

ELECTION PETITION AND THE FUTURE OF ELECTORAL REFORMS IN GHANA

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ABSTRACT

The results of Ghana's 2012 and 2020 elections were challenged in the nation's Supreme Court. Even though the court processes in both cases did not alter the election results, they nevertheless exposed monumental flaws in the electoral processes. The flaws in the 2012 electoral processes were exposed at the Supreme Court and featured in the final judgment of the court in a manner that allowed the Electoral Commission to initiate moves towards electoral reforms. However, the challenges of the 2020 elections, though exposed at the courts, were never featured in the final judgment of the Supreme Court. This paper discusses the implications of the 2020 election petition for the future of electoral reforms in Ghana. It argues that the rigid application of the letter of the law by the Supreme Court and the relegation to the background of the thorny issues of electoral challenges in the 2020 elections, would render the quest for further electoral reforms difficult. This would then make the future of any attempt to fine-tune the electoral processes quite bleak.

Keywords: election, petition, electoral reform; Supreme Court; judgment; letter of the law; spirit of the law

INTRODUCTION

The 1992 Constitution of Ghana provides for the contestation of election results. Article 64(1) states that 'the validity of the elections of the president may be challenged only by a citizen of Ghana, who may petition the Supreme Court within

twenty-one days after the declarations of the result of the elections in respect of which the petition is presented'. Article 64(2) also states that 'a declaration by the Supreme Court that the election of the President is not valid shall be without prejudice to anything done by the President before the declaration'. Also, article 64(3) states that 'the Rules of Court Committee shall, by constitutional instrument, make rules of court for the practice and procedure for petitions to the Supreme Court challenging the election of a President (Republic of Ghana 1992, pp. 49–50).

Armed with the requisite constitutional provisions, the results of Ghana's 2012 and 2020 elections were challenged in the nation's Supreme Court. Even though the court processes in both cases did not alter the election results, they nevertheless exposed flaws in the electoral processes. The flaws in the 2012 electoral processes were exposed and featured in the final judgment of the courts in a manner that allowed the Electoral Commission (EC) to initiate moves towards electoral reforms. However, though the challenges of the 2020 elections were exposed at the courts, they were not featured in the final judgment of the Supreme Court. This has created the impression in the minds of many Ghanaians that nothing serious or untoward had happened in the 2020 electoral processes (Mahama 2021). The pursuit of this idea after the 2021 election petition would mean that the quest for further electoral reforms would be difficult, and any future attempt to fine tune the electoral processes may be quite bleak.

Several studies have been conducted on the electoral processes and electoral reforms in Ghana. These include works by Oquaye (1995), Boahen (1996), Ayee (1998), Ayee (2001), Badu and Larvie (1996), Gyimah-Boadi (2004), Debrah (2011), Oquaye, (2014), Debrah (2015), Gyampo, Graham and Yobo (2017), and Gyampo (2018). Apart from an earlier study undertaken by Gyampo (2018) on 'The State of Electoral Reforms in Ghana', which briefly highlights the 2012 election petition process, none of the studies cited is linked directly or indirectly to election petitions and how they could shape electoral reforms in Ghana. In particular, no scientific study has been conducted about the implications and future of electoral reforms in Ghana following the nation's 2020 election petition to the Supreme Court.

This study aims to fill the lacunae in the literature. It uses a purely qualitative approach by reviewing the petitions or demands of plaintiffs and court verdicts in the 2012 and 2020 election petitions. This is by interrogating earlier works and the state of current thinking on electoral reforms in Ghana and making the needed inferences and deductions based on the materials, facts, and information from the existing literature and other relevant documentation. Structurally, the subsequent sections of this paper explain the concept of electoral reform in dealing with any potential crisis of conceptual confusion; discuss the theoretical taxonomy of the study; deliberate on historical electoral reform initiatives in Ghana; review

the 2012 election petition and its consequent ruling/reform proposals; review the 2020 election petition and its consequent ruling; and draw a conclusion on the implications of the 2020 election petition for the future of electoral reforms in Ghana.

WHAT IS ELECTORAL REFORM?

Lijphart (1994, p. 51) explained the idea of electoral reform in terms of the total replacement of the electoral formulae of national electoral systems. In his view, a minimum of 20% change to a nation's electoral formulae could qualify as major electoral reform. A minor electoral reform has less than 20% change to the electoral formulae. But scholars like Katz (2007) argue that there should be no line of demarcation between major or minor electoral reform. Any change to the electoral processes, regardless of whether major or minor, connotes electoral reform. The International Institute of Democracy and Electoral Assistance (IDEA) (2006) defined electoral reform as the improvement of the responsiveness of an electoral process to the desires and expectations of the electorate. This constitutes reform when the change is intended to foster and enhance impartiality, inclusiveness, transparency, integrity, or the accuracy of the electoral process (*ibid.*).

