

Grounding with the People: Participatory Policy Making in the Context of Constitution Review in Ghana

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Received: November 2, 2012 Accepted: November 20, 2012 Online Published: February 26, 2013

doi:10.5539/jpl.v6n1p99

URL: <http://dx.doi.org/10.5539/jpl.v6n1p99>

Abstract

Ghana has been experimenting with the participatory policy making approach that allows citizenry engagement in the formulation and implementation of public policies in recent times. In many ways the approach enhances the opportunity structures for consolidating the country's democratic credentials by allowing citizens to share in the ownership of governance decisions. In this paper, we draw illustrations from the participatory strategies used by an adhoc body known as the Constitution Review Commission (CRC) established to study and make recommendations for the amendment of Ghana's 1992 Constitution. The paper shows that although the idea of citizenry participation has intrinsic nation-building value for which reason it can be instrumental in kneading multi-ethnic countries together, paradoxically, against the innovative and comprehensive strategies adopted by the CRC, the approach was hindered by a series of inherent challenges that serve to perpetuate existing socio-political inequalities by privileging educated, urban, and relatively organized Ghanaians over their underprivileged and traditionally marginalized counterparts, especially those in the rural areas.

Keywords: participation, public policy, Ghana, governance, constitution, citizenry

1. Introduction

In the period immediately following independence, policy making in Ghana followed the tradition of the bureaucratic approaches that confined participation in the policy space to bureaucrats and a few individuals (Juma and Clark, 1995; Ohemeng, 2005; Kpessa, 2011). However, since the 1990s, the role of the citizenry in public policy making has been undergoing radical transformations pointing to a shift from reliance purely on bureaucratic expertise, professional skills, and elected officials to active engagement of the citizenry in policy deliberations, design, and implementation. As a result, in the last decade, governments have been courting the involvement of the public in policy making on the basis of what is now known as participatory policy making. This is considered an alternative that allows for open dialogue and deliberation of policy issues between policy makers on one hand and civil society organizations as well as individual citizens on the other (Ohemeng, 2005; Williams, 2008; Abdulai and Quantson, 2009; Kpessa, 2011). Thus, increasingly, elected officials and policy makers across political parties in Ghana resort to high level executive or presidential commissions constituted outside the official channels of the policy bureaucracy, to initiate policy deliberations prior to legislative debates and executive assent and implementation. For instance, in pursuit of social security reforms in 2004, the New Patriotic Party (NPP) administration led by John Agyekum Kufuor first established an *ad hoc* presidential commission to consult with the Ghanaian public on the challenges and options for reforming the country's pension program (Kpessa, 2011). In 2008, the National Democratic Congress (NDC) administration led by president John Evans Atta Mills also established a similar *ad hoc* commission—the Constitution Review Commission (CRC)—to review the 1992 Fourth Republican Constitution of Ghana, and make recommendations for possible amendments (Constitution Review Commission, 2011).

Although public participation is becoming a major aspect of Ghanaian policy making, there is little scholarly research and engagement with participatory processes in a manner that pays close attention to analysis of the specific strategies employed, and the extent to which they enhance or impede the intended good governance outcomes. Being a relatively recent phenomenon in the post independence era, it is important that we understand

the conceptual basis of participatory policy making; the exact ways by which the practice of participatory policy making is being uploaded into the Ghanaian policy space; the extent to which participatory policymaking addresses in reality, the challenges of socio-political exclusion and elitism associated with traditional bureaucratic approaches to policy making; and identify and discuss the dimensions of the approach that have the potential to under serve the democratic process.

Drawing on the work of the Constitution Review Commission in Ghana, this paper examines the participatory processes in the context of a developing country by disaggregating and discussing the specific strategies the CRC adopted in engaging Ghanaians. It shows that although the idea of citizenry participation is a good one, in the context of a postcolonial state like Ghana, the approach was hindered by a series of inherent challenges with the potential to perpetuate existing socio-political inequalities that enhance the opportunity structures of privileged Ghanaians over their underprivileged counterparts. Specifically, our analyses show that notwithstanding the elaborate and comprehensive strategies adopted by the CRC to elicit public cooperation and involvement, participatory public policy making in the context of developing societies is constrained by structural and contingent factors that undermine the ability and capacity of the traditionally marginalized to participate meaningfully in the policy making processes. On the other hand, the process of public participation has engendered some amount of public awareness on constitutional issues due to the inherent educational dimensions of such public engagements; and foisted an environment of non-partisan discourse on matters around the review of the constitution as evidenced in the support the CRC received from all the political parties. In addition, the processes of participation provided Ghanaians with opportunities to “own”, at least in theory, a policy process that has hitherto been confined to secluded interactions among bureaucrats, political elites, and experts.

Methodologically, the research project utilized a combination of qualitative strategies in the data collection processes. Specifically, data for the analyses contained in this paper was based on interviews conducted with officials and staff of the CRC, participant observation, review of media reports, and review of documents obtained from the Constitution Review Commission. The use of multiple data collection strategies helped to triangulate the information obtained for the purposes of accuracy. In terms of scope of the research, the analytical accounts and the assertions made in this study, as is often the case for any such research project, can strictly claim only to represent empirical findings relating to the participatory processes associated with the constitution review process. However, given the growing deference to participatory policy making in key issue areas, there is a significant amount of scope for drawing useful theoretical and conceptual lessons for other policy areas and other developing countries intending to adopt participatory approaches. Although the work of the CRC has been submitted and a government white paper has been issued accepting about 90% of the recommendations of the commission (Government of Ghana, 2012), the current study focuses only on the participatory channels and not the substantive content of the deliberations that culminated in the CRC’s report. Thus, this is neither a study of the final report submitted nor of the white paper response issued by the government. Both are subjects of our future research agenda.

