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Party Politics and Electoral Malpractice in Ghana's Election 2012

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ABSTRACT

Ghana is one of the thriving democracies in sub-Saharan Africa. It has held relatively free, fair, and transparent elections and in 2000 and 2008, it passed Samuel Huntington's (1991) 'two turn-over test' of democratic consolidation when peaceful alternation of power occurred. However, last year's election, the sixth in the series of national and parliamentary elections held since the country was ushered into the Fourth Republic was different from the previous five that came before it. Concerted effort was taken to pursue alleged electoral infractions at the Supreme Court rather than the previous practice of pretending that nothing happened. This paper uses a qualitative research design in which documents critical to the 2012 elections including: the results of the elections, the first written petition of the Election Petitions, the responses from the 1st and 2nd Respondents, the amended petition, the written addresses of all parties to the Election Petition, and the written judgments of all the nine Justices that sat on the case were gathered and analyzed. These documents are manually coded into themes which are subsequently discussed. The paper found that although infractions occurred in last year's election they were not outcome-determinative. They were purely administrative and in most cases ill-advised decisions by electoral officials that had no impact on the overall results and the winner of the elections. Notwithstanding the above conclusion, the paper proposes some administrative, structural, and legal reforms vis-à-vis the Ghanaian electoral architecture.

Keywords: *Electoral fraud; ballot rigging; African elections; electoral governance; electoral reform.*

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1. INTRODUCTION

Ghana is one of the thriving democracies in sub-Saharan Africa. It has held relatively free, fair and transparent elections since its transition to the Fourth Republic in 1993. It passed Samuel Huntington's [1] 'two turn-over test' of democratic consolidation when in 2000 and 2008, opposition parties won elections and power was peacefully handed over to them by incumbent governments. However, last year's election, the sixth in the series of national and parliamentary elections held since the country was ushered into the Fourth Republic was not like the previous five that came before it. In all the five elections before the December 2012 one, there were allegations of electoral malpractices and fraud, yet no concerted effort was taken to pursue those allegations (with the few exceptions to the publication of the 'Stolen Verdict' by the opposition New Patriotic Party in 1992 that only documented alleged electoral fraud and the subsequent boycott of the parliamentary elections that followed; and the effort of the Rojo Mettle-Nunoo-led NDC attempt at challenging the results of the 2004 elections) except to just complain, pretend that nothing happened, and prepare for the next election. This time around, the ball game was different and the losing New Patriotic Party (NPP), triggered by the vigilance of the parliamentary candidate for Dome-Kwabanya constituency, decided to pursue these allegations in court after the Electoral Commission's refusal to delay the declaration of the winner of the 2012 Presidential Elections until all allegations of electoral fraud were investigated.

Even though electoral fraud has a well-documented antiquity, dating back to the fledgling democracies of the 19th century and their predecessors [2] it is still slippery in terms of definition. Classic theories of electoral competition submit that candidates can sway their chances of being elected only by choosing their policies wisely. However, in reality, elections are often connected with a multiplicity of variables that result in the (re) distribution of votes in favour of one or another candidate [3]. According to Vorobyev [3] practitioners and academics alike, in their attempt to categorize electoral infractions have generally used one of two basic approaches that are either restrictive or inclusive in nature. The inclusive definitions are broad-based and often make reference to democratic norms or international standards. Under this category of definitions, electoral activities are deemed fraudulent when they are seen to have violated the principles of free and fair elections and the rights of citizens to choose their representatives. On the other hand, the restrictive approach, according to Vickery and Shein [2] examines the narrow conception of electoral infractions that generally take a legal-based approach to identifying fraud. Elections are deemed to be fraudulent under this approach when it violates the domestic laws governing elections in a given country. Suffice to say that electoral fraud, whether it is restrictively or inclusively assumed, can be seen as any purposeful action taken to tamper with electoral activities and election-related materials in order to affect the results of an election, which may interfere with or thwart the will of the voters [4]. It is also seen as 'electoral crimes and sub-standard practices that result in failures or refusals to act (i.e., inability or denial to provide necessary oversight); acts of deception (i.e., providing false or misleading information), acts of coercion (i.e., intimidating or forcing a voter or other electoral participant to behave in an involuntary manner), and/or acts of destruction (i.e., physical violence toward individuals or institutions)' [5].

Andreas Schedler [6] pushed further the contours of electoral fraud by noting that it involves 'the introduction of bias into the administration of elections' which may happen at any stage of the electoral process, from voter registration to the final tally of ballots. Fabrice Lehoucq [7] perceives electoral fraud as 'all clandestine efforts to shape election results.' This feeds into his work with Ivan when electoral fraud was similarly seen as 'activities that can alter the

results of the ballot box and that violate electoral laws' and it 'does not assume that any constraint or act that encourages or compels voters to behave against their interests...is fraudulent' [8]. These definitions have been critiqued by Vickery and Shein [2] for the premium it places on 'clandestine activities' (p.4 and p.7) when in actual fact, some aspects of the electoral processes should healthily be so (such as legitimate closed-door strategy sessions of a political campaign) and its elimination of obviously fraudulent activities that might be committed in the open by a brazen incumbent candidate or party including ballot stuffing and ballot snatching in most parts of Africa. Beside this critique, the above definitions set the limits for investigating what is and what might not be electoral fraud.

