

Electoral Dispute Resolution in Ghana since 1992: An Assessment of the Role of the Judiciary Arm of State.

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Abstract

Ghana has witnessed many electoral disputes since 1992. In the given circumstances, both institutions of state and non-state actors have played important roles in the resolution processes. This paper assessed the role of the Judiciary in respect of electoral dispute resolution, as stipulated under Articles 64(1) and 99(1) of the 1992 Ghana Constitution. In that regard, this paper examined the effectiveness of the court system and factors that often informed decisions of justices. In adapting a qualitative research approach, this study purposively selected 120 knowledge-based respondents across all 16 administrative regions of Ghana. Major findings are that to some extent, the judiciary has been effective in resolving electoral disputes. However, this success story is not based solely on the skills used by the courts, but also credited to Ghanaians who by nature are law-abiding and peace-loving, and are easily disposed to accepting decisions of the courts even where they may disagree. To enhance this important judicial function, the study recommends that judges must dispense justice within the tenets of the law, devoid of political and material motivations. Also, the discretionary powers of judges must be regulated by law since judges may be tempted to overstretch such powers; as perceived of them in the 2012 and 2020 Presidential Petition Cases brought before the Supreme Court. This modest study inspires the judiciary to improve upon its shortfalls, as the Electoral Commission and political parties are equally inspired to avoid repeating earlier mistakes that led to electoral disputes.

Key Words: Electoral disputes; Ghana; Judiciary role; and Resolution.

Purposes/Objectives

The main purposes of this work include the following:

- (1) Identifying underlining causes of electoral disputes in Ghana and finding ways of preventing their persistence in ensuing years.
- (2) Ascertain the effectiveness of Ghana's electoral dispute resolution systems within the context of achieving an inspirational transformation of the systems, with particular focus on the Judiciary arm of state.
- (3) Assess the performance of the Electoral Commission of Ghana in the discharge of its mandate under the 1992 Fourth Republican Ghana Constitution.

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Part 1. Introduction

Democracies are extolled as the best form of governments in today's world of governance. As a term, it connotes a form of majority government where power is vested in the people, is either directly or indirectly exercised by them (Diamond, 2015). Abraham Lincoln, a onetime president of the United States of America (USA), simplified the definition of the term when he said, "*It is government of the people, for the people and by the people*" (Wilentz, 2015:53-54). He further stated that, just as he would not be a slave he would not be a master, since anything that differs from this position is no democracy (Borrit, 1978:276; Paludan, 1994). In a wider sense, the term refers to a system of governance in which rulers are held accountable for their actions within the public realm, by the indirect action of citizens and through the cooperation of their elected representatives (Berman, 2019; Diamond, 2008). Today, indirect democracy is the more widely used form of democracy by nations-states, where the supreme power of the people is exercised through elected representatives within designated time limits (Berman, 2019).

Indeed whatever form a democracy may take, free, fair and transparent elections form the bedrock of that system as they reflect and represent the will of the people (Lindberg, 2009). And according to Hoglund (2006:4), 'elections facilitate communication between the government and the governed, and also have symbolic purposes by giving voice to the public'. Unfortunately, many electoral processes across the globe are tainted with fraud, irregularities and lack of transparency, often leading to disputes that sometimes culminate into violent conflicts. The United Nations Development Programme (UNDP)(2009), posits that electoral violence is the act or threat of coercion, intimidation, or physical harm perpetuated to effect an electoral process; or that which arise in the context of electoral competition, including delays, disruptions or derailments of polls that aim at influencing the outcomes of elections. In that similar vein, electoral disputes are election-related disputes that arise from inaccurate, manipulated, unjust and tainted electoral processes; whereby aggrieved