As far as case selection is concerned, the choice of Ghana is informed by five important factors: first, Ghana, and perhaps Kenya, are the only countries in sub-Saharan Africa that have initiated a process of constitutional reform involving extensive public engagement and deliberations that span two years of consultation with the citizenry. Second, as earlier noted, since the early 2000s, political parties in Ghana across the ideological divide have not only embraced the idea of participatory policy making that attempts to bring governance closer to the doorsteps of the ordinary people, those that had the opportunity to govern have deployed the approach in varying degrees for the purposes of policy reforms. Third, the gravitation of Ghanaian policy elites towards participatory approaches to policy making is a radical departure from the “closed circuit” strategies that depended solely on bureaucrats and policy elites in previous years (Kpessa, 2011). Fourth, Ghana’s process of participatory policy making in respect of the CRC’s work has accumulated a large volume of data available for use by scholars, and finally, the authors of this article are among few Ghanaian researchers interested in the changing trajectories in policy making in the sub-Saharan African countries and who have on the bases of this interest intimately monitored and participated in the constitution review process.

In what follows, the paper is organized into four main sections. In order to properly situate the empirical analysis, the first section discusses the notion of participatory policy making by highlighting its core principles and growing popularity, nationally and internationally. This is followed by a discussion of the political and institutional context or background against which the constitution review exercise took place in Ghana. The third section analyses the specific public participation strategies adopted by the CRC in the performance of its duties, while the fourth section discusses the challenges and constraints imposed on the use of participatory policy

making in the context of a developing country like Ghana. Without disputing the enormity of the inherent constraints associated with participatory policy making in the context of a country like Ghana, the paper concludes with a discussion of some of the major symbolic significances of the approach as deployed by the CRC.

2. The Idea of Participatory Policy Making

The idea of participatory policy making is not entirely new. In the 1990s, against the background of several reforms designed to push back the operating boundaries of the state, the approach gained significant influences. Its influence especially in developing countries was boosted by explicit expectations by World Bank and other multilateral institutions that aid-recipient countries undertake reforms that allow public engagement in their policy processes (Williams, 2008). Thus, participatory policy making refers to policy processes that seek to go beyond reliance on bureaucrats, elected officials, and experts' knowledge to include engaging ordinary citizens in the formulation and implementation of public programs (Peters and Pierre, 2000). This approach is seen as one of the best means of tapping into the knowledge and energy of the broader society in a manner that involves inviting social actors to engage with the state on some of its core activities (Ackerman and Fishkin, 2004). According to advocates of this approach, policy decisions made solely by bureaucrats and elected officials often have both intended and unintended consequences on the lives of the general population. As a result, it is imperative in policy processes, for those directly in charge of governance to ensure a direct inclusion of the views and preferences of the citizenry in a manner that does not only give citizens a sense of ownership of policy outcomes, but also legitimizes the mechanism used to produce those outcomes (Cohen, 1989; Cohen and Sabel, 1997). The World Bank (1994) for instance argues that the approach was intended to replace the "didactic lecture-based approach, which treats villagers as passive objects for one-way information transfer and is largely ineffective for bringing about behavioural change" (pp. 85-86).

As such participatory policy making emerged as a critique of traditional approaches to public policy hence its conceptualization of actors and various dimensions of public policy making is different from the conventional approaches. For instance, while in conventional approaches, the pluralist and corporatist models based on representative democracy perceive citizens mostly as voters, clients, subjects or customers, the participatory approach sees citizens as activists, co-producers of policy, partners of social cooperation and negotiation (Kpessa, 2011). As an alternative way of approaching public policy, the participatory perspective rose to prominence on account of several factors including (a) declines of deference (Carroll & Carroll, 1999), (b) rise of popular sovereignty (Philips, 1999); (c) pre-eminence of liberal democratic values since the 1990s (Carroll and Carroll, 2004), and (d) concerns over persistent bureaucratic corruption, inefficiency and inequality in resource allocations (United Nations, 2008).

Arguably, the participatory approach was designed to transform the paternalistic role of the state associated with the bureaucratic approaches to policy making by repositioning it in a manner that empowers and facilitates interaction among different social actors with a shared interest in any given issue area (Esau, 2008). The success of policies require large-scale public acquiescence and support, thus the participatory approach takes the view that citizens need to be treated as stakeholders, and actively encouraged to speak up, while the State, through its legitimate officials, provide trustworthy listening ears (Vogel, 1986). The idea is to foster a deliberative policy environment in which participants listen to each other's views, policy preferences and alternative options with the ultimate goal of adopting a solution that approximates the collective view of actors through a rigorous process of bargaining, negotiation and compromise (Kpessa, 2011). The use of this approach involves (a) a commitment to pluralism of values, (b) open deliberation as a source of policy legitimacy, (c) consideration of all policy participants as having deliberative capacity, and (d) an effort to give every policy participant opportunities to propose, criticize or support policy ideas (Cohen, 1989).

Public participation is said to be one that prioritizes an environment of reciprocity in which ordinary people and groups, beyond political parties representing citizens' interests, are able to freely engage in open dialogue and deliberation in a give-and-take manner, and not mere declaration of preferences and claims. As a result, it requires that both participants and public officials envision each other as equals, and engage in a reasoned public dialogue by boldly stating and justifying their policy preferences. This assumption is based on the notion that people would come to the arena of participatory policy deliberation willing to have the underlying claims in their policy preferences validated or challenged by others on the basis of reasoned or superior argument (Cohen, 1989; Risse, 2000; Risse, 2004). By design, participatory policy making requires extensive public awareness not only to generate the needed public understanding of the issues and provide people adequate information about the processes, but also to ensure that the core issues and claims made by various participants and their inherent justifications are readily available for public scrutiny (Gutmann and Thompson, 1999). Although difficult to

achieve in its entirety, supporters of this approach aver that participatory policy making must be designed in a manner that enhances the opportunity structures of all citizens in a given country to actively engage in policy processes without any hindrance (Fischer, 1993).

