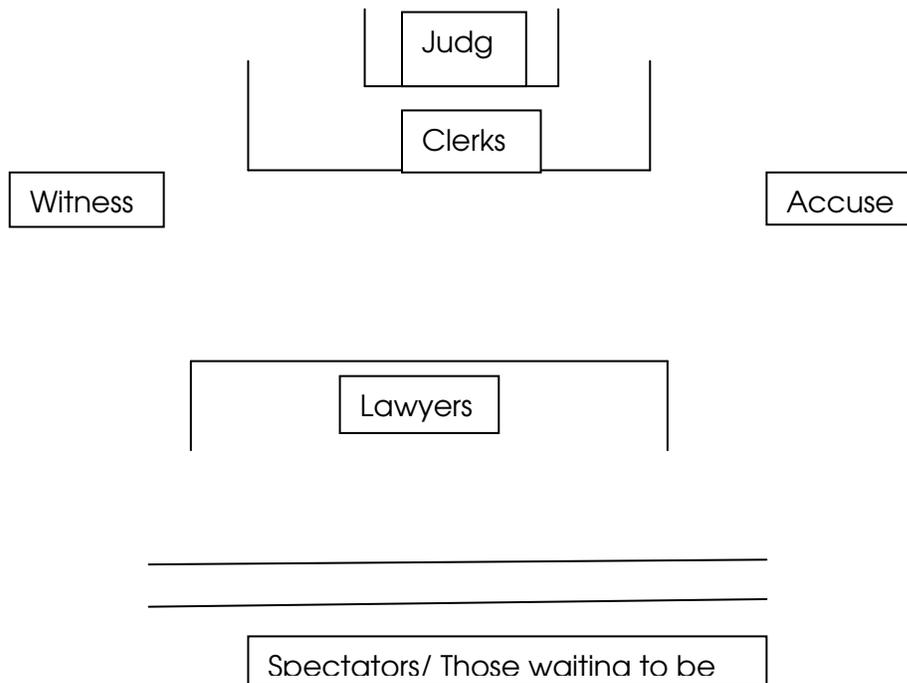
Cape Coast has two courts: the Circuit Court and the High Court. The Circuit Court handles the smaller cases that go to court. The larger cases such as murder and robbery are sent to the High Court. The office of the Circuit Court is at the CCMA office. There are posters hanging on the walls that proclaim, "Justice must not only be done, it must be seen to be done" and "Make corruption history in the judicial service."<sup>58</sup> These two posters, among others, show the strong commitment of the court to justice and to the law. This court was open to the public and the courtroom was full of those coming to give testimony and to give support. There is no jury for any of the cases heard at the

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<sup>57</sup> Interview with Peter Dery

<sup>58</sup> Poster at CCMA

Circuit Court. The courtroom was structured like this<sup>59</sup>:



On Thursday, November 12, 2009 the Circuit Court heard three main cases. The first case involved the investigation of narcotics. In this case, the police received a tip that there were narcotics at a house. When they raided the house they arrested a man and two women. None of the three people arrested was the actual owner of the house in question and one of the women didn't even live there. The case did not go very far because the investigation was still classified as on-going<sup>60</sup>. The judge did comment, however, that two of the defendants were minors and that in the future; the police could not try adults and minors at the same time because that is illegal.

The second case involved a young man who was arrested for "easing" himself on school property. The kid pleaded guilty and was fined as an incentive to not do it again<sup>61</sup>. This case was important because it was the only case that was actually resolved throughout the observational period. The child was caught, pleaded guilty, and was sentenced accordingly. This case showed the potential of the efficiency of the court system in Ghana.

The one case in which people gave testimony was a land dispute case. In this case, a woman accused the Methodist Church of stealing her land. The plaintiff was

<sup>59</sup> Drawing done by author, not to scale.

<sup>60</sup> Observations done by author.

<sup>61</sup> Observations done by author. The names of those in the case were withheld to preserve the confidentiality of the case and the rights of the accused.

put in the witness stand and was questioned by her attorney. The questions that were asked led to the conclusion that she had the title to the land and that the Methodist Church did not<sup>62</sup>.