Even though these definitions permeate all electoral fraud, it is important to note that, conclusion on electoral fraud are consequent of the analysis of particular elections in a given country at a given moment [7]. López-Pintor [4] in an attempt to make the understanding of electoral fraud clear drew three different electoral environments. The first is the stable democracy, where multiparty elections with increasing degrees of freedom and voter inclusiveness have been taking place since the last quarter of the 19th century, either uninterruptedly or with some breakdowns due to internal or international warfare. The second environment is the consolidating democracy, in which elections have been held for a number of years with good prospects for stabilization. The third environment is the emerging democracy, where elections have been held only once or a few times, or even if periodically held for a longer time, the prospects remain dim for stabilizing democracy.

Ghana's electoral history, as well as its democratic development, fits it into the second category and therefore justify the assumption that, electoral fraud will decrease as it moves towards the last category of a stable democracy. Several reasons may account for the increasing crime of electoral fraud in the country including: the nature of the electoral system, the desperation of party candidates to win elections at all cost, and the poor institutional architecture that conducts and regulates election in the country. Mozaffar and Schedler [9] notes that, because elections in established democracies tend to be routine events, usually producing results within a narrow, but fully acceptable margin of error, systematic analysis of electoral governance has not attracted much scholarly interest in developing countries (p.148). The assumption has been that, there will always be a margin of error because of defective ballots, incomplete voter registers, inaccuracies in counting and impersonation, and other blemishes. Human errors happen sometimes, but if these errors are random and do not accumulate to determining the outcome of the election, then electoral credibility survives [10]. The lack of a robust and comprehensive framework for analyzing elections has often left two unsatisfactory outcomes: election observers make judgment on the basis of largely impressionistic and incomplete evidence centred on the conduct of the vote and count on election day; or observer missions (largely from abroad and with their own governments' lead) call the results of an election in a politicized way, detached from the reality of the process itself [10].

The greatest failing of election assessment to date has been the tendency to see election quality in bimodal terms: Good or bad; free and fair or not free and fair; etc [10]. In essence, one needs to look at the process and outcome to gauge the full picture of election quality.

2. METHODOLOGY

This paper seeks to answer the following questions: Was Ghana's election 2012 fraudulent? What was the nature of fraud committed during the 2012 elections in Ghana (if any)? What was the impact of this fraud (if any) to the overall quality of the elections? Does Ghana's

election management body (i.e., the Electoral Commission) need any reform? What shape will the reform take, if any is required? To be able to answer these questions, this paper has gathered and analyzed several documents critical to the 2012 elections including: the results of the elections, the first written petitions of the Election petition, the responses from the 1st and 2nd Respondents, the amended petition, the written addresses of all parties to the Election Petition, and the written judgments of all the nine Justices that sat on the case. The assembly and analysis of these documents was not only cost-effective but were primary data for the ensuing legal tussle that followed after the allegation of electoral infractions and contain information about the phenomenon that the paper wishes to study. According to Mogalakwe [11] the documentary method provides the opportunity to categorize, investigate, interpret, and identify the limitations of most commonly written documents whether in the private or public domain. Further, all the documents analyzed symbolized the eye-witness accounts produced by people who experienced the elections and the subsequent legal battle fought to get some votes annulled. These documents were manually analyzed for themes which were coded and subsequently discussed.

3. TYPES, CAUSES AND EFFECTS OF ELECTORAL FRAUD

Fabrice Lehoucq [7] discusses two important types of electoral fraud, namely procedural and ballot fraud. Procedural fraud during elections may occur in one of the following ways: polling station opening late and closing early; failing to advertise the location of a polling station before the election day; delaying polling materials; unlawfully disqualifying competent candidates; violating voting requirements; incomplete voters' register; coercing voters to choose a particular candidate; no census before the compilation of electoral register; expelling or threatening party observers; location of polling stations changed on election day; making voting public. On the other hand, any of the following instances qualifies as a ballot fraud: holding elections outside the official time period; stuffing ballot boxes with votes; double/multiple voting; minor/non-citizens voting; number of votes exceeding number of voters; voters prevented from casting their votes; number of votes inflated; votes not received; substitution of votes; elections not held at the stipulated time; altering ballots; intimidating voters; rejecting electoral identifications; illegally annulling votes; electoral identification not demanded from a citizen; removing ballots; vote tally conducted by unauthorized persons; electoral documentations opened before election day.

Either of these categories of fraud may be perpetrated for several reasons. Empirical and theoretical studies reveal that, economic inequality among parties competing for power is a major cause of electoral fraud. Lehoucq [7] notes that 'if all voters were equally endowed with economic resources, then citizens would only sell votes if it were in their interests to do so' (p.4) Similarly, Ziblatt [12] concurs that, inequality in resource distribution can account for variation in levels of electoral corruption. This can also be manifested in the form of economic threats where voters are made to believe that voting in a particular way may lead to their personal economic loss. Socio-economic factors have an effect on the likelihood of electoral fraud. Behaviours such as vote-buying have been found to be more common in contexts where poverty is prevalent [13]. The Gross Domestic Product per capita and level of urbanization show positive relationships with electoral fraud [14]. Countries with the highest GDP and more urbanized population are likely to be more discerning and vote based on issues than on financial corruption.