The participatory approach is also viewed by some as a shift in paradigm in the sense that it attempts to eliminate the situation where powerful and resourceful groups and individuals exert influence at the expense of the less powerful in society. Although some argue that this approach provides additional opportunities for exerting transparency, accountability and ensuring a minimalist role of the state (Biersteker, 1990) others argue that the state, must within the context of popular participation, play an activist role by mobilizing ordinary citizens in policy development to counter and neutralize the influence of dominant actors and powerful interest groups (Bardhan, 2002). The central focus of the participatory approach is to create space for ordinary citizens or the general population in any given country, who hitherto were on the fringes of policy deliberations or previously perceived as passive recipients of policy outcomes, to engage actively in the policy processes either on their own or in association with others. As others have noted, the participatory approach can be broadly conceptualized, however, it excludes situations where policy bureaucrats and elected officials make policy decisions on the basis of their own beliefs and values, and not in response to some communication or demand from the citizenry (Sidney, Verba and Almond, 1980; Potapchuk, 1991; Fischer, 1993; Hiller, Landenburger et al., 1997; Boon and Meilby, 2000; OECD, 2001; Bishop and Davis, 2002; OECD, 2005; Esau, 2008).

In the last three decades, the idea of participatory policy making has been closely linked to democracy and good governance emanating from demands for greater accountability and transparency from public officials, and a quest of the public to actively participate in shaping policy decisions that affect their lives. Governments have thus, been compelled to devise strategies that enhance the opportunity structures for popular participation. While on the citizenry side the expectation is that public officials will take their views, preferences, and knowledge into consideration when designing policies, some governments also now assume that the process of popular participation has the potential to provide policy windows for gaining a better understanding of the expectations of their people (OECD, 2001). For these reasons, participatory policymaking is viewed as a sound investment and fundamental not only to good governance, but also for enhancing the legitimacy of public officials.

At the international level, the United Nations (UN) has given official recognition to participatory policy making, and affirmed its significance in several of its major resolutions on a wide range of international issues, including economic and sustainable development, the status of women, Action for Peace, Science and Technology for Development, Development in Africa, and Public Administration and Development, among others. In addition, the United Nations General Assembly Resolution 50/223 underscored the relevance of the participatory approach as essential in development policy making during the 2005 World Summit, where leaders from various countries unanimously expressed interest in the approach. Furthermore, resolution 2006/99 of the Economic and Social Council advises member states to foster the trust of their citizenry by ensuring public participation in policy development, accountability processes and service delivery (United Nations, 2008).

Overall, there is significant consensus that since democracy rests upon informed consent of the citizenry, participatory policy making enhances their ability to shape public decisions and the cognitive position of those entrusted to make those decisions (OECD, 2005). Among OECD countries, governments have devised several strategies including public opinion polls, survey notices, comment periods, public hearings, focus group discussions, workshops and seminars, open hours, citizens panels, advisory committees, citizens' forums, citizens' juries and consensus conferences, among others, purposely for the engagement of the citizenry in public policy processes (OECD, 2001). One study of participatory policy making among OECD countries concluded that the approach "strengthens democracy, providing a bulwark against misgovernment, by exposing abuse of power, by offering greater participation to minorities through equal rights of citizenship" (OECD, 2005, p. 32).

The extent to which the participatory policy making framework and conclusions drawn from analyses of its applications in the developed world can be applied to developing countries needs further examination. In developing countries, international financial and development agencies have made participatory policy making a condition for financial assistance (Williams, 2008), and governments in the developing world have embraced it, sometimes genuinely, sometimes for the cash, making a study of this kind imperative. The section below focuses on the empirical analysis of the context and strategies used by the CRC to elicit public participation in the constitution review process.

3. Institutional Context of the CRC's Participatory Approach

Ghana's 1992 Constitution, which ushered in the fourth attempt at democratic governance in that country since independence, is the supreme law of the land, and the ultimate source of judicial, legislative and executive

authority in the country. This constitution was designed from a process of limited citizenry engagement undertaken through a consultative assembly established by the Provisional National Defence Council (PNDC) military government, and ratified through a popular referendum, (Afari-Gyan, 1995). In the last two decades, the 1992 Constitution has successfully delivered series of elections that culminated in peaceful transfer of political authority from one political party to another (Kpessa, 2011). This is a great achievement because no other constitution in the post independence era in Ghana was able to survive more than a couple of years. Aside the 1960 First Republican Constitution, which lasted for five years and eight months, the 1969 and 1979 Constitutions, lasted for 27 months each (Constitution Review Commission, 2009). Against this background, the 1992 Constitution is seen as a celebrated document for the guidance it has provided for navigating the kinds of crises that disrupted previous democratic experiments. Notwithstanding its achievements, the constitution has not been successful in knitting the country into a nation as the large majority of Ghanaians “still lay outside the formal structures and operations of the state—in the informal sector”, where government and its institutions are seen as a distant abstract entity; and the formal rules are often subordinated to informal institutional norms and practices (Kpessa, 2011).

More importantly, soon after it was introduced, certain provisions of the Constitution confronted the realities of governance thereby necessitating amendments. For instance, after a confrontation between the first President and the first Vice President under the Constitution, the constitutional provisions that made the Vice President automatic chairperson of the Ghana Armed Forces, the Police and Prisons Councils came under attack. By 1996 several provisions of the Constitution were amended to accommodate or reflect what was perceived as the thinking of most Ghanaians (Constitution Review Commission, 2009). Examples of these amendments include a change in the position of the Vice President as the automatic chair of the aforementioned statutory agencies; a review of the gratuity payable to members of Parliament; extension of time within which to hold parliamentary by-elections upon the death of a sitting parliamentarian; provision for Ghanaians to hold dual nationality; and prohibition of leading members of political parties from serving on the National Media Commission (NMC) (Constitution Review Commission, 2009).

In spite of these changes, the 1992 Constitution has consistently come under attack for lapses in the overall governance framework of the country. Several Ghanaians—academics, government officials, civil society organizations, media practitioners, and social commentators often point to what are perceived as constitutional weaknesses and argue for the need to “remove contradictions, and ambiguities, supply omissions, and make the Constitution more practical and relevant to the needs of Ghanaians in the twenty-first century” (Constitution Review Commission, 2009, p. 9). For instance, the requirement that a president must select at least 50% of his ministers from Parliament in what is considered a presidential system of government is seen as an affront to the autonomy and independence of the legislature; inimical to the principles of separation of powers; and an incentive for political patronage especially because parliamentarians of ruling parties at any given period often toe the President’s line in search of ministerial appointment.