The current state of thinking about electoral reforms provides for three related dynamics in the process of electoral reform. For instance, the IDEA (2006, pp. 295–296) has presented some of the features around which reforms may take place, starting with the legal framework that governs the conduct of elections. Here, the reform may focus on the amendment of the constitution, the electoral law, and other related regulatory instruments which aim to foster the integrity of the electoral processes. As Jacobs and Leyenaar (2011, p. 41) noted, 'a change in the legislation on the electoral processes is an electoral reform'. The motivation for change could be the alteration of the electoral laws or the introduction of rules on voting choices. The second may address administrative processes, including new mechanisms and technical innovations to build the capacity of the election management body (IDEA 2006). The third could be directed at political changes, including the environment within which the election management performs its duties to create a supposedly safe haven in which to carry out its responsibilities (*ibid.*).

Various stakeholders tend to play roles in fine-tuning the electoral processes. In Ghana, the EC has been instrumental in the reform efforts. Smith (1960, pp. 1–6) reports that the EC of many independent African countries responded to the perceived shortcomings of the inherited colonial electoral systems by changing the *status quo* to accommodate post-colonial political dynamics. For instance, in Ghana, the EC expanded voters' access to registration and created the opportunity

for Ghanaians to exercise their franchise (Crabbe 1975). Politicians and political parties have also featured in the reform agenda. Hence, much of the reform in the electoral process before democratisation occurred largely as a response to intense pressure from politicians and political parties. Voter dissatisfaction and court rulings, as well as recommendations by constitutional or presidential commissions, have also stimulated electoral changes in many developed and emerging democracies. For instance, the electoral reforms in Italy and Japan in the 1990s have been attributed to voter dissatisfaction with the system (IDEA 2006). In Ghana, it took the Siriboe Commission's Report (1968) to re-demarcate constituency boundaries. The various meetings of political elites in Ghana about the electoral processes, and the Supreme Court ruling in Ghana's 2012 election petition, have all been instrumental in persuading the EC to overhaul and reform the electoral processes (Gyampo 2018).

THEORETICAL TAXONOMY

The main theoretical explanations for electoral reform have generally been the rational choice and institutionalist approaches. The earliest model for analysing electoral reform came from rationalists. To the rationalist, any attempt at reforming the electoral process is essentially a political process that grants decision-makers the opportunity to make changes to the electoral processes of a country for the purpose of achieving their political interests and benefits. This theory views politicians as maximising political power to enhance their party's chances of winning general elections (Shugart 2008). In this regard, the only reason why the political elites would seek a reform of the electoral processes would be to maximise their gains at elections and minimise all opportunities for their electoral defeats (Benoit 2004, p. 376). Therefore, electoral reform in the rationalist perspective addresses only areas that are of critical concern to the politician. It is therefore not about interventions to ensure fairness of votes and allocation of seats in the polity or anticipated changes in the population, such as population growth dynamics (Renwick 2010). It is about the selfish interests of politicians who gather as much information as possible about the range of reform options and the consequences for their prospect of winning more seats, in their quest to reform the electoral processes (Benoit 2004; Hindmoor 2006).

The rational choice theory of explaining electoral reform has however been criticised. Generally, if reforms are introduced only to secure the electoral fortunes of politicians, then they would not be initiated in an election in which the politician is assured of victory (Katz 2007). Politically motivated electoral reforms can be counterproductive due to the high degree of uncertainty around their effects on the fortunes of political actors (Colomer 2005, p. 22). Due to the uncertainties

about the outcome of such politically-motivated reform processes, those most likely to suffer damages or disadvantages would resist the change (Reed & Thies 2001). Furthermore, only those political parties that feel most dissatisfied with the rules in use (for instance, parties relegated to opposition for several years) would support a change in the electoral process. Electoral reform process must benefit from support across the board to gain acceptance and legitimacy (Pilet & Bol 2011, p. 67).

The institutionalist model came in response to the weaknesses of the rational choice theory. Its core premise is rooted in the inter-relationship between institutions and their societal roots (Lijphart 1994, p. 2). The model argues that institutional settings are relatively stable and may be altered or reformed only when there are challenges that distort institutional equilibrium (*ibid.*). Thus, within the context of the institutionalist school of thought, electoral reforms can occur only when there are institutional dysfunctions, and when existing institutions produce perverse effects (Shugart 2008, p. 2). Katz (2007), for example, noted that system changes are possible when the existing electoral arrangements are eroded, largely due to concerns such as vote-buying and nepotism. Advocates of this model posit that electoral reform occurs because of a perceived imbalance in the established arrangement for conducting elections. IDEA (2006, p. 296) explained that reforms to an electoral process may be triggered by the failure to deliver acceptable elections, by conflict resulting from disputed elections, and/or by recognised changing dynamics related to population growth and increased economic activities. From these disparate views on the need for electoral reforms, a crucial question is whether an electoral process must undergo reforms for the least system dysfunction? Frequent changes and electoral reforms for the smallest weaknesses in the electoral processes may undermine the resilience of the process and the need for processes to correct themselves in future elections.

Apart from the rational choice and institutionalist models, some scholars have explored other means of explaining reforms. The desire to comply with global best practice may push a country to undertake major or minor electoral reforms (Bowler & Farrell 2009). Indeed, electoral reforms may be linked to donor conditionality for the transition from authoritarian rule to democracy. Several African countries that depended on international donor financial support were forced to implement overall political reforms, including electoral reform, to inaugurate the rebirth of democracy. This was witnessed in Liberia and Sierra Leone when they emerged from civil war to democracy. In this regard Dalton and Gray (2003) identified 'diffusion agents' as a factor instigating progressive electoral reform. It must however be noted that as African democracies evolve, there is no one-size-fits-all global reform agenda to be imposed on them. Each unique country situation may make it impossible for global standards in electoral reform to be implemented in haste.