Wintrobe [15] examines the continuous perpetration of electoral fraud on account of what he terms 'electoral autocracies' (p.33). Electoral autocracies involve the use of autocratic power by incumbent governments to repress and disarticulate the major opposition party. This does

not manifest in only intimidating, imprisonment, and murder of opposition leaders but extends to autocrats selectively rewarding the opposition for behaving as loyal and acquiescing to electoral fraud [15]. In electoral autocracies, incumbent governments frequently employ black propaganda in running down and misrepresenting their closest opponents during elections while at the same time putting best gloss to its policies and programs. Structurally, elections under autocracies take place in skewed institutional settings where the autocrat controls every aspect of the organization and monitoring of the elections and there are few independent sources of information to verify the electoral fraud [16]. In expanding our understanding of electoral fraud under autocracies, Fortin-Rittberger [14] proposes two opposing mechanisms through which state capacity can influence the quality of elections: through infrastructural state capacity and coercive state capacity. The threat of rebellion under this election regime is more credible simply because, the autocrat cannot divide its opponents by selectively offering legislative seats to those who acquiesce with the electoral fraud [16].

Further, competition in the electoral process can be a cause for electoral fraud. The extent of competition in an election determines its democratic nature. Jonah [17] discusses, regarding this feature, about the 'concept of challenger quality' (p.90). It states that, the outcome and competitiveness of an election rest on the performance of the challenger. A challenger that is able to raise adequate funds and run a good campaign may do much better than incumbents that are less organized and under-funded. However, the nature of the competition and the closeness of the electoral race have an impact on the incentives to engage in electoral fraud since such tendencies are more manifest when the stakes are much higher [14].

Significantly, all outcomes or types of electoral fraud can be placed under two main categories: outcome determinative fraud and non-outcome determinative fraud [4]. With outcome determinative fraud, fraud affects the outcome of the election such that, the winners and losers are different from what the electorates desired in exercising their franchise. On the contrary, in the non-outcome determinative fraud, the outcomes are not affected (i.e. the winners and losers remain as wished by the electorates through the votes cast). This suggests that the outcome determinative fraud has more serious political implications since it subverts the will of the people. Yet, both the former and the latter entail criminal behaviour that should be punished according to the law. In new democracies, electoral fraud may be more devastating since serious fraud is likely to result in instability and an immediate erosion of the new government's tenuous credibility.

3. ALLEGED ELECTORAL FRAUD IN GHANA'S ELECTION 2012

The petitioners to the electoral petition are of the contention that, 'the 2012 elections were fraught with 'a number of constitutional and statutory violations, malpractices, and irregularities' [18] that generally compromised the quality of the elections and the credibility of the results declared by the Electoral Commission. The Petitioners therefore came out with the following categorizations (indicated in Fig. 1 below) of violations and irregularities that occurred in the 2012 general elections.

Violation / Irregularity	Exhibit category	No. of Polling Stations
Over-voting only	MB-C	264
Over-voting , Voting without Biometric Verification	MB-D	78
Over-voting, Voting without Biometric Verification, Duplicate Serial Number	MB-E	327
Over-voting, Voting without Biometric Verification, Duplicate Serial Number, Duplicate Polling Station Code	MB-U	2
Over-voting, Voting without Biometric Verification, Duplicate Serial Number, Absence of the Signature of Presiding officer	MB-F	60
Over-voting, Voting without Biometric Verification, Absence of the Signature of Presiding officer	MB-G	15
Over-voting , Duplicate Serial Number	MB-H	754
Over-voting , Duplicate Serial Number, Duplicate Polling Station Code	MB-X	6
Over-voting, Duplicate Serial Number, Absence of the Signature of Presiding officer	MB-J	161
Over-voting, Duplicate Serial Number, Absence of the Signature of Presiding officer, Duplicate Polling Station Code	MB-AA	2
Over-voting, Absence of the Signature of Presiding officer	MB-K	53
Voting without Biometric Verification only	MB-L	345
Voting without Biometric Verification, Duplicate Serial Number	MB-M	1071
Voting without Biometric Verification, Duplicate Serial Number, Absence of the Signature of Presiding officer	MB-N	172
Voting without Biometric Verification, Duplicate Serial Number, Absence of the Signature of Presiding officer, Duplicate Polling Station Code	MB-Z	2
Voting without Biometric Verification, Absence of the Signature of Presiding officer	MB-O	57
Voting without Biometric Verification, Absence of the Signature of Presiding officer, Duplicate Polling Station Code	MB-Y	2
Absence of the Signature of Presiding officer	MB-S	293
Duplicate Serial Number only	MB-P	5591
Duplicate Serial Number, Absence of the Signature of Presiding officer	MB-Q	821
Duplicate Serial Number, Duplicate Polling Station Code	MB-V	16
Duplicate Serial Number, Absence of the Signature of Presiding officer, Duplicate Polling Station Code	MB-W	2
Duplicate Polling Station Code only	MB-T	3
Unknown Polling Station	MB-AB	22
Total		10,119

Fig. 1. Categorisation of violations and irregularities

Source: Petitioners' Written Address; Writ no. J1/6/2013 (2013, pp.127-128)

These identified violations, irregularities, and malpractices, for reasons of convenience and also analysis, were summarized into six categories. These categories emanated from the analysis of some 24,000 out of the 26,002 Statements of Poll and Declaration of Results of Election for the Office of President, otherwise known as the 'pink sheets' (in apparent reference to the colour of the forms used in the December 2012 elections) used in the elections. The petitioners' use of these pink sheets stem from their argument that, it is the fundamental documentary evidence on which the final results of the winner of elections in

Ghana is declared [18]. The following categorizations were made: first 'widespread instances of over-voting, i.e. where votes cast exceeded (a) the total number of ballot papers issued to voters on election day or (b) where votes cast at various polling stations exceeded the total number of registered voters in violation of Article 42 of the Constitution, the universally-acknowledged principle of "one man, one vote" and Regulation 24 (1) of C. I. 75' [18]. The petitioners went further to allege that the over voting infraction 'occurred in 1,722 polling stations (out of the 10,119th the petitioners are relying on), in 85% of these polling stations, over-voting took place along with no biometric verification, no signature of presiding officer, duplicate serial numbers, and duplicate polling station codes. It is only in 264 polling stations where the only irregularity was over-voting' [18].