Although others argue that the Constitution is too young to be reformed, and that the challenges associated with Ghana’s constitutional democracy rests with the individuals who exercise political authority and not with the Constitution, presidential candidates of the four major political parties in 2008 and then outgoing President John Agyekum Kufour, unanimously called for a review of the 1992 Constitution to adequately reflect the wishes and aspirations of Ghanaians (Constitution Review Commission, 2009, p. 9). Consequently, in his maiden *State of the Nation* address the next president, John Evans Atta Mills, noted that a “National Constitutional Conference was the surest way to ensure that our Manifesto promises as well as those of some other political parties which require constitutional amendments see fruition in a consensual manner” and announced the government’s intention to “establish a Constitutional Review Committee to collate views on the amendment proposals” (Government of Ghana, 2009). Under the bureaucratic approaches to policymaking, once a decision to review the Constitution was firmly made by the government, the appropriate government agency, department or ministry, in this case, the Ministry of Justice and Attorney General’s Department, will ordinarily take it up. However, guided by the participatory paradigm, the government initiated the constitution review process outside the official channels of decision-making purposely to accommodate the exigencies of popular participation. Thus, the Commission was specifically created to engender meaningful public conversations towards amending the constitution (Government of Ghana, 2010).

The CRC was made up of nine commissioners. The Chair of the Commission, Prof. Albert K. Fiadjoe is a renowned Professor of Public Law with over forty years of research, writing, teaching and legal advocacy in Ghana and abroad. Akenten Appiah Menka is a lawyer and an industrialist, with over forty years of experience in participating in and growing the private sector of Ghana. The Very Reverend Prof. Samuel K. Adjepong is a

retired Professor of Physics, a former Vice Chancellor of one of Ghana's leading Universities and currently the President of the Methodist University College of Ghana. Mrs. Sabina Ofori-Boateng is one of Ghana's leading draftspersons, with over forty years extensive experience in drafting laws, including constitutions. Naa Alhaji Iddirisu Abu retired from the Public Services of Ghana as the longest serving Director of the Survey Department and is a leading member of the National House of Chiefs in Ghana. His expertise on lands and natural resources and on traditional authority and Ghanaian culture are sterling. Osabarimba Kwesi Atta II is the Paramount Chief of Cape Coast Traditional Area, one of the most important municipalities in Ghana, and has over forty years experience in the financial sector in Ghana.

The younger breed of commissioners were the following: Dr. Nicholas Y. Amponsah, a Senior Lecturer in Political Science at the University of Ghana and an expert in decentralized governance and in political theory; Mr. Gabriel Pwamang, a distinguished lawyer and civil society operative; and Mrs. Jean Mensa, the Executive Director of one of Ghana's leading civil society organizations, the Institute of Economic Affairs. Dr. Raymond A. Atuguba, a Senior Lecturer at the Faculty of Law, University of Ghana, and co-author of this paper, was the Executive Secretary and Principal Researcher to the Commission.

The set up of the Commission also included a Director of Finance and Administration and various managers for the portfolios of: Research, Communication, Consultations, Operations, Documentation, Media, Information Technology and Monitoring and Evaluation. Each manager had a team of officers working with them, and the research unit in particular had at various points in time between six and some sixty officers and assistants; six during the preliminary research phase and about sixty during the field research phase.

4. Participatory Strategies of the CRC

In comparison with other recent cases of public participation in policy making in Ghana, the constitution review process arguably represents the broadest and most sophisticated citizenry engagement effort, and the most extensive open governance experiment in Ghanaian history. Although there have been consultative elements as part of the writing and promulgation of previous constitutions, the constitution review process is the first to systematically attempt to include voices not only from major interest groups, but also from all 170 administrative districts of the country as well as Ghanaians in the Diaspora. What is more, the commission elected to pursue an iterative approach, changing strategies and schedules to meet popular requests as well as to address some of the shortcomings of initial approaches (Constitution Review Commission, 2011). Arguably, the use of the participatory approach by the Commission was informed by its mandate, which was to (a) ascertain from the people of Ghana, their views on the operation of the 1992 Fourth Republican Constitution and, in particular, the strengths and weaknesses of the Constitution; (b) articulate the concerns of the people of Ghana on amendments that may be required for a comprehensive review of the 1992 Constitution; and (c) make recommendations to the Government for consideration by drafting Bills for possible amendments to the 1992 Constitution as stipulated in the Constitution Review Commission of Inquiry Instrument, 2010 (Government of Ghana, 2010).

The commission emphasized the important distinction between a review of the text of the constitution and a review of the operation of the constitution. While the former would only count demands for constitutional change as relevant submissions, the latter enabled the commission to operate with a much broader notion of relevance. Collating the views of Ghanaians on the actual operation of the Constitution allowed for an examination of the lack of operationalization and implementation of existing constitutional provisions. Importantly, it also created more room for an interpretive analysis of submissions in which a submission demanding something already enshrined in the Constitution could be read as an indication of non-implementation. This interpretive approach necessitated that submissions were not quickly dismissed as irrelevant. A submission that could be classified as legally wrong might still be experientially "right" - all submissions therefore were respected, as only a participant's total confidence in the process can ensure that she would be willing to honestly speak her mind, share her experiences and make recommendations. Such broad scope necessarily required that the Commission collected and analyzed submissions in a way that enabled recommendations to be made not only at the constitutional level, but also at the legislative and administrative levels, where issues of misinterpretation and/or non-implementation of constitutional provisions often played out.