HISTORY OF ELECTORAL REFORM INITIATIVES IN GHANA

Since 1992, Ghana's electoral processes have undergone several mutations and reforms. In 1994, the opposition parties that lost the November 1992 presidential election and boycotted the subsequent parliamentary polls in December of the same year, threatened to stay away from participating in all future elections unless there was satisfactory electoral reform (Gyampo 2018). The opposition parties argued that the electoral processes used for the conduct of the 1992 presidential election created an uneven playing field and conferred advantages to the National Democratic Congress (NDC). The opposition parties, led by the New Patriotic Party (NPP), published a book titled *The Stolen Verdict* which encapsulated all the cases of electoral fraud perpetrated by agents of the NDC and the Interim National Electoral Commission (INEC) during the 1992 presidential elections (Boahen 1996).

The NPP produced a litany of instances of election violence perpetrated against its candidates and officials. All the opposition forces then laid out stringent conditions to be met before they would consider returning to the electoral front. They insisted that the electoral process should be overhauled by creating a transitional body to supervise the electoral process; by compiling a completely new voters' roll and identity cards for voters; and by replacing the INEC with a new body with representatives from all parties (Ayee 1998). On the other hand, the NDC saw the prevailing electoral processes as efficient and therefore made no demands for electoral reform (Debrah 2015). According to the NDC, the status quo had not posed any threat to the credibility of the 1992 elections because the international community, led by the Commonwealth Secretariat's team of election observers, endorsed the election outcome as free and fair (*ibid.*).

With the future of democracy threatened and the survival of the electoral process hanging in a balance, the international community pressured the EC for electoral reform as the only way of preventing chaos and democratic relapse (Debrah 2015; Gyampo 2018). In countries that maintained the status quo without changing their electoral processes, such as Côte d'Ivoire, Mali, Kenya and the Central Africa Republic, disagreements over the electoral processes and election outcomes sparked heinous civil wars (Lumumba-Kasongo 2005, pp. 1–20). Knowing that electoral reform has great potential for democratic progress, the International Foundation for Electoral System (IFES) established a presence in Ghana to provide a technical guide towards electoral reform (Gyampo 2018). Other international agencies such as the Commonwealth Secretariat and National Democratic Institute (NDI) as well as the governments of individual member states pledged both material and financial support to implement changes in the electoral processes of Ghana (Badu & Larvie 1996; Ayee 1998). Favourable international backing for reform encouraged a settlement by the political elite.

Both the NDC and NPP agreed to proceed by broad consensus to enact a new system that would promote the general good (Tsebelis 2002, p. 33). As a result, in March 1994 an elite consensus body called the Inter-party Advisory Committee (IPAC) was inaugurated. It comprised the EC, which had been established by Act 451 in 1993, together with representatives of political parties, with donors as observers (*ex-officio* members) (Ayee 1998). However, when IPAC commenced work, it functioned as a chamber for the elite to bargain over how to make the electoral process achieve its objective of free and fair elections. The elite used the IPAC platform to reform the electoral processes through an agreement among themselves on the thorny areas of the electoral processes (Gyampo 2018).

A major change in the electoral process instigated via the elite consensus platform was the replacement of the voters' register. The politicians agreed that the voters' register used for the 1992 elections was inaccurate, outdated, unacceptable and therefore incapable of promoting free and fair elections in the future (Ayee 1998; Commonwealth Secretariat 1992). The registration of voters departed from the old method where names of voters also bore titles such as 'Nana', 'Dr/Prof/Mr.' and 'Rev/Alhaji' if they were traditional rulers, academics or religious leaders respectively (Tsebelis 2002). The mechanics of the electoral roll/register were also overhauled to ensure the use of a combination of thumbprint and photo identity (ID) cards in the less controversial areas and controversial border towns respectively (Ayee 1998). To promote the integrity of the register, temporary registration officials and political party agents were recruited and underwent thorough training on procedure (*ibid.*). Party agents formed an integral part of the registration process. As observers of the process for their parties, they could challenge an applicant suspected of being ineligible who came to register at the centres (*ibid.*).

A Registration Review Committee (RRC) with a presence in all constituencies was composed to arbitrate disputed registration cases. Individuals who felt aggrieved by the decision of the RRC could appeal to the courts for redress. A provisional voters' roll was then available for inspection by those who registered their names for purposes of rectifying any anomaly such as omissions, wrong inclusions and deleting the names of the deceased (Ayee 1998; Gyampo 2018). Party agents were also permitted to endorse the daily records of the registration exercise at the centres (Debrah 2015). The EC submitted the final register to each political party to aid their door-to-door campaigns (*ibid.*). Every year, the EC has endeavoured to add new qualified voters on the roll even though it has implemented this mandate more in the election years (Ayee 1998; Gyampo 2018). By 2000, every registered voter had been issued with a photo ID card. In 2004, changes

in the process saw the photographs of voters appearing on the register next to their vital information. This measure aided smooth voter identification, thereby dispelling fears of double voting and impersonation (Debrah 2015; Gyampo 2018).