The second alleged violations were 'widespread instances of people voting at polling stations without prior biometric verification in violation of the law governing the elections of December, 2012, particularly, Regulation 30 (2) of C. I. 75' [18]. These alleged infractions were believed to have 'occurred in 2,020 polling stations. In 70% of these polling stations, voting without biometric verification took place along with over-voting, no signature of presiding officer, duplicate serial numbers, and duplicate polling station codes...it is only in 345 polling stations where the only irregularity was voting without biometric verification'[18]. The third violation was 'widespread instances of polling stations where alleged results appearing on the pink sheets were not authenticated by the signatures of presiding officers or their assistants in violation of article 49 (3) of the Constitution and Regulation 36 (2) of C. I. 75' [18]. This violation, according to the petitioners 'occurred in 1,638 polling stations, in 82% of these polling stations, this occurred together with over-voting, voting without biometric verification, duplicate serial numbers, and duplicate polling station codes...it is only in 293 polling stations where the only irregularity was no signature of the presiding officer' [18].

The fourth violation took the form of voting 'in certain locations which could not be identified as part of the official list of 26,002 polling stations created by the Electoral Commission for the conduct of the December 2012 presidential elections' [18]. These violations were found in "seven polling stations, in 88% of these polling stations this occurred together with over-voting, no biometric verification, no signature of presiding officer, and duplicate serial numbers...it is only in 2 polling stations where the only irregularity was the use of duplicate polling station codes' [18]. The fifth violation happened at polling stations where 'different results were strangely recorded on pink sheets bearing the same polling station codes, contrary to the expressed and accepted policy of the Electoral Commission for each polling station to be assigned a unique code in order to guarantee the integrity of the results and to avoid confusing one polling station with another' [18]. The sixth occurred at polling stations where 'different results were declared on pink sheets bearing the same serial numbers, contrary to the established procedure of the electoral commission' [18]. These serial numbers were for the purpose of uniquely identifying each pink sheet. The alleged infraction of duplicate serial numbers 'occurred in 8,987 out of 10,119 polling stations the petitioners were relying on (i.e. 88% of the polling stations in contention). Over 75% of all cases of over-voting, voting without biometric verification, and the absence of signature of presiding officer occurred with the use of duplicate serial numbers' [18].

Based on the above arguments, the petitioners therefore sought three reliefs as set out in Form 30 of the Supreme Court (Amendment) Rules, 2012, C. I. 74. First, that John Dramani Mahama, the 1st respondent in the Election Petition was not the validly elected President of the Republic of Ghana, and second; that the leader of the opposition and the first petitioner in the election dispute, Nana Addo Dankwa Akufo-Addo, rather was validly elected

President of the Republic of Ghana. The third relief is the consequential orders that may emanate from the Supreme Court. The impact of these three reliefs (as indicated in Fig. 2 below) will dramatically change the results and winner of the elections held on the 7th and 8th of December in Ghana to the following:

Candidate	EC results	All irregularities	Valid votes	% of valid votes
John Mahama	5,574,761	2,622,551	2,952,210	41.79%
Henry Lartey	38,223	16,534	21,689	0.31%
Nana Akufo-Addo	5,248,898	1,233,186	4,015,712	56.85%
Paa Kwesi Nduom	64,362	27,500	36,862	0.52%
Akwasi Addai Odiike	8,877	3,825	5,052	0.07%
Hassan Ayariga	24,617	11,110	13,507	0.19%
Abu Sakara	20,323	9,028	11,295	0.16%
Jacob Osei Yebaoh	15,201	7,605	7,596	0.11%
Total	10,995,262	3,931,339	7,063,923	100.00%

Fig. 2. Impact of annulment due to all violations and irregularities

Source: Petitioners Written Address; Writ no. J1/6/2013 (2013:p. 133)

4. A NON-OUTCOME DETERMINATIVE ELECTION?

Quite to the contrary of the allegations raised by the Petitioners, the Respondents believed there were no irregularities besides the normal administrative errors that characterize every human endeavour. They further noted that, the Petitioners were not able to execute properly the burden of proof that parties that allege infractions must do. For example, the counsel for the 2nd Respondent, Mr. Tony Lithur, in his written address to the Supreme Court, notes that "...the law is settled that, the party who bears the burden of proof must produce the required evidence of the facts in issues that has the quality of credibility for his claims to succeed" [19]. Failure to do this could crumble the case as admitted by Her Lordship Mrs. Sophia Adinyira, JSC, in *Ackah vs. Pergah Transport Limited and Others* (2010) on page 736, thus, "it is a basic principle of law on evidence that, a party who bears the burden of proof is to produce the required evidence of the facts in issue that has the quality of credibility short of which his claims may fail..." [19]. In the election petition case, the burden of proof was therefore on the Petitioners to prove not only non-compliance with electoral laws as alleged in their petition but also that, the non-compliance was outcome determinative, i.e., affected the results of the election. Indeed, the Counsel for the Third Respondent in the Petition, Mr. Tsatsu Tsikata, observes that "there was no evidence that any voter in the election voted more than once or that any person not entitled to vote was allowed to vote... [and that] no complaint by the agents of the candidates at polling stations or constituency centres regarding over-voting was recorded anywhere" [20]. On the issue regarding the absence of signatures, the counsel for the Third Respondent notes that "the absence of signatures of Presiding Officers on the pink sheets does not justify annulment of votes that were cast lawfully in the exercise of the constitutional rights of citizens" [20] and that "while failure to sign constitutes a breach of the duty imposed on that election official by the Constitution, nowhere does the Constitution require or justify the annulment of votes cast and, hence, the results announced at the relevant polling station because of such a breach" [20].