In using the participatory approach, the CRC offered a variety of channels for public involvement and engagement from the very moment it was established. Ghanaians willing to participate in the process of reviewing the constitution were given the opportunity to submit their petitions, suggestions, ideas and insights by postal and electronic mail, deposit their submission at the CRC's head office, or send them to any of the offices of the Metropolitan, Municipal or District Assemblies, National Commission for Civic Education, Regional

Houses of Chiefs or Chiefs Palaces across the country. The CRC also developed a strategy that allowed the citizenry to make submissions through phone calls and short message service (SMS) as well as contemporary social network forums such as Facebook and Twitter. The participation avenues discussed above were considered complimentary to the CRC's aggressive face-to-face countrywide tours to solicit the views of Ghanaians on what aspects of the constitution ought to receive attention in the exercise. The first of such participatory tours took the staff of the CRC to all the regional and district administrative units across the country purposely to create local level platforms for the citizenry to participate in the process, and to consult with community as well as local opinion leaders (Constitution Review Commission, 2009; Constitution Review Commission, 2011).

The CRC worked in close collaboration with the staff of local government authorities, traditional rulers, and officials of the National Commission of Civic Education (NCCE) to design town hall style forums to enable the citizens participate freely in the deliberations, and make submissions. Such public deliberations often began with an explanation of the CRC's mandate, emphasizing the relevance of active public participation in the process. The CRC's first rounds of public consultations were conducted between April and June 2010. Following this, the commission organized focus group discussions to augment the consultations from July to September 2010. In contrast to the earlier consultations, these focus group discussions were held with several identifiable groups with the goal of encouraging those who might have been intimidated by the larger public forums to take advantage of the more intimate sessions in the focus group discussions to make submissions. Officials of the CRC argued that the focus group approach, which was replicated in all the 170 administrative districts in the country, was instrumental in whipping the people's enthusiasm in the participatory process.

In addition to the focus group approach, the CRC held two-day high-level special consultations in the ten regional administrative capitals in the country where all the nine commissioners of the CRC were present. These consultations were modeled along the lines of a session of the High Court of Ghana in compliance with rules applicable to the procedures of Commissions of Enquiry that were passed after the Commission begun its work (Government of Ghana, 2010). Some of the sessions of this phase were televised to the whole nation, with simultaneous sign language interpretation. In using the High Court approach, each citizen who appeared before the CRC was addressed as a "witness", whose testimony was "cross-examined" first by the Executive Secretary and Lead Counsel of the commission and then by the commissioners, to clarify the content and intent of the submission. The CRC provided facilities to ensure that the hearing and visually impaired were able to make submissions without much difficulty.

Beyond the High Court model, the regional consultations were also designed in a way that allowed Ghanaians to participate in thematic discussions on issues relating to National Development Planning, Decentralization and Local Government, Human Rights, Traditional Authorities, National Security, Executive Powers, Legislative Powers, Judicial Powers, Independent Constitutional Bodies, the Public Services, Lands and Natural Resources, and a set of miscellaneous issues, including the indemnity clauses in the 1992 Constitution that protect persons who overthrew various previous constitutions of Ghana. These sessions were chaired by the commissioners and facilitated by researchers of the commission. Often after a brief introduction of the key constitutional issues surrounding the thematic area by CRC officials, participants were given the opportunity to freely deliberate while CRC officials condensed their oral presentations into submissions on the themes. The CRC also organized special consultative meetings with major constitutional bodies and civil society organizations, including national security operatives, the National Development Planning Commission (NDPC), the National Commission for Civic Education (NCCE), the Commission on Human Rights and Administrative Justice (CHRAJ), the Bank of Ghana, the Statistical Service, and many others. Special consultative sessions were also held with all the major Political Parties and special interest groups such as gender and human rights advocates, governance groups, persons with disability, the youth and children, including institutions with interest in matters affecting children.

The CRC also met with members of the Executive, Legislature and the Judiciary arms of government and solicited the input of former and current Presidents, Vice Presidents, Speakers of Parliament, and Chief Justices. The sessions with the former and current high level operators of the constitution were held behind closed doors so as to allow an atmosphere in which these officials could speak openly, away from the glare of the media, about critical constitutional matters that needed reform. Similar closed-door platforms were created for the presidential candidates of the four major political parties with representation in Parliament and any other political party that obtained more than 0.5% of the vote in the immediate past presidential and parliamentary elections. As already noted, participation and consultation of all these select categories of Ghanaians were taken behind closed doors to enable them share their experiences without fear of negative public reaction.

The CRC also organized public forums in a number of countries to give Ghanaians in the diaspora opportunities to participate in the constitution review process. Specifically, officials of the CRC visited and arranged public deliberations in Egypt, Nigeria, Botswana, South Africa, Kenya, USA, Canada, the Netherlands, Italy, the UK and Germany. These countries were selected based on four major criteria. The estimated number of Ghanaians living in the country; the relative demands from the citizens in these countries for face-to-face avenues to participate in the processes; the organizational capacities of the citizens and the readiness of Ghana's foreign missions abroad to host the forums; and finally the security situation in the country. For instance, although La Cote D'Ivoire had an estimated one million Ghanaians according to records from its Ghana Embassy, and several requests for consultations, including sending special requests to be given opportunities to participate in the process, the CRC visitation to that country was cancelled when the security situation there deteriorated. Admittedly, the CRC's activity in the Diaspora did not go beyond national capitals where the country's missions are located and a few other major cities with significant concentration of Ghanaians.

The processes of participation designed by the CRC were climaxed with a five day "National Constitution Review Conference" held in Accra, attended by 2998 participants comprising delegates from each district, government officials, parliamentarians, judges, representatives of Civil Society Organizations, as well as international observers. At the end of the process, the Commission collected 83,161 usable submissions from Ghanaians addressing various concerns about the governance of Ghana. Out of the CRC's process is now a rich store of data for all manner of social science research.