An important dimension of the reform was the replacement of the opaque ballot boxes used for the 1992 elections with transparent boxes (Ayee 1998). Cardboard screens were also set up in open spaces designated as polling centres where voters entered to make their decisions before depositing their thumb-printed ballot papers in the box, which was located at conspicuous places in front of the designated public buildings marked as polling centres (Debrah 2011). This was a deviation from past practices where voters went into a closed room to mark their choice of candidate. This situation stirred allegations that some voters concealed additional ballot papers on their bodies when they went to the rooms to cast their ballots (Debrah 2015). Accusations of vote-rigging were addressed by setting up polling booths in open places (*ibid.*). To allay the concerns about figures being doctored during and after vote-counting at the polling stations, the EC, in collaboration with the political parties, implemented an arrangement that allowed vote counting and the declaration of results to take place at the polling centres immediately after voting ended (Electoral Commission 1996, pp. 2–16). In the presence of candidates' agents and voters, the presiding officers counted the ballots for each candidate and recorded the figures on the Declaration of Result Form, which each party/candidate's agent countersigned to authenticate the results. Each agent was given a copy of the signed form for the candidate's independent vote-tabulation (Debrah 2015). At the EC regional offices where the constituency's cumulative results for each candidate were faxed to the headquarters, candidates' agents witnessed the process (Electoral Commission 2008, pp. 1–16).

The reform also focused on party organisation and financing. The goal of party reform hinged on the need to provide a levelled playing field for political competition. By 2000, it had become obvious that the Political Parties Law (PNDCL 281) was no longer capable of aiding party development. Indeed, this law obstructed competitive party politics and democratic progress (Ayee 1998, p. 31). As a result, a new Political Parties Act 574 was enacted in 2000 to replace the PNDCL 281 to guarantee greater citizen participation in politics. Only multi-ethnic parties whose internal organisation conformed to a democratic ethos qualified to receive the Certificate of Registration to participate in any electoral competition. To discourage political corruption, political parties were requested to make a declaration of their assets and expenditure within 90 days after receipt of the final Certificate of Registration, and 21 days before general elections respectively. Similarly, within six months from 31 December of each year, and after a general election or by-election in which a party participated, a detailed audited statement of accounts (showing income and expenditure) should be submitted to the EC

for scrutiny (Republic of Ghana 2000, pp. 1–13). Party financing has always been a thorny issue in Ghana's multiparty politics. Incumbents have been accused of depriving their opposition of funds while they used state resources to secure re-election, thereby undermining the competitiveness of the elections. The PNDCL 281 had disqualified foreign companies from donating to political parties, and limited members' contribution to ₵200 (\$60) (Republic of Ghana 1992, p. 3). However, Act 574 scrapped the limited contribution provision and granted party founding members unlimited financial donations towards the development of their parties. In addition, firms owned by Ghanaians could donate to political parties. Only the ban on foreigners' contributions to political parties was retained in the new Law (Republic of Ghana 2000, pp. 8–10).

There was an elite consensus among the political actors for the introduction of biometric registration and voting into Ghana's electoral processes (Gyampo 2018; Republic of Ghana, 2012). This was in order to deal with concerns of electoral irregularities and malpractices such as double-voting, impersonation, and rigging. It was widely held that biometric registration and verification could reduce the incidence of electoral fraud. Hence in the lead-up to the 2012 general elections, the cliché 'NVNV' or 'No Verification, No Vote' was trumpeted by the political elites and their apparatchiks in a manner that pointed to the end of electoral irregularities and fraud (Gyampo 2018).

Following the 2012 general elections, an election petition to the Supreme Court of Ghana was mounted to challenge the outcome of the election results. The Supreme Court ruling took eight months to be delivered; it exposed serious flaws in the electoral processes and also provided an impetus for electoral reform in Ghana. The next section of this paper looks at the 2012 election petition and its consequent proposals for electoral reform.

THE 2012 ELECTION PETITION AND ELECTION REFORM

The 2012 election petition was filed at the Supreme Court of Ghana by Nana Akufo Addo, presidential candidate of the New Patriotic Party (NPP), his running mate, Dr. Mahamadu Bawumia, and the chairman of the party, Mr. Jake Obetsebi Lamptey. They petitioned the apex court of Ghana on issues of electoral anomalies and irregularities, requesting that the court annul the election of John Mahama, NDC presidential candidate, as president (Debrah 2015).