The Circuit Court at Cape Coast was characterized by an English theme. Everyone addressed the Judge as “my lord” and everyone bowed to the Judge as they entered or left the room. The Judge and lawyers all wore black suits although one of the lawyers wore sandals with his suit. Neither the Judge nor the lawyers wore wigs or robes. Also, the court proceedings were in English but some of the defendants did not speak English fluently. So, the lawyer posed questions to a translator who translated the questions into Fante. The witness would then respond in Fante and the lawyer would translate that back into English for the court to hear. It was clear that the Judge and the Lawyers spoke Fante because when the witness was not answering the question they spoke to her in Fante to tell her the question they wanted her to answer. One thing about the court that differentiated it from Western courts is that everything was written down by hand and the Judge took note of every question that was asked and every answer that followed it. So, there were long pauses between the end of the question and the beginning of the answer while the Judge was writing. Another differentiation between this court and Western courts is the attendance of lawyers and those summoned to appear in court. In many cases, the lawyers were not present because of other legal commitments so the case had to be rescheduled. Also, sometimes the defendants or witnesses were not available to be in court because they had to work, or they were traveling, or could not make it to court. In Ghana, some of these complications cannot be helped because of the sheer amount of clients that some lawyers have; in fact, some lawyers stayed in the court and represented as many as 5 clients in a row<sup>63</sup>. Also, it can take a lot of planning and money to travel and if someone does not have the ability to travel they cannot attend court.

The High Court in Cape Coast was held at a separate building closer to Cape Coast Castle. The observational period for this court was on Wednesday, November 11, 2009. While the High Court can host jury cases, there were no cases involving juries on this day.<sup>64</sup> The High Court is also more formal than the Circuit Court and had a stronger British influence. In the High Court, the lawyers and the Judge all wore black robes and black suits with white dress shirts underneath. They also had in their possession formal wigs like they do in British courts; however, they were not wearing them and the wigs were sitting on the desk. The courtroom is shown below<sup>65</sup>:

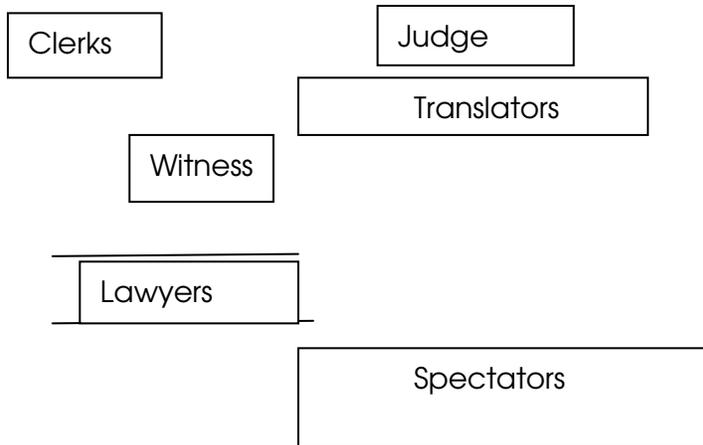
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<sup>62</sup> Observations by author.

<sup>63</sup> Observations by author.

<sup>64</sup> Please reference the Limitations section for why the author was unable to observe a jury case.

<sup>65</sup> Drawing done by author. Not to scale



There was only one case occurring on November 11 and it involved a land dispute. Two parties were arguing about who owned a house. The questions that were asked of the defendant were primarily about work done on the house and who the defendant thought scheduled the work<sup>66</sup>. The point was that if the defendant was the owner then she would have organized the work but she didn't so maybe she was not the owner. Just like in the Circuit Court, the questions were posed in English and then translated into Fante for the defendant to answer in Fante and then that answer was translated back into English for the benefit of the court. Also like the Circuit Court, there were long pauses between when questions were asked and answered so that the Judge could keep accurate notes of the proceedings. Presumably, this is so that when the Judge has to render a decision regarding the case, she can look back at the questions and the answers and then make an accurate judgment.

The Cape Coast government is structured very much like the central government of Ghana. The Assembly fulfills all legislative needs with the majority of the assembly elected by districts; the same way that Members of Parliament are elected. Judicially, there are several levels to the court system in Cape Coast. This is also a component of the courts at the central level. The procedures of the courts at the central and local levels are also the same. From an executive perspective, the Metropolitan Chief Executive acts like the President. He must work cooperatively within the bureaucracy at the local level of government in order to pursue his own goals, and the goals of his political party. Also, it is difficult for the MCE to deviate from the will of the Assembly because of the potential ramifications; just like it is difficult for the President to go against what Parliament wants.