5. Constraints and Challenges in the Participatory Process

The participatory approach as employed in the Ghanaian context cannot be without constraints and difficulties. The institutional space within which the participatory approach was deployed was the foremost constraint. Ghana, like many developing countries is a product of colonial encounter. The uneven power relations of that encounter shaped the colonized and left an inherited institutional legacy of policy making that conforms more to the colonizers social milieus than that of the colonized (Quayson, 1999; Bhambra, 2009; Atuguba, 2006, 2007, 2008). The act of colonization and its accompanying interactions between colonial state officials, indigenous authorities, a rising African merchant class and emergent Western-educated elites has thus shaped the politics and the politics in and through which interactions occur (Korang, 2003). A hegemonic, western episteme associated with 'modernity' and 'development' underpinned by a monolithic teleology of progress provided new opportunity structures for a rising class of Ghanaian but western educated elites who dominated the participatory processes. Notions of 'development' and 'modernity' that were at the background and foreground of the constitution review discourses and processes were an integral part of legitimizing contemporary narratives, however, their normalization created silences about the inequalities they not only perpetuate, but also legitimize. Thus, from a postcolonial perspective, there are two levels of constraints that impinged on the ability of participants in the process to fully express their views.

The first arose from the composition of the commission and its staffing which, in its majority, was comprised of Accra based male commissioners, lawyers and staff, re-inscribing a regional and gender bias associated with official state matters. The Commission had to consciously recruit lawyers and field research assistants from outside Accra to create some regional balance. Nevertheless, there was a preponderance of Accra based officials in the commission, including in the composition of the Commission itself, although the usual tokenism of adding one or two commissioners from outside Accra and one or two women, was observed. It is instructive to note that the 1992 Constitution itself provides in its article 35(6) (b) that "the State shall take appropriate measures to...achieve reasonable regional and gender balance in recruitment and appointment to public offices" (Republic of Ghana, 1992). In its recommendations, the commission has made this provision sharper by providing that no public office should be comprised of more than 70 percent of the same gender and has elaborated mechanisms for reducing ethnicity in the country. In brief, the participatory processes were driven and facilitated by mostly educated male elites from the principal urban centre of the country.

This professional bias was inscribed in the disproportionate number of lawyers on the commission and on the staff. For instance, all the consultative sessions of the CRC were led by a lawyer, and in some cases, the settings were arranged in the format of a court hearing. Although the format was designed with the best of intentions, it evoked images of the disproportionate power of the state, and thus did not provide an enabling environment for meaningful civic engagement. The commission was composed of five lawyers out of a total membership of nine. In addition, the Executive Secretary and several of the commission's staff were also lawyers. Again, this flows from a professional bias in a country where the Cabinet, the Parliament, and of course the Judiciary has a preponderant number of lawyers relative to other professionals. Whilst the legal character of a constitution may seem to justify this, the essence of a participatory approach to policy making has an internal logic which holds

that matters addressed in a constitution would ultimately be crystallised as legal provisions, but are originally leveraged, presented, and interrogated as natural and social science issues. This then calls for moderation in the way in which there is an overconcentration of lawyers in review exercises of this kind. The moderating influence here may be the fact that the lawyers on the Commission and the executive secretary were selected because of their professional competences beyond law. Flowing from the above, the regional consultations conducted in all the ten regional capitals were conducted in the presence of all 9 commissioners, who sat as a court panel, with the CRC calling on participants to make their submissions as witnesses. This was mandated by the procedural rules contained in a Constitutional Instrument issued by the government to govern the conduct of proceedings of Commissions of Inquiry. Although the Commission took steps to make the proceedings more friendly and accommodating to witnesses, the entire courtroom-like set-up, processes and mannerisms were discomfiting and intimidating.

Another major challenge with the participatory process related to language. In participatory policy making processes, the facility with which the citizenry can communicate with policy makers is critical. A significant portion of Ghana's population is unable to communicate effectively in the English Language. Language being critical to communication, the Commission made it a point to go beyond the use of the official language-English, and incorporate local languages in the process. All persons making submissions were asked to speak in the language of their choice and it was the duty of the Commission to find interpreters for the citizens. The major sessions of the Commission were also accompanied by sign language interpretation and the basic documents of the Commission translated into Braille. Beyond these attempts at language equalisation in public discourse, the fundamental issues of the liability of English, policy, and legal concepts to be effectively translated from and into local languages remains unaddressed. If participatory public policy making is hinged on conducting the worldview and experiential knowledge of the citizenry into the policy space and ultimately into policy, then the integrity of the transmission process, through the vehicles of language and translation, needs to be constantly interrogated and improved. The intermediary role of interpreters was arguably a hindrance to participation, especially in cases where participants had no means of validating the interpretation of their oral submissions made in local languages, and ascertain the extent to which the substance of such submissions were filtered in the interpretation and translation processes.

In addition, the participatory processes, especially the public fora, and even the social media-based strategies, were inherently fraught with doubts and fears about social and conceptual permissibility of a given submission. This phenomenon led to restraint, abrogation or even silence on certain issues by some of the citizenry. The perceived social permissibility of the submission, that in the participant's estimation of his or her idea being acceptable and allowed in the context of the particular social setting and relationships, are critical. This arose from the context in which some sessions for eliciting submissions were held. In sessions where local traditional authorities, including the chiefs and their elders, and local government officials were present, citizens were constrained in making submissions that were critical of these officials, especially where submissions aimed to curtail powers of traditional and local authorities or exact greater accountability from them. In one such session, a woman knelt down, asked for permission and forgiveness from a chief present at the session, before proceeding to make recommendations critical of the chieftaincy institution. Thus, in the context of the sensitivity of Ghanaian society to social hierarchy, where the elderly and those in authority are held in high reverence, the open forum and town hall style strategies were not very effective spaces to talk about all the issues of concern to ordinary people.

The social hierarchies inherently precluded free enunciation. As noted, the presence of local government officials and traditional authorities constrained some participants from speaking their minds. Against this background, it is fair to say that social permissibility did not allow for some submissions to be made freely in contexts where traditional authority and local government officials were present. Thus, the noble objectives of the participatory approach notwithstanding, the potential to render the citizenry vulnerable to political vendetta and witch-hunting, especially if their submissions are perceived as too critical of people in power, exists. In fairness however, participants who felt uncomfortable with making submissions directly in the public sphere, had the option to write directly to the CRC via postal mail, SMS, email or phone in directly to speak to an official. The further challenge though is that this is a society where people prioritize direct personal interaction, and the impersonal nature of these alternative avenues weakened the extent to which the citizenry demonstrated preference for them.