Also, an observation significant to the case has been made by the Counsel for the Third Respondent and that borders on both the credibility of the Petitioners as well as the reliefs they sought from the Supreme Court. Since the filing of their affidavit, the Petitioners kept

reducing the number of polling stations in which alleged infractions occurred; originally from 11,916 to 11,842 and finally to 11,221. The Petitioners also claimed to have deleted in total 704 polling stations from their second figure of 11,842, thus moving away from their original claim of having about 4.63 million votes annulled to a new claim of having 4,381,415 votes annulled. Thus, Mr. Tsikata, the counsel for the 3rd Respondent questioned the tanking demands of the Petitioners as follows: “the constantly changing [of] figures of the Petitioners, from the original day of Petition to the last but one day of trial portrays the uncertain, speculative, and indefinite nature of the case of the Petitioners” [20]. In conclusion, counsel for the Third Respondent, notes that, the claims of the Petitioners were “...founded on the false premise that by a desk analysis of pink sheets (not even covering all 26,002 polling stations of the country but limited initially to a maximum of 24,000 polling stations and selectively focusing on what could yield the pre-ordained intended outcome of the Petitioners), as distinct from the living reality of the election, the votes of almost 5 million Ghanaians should not be allowed to count. This is the flawed perspective to which Petitioners have doggedly clung [to]” [20].

The counsel for the Third Respondent also questioned the credibility of Dr. Mahamudu Bawumia, the second petitioner and the star witness of the Petitioners in the Electoral Petition case (writ no. J1/6/2013). Mr. Tsikata notes that, Section 60 (1) of the Evidence Decree states that “a witness may not testify to a matter unless sufficient evidence is introduced to support a finding that he has personal knowledge of the matter” [20] and that the Petitioner’s witness oft-repeated statement of “you and I were not there” actually undermines the value of his evidence completely, since he is admitting his lack of personal knowledge and, therefore, his lack of qualification to be a witness as to the facts in issue [20]. He went further to declare that, the evidence presented by the Petitioners “does not disclose any profound irregularity in the management of the electoral process, nor does it gravely impeach the mode of participation in the electoral process by any of the candidates offered himself or herself before the voting public” [20]. Indeed, the post-election reports of the several local and international election observer missions seem to support this view. For example, the African Union Election Observer Mission to Ghana concluded in their report that, the 2012 elections “...were conducted in a peaceful and credible manner and was largely a reflection of the wishes and aspirations of the people of Ghana” [21]. Similarly, the ECOWAS Mission [22], as well as the Electoral Institute for Sustainable Democracy in Africa (EISA) observer team [23] all arrived at the same conclusion. At the domestic level, the Coalition of Domestic Election Observers (CODEO) conducted a Parallel Vote Tabulation (PVT) of the 2012 elections. The “PVT is an advanced and scientific election observation technique that enables election observers stationed at polling stations to record and transmit, in real-time, information about the conduct of the opening of the polls, voting, and official vote count processes to a central election observation point using text messaging” [24]. According to the Coalition, the PVT was used for two significant reasons: to “scientifically and independently verify the accuracy of the official result of the presidential election declared by the Electoral Commission” [24] and to “help confirm that, the official results of the presidential polls truly reflect the will of the Ghanaian people” [24]. The Coalition’s statement after the election notes: “...based on the findings of the PVT, CODEO can confidently assure all political contestants and the public that, the official results announced by the Election Commission accurately reflect the ballots cast by voters at all the Electoral Commission designated polling stations over the two days of voting” [24].

Upon reviewing both the petitioners’ and the respondents’ submissions, the Supreme Court decided on the 2nd of April 2013 that, the trial will be built on two fundamental issues: one, ‘whether or not there were violations, omissions, malpractices, and irregularities in the

conduct of the presidential election held on the 7th and 8th December, 2012,' and two, 'whether or not the said violations, omissions, malpractices and irregularities, if any, affected the results of the election.' The petition hearing took fifty days in which arguments and cross-examination of key witnesses were broadcast live on radio and on national television. On the 29th of August, the nine panel judges unanimously dismissed 'the claims relating to Duplicate Serial Numbers, duplicate Polling Stations Codes, and Unknown Polling Stations.' Also by a majority decision, they dismissed the claims of Over-voting (5:4); the claims relating to the Absence of Signatures of Presiding Officers (5:4), and the claims relating to Voting without Biometric Verification (5:4). Justice William Atuguba, the Presiding Judge on the case, finally announced that the '... the overall effect is that, the First Respondent [President John Dramani Mahama] was validly elected and the Petition is, therefore, dismissed.'