## Accra

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<sup>66</sup> Observations done by author on 11/11/09. Notes in possession of author.

Population wise, Accra is the largest metropolis in Ghana and as of the 2000 census, the population was 2,905,726.<sup>67</sup> Since Accra is a metropolis, like Cape Coast, the way the Assembly functions is quite similar. The major difference between the two assemblies is the amount of representatives that exist. Since the population of Accra is so much larger than the population of Cape Coast, there are 90 representatives in the Accra Metropolitan Assembly<sup>68</sup>. Similarly to Cape Coast though, 70% of the members are elected and 30% are appointed by the President. The Assembly works together to nominate and appoint the Chairman of the Assembly; this position is equivalent to the Leader of the House position in the KEEA district and the Presiding officer in Cape Coast.

The Mayor of Accra is currently the Honorable Alfred Okoe Vanderpuije. The title is actually Metropolitan Chief Executive but it is interchangeable with "Mayor" and the title Mayor is actually used in an attempt to sound more Western.<sup>69</sup> Before he was the Mayor, the Honorable Vanderpuije, was an educationist. This is consistent with the previous jobs of the Municipal Chief Executive of the KEEA district and the Metropolitan Chief Executive of Cape Coast because they had previously held jobs in the field of education. The Mayor is nominated by the President and then confirmed by the Assembly by a 2/3 majority. The necessary 2/3 vote of the assembly in order to confirm an appointment of any Chief Executive is a check on the power of the Executive branch of the national government. If the President was able to appoint whomever he wanted the result could potentially be an undemocratic republic which is an oxymoron. Since 60 members<sup>70</sup> of the Assembly need to approve the nomination, it means that the majority of the representatives of the people agrees with the appointment and shows the benefits of a representative democracy. The job of the Mayor is to see to the development of the social and economic infrastructure of the city.<sup>71</sup> The position includes a lot of bureaucracy; he works closely with the Regional Coordinating Council, the Ministry of Local Government, and the Ministry of Rural Development.

At the Accra Metropolitan Assembly, bylaws are primarily created due to circumstances. This means that the AMA does not contemplate which type of bylaws it enacts but primarily reacts to the situations of adverse behavior or issues by creating bylaws. The goal of the creation of bylaws is to curb those unwanted activities. Many bylaws are created to solve problems and once the problems are solved the bylaws are no longer relevant. Bylaws dealing with sanitation are incredibly important especially since there are news reports saying that up to 70% of the trash in Accra is not cleaned up.<sup>72</sup> At an assembly meeting, anyone can make a motion for a bylaw. The

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<sup>67</sup> From [Ghanadistricts.gov.gh](http://Ghanadistricts.gov.gh). Bibliographic information found in the Bibliography

<sup>68</sup> Interview with Ben Armah, the Deputy Director of the Administration on 11/20/09. Notes in possession of the Author.

<sup>69</sup> Ibid.

<sup>70</sup> 2/3 of 90 equals 60.

<sup>71</sup> Interview with Mr. Armah

<sup>72</sup> News report on TV Africa. September 2009

assembly can then adopt the motion and create a sub-committee to investigate and write the bylaw. Then, the proposed bylaw goes to the Metropolitan Solicitor is used to put the proposed bylaw into legal language. After the bill is put into legalese it returns to the Assembly. The Assembly votes and a simple majority is able to pass the bill as a bylaw. The Attorney General then looks at the bylaw to ensure that it doesn't contravene any law of the country. Once the bylaw is approved by the Attorney General, it goes into effect. If at any point in time the bylaw is voted down, it is returned to the sub-committee and it attempts to fix the flaws in the bill.<sup>73</sup>

Accra is the capital of Ghana and the main judicial headquarters is stationed there. The headquarters houses the High Court, the Supreme Court, the Court of Appeal, the Commercial Court, and the Specialized High Court which includes: Land court, Industrial Court, Human Rights Court, and Economic Crimes Court.<sup>74</sup> The Circuit Court is stationed down the road from the headquarters at a smaller branch. The High Court also has courtrooms in the complex that houses the Circuit Court. Any case can be heard in the Circuit Court and if the defendant does not like the ruling, the case can be appealed to the High Court. At the Circuit Court, the Judge wore black robes and the lawyers wore black suits. Some of the lawyers were dressed in suits that were what the lawyers in the High Court wear.<sup>75</sup> It is a possibility that because of the busy schedule of lawyers and the proximity to the High Court, those lawyers were either coming from the High Court or were going to the High Court afterwards. The Circuit courtroom looked like this<sup>76</sup>:

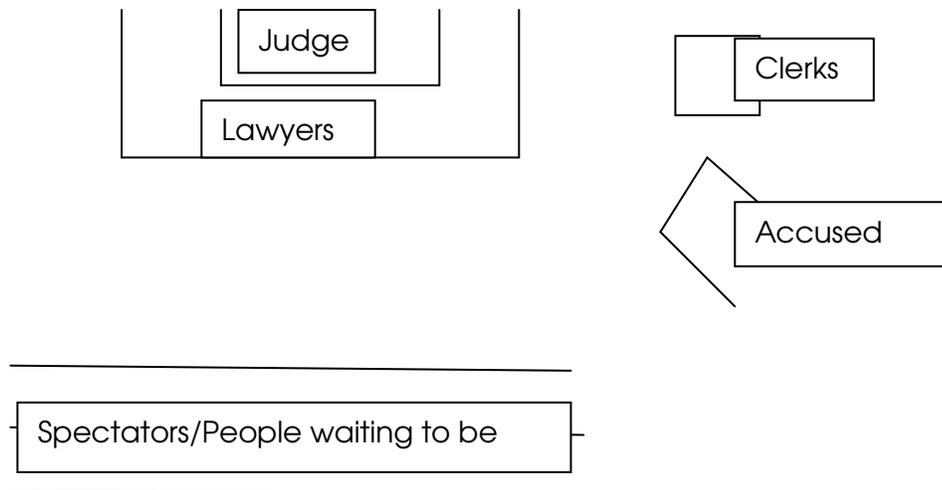
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<sup>73</sup> Interview with Mr. Armah

<sup>74</sup> Observation of Judicial Headquarters

<sup>75</sup> Observation of Circuit Court proceedings

<sup>76</sup> Drawing done by author. Not to scale



The cases that were heard on November 20, 2009 were primarily cases dealing with bail. For the most part, the people brought to court by the police had been in custody for a long time and were still unable to make bail. One man had been in jail for six months because he could not pay the 15,000 Ghana Cedi bail. In order to make it easier on him, the judge reduced the bail so that it was only 5,000 Ghana Cedis which is still a lot of money but is more manageable than 15,000 Ghana Cedis.<sup>77</sup> Several other people had their bail reduced to 5,000 Ghana Cedis as well. Another case that was heard was a lawyer petitioning for his client to be given the chance to make bail.

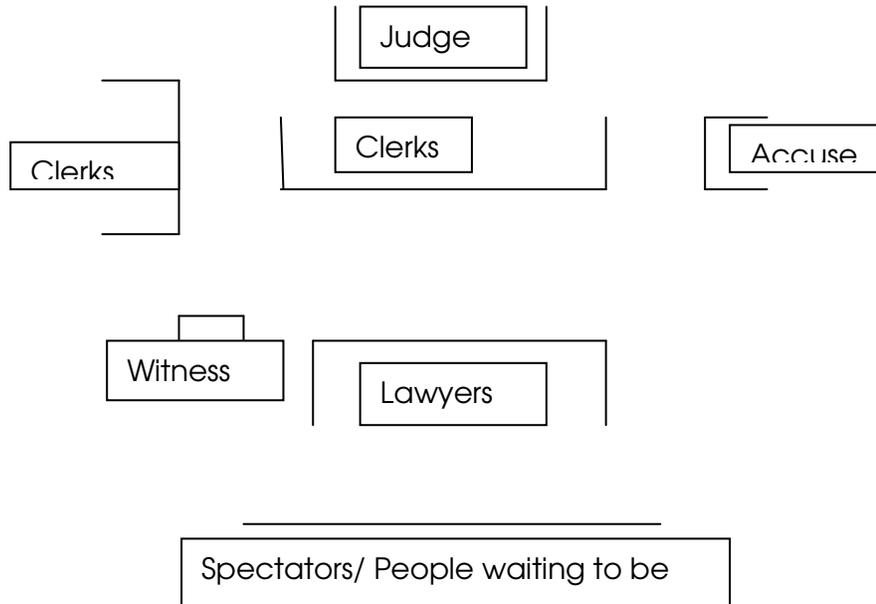
There is also a large British influence in the Circuit Court. Like the Circuit Court in Cape Coast, people address the Judge as "my lord". Unlike Cape Coast, the entire proceedings were conducted in English. There were no translators and the primary responsibility of the clerks was to call the next cases and make sure everyone was in attendance.