Related to social permissibility is the issue of conceptual permissibility, that is, (a) the participant's estimation of his or her idea being acceptable and allowed in the context of the review exercise, and (b) the perception of a submission being compatible with the scope and the aim of the review exercise. This was particularly poignant

during the formal regional hearings where the commission had to hold formal hearings sitting as a High Court and calling on participants as witnesses. This notion was reinforced by the legislative requirement to examine and cross-examine witnesses during the proceedings. Although the commission translated this requirement into a process for establishing the factual, legal and logical integrity of the submissions, the entire process established a power hierarchy that carried a real potential to subordinate the voices of the citizenry, even if that was not the intention. Both aspects of permissibility are inextricably linked to the participants' perception of power relations. While one is about perceptions of key participants, the other is about the edifice of the state itself, and the extent to which it has created normality against which it is hard to argue. In fact, whereas the court style hearings projected the gravitas and import of what was often termed "a national assignment" in the televised introductions, the highly formalized style of the consultations also created additional hurdles for participation.

6. Conclusions

Notwithstanding the challenges associated with the participatory process as enumerated above, the approach adopted by the CRC in the context of a developing democracy has some significance. First, the non-partisan character of the approach provided a forum for dialogue and conversation between the citizenry and the political establishment in a manner that prioritized, at least in theory, the views of ordinary people on an issue as important as the nation's constitution. The approach thus, provided an alternative avenue for state-citizenry interaction beyond the phenomenon of periodic elections. For over a year, the CRC through its various data collection strategies ignited and sustained a conversation between the State and its citizens over what forms of laws, rules, and regulations can best be adopted through the reform processes to enhance the quality of life and protect and safeguard the rights, responsibilities, and obligations of the Ghanaian state and its citizens. In a country, where partisanship is the lens through which most public discourses are carried out, the CRC's ability to manage a prolonged public participation and consultation program on a major and potentially divisive issue, without incurring the displeasure, or inviting the wrath of the various political parties or any segment of the society, helped to reinforce the legitimacy of the state, and shows that decency, moderation and sensible dialogue are possible in highly adversarial and divisive political contexts.

In addition, judging from the overall public enthusiasm associated with the all-inclusive approach of the CRC, and the profound commendations it received from political parties, civil society organizations and ordinary Ghanaians, we can deductively argue that participatory policy making is an effective instrument for national cohesion and nation-building, especially in the context of multi-ethnic societies. Through the use of public participation, the CRC was able to reignite a broader sense of belonging, oneness, and some measure of collectivism and solidarity that transcended the ethnocentric undertones often beneath the foreground and background of political discourses associated with the major political parties in Ghana. Consequently, the participatory approach as used by the CRC, points to the extent to which all inclusive forms of public deliberations can help ease social tensions, collapse ethnocentrism, and generate some shared affinity with the state, its institutions and operations. On the basis of this, strategies of participation that evoke the symbolisms of the State, as an institution in which all the citizenry have a stake, can assist in subordinating ethnocentric identities to national identity, and thus further defuse mutual suspicions and their accompanying tensions.

Due in large measure to the participatory approach used, the CRC report is perceived as the collective wishes and desires of the nation. This automatically made acceptance of its recommendations imperative as government could suffer adverse electoral implications if it failed to accept outcomes of such participatory processes. The fact that the government has accepted over 90% of the CRC's recommendations illustrates this point. Thus, the approach indirectly compelled the government to accept decisions generated through citizenry engagement processes partly because in electoral politics, it is wiser for governments to be on the side of the people, and the participatory approach offered an opportunity to ascertain the mood of the electorate.

In a nutshell, the CRC's decision to directly engage the citizenry was a bold attempt at using a participatory approach for the formulation of public policy in the context of a developing country. In doing this, the CRC used several mutually reinforcing strategies and mechanisms to deal with the intractable challenges of participatory policy making: gender, regional, and professional bias; language barriers; and obstacles posed by cultural permissibility of submissions. Many of these challenges, shifted the balance of participation in favour of the elites and mostly educated urban working class. Overall, however, the significance of the participatory approach as operationalized by the CRC lies in its capacity to support national cohesion and enhance democratic values such as open deliberations and tolerance of divergent views.

Acknowledgement

The authors wish to express their profound gratitude to the Ghanaian State for the annual book and research pecuniary allowance given to all academic staff, without which, this research could not have been possible.