3.1 The Politics of the Electoral Petition

The Election Petition was not only a legal battle fought at the Supreme Court of Ghana but was also a highly- politicized issue battled in both the media and streets of the country. There were regular press conferences and media briefings by both counsels and supporters of the petitioners and respondents in an attempt to win the support of the people. Civic groups were formed with partisan agenda including Let My Vote Count (LMVC) and Let My Vote Stand (LMVS) alliances. The activities of these organizations were widely reported by partisan press. What actually threatened the peace of the country were the intransigent and genocidal statements made by partisan media commentators as well as prominent citizens in the country. In the wake of these provocations, the Supreme Court had to invoke its powers of contempt to restore discipline. Several people including Sammy Awuku, Ken Kuranchie, Steven Atubiga, Owusu Afriyie, and Hopeson Adorye were invited by the Court and different punishments including; a ban from the Supreme Court proceedings, fines, and custodial sentences were imposed. Before these issues of contempt, the 2012 elections began with interesting events and incidents including: the creation of additional constituencies and the introduction, for the first time, biometric electoral register and a Biometric Verification Device (BVD) on the day of the elections.

The Electoral Commission, according to Article 45 of the 1992 Constitution¹, is the only statutory body empowered to perform functions related to elections in the country. In the discharge of this constitutional duty, the Electoral Commission performs the following functions: registration of voters [Article 45(a) of the 1992 Constitution and Article 2(a) of The Electoral Commission Act (451),1993] ; initiation and conduct of public elections and referenda [Article 45 (c) of the 1992 Constitution and Article 2(c) of The Electoral Commission Act (451),1993]; demarcation of electoral boundaries for both national and local government elections [Article 45(b) of the 1992 Constitution and Article 2(b) of The Electoral Commission Act (451),1993]; compilation and revision of the electoral register [Article 45(a) of the 1992 Constitution and Article 2(a) of The Electoral Commission Act (451),1993]; execution of programmes for the expansion of voter registration [Article 45(e) of the 1992 Constitution and Article 2(f) of The Electoral Commission Act (451),1993]; preparation of identity cards for registered voters [Article 2(d) of The Electoral Commission Act (451),1993]; registration of political parties and the proper storage of electoral materials [Article 2(g) of The Electoral Commission Act (451),1993]; education of the public on the electoral process and its purposes [Article 45(d) of the 1992 Constitution and Article 2(e) of The Electoral Commission Act (451),1993]; and the promulgation of regulations for the effective performance of its function [Article 45(h) of the 1992 Constitution].

In all these functions, the demarcation of boundaries and the creation of new constituencies is one of the functions that stir the most controversy. The demarcation of boundaries and the creation of new constituencies are simultaneous to the power of the President to create districts, and that of the Minister for Local Government and Rural Development to establish an Assembly for each district as provided under Sections 1 and 2 of the Local Government Act 1993, Act (462) and Section 3 of the same Act respectively. This interface between the function of the Electoral Commission, the President, and the Local Government ministry is as a result of the fact that 'the creation of districts and the establishment of District Assemblies necessarily involve the demarcation of local electoral areas and the conduct of elections for District Assembly and Unit Committee Members' [25]. The overlap is explained by the fact that, a 'conglomeration of electoral areas makes up a District, Municipal, or Metropolitan Assembly; the manner in which the jurisdiction of each District, Municipal and Metropolitan Assembly is determined is to indicate which electoral areas fall under the particular Assembly' [25].

Since Ghana's transition to democracy in 1993, political power has mainly revolved around the NPP and the NDC. However, the power to take decisions that allows effective governance lies in the power to control the legislature and as such, each of these parties has always tried as much as possible to take electoral decisions that will not only win them the presidency but also the control of the legislature. These decisions often leave the less powerful parties at a huge disadvantage. The first time the Electoral Commission created new seats after the coming into force of the 1992 Constitution was in 2004 when the NPP was in power. Thirty (30) more seats were created during the 2004 election, increasing the total number of seats in Ghana's parliament from 200 to 230. The NPP won 17 out of the newly created 30 seats, with the NDC winning 12 seats and an independent candidate picking up the remaining seat. In the 2012 elections under the NDC government, an additional 45 constituencies were created, increasing the total number of seats in parliament to 275. Again, the NPP and the NDC split these new 45 constituency seats among themselves, with the NPP sweeping 23 out of the 45 seats while the NDC won the remaining 22 seats. The manner in which new constituencies are created by each government and the location of some has led to the accusation of gerrymandering. Some sections of Ghanaians are not too happy with this arrangement as it allows the creation of new constituencies in perceived strongholds of incumbents. Regarding this thorny constitutional provision, the CRC recommends reconciling the respective roles of the Electoral Commission, the Minister for Local Government, and the Statistical Service since the Statistical Service is the body that produces and keeps custody of the demographic information used by the Electoral Commission to determine the need or otherwise for boundary demarcation [25].

The need for such an action is as a result of the several misgivings about the work of the Electoral Commission and other documented electoral season behaviour of political parties and politicians. Some of these include: 'acrimonious and unnecessarily long drawn campaigns; high perception of ethnic-bloc voting; delegitimization of the electoral process by the two main parties (NDC and NPP) via accusations and counter accusations against each other and the Electoral Commission; the high incidents of monetization in the electoral process; the use of unregulated reportage and parallel voting results by the media and political parties; abusive use of opinion and exit polls to serve political propaganda; incumbency abuse during the electioneering process; media polarization to perpetuate partisan propaganda; among other factors [25]. Yet, are these problems legal, systematic, or attitudinal? Majority of the international observers that monitor Ghana's elections always write about the free and fair nature of the process and attest to how robust and comprehensive the Ghanaian electoral laws are. These laws also conform to international

standards that regulate the conduct of elections. The problem therefore is far from legal. The Ghanaian electoral management body, the Electoral Commission is guaranteed the freedom and also well-empowered under Article 46 of the 1992 Constitution and Article 3 of The 1993 Electoral Commission Act (Act 451) to work without any interference. It also works and consults with political party representatives in all decisions that it makes through the Inter-Party Advisory Committee (IPAC) and therefore, the issues may go beyond the system. The problem lies in the attitude of politicians and political parties that seek to win power at all cost. In their quest for political power, politicians and their parties do not only under-enforce the laws but overtly abuse and violate it. The breaches of electoral laws are at times perpetuated in collaboration with Electoral Commission officials and other relevant state authorities tasked to protect those laws.