The High Court in Accra was the most formal and most Westernized court observed. People dress very formally in the High Court and everyone wore wigs, black robes, black suits, with white dress shirts. The British influence was overwhelming. There were six clerks in the room and they all had computers. Those computers were used for taking notes and they also recorded what was said by the lawyers and the judge. This was the only court to have microphones so that everyone in the courtroom could hear

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<sup>77</sup> Observations of Circuit Court Proceedings by Author.

what was said. The room was air conditioned which made it more comfortable for everyone wearing robes. The layout of the courtroom is shown below<sup>78</sup>:



The procedure of the High Court is that each case is called and then attendance is taken starting with the clients and then the lawyers. After that, the opening motions for adjournment or introduction of new evidence are made<sup>79</sup>. More often than not, cases were adjourned. This, like other courts in Ghana was due to the absence of lawyers, clients, and witnesses. Once again, the busy schedule and transportation difficulties were the cause of the absences. What is different between the Accra High Court and other courts in Ghana is that the Accra has time slots written outside the door to the courtroom for when the cases are scheduled to begin. However, if the case is comes up before the scheduled time, it is called early and then the lawyers and clients can be late. This happened to one lawyer who came ten minutes before his case to find out that he had missed his case. He said that had been at the court for an hour but did not want to sit in the courtroom so he had been wandering around like “a displaced tenant”.<sup>80</sup> The Judge said that he would call both lawyers to schedule a make-up date.

The cases heard involved an argument to grant bail and a land dispute. In the first case, a lawyer argued that his client should be granted bail. The lawyer said that

<sup>78</sup> Observation of High Court by Author. Drawing done by author. Not to scale

<sup>79</sup> Observation of High Court Proceedings by Author

<sup>80</sup> Observation of High Court Proceedings by Author

the accused had a family and a job and that these two factors made it so that he was a low-flight risk, meaning that he was very unlikely to run away. Bail was set at 10,000 Ghana Cedis. The next case involved a land dispute and in this case a witness who created a survey of the land was put on the witness stand<sup>81</sup>. She was asked about who commissioned her to create the survey and why she left out certain parts of the survey. The witness was unable to remember those details so there was no need for a cross-examination.

The central government is structured very much like the metropolitan government of Accra. The Metropolitan Assembly fulfills the legislative needs of the government. They create laws and even go as far as to send them to the Attorney General to make sure that the laws pass legal scrutiny. The fact that Members of Parliament are elected by district is exactly the same method that the central government uses: aspiring Members of Parliament campaign and are elected to represent a certain district. The Speaker of the House's position closely resembles the job of the Presiding Member of the Assembly. The President's position is much like the job of the Mayor of Accra. They are both the executive heads of their respective areas. While the Mayor is not elected, he must still be confirmed by representatives of the people. Also, in order to continue doing his job, he must earn the respect of his constituents and the President. In order for the President to continue, he must earn the respect of the people and of all those who vote.

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<sup>81</sup> Ibid

# Conclusion

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This paper is called “All That You Can’t Leave Behind” for several reasons<sup>82</sup>. The main reason is because it is a reference to Ghana’s colonial history. The Nkrumah administration, a few years after independence, embarked on some policies that leaned towards socialism. Ghana has turned around and has become a primarily Capitalist nation since then but the fact that Ghana is able to change policies means that the government is trying to figure out what works best for the Republic of Ghana. Fifty-two years have passed since independence and as much as Ghana develops the legislative and judicial branches; they are still grounded in British tradition and procedures.

Even though the traditional Chiefs can operate outside of the modern practices when it comes to the creation of bylaws the procedure for creating bylaws is a Western creation. The notion of checks and balances comes from the West and in Ghana; there is no shortage of checks and balances in the government. The legislative and executive aspects of local government can observe each other to make sure that there are no abuses of power and that democracy still exists.

Komenda, Cape Coast, and Accra all share similar roots when it comes to governmental processes. When new bylaws need to be created, they expect their Assemblies to accept the responsibility. Those bylaws then fulfill similar processes to make sure that the law is created correctly. While a minor difference exists between the titles of the positions, they fulfill all of the same roles. For example, the Assembly of Accra sends its bylaws to the Attorney General to be examined. The Cape Coast Assembly sends its laws to the Metropolitan Solicitor. In all three of the localities, the police are then expected to enforce the laws. One difference exists between how the news of laws is broadcasted. Places like Cape Coast and Accra rely more on Television, radio: more modern forms of communication than Komenda which relies primarily on information vans and educational programs.

The executive branch acts the same in all three localities. The only thing that changes is the titles and the size of the constituency. Accra houses the greatest number of people while Komenda holds so few people that it has to join with three other areas to create a district. All three executives were appointed by the President and all have

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<sup>82</sup>“All that you can’t leave behind” is also a line in the U2 song “Walk On”. The song is about trying to move on from past influences and actions but eventually realizing that the past is part of your identity. So, you can move on but knowledge and influences gained will always be present.

to try and fulfill the will of themselves, the people they represent, and their political parties. Each position requires a fulltime commitment and involves interacting with every aspect of the local government and many aspects of the central government.

The Judicial branches of the three localities are where the big differences occur. The metropolises of Accra and Cape Coast operate in much the same way with the sole exception that Accra houses more courtroom which is caused by the larger population. Both Accra and Cape Coast have Circuit Courts and High Courts. The main difference lies with the Komenda Arbitration Committee. To join the Arbitration Committee, one does not have to be a lawyer, nor possess any legal training whatsoever. This is directly at odds with the Constitutional declaration about how a person becomes a Justice. The Komenda Arbitration Committee also utilizes five members, whereas the courtrooms in Accra and Cape Coast only use more than one Justice in special circumstances. Also, the KAC resolves disputes in the form of retribution. It cannot grant bail, imprison, or anything like that but instead relies on the abilities of the Magistrate. The court systems in Cape Coast and Accra can do all of the above under their own authority. Even though the Komenda Arbitration Council is based on morality and not law, the Magistrate (an English word) comes from Cape Coast in order to deal with issues of law. The other courts also operate in true British style, complete with the wardrobe. Although, during the lulls in the court when the judges and lawyers are conversing they make jokes and the court becomes friendlier, more hospitable, and less dramatic; in short, the court becomes more Ghanaian. In one instance when the Judge and the lawyers were trying to decide on a date to reconvene the lawyers were suggesting dates and the judge gave an exasperated sigh, held up his date book and said, "See how busy I am!" and everyone in the court began to chuckle. Also, the comment about by the lawyer about how he had been wandering around the court like a "displaced tenant" is something that would not be said in a British Court. These observations and interviews show that Ghana is a country that is maturing on its own and is deciding which government applications are right but no matter how much maturation occurs the profound British and Western influence will not disappear simply because it is so engrained into the government.

For further study, the creation of bylaws and the administration of justice in Northern Ghana should be studied. Although the Constitution deals with all of Ghana, there is a possibility that the localities operate in a slightly different manner. This is likely because the majority of the British influence was in southern Ghana where the Atlantic Ocean and the ports are. The northern part of Ghana was contested by the Dutch and the French so there could be some influences of those nations. Also, the northern part of Ghana is less developed than the southern part of Ghana so there is the possibility that Circuit Courts are not as popular and that the style of justice is more comparable to the Arbitration Committee. Also, it would be interesting to interview a Justice on the

High Court and the Circuit Court just to hear their opinions on the Justice system and what they think about the influence of the British.

The Ghanaian government and Ghanaian life are truly Ghanaian. There are Ghanaian customs that must be observed, and Ghanaian tendencies that are always shown. Ghana as a country will continue to mature and to find its own ratio of traditional customs to Western influences in all aspects of life. It is impossible to change the past and the subtle or not-so-subtle influences of Britain and other Western cultures will always be a part of Ghanaian life and government.

“All that you fashion, all that you make, all that you build, all that you break, all that you measure, all that you feel, all that you can't leave behind.”

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