Their main contention was that the EC, headed by Dr. Kwadwo Afari-Gyan, allowed voting to take place in several polling stations across the nation without biometric verification. This, they argued, was contrary to the Constitutional Instrument (CI)75 Regulations 30(2). Therefore, they petitioned the court to annul the election results in those polling stations (Gyampo 2018). Another concern was

that the EC employed the services of Superlock Technologies Limited (STL), an information technology company, without notifying the IPAC.¹ They argued that this contradicted conventional practices in Ghana, where such major decisions were transparently discussed with the IPAC. According to the petitioners, the EC failed to discuss the issue with IPAC because they wanted to rig the elections in favour of the NDC presidential candidate (Asante & Asare 2016, p. 3). Also, several Statement of Poll and Declaration of Results Forms (also called pink sheets) had an identical serial number. The petitioners claimed that this was illegal and an electoral fraud, as all pink sheets were expected to have unique serial numbers. The petitioners further raised issues of widespread incidences where presiding officers failed to sign the results declared on the pink sheets in contravention of CI 75, Regulation 36(2). In addition, the petitioners claimed that the principle of one man, one vote was violated as some people engaged in multiple voting under the watch of the EC. Finally, they noted as dubious the change in the total number of registered voters from 14 031 680 before elections, to 14 158 890 on 9 December 2012 when the results were declared by the EC (Alidu 2014, p. 1453).

SUMMARY OF THE JUDGMENT

In a 588-page judgment with a majority of 5 to 4, the Supreme Court of Ghana dismissed the NPP petition and declared that John Dramani Mahama of the NDC was validly elected as president on 7 December 2012 (Baneseh 2013). Four out of the nine judges, namely Justice William Atuguba, Mrs Justice Sophia Adinyira, Mr Justice N. S. Gbadegbe and Mrs Justice Vida Akoto-Bamfo dismissed the petitioner's claims for the annulment of a total of 3 931 339 votes due to electoral irregularities in the presidential election on 7 and 8 December 2012 (Baneseh, 2013). Three of the judges, namely Mr Justice Julius Ansah, Ms Justice Rose Constance Owusu and Mr Justice Anin Yeboah voted for the annulment of the two million votes due to the petitioner's argument of gross irregularities (Gyampo 2018). They also declined the request of the petitioner to declare their candidate Nana Akufo-Addo as the validly elected president, but supported the view that the votes affected by the allegations of the petitioner be annulled and rerun (Debrah 2015).

In their verdict, the justices of the Supreme Court acknowledged the challenges and monumental flaws of the electoral processes and made extensive recommendations for electoral reform. Justice William Atugubah, who chaired the panel of judges, summarised the proposals for electoral reforms as follows:

1 The IPAC brings all political parties together to discuss issues of the electoral processes with the Electoral Commission with a view to building consensus and finding solutions to problems confronting the electoral process.

This petition, however, has exposed the need for certain electoral reforms. I mention some of them. The voter's register must be compiled and made available to the parties as early as possible; a supplementary register may cater for late exigencies; the calibre of presiding officers must be greatly raised up; the pink sheet is too elaborate, a much simpler one is required to meet the pressures of the public, weariness and lateness of the day at the close of a poll etc.; the carbon copying system has to be improved upon; the Biometric Device System must be streamlined to avoid breakdowns and the stress on the electorate involved in an adjournment of the poll, and invalidating wholesale votes for insignificant excess numbers is not the best application of the administrative principle of the proportionality test.

ELECTORAL REFORM AFTER THE 2012 ELECTION PETITION

As a result, the EC invited proposals for electoral reforms from 38 key stakeholders including political parties, faith-based organisations, professional bodies, and civil society organisations (CSOs). The IEA, under the aegis of the Ghana Political Parties Programme (GPPP) for instance, held a series of workshops to review the electoral processes. This culminated in the submission of 25 proposals for electoral reform to the EC on 20 November 2013.² Subsequently, in January 2015, the EC inaugurated a 10-member Electoral Reforms Committee to examine the proposals for electoral reform and advise the Commission on the implementation of the proposals. The Committee, comprising representatives of political parties, the EC and CSOs, submitted its report encapsulating forty-one proposals for electoral reform to the Commission in April 2015.³

Almost all the reform proposals (close to 99%) were accepted by the EC, albeit with some modifications, while others were slated for further discussion with political parties before their acceptance and possible implementation.

Proposals outside the Ambit of the Commission

Eight proposals fell outside the ambit of the Commission. The Commission therefore forwarded these to the appropriate institutions including Parliament, the judicial service, the Attorney-General's Department, and other institutions, for the necessary action to be taken. These proposals concerned the term of the office of the chairperson and members of the Commission; the appointment of

2 The leading author Prof Gyampo is the Coordinator of the Ghana Political Parties Programme and a member of the Electoral Reform Committee.

3 See report of the Electoral Reforms Committee submitted to the Electoral Commission in April 2015

Commission members following broad consultations and with prior approval of Parliament; financial estimates of the Commission to be sent directly to Parliament; removal of Attorney-General's consent before prosecuting electoral offences; empowering the Commission to prosecute election offences; establishment of election tribunals to determine electoral cases and petitions; spelling out grounds for invalidating the election of a president; and the need to reduce the period of determination of a presidential election petition (Gyampo 2018).