References

- Abdulai, A., & Quantson. (2009). The changing Role of CSOs in Public Policy in Ghana. *Ghana Journal of Social Sciences*, 5 & 6, 114-151.
- Ackerman, B., & Fishkin J. S. (2004). *Deliberation Day*. New Haven, CT: Yale University Press.
- Afari-Gyan, K. (1995). The making of the Fourth Republican Constitution of Ghana Accra, Ghana, Friedrich Ebert Foundation.
- Atuguba, R. A. (2006). Ghana: Changing Our Inherited Police Institutions. In A. Seidman, R. B. Seidman, P. Mbana, & H. H. Li, *Africa's Challenge: Using Law for Good Governance and Development*. Trenton, NJ: Africa World Press.
- Atuguba, R. A. (2007). Ghana at 50: Colonised and Happy. In H. J. A. N. Mensa-Bonsu et. al. (Eds), *Ghana Law Since Independence: History, Development and Prospects*. Legon: Faculty of Law, University of Ghana.
- Atuguba, R. A. (2008) The Colonial State Lives on: Reflections on the Colonial Character of Ghana's Police. *African Agenda*, 11(2).
- Bardhan, P. K. (2002). "Decentralization of Governance and Development." *Journal of Economic Perspectives* 16(4), 185-206. <http://dx.doi.org/10.1257/089533002320951037>
- Bhambra, G. K. (2009). *Rethinking Modernity: Postcolonialism and the Sociological Imagination*. New York, Palgrave Macmillan.
- Biersteker, T. J. (1990). Reducing the Role of the State in the Economy: A Conceptual Exploration of IMF and World Bank Prescriptions. *International Studies Quarterly*, 34(4), 477-492. <http://dx.doi.org/10.2307/2600608>
- Bishop, P., & Davis G. (2002). Mapping Public participation in Policy Choices. *Australian Journal of Public administration*, 61(1), 14-29. <http://dx.doi.org/10.1111/1467-8500.00255>
- Boon, T., & Meilby, H. (2000). Enhancing Public participation in State Forest Management: A User Council Survey. *Forestry*, 73, 155-164. <http://dx.doi.org/10.1093/forestry/73.2.155>
- Carroll, B. W., & Carroll, T. (1999). Civic Networks, Legitimacy and the Policy Process. *Governance: An International Journal of Policy and Administration*, 12(1), 1-28. <http://dx.doi.org/10.1111/0952-1895.00088>
- Carroll, T., & Carroll, B. W. (2004). The Rapid Emergence of Civil Society in Botswana. *Commonwealth and Comparative Politics*, 42(3), 333-355. <http://dx.doi.org/10.1080/1466204042000326172>
- Cohen, J. (1989). Deliberative Democracy and Democratic Legitimacy Good Polity (pp. 17-34). Oxford, Blackwell.
- Cohen, J., & Sabel, C. (1997). Directly-Deliberative Polyarchy. *European Law Journal*, 3(4), 313-342. <http://dx.doi.org/10.1111/1468-0386.00034>
- Constitution Review Commission. (2009). Consultative Review of the Operation of the 1992 Constitution of Ghana. Accra: Constitution Review Commission.
- Constitution Review Commission. (2010). Consultations Strategy. Accra: Constitution Review Commission.
- Constitution Review Commission. (2011). From a Political to a Developmental Constitution: Final Report of the Constitution Review Commission. Accra: Constitution Review Commission.
- Esau, M. V. (2008). Contextualizing Social Capital, Citizen Participation and Poverty through an Examination of the Ward Committee System in Bonteheuwel in the Western Cape, South Africa. *Journal of Developing Societies*, 24(3), 355-380. <http://dx.doi.org/10.1177/0169796X0802400303>
- Fischer, F. (1993). Citizen participation and the democratization of policy expertise: From theoretical inquiry to practical cases. *Policy Sciences*, 26(3), 165-187. <http://dx.doi.org/10.1007/BF00999715>
- Government of Ghana. (2009). *State of the Nation. Annual Address to the People of Ghana by the President of the Republic: John Evans Atta Mills*. Parliament House: Assembly Press, .

- Government of Ghana. (2010). Constitution Review Commission of Enquiry Instrument 2010 (C.I 65). Accra: Government Printer.
- Government of Ghana. (2012). White Paper on the Report of the Constitution Review Commission. Accra: Government Printer.
- Gutmann, A., & Thompson, D. (1999). *Democracy and Disagreement*. USA: Harvard University Press.
- Hiller, E., & Landenburger, G. (1997). Public Participation in Medical Policy-Making and the Status of Consumer Autonomy. *American Journal of Public Health*, 87, 1280–1288. <http://dx.doi.org/10.2105/AJPH.87.8.1280>
- Juma, C., & Clark N. (1995). Policy Research in Sub-Saharan Africa: An Exploration. *Public Administration and Development*, 15, 121-137. <http://dx.doi.org/10.1002/pad.4230150204>
- Korang, K. L. (2003). *Writing Ghana, Imagining Africa: Nation and African Modernity*. New York: University of Rochester Press.
- Kpessa, M. (2011a). *Ghana's Democratic Development Since 1992: Prospects and Deficits*. Accra: National Commission for Civic Education.
- Kpessa, M. (2011b). The Politics of Public Policy in Ghana: From Closed Circuit Bureaucrats to Citizenry Engagement. *Journal of Developing Societies*, 27(1), 29-56. <http://dx.doi.org/10.1177/0169796X1002700103>
- OECD. (2001). *Citizens as Partners: Information, Consultation, and Public Participation in Policy Making*. Paris: OECD.
- OECD. (2005). *Modernizing Government: The Way Forward*. Paris: OECD.
- Ohemeng, F. (2005). Getting the State Right: Think Tanks and the Dissemination of New Public Management Ideas in Ghana. *Modern African Studies*, 43(3), 443-465. <http://dx.doi.org/10.1017/S0022278X05001047>
- Peters, G., & Pierre, J. (2000). *Governance, Politics and the State*. London: Macmillan. <http://dx.doi.org/10.1111/0952-1895.00133>
- Philips, S. D. (1999). Social Movements in Canadian Politics: Past their Apex?. *Canadian Politics. Beckerton and Gagnon*. Peterborough: Broadview Press.
- Potapchuk, W. R. (1991). New Approaches to Citizen Participation: Building Consensus. *National Civic Review*, 80(2), 158-169. <http://dx.doi.org/10.1002/ncr.4100800207>
- Quayson, A. (1999). *Postcolonialism: Theory, Practice or Process?* UK: Polity Press.
- Republic of Ghana. (1992). *The Constitution of Ghana*. Accra: Government Printer.
- Risse, T. (2000). “Let’s argue!”: Communicative Action in World Politics. *International Organization*, 54, 1-40. <http://dx.doi.org/10.1162/002081800551109>
- Risse, T. (2004). Global Governance and Communicative Action. *Government and Opposition*, 39(2), 288-313. <http://dx.doi.org/10.1111/j.1477-7053.2004.00124.x>
- Sidney, V., & Almond, G. (1980). *The Civic Culture Revisited*. Boston: Little Brown.
- United Nations. (2008). *People Matter: Civic Engagement in Public Governance World Public Sector Report*. New York: UN-DESA.
- Vogel, D. (1986). National Styles of Regulation: Environmental Policy in Great Britain and the United States. Ithaca: NY Cornell University Press.
- Williams, D. (2008). *The World Bank and Social Transformation in International Politics: Liberalism, Governance and Sovereignty*. London and New York: Routledge.
- World Bank. (1994). *Ghana Community Water and Sanitation Project Staff Appraisal*. Accra: World Bank 12404.