Another controversial and highly politicized issue prior to the 2012 elections was the introduction, for the first time, a biometric voters' register and a biometric verification device (BVD) in the country. A voters' register is not only an official list of people qualified to vote but deals with issues that borders on citizens' fundamental right to elect their leaders. A comprehensive voters' register must have three critical features including; inclusiveness, accuracy, and currency [26]. The inclusiveness deals with having the names of all eligible voters in the register; the accuracy deals with having an exact match of a person's bio-data to his/her personal information to enable the individual to vote. The last feature deals with the current or up-to-date nature of the register available and this is normally guaranteed via the continuous registration of citizens that turn the voter age of 18, and also deleting the names of people who are death and/or may not be able to vote. Previous voter registers in the country were affected by multiple registrations, names of dead relatives as well as minors, and aliens names in the register. Apart from being a novel reform in Ghana's electoral history, the biometric voter register was aimed at addressing these anomalies that had made the country's voters' register unholy. With the exception of those citizens with missing fingers, the biometric voters' register captures the face and ten figure prints of the person registering and this information are verified on the day of voting before a person is allowed to vote. This novelty became of the topical issues during the Election Petition hearing when the EC was accused of allowing people to vote without prior biometric verification contrary to the laws governing the elections of December, 2012, particularly, Regulation 30 (2) of C. I. 75. This alleged violation was deemed to have occurred in areas where voters' profession was either farming or blacksmithing that killed the cells present around the fingers. Most of these people had to wash their hands with the coca-cola drink and did several unexplainable things to get their finger print verified biometrically. The EC in the wake of numerous complaints about the breakdown of the BVD and also the inability of some to verify majority of the citizens in the above profession, allowed voting to continue to the next day December 8, to enable those affected exercise their franchise. The political aspect of this was the statement attributed to President John Mahama which allegedly directed or purported to have directed electoral officials to allow people who could not be verified by the BVD to vote contrary to electoral regulations and the famous 'No Verification, No Vote' declaration made by the EC chairman. These politics, notwithstanding, the country came out strong of last year's election and all the activities that followed after that actually deepened the country's democracy and its institutions.

4. CONCLUSION

The dismissal of the petition filed by the major opposition party in the country challenging the validity of the President was very significant in several ways. This was not only the first time such a concerted effort was put forward to challenge alleged electoral fraud in the country,

but it also exposed several flaws in the manner in which elections are conducted in the country. The open admission, in court, by the electoral commissioner that several errors occurred in nature of 'administrative' and 'transpositional' as well as the admission that, non-permanent staff of the commission provided the needed assistance to permanent staff raised several concerns for future elections in the country. Even though majority of stakeholders in the conduct of Ghana's election admitted that reform within the electoral commission is necessary, there has been a partisan attitude in the manner in which the most needed reforms should be carried out. Civil society organizations that are championing the reform agenda are either labeled as partisan or accused of pushing that agenda to facilitate a continuous flow of funds from donors to enable them stay in business. The governing NDC and the Electoral Commission, the first and second respondents respectively, see no need for reform since all the allegations brought against them were dismissed by the Supreme Court suggesting that nothing has happened and also, nothing needs to be done in the nature of reforms. It is only the vanquished opposition NPP that is trumpeting the need for reform. Given that the governing party needs serious political will to push any reform seriously advocated by the opposition and civic groups, they are hurriedly labeled as partisan and self-seeking, this situation have (has) been and remains dicey.

Now the question remains: were the infractions in last year's election necessary to trigger any sort of reform? Apart from the three categories of Duplicate Serial Numbers, Duplicate Polling Station Codes, and the Unknown Polling Stations category that were entirely dismissed by all the nine Justices, the other three claims of Over-voting was dismissed by a slim majority of 5:4; the claims relating to the Absence of Signatures of Presiding Officers was also by a slim majority of 5:4, and the claims relating to Voting without Biometric Verification was by a 5:4 majority. Indeed, some of the Justices even recommended cancellation of the results and a re-run of the elections in the affected areas. Some commentators sought to impugn the integrity of the judiciary by reading political meanings into the verdict and even went to the extent of accusing them of receiving bribes through the Asantehene (the paramount Chief of the people of Asante). Yet, the reasons adduced by the Justices that held the minority opinion should not be entirely dismissed. These opinions serve as the volley on which subsequent calls for reform and even the resignation of Dr. Afari Gyan, the chairman of the electoral commission and the returning officer for the Presidential elections in the country, were made.