Proposals Accepted with Modifications

The Commission accepted a total of 17 proposals with some modifications. These were:

- The need for well-trained election officials to man the polls
- Continuous voter registration exercise
- Setting up a national collation centre to replace the strong-room
- Institutionalising the inter-party advisory committee meetings
- Using biometric verification devices for voter registration and exhibition exercises
- Raising the minimum educational qualification requirements for various levels of election officials
- Defining the term 'ordinarily resident' in CI 72 and 'hails from' for the qualifications to be registered as a voter in an electoral area
- Taking of oath by election officials before a judicial officer
- Holding elections in November instead of December
- Deferring the adoption of electronic voting
- The EC taking steps to reduce rejected ballots
- Sanctioning election officials who breach electoral laws
- Serial numbering all the statement of poll and declaration of result sheets
- Making clear provisions regarding processes and procedures to be followed upon the adjournment of the poll
- Improving compensation packages for election officials
- Giving vulnerable person priority at all polling stations
- Improving the training of election officials and commission staff (Gyampo 2018).

Proposals Accepted in Principle but Requiring Further Discussions at IPAC

There were 15 such proposals, as follows:

- No creation of additional constituencies in election year
- Voter registration exercise notice period should be extended from 14 to 21 days
- The Commission should receive a mandate to go to court for authority to delete names of unqualified persons from the provisional voters' register
- The Commission must be required by law to provide a copy of the final certified voters' register to political parties 21 days before elections
- Civil society organisations must be full members of IPAC
- The number of voters per polling station should be reduced
- An annual calendar of Commission activities should be published at the beginning of an election year
- All polling stations should be gazetted with their codes and locations not later than 42 days before elections
- Returning officers should give copies of proxy, special and absent voters' lists to candidates or their agents
- The list of accredited special voters should be expanded to include accredited media personnel and election observers
- The Statement of Poll and Declaration of Results form should be redesigned and simplified
- Where there is over-voting, polling station results should be annulled
- Returning officers must issue copies of collation sheets to agents
- Presidential election results should be published on a polling station by polling station basis (Gyampo 2018).

Rejected Proposal

The only proposal that was rejected by the EC was the No Verification, No Vote principle as the EC decided that it would be unfair for machines to determine who is eligible to vote. The Commission indeed recognised that the right of a citizen to vote is fundamental and guaranteed by the 1992 Constitution. In the view of the Commission, it has an inherent mandate to ensure that every eligible voter has the opportunity to vote. The Commission argued that in the absence or malfunctioning of the biometric verification device, there should be other physical or manual means of verifying voters in order not to disenfranchise Ghanaians (Gyampo 2018).⁴

4 See also Minutes of IPAC meeting, 20 July 2015

THE 2020 ELECTION PETITION

The 2020 election petition to the Supreme Court was filed by former President John Dramani Mahama. The petitioner (John Dramani Mahama) pointed out that the elections on 7 December 2020 did not result in any candidate obtaining the 50% plus one vote required for the election of a president. At the Supreme Court, the petitioner argued that the declaration by Mrs. Jean Mensa, chairperson of the EC and also the first respondent in the suit, of New Patriotic Party flag bearer, Nana Akufo Addo as president-elect, violated Article 63(3) of the 1992 Constitution. This article requires the winner to obtain more than 50% of total valid votes cast. The petitioner therefore submitted that the Supreme Court declare the election of Nana Akufo Addo as president-elect null and void. He further argued that, in declaring the election results, Mrs Jean Mensa (first respondent and the returning officer for the presidential elections), violated the constitutional duty imposed on her by articles 23 and 296(a) of the 1992 Constitution to be fair, candid, and reasonable. Mr Mahama also alleged that the EC collation of the presidential election results was 'unfair, untruthful and unreasonable'. The petitioner further noted that the said declaration was made arbitrarily, capriciously and with bias in favour of the second respondent, contrary to Article 296(b) of the 1992 Constitution, and in complete disregard of the allegations of vote-padding. Furthermore, the petitioner argued that the declaration of results was made without regard to due process of law as required under articles 23 and 296(b) of the 1992 Constitution (Mahama 2020, p. 2).

The petitioner, therefore, requested that the Supreme Court grant the following reliefs:

- a. A declaration that Mrs. Jean Mensa, chairperson of the first respondent and the returning officer for the presidential elections held on 7 December 2020, was in breach of Article 63(30) of the 1992 Constitution.
- b. A declaration that, based on the data contained in the declaration made by the chairperson of the first respondent, no candidate satisfied the requirement of Article 63(3) of the 1992 Constitution to be declared president-elect.
- c. A declaration that the purported declaration of Nana Akufo Addo as president-elect on the 9 December 2020 was null and void and of no effect whatsoever.
- d. An order annulling the Declaration of President-Elect Instrument, 2020 (C.I. 135) dated 9 December 2020 issued under the hand of Mrs Jean Mensa, chairperson of first respondent and the returning officer

for the presidential elections held on 7 December 2020 and gazetted on 10 December 2020.

- e. An order of injunction restraining second respondent Nana Akufo Addo from holding himself out as president-elect.
- f. An order of mandatory injunction directing the first respondent to conduct run-off elections for the petitioner and second respondent, as required by articles 62(4) and (5) of the 1992 Constitution (Mahama 2020, pp. 2–3).

RESPONDENTS' ARGUMENTS

The First Respondents' Argument (EC)

The EC argued that it 'complied with all the processes and procedures laid down by law for the conduct of the 7th December 2020 Presidential Election with fairness to every candidate and without malice, ill will or bias against anyone' [para 40 of 1st Respondent's answer to petition]. The EC offered a thorough explanation of the whole process for the collation of the presidential results. They argued that representatives of Mr Mahama (the petitioner) signed 13 out of the 16 regional election results summary sheets, while representatives of the second respondent (President Akufo Addo) signed 15 out of the 16 regional results summary sheets. The EC however admitted that some errors were made during the declaration of the presidential results on 9 December 2020, noting that 'in reading out the results on 9th December, 2020, its chairperson inadvertently read out the figure presenting the total number of votes cast as the figure representing the total number of valid votes, and the percentage of [the President] as 51.59% instead of 51.295%' [para 21 of 1st Respondent's answer to petition]. The EC also acknowledged that there were some errors in the declaration of the total valid votes. Nevertheless, the EC argued that those errors were corrected after the declaration, 'the figures converted into percentages showed that the president had obtained more than 50% of the valid votes, which met the constitutional threshold for the Election of President under Article 63(3) of the Constitution' [para 28 of 1st Respondent's answer to petition] (Ghanalawhub 2021).

The Second Respondent's Argument (Nana Akufo Addo)

In his response to the petition, the second respondent, President Akufo Addo, indicated some initial objections. He argued that the petition should be dismissed by the court because it is 'incompetent, frivolous and vexatious and discloses no

reasonable cause of action in terms of article 64(1) of the Constitution'. The lawyer for the second respondent, Mr Anthony Akoto Ampaw, and the team, argued that the petition failed to meet the constitutional requirement for challenging the validity of a presidential election. They also pointed to the purported factual limitations in the petition, including the claim in paragraph 13 of the petition that 'a total of one hundred points three per cent (100.3%)' is yielded from the percentages announced by 1st Respondent (EC) on 9th December 2020' (Ghanalawhub 2021).

SUMMARY OF THE JUDGMENT

The seven justices of the Supreme Court of Ghana who presided over the election petition on 4 March 2021 unanimously dismissed the petition of the former President John Dramani Mahama as being without merit. On the issues of alleged vote padding, in the view of the court even if proven this would not be significant enough to overturn the results obtained by President Akufo-Addo. They mentioned that 'Indeed, evidence on record clearly showed that the impact of the alleged vote padding, even if proved, would have been very insignificant and would not have materially affected the outcome of the elections. It would therefore not have been a proper ground for the annulment of the 2020 Presidential Elections' (Republic of Ghana 2021, p. 54). In their conclusion, the Supreme Court stated that the petitioner did not demonstrate in any way the alleged errors and unilateral corrections made by the first respondent affected the validity of the declaration made by the chairperson of the first respondent on 9 December 2020 (Republic of Ghana 2021, p. 57).

BRIEF ANALYSIS OF THE 2020 ELECTION PETITION AND JUDGMENT

Unlike the 2012 election petition that interrogated virtually all the concerns raised by petitioners in a manner that exposed the flaws in the nation's electoral processes, the court processes in the 2020 Election Petition were heavily adversarial. Though there is general consensus that there were challenges with the 2020 elections, the court did not delve into the problems for the purposes of properly exposing them, nor making consequential pronouncements that would provide for further electoral reforms. The political elites in Ghana, the petitioner and the defendants all agree that there were challenges with the 2020 elections (Republic of Ghana 2021). The institutionalist argument for electoral reform, and the justification for same, has been forcefully opined by Lijphart (1994), Shugart (2008) and Katz (2007), calling for electoral reform when there are challenges that distort the institutional equilibrium. In contrast, the conduct of the first defendant in refusing to speak to the challenges of the electoral processes at the Supreme

Court, and the final verdict of the Court, ignored the weaknesses of the electoral processes and hence downplayed the imperative for electoral reforms.

Several thorny issues regarding the 2020 elections deepened the already existing trust deficit of the Electoral Commission. These include:

- the inability of the EC to build the needed relational competence in engaging with the opposition to deal with electoral irregularities before declaring results;
- the challenges encountered during the collation of results, a lack of clarity on what constitutes Form 13 and the details it must encapsulate;
- multiple mistakes in the declaration of election results and corrections without allowing key stakeholders to benefit from insights and explanations with regard to the reasons for such changes and the basis for the corrections; and
- allegations of vote padding, among others, which were validated by the Supreme Court's demeanour and blatant refusal to address them and make recommendations on how they must be tackled.

Moreover, some of the preliminary court rulings shielded the EC from being accountable and testifying or being cross-examined on the irregularities and challenges that saddled the 2020 elections. These were, in particular, the application to re-open the petitioner's case, and a review of the ruling on the application to re-open the petitioner's case. The NPP's position was consistent with the EC's declaration so they were not asked by the Supreme Court to present their petition.

Many well-meaning Ghanaians across the political divide, civil society and several governance experts expected that the practical issues of electoral malfeasance and irregularities that marred the 2020 elections would have featured prominently in the final ruling of the courts. Although these were not the issues before the Supreme Court, the institutional weaknesses of the EC that make electoral reform an imperative, were clearly exposed during the court processes. Regrettably, the fact that in their ruling on the 2020 election petition, the Supreme Court left electoral reforms in abeyance creates the impression that all is well with the electoral processes.

