

4TH Congress of the World Conference on Constitutional Justice

THE RULE OF LAW AND CONSTITUTIONAL JUSTICE IN THE MODERN WORLD

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RESPONSES TO QUESTIONNAIRE

BY JUSTICE WILLIAM A. ATUGUBA

SUPREME COURT

GHANA

I. The different concepts of the rule of law

1. Principally, the 1992 Constitution of Ghana as the supreme law of Ghana to which all acts and omissions, public or private must conform – *Tuffour v. Attorney General* (1980) GLR 634 (C.A. sitting as the Supreme Court).
 - General powers of judicial review of administrative action.
 - The enforcement of the Fundamental Human Rights provisions of the Constitution.
2. The Rule of Law in Ghana is premised on the principle that sovereignty in Ghana resides in the people of Ghana for whose welfare and interest the powers of government are to be exercised –article 1(the right to vote), article 42 (the right to due process of law), article 19(11) (nulla poena sine lege).
3. The rule of law is applied throughout all the fields of law particularly the Fundamental Human Rights for which there is a special Division of the High Court for their enforcement.
4. In Ghana, the Constitution is very elaborate and has detailed provisions on every major aspect of the law. There is also Chapter 6 on “The Directive

Principles of State Policy”. This requires the government and all persons to have regard to them in formulating policies or applying the constitution. These include social, economic, political, cultural etc matters. The rule of law in Ghana is therefore largely contained in the 1992 Constitution of Ghana.

5. The major change in the concept of the rule of law in Ghana is that the Constitution and statutory law generally should be liberally construed to give effect to their purposes, aims and objectives rather than a rigid, literalistic approach of the old Common Law – *Adofo v. Attorney-General & COCOBOD* (2005-2006) SCGLR42.
6. Articles 73-75 of the Constitution of Ghana require compliance by the President with the principles of International Law without prejudice to the national interest. The courts in Ghana frequently resort to principles of international law to inform their decisions on any matter.

II. New challenges to the rule of law

7. In recent times, owing to economic inflation, there have been frequent labour confrontations between the government and public workers owing to dissatisfaction with salary levels. The government, however, often sorts out these problems amicably with the workers, through bilateral negotiations.
8. Owing to international terrorist activities and threats, persons of dual national have been held by the Supreme Court of Ghana to be excluded from high profile placements in public office, such as the Judiciary, the Legislature, the Executive, the Security Agencies, etc – *Asare v. Attorney General* (2012) SCGLR460.
9. In the field of Diplomatic Immunity, Ghana has been challenged in constitutional litigation to erode diplomatic immunity from legal process in

the interest of a fair trial of a criminal matter. But the Ghanaian Supreme Court has preserved international legal norms in this respect. – *Tsatsu Tsikata v. The Republic*

III. The law and the state

10. Owing to the invalidation of several laws and official acts on grounds of constitutionality since 1992, there have been fewer state infractions of the law in recent years. In recent times, international agreements entered into by the government of Ghana without prior parliamentary approval have been invalidated by the Supreme Court of Ghana – *Faroe Atlantic Co. Ltd v. Attorney-General* (2005-2006) SCGLR 271. In particular, the Electoral Commission of Ghana has had to comply with decisions of the Supreme Court invalidating the use of National Health Insurance cards in the registration of voters and the disqualification of presidential candidates without due process, etc.
11. By article 129(3) of the Constitution of Ghana, all other courts in Ghana are “bound to follow the decisions of the Supreme Court on questions of law”. Case Law however excepts decisions given per incuriam or where decisions are conflicting or without a discoverable ratio decidendi. Of late, a few lower courts have tended to go contrary to Supreme Court decisions but have been halted.
12. The Supreme Court has discouraged imprisonment for debt as a means of enforcing judgments for the recovery of money. It has sometimes discouraged the denial of a substantive remedy due to procedural lapses of the litigant – *GIHOC Refrigeration & Household Products Ltd (No. 1) v. Hanna Assi (No. 1)* (2007-2008) SCGLR.
13. By the common law of Ghana and articles 23 and 296 (a) and (b) of the Constitution of Ghana, public officials must be fair and candid, reasonable

and conformable with the law in their actions – *Tema Development Corporation & Musah v. Atta Baffuor* (2005-2006) SCGLR 121.

IV. The law and the individual

15. Access to the Supreme Court can be gained mainly by writ against unconstitutional acts whether public or private under articles 2 and 130 of the Constitution or by motion invoking the supervisory jurisdiction of the Supreme Court against illegal conduct by persons exercising adjudicating public functions – *British Airways v. Attorney-General* (1996-1997) SCGLR 541.

16. Yes. This has been considered in detail in *Bako-Alhassan v. Attorney-General* (2013-2014) 2 SCGLR 823.

17. Yes. The Supreme Court has held that the Fundamental Human Rights in the Constitution are not exhaustive but include those in International Law, Treaties etc – *Adjei Ampofo v. Attorney-General* (2003-2004) SCGLR 411.

18. The rule of law as embodied in the common law e.g. the power of judicial review over administrative acts and the observance of due process has been observed by the Supreme Court of Ghana.