On the 19th of July 2013, the Civic Forum Initiative together with the Institute for Democratic Governance and several other civic bodies in the country organized a national summit dubbed 'Justice, Peace and Reforms will Strengthen Ghana.' In this national summit, several stakeholders discussed the need for the petitioners and respondents in the then ongoing Election Petition to respect the verdict of the Supreme Court that was sitting on the case. Beyond the call to respect the Supreme Court's verdict, there were also a number of reforms suggested to bolster the electoral system in Ghana including: initiating an intra/inter party dialogue at both local and national levels to improve confidence within and among political parties in the country; having a healthy and constructive debate on the manner in which Commissioners of the Electoral Commission are appointed. The President, in consultation with the Council of State, appoints the Commissioners of the Electoral Commission per Article 43(2) and Article 70(2) of the 1992 Constitution as well as Article 4 (2) of The Electoral Commission Act 1993 (Act 451). Also, Articles 5 (1 and 2) state the terms of conditions of the Chairman and the two deputies of the Commission but the constitution is very silent on the number of years that these officers shall spend in office. This gives the Electoral Commissioner, where the appointment was influenced by partisan considerations, a lot of years to influence electoral victory in favour of his/her political appointee. Another

serious reform issue that came up was the need for a private member legislation that allows a bipartisan selection of ministers and/or government appointees to gradually do away with the winner takes all politics that has divided the country and a revision of the electoral governance structures and legislations.

It is the position of this paper that any reform in the EC must be consensus- based and well thought through. Indeed, Justice William Atuguba who ruled against the petitioners in all the reliefs sought, made a proposal on the nature of reforms needed within the Electoral Commission [27]. According to him, the Election Petition has 'exposed the need for certain electoral reforms' (p.46) and these include: early compilation of the electoral register which must be made readily available to all parties contesting that particular election; using a supplementary register to cater for 'late exigencies'; raising the caliber of the presiding officers that handle elections, and simplifying the content of the 'pink sheet' to enable officers that use them meet the pressure of the electoral process [27]. Similarly, Justice Dotse recommends a 'better management of the serial numbers' (p.193) on the Statement of Poll and Declaration of Results, otherwise known as the 'pink sheets' [28]. This serial numbers on the 'pink sheet' featured prominently in the electoral petition dispute; not only constituting one of the violations on which the petitioners sought to annul votes, but also took a centre stage in the accounting firm, KPMG's, audit of the 'pink sheets' submitted as evidence. He further calls for strengthening the Inter Party Advisory Committee (IPAC) to 'consider legislation' that will 'legitimize the use of serialized pink sheets in just the same way as there are unique polling station codes' (p.194), and also enhancing 'security features... on the pink sheets, to make them identifiable to a particular region, constituency, and polling station just as it is with the polling station codes' [28]. In doing these, 'multiple use and abuse' of this document could be minimized. In furtherance of this objective, the Electoral Commission needs to take control of the 'printing, marking, distribution and the use of the pink sheets' (p. 194) in subsequent elections to prevent abuse and misuse of the document [28]. Justice Dotse also calls for a re-evaluation of the 'methods of recruitment, training and general orientation of the staff that fill [the pink sheets] at the polling stations, be they temporary or permanent, [and those officials] engaged in performing critical core functions on Election Day' [28]. Closely associated to this is his call for political parties and their candidates to 'ensure that those persons they engage as agents to observe the elections at the polling stations are not only loyal and dedicated party persons, but persons who are competent enough to understand the implications of the recordings on the pink sheets and the sequential nature of the said recordings' [28]. One of the fundamental issues that arose from the court proceedings was that, elections are contested and won at the polling stations and not at the Court. This fact therefore beholds that, parties and their candidates should pay great attention at the polling stations to guard against electoral malpractices.

Most of the issues raised in both the Written Judgments of the Justices as well as the National Summit were contained in the recommendations of the Constitutional Review Committee. The Committee made recommendations for both legislative and administrative reforms concerning the Electoral Commission. For example, it notes that '...the respective roles of the EC, President, and the Minister for Local Government and Rural Development, to demarcate electoral boundaries for local government elections as well as create Districts and establish District Assemblies, should be further clarified to remove any apparent conflict of roles' (p. 373) [25]. It further recommends the empowerment of the Electoral Commission and its agencies to 'investigate incidents of electoral violence and electoral offences within the shortest possible period' (p.373) and accordingly recommends for amendment of Regulations 13, 14 and 21 of the Public Elections (Registration of Voter) Regulations, 1995

(C.I. 12)... [and]...Sections 27 to 42 of the Representation of the People Law, 1992 (PNDCL 284) as amended (p. 373) [25]. Further, sub-section g of Section 195 recommends the Electoral Commission to 'prescribe severe penalties for the infringement of electoral laws' and amends the 'Political Parties Act to include the IPAC mechanism for the self-regulation of political parties' (p.374) [25]. Lastly, administratively, the Committee recommends that 'cases of electoral violence be referred to [the office of the] Attorney-General for swift action' (p. 374) and that 'the season for political campaigning be closed from one month after elections to one year before the next election' (p. 374) [25].

The manner in which alleged electoral fraud was pursued in Ghana serves as a learning point for many African countries. In many countries in Africa, including Kenya, Zimbabwe and Cote d'Ivoire, alleged electoral infractions have led to civil war and many deaths. The decision of the opposition party in Ghana to go to court to fight against alleged electoral malpractice served two important purposes; first it allowed Ghana's democratic institutions to function by testing the provisions of the constitution of the country and the results went further to deepen the country's democratic credentials. Second, it demonstrated the democratic maturity of all Ghanaians and that served as an example for many African countries. Indeed, many African countries including Kenya resorted to the judiciary to settle allegations of fraud in their recent elections rather than taking to the streets and exacting revenge as what happened previously.

COMPETING INTERESTS

Author has declared that no competing interests exist.

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