THE FUTURE OF ELECTORAL REFORM IN GHANA

As indicated earlier, many hoped that the Supreme Court's final judgment would give the EC the opportunity to deal with some of the issues in the 2020 elections, as

in the 2012 election petition. Unfortunately, the mechanistic application of the law in a positivist manner, without including other socio-political considerations, and the implications of sticking to rigid legalities with no consideration for electoral reforms, denied Ghana's electoral processes a clearer voice and directives for electoral reforms. This approach is a total departure from Lijphart (1994, p. 2) who explained that electoral reform as a replacement of a national electoral system, can consist of minor or major electoral reforms (Katz 2007, p.6). The ruling of the Supreme Court on the 2020 elections petition missed the opportunity to reform Ghana's electoral laws and regimes, the legal framework that governs and guides the conduct of elections in Ghana. This was what the 2012 elections petition had done and which contributed to the improvement of the electoral process in the subsequent elections of 2016 and 2020.

But given that the challenges of the 2020 elections still linger, the EC may independently initiate interventions, after the 2020 election petition, to deal with some of the challenges and concerns raised by the petitioners. The difficulty, however, lies in the fact that such a move requires a multi-stakeholder engagement with the participation of the political party to which the petitioner belongs. The question is, how will the EC get the NDC to approve such a move, particularly in the absence of a credible dialogue platform? Will there be a concession that the challenges of the electoral processes exposed at the court but denied recognition of admission by the first defendant, actually exist? If so, how will the EC be perceived by the NDC and the Ghanaian public? Put differently, the Supreme Court did not make pronouncements in its final judgment that admits the challenges of the 2020 elections, and the EC was shielded and prevented from conceding that there were challenges with the 2020 elections. So, the question remains as to how the Commission will be able to initiate interventions to deal with any challenge.

The Commission invited all political parties to the IPAC meeting on Wednesday 21 April 2021 to review the conduct of the 2020 presidential and parliamentary elections. But, as anticipated, the NDC refused to participate in the meeting. The following statement was signed and issued by the party's general secretary, Johnson Asiedu Nketiah:

The National Democratic Congress (NDC), declined an invitation by the Electoral Commission of Ghana to attend an IPAC meeting to review the 2020 Parliamentary and Presidential Elections which was scheduled for today, Wednesday 21st April, 2020. The party took this decision because of the lack of candour, odious duplicity, and open bias that was displayed by the Jean Mensah-led Electoral Commission in favour of the New Patriotic Party in the conduct of the 2020 general elections. It is the considered view of the NDC, that

the current leadership of the Electoral Commission who supervised the manipulation of the 2020 general elections and the stolen verdict that resulted from same, lack the integrity, credibility and impartiality to lead any such discussions or review of the very elections they rigged. The NDC has thoroughly examined the dubious role the Jean Mensah-led Electoral Commission played in the rigging of the 2020 general elections. Moving forward, the party shall review its working relationship with the electoral management body and take appropriate steps to forestall the rigging of any future elections in the country (NDC, 2021).

This sharp response from the NDC, rejecting the invitation by the EC to review and discuss the 2020 general elections, makes it difficult for the EC to bring together all the stakeholders, and in particular, the largest opposition party, to discuss matters of electoral reform in a manner akin to what happened in the post-2012 election petition. This and other related issues are puzzling questions whose answers are quite difficult to find. But they need to be answered to give a meaningful future to Ghana's quest to reform its electoral processes.

As answers are brainstormed and preferred, it can be admitted with a degree of certainty that the EC would continue to suffer from a trust deficit not only from the opposition but possibly from civil society, the public and even the ruling party. This may negatively affect the independence, image, and credibility of the EC if it makes an attempt at further reforming the electoral processes. Ghana's recent history on the removal of the immediate past chairperson of the Commission and her deputies includes ominous political overtones. A heightened trust deficit in the Commission may thus disturb the security of tenure of its current headship in a manner that may undermine continuity and the quest to build strong and independent institutions.

CONCLUSION

Since 1993, there have been several interventions aimed at fine-tuning Ghana's electoral processes; and indeed, the aftermath of every election has revealed incontrovertible challenges that have been accepted and worked on to improve the electoral processes. However, it appears that even though there were challenges with the electoral processes during Ghana's 2020 elections, the tacit non-admission of these by the EC and its refusal to raise them at the Supreme Court, hiding under the cloak of the law, makes the Commission look like a political ostrich. The petitioners in the 2020 election petition knew the challenges they were

likely to face at the Supreme Court in trying to make a case for a re-run of the presidential elections and for electoral reform. But the enigmatic position of any judicial process is cheapened if litigants go to the courts with a prior knowledge about the final judgment. It should be possible to test contentious issues in the courts; and with solid reasonable arguments, it should be possible for the courts to consider other factors in giving judgments that would not be dependent only on law. Unfortunately, the 2020 election petition was heard and a ruling based on only the legalities in a manner that covered the challenges of the 2020 elections. Until these challenges are admitted and addressed by all stakeholders, the future of electoral reform, post-2020, and the EC itself in the discharge of its mandate, is not too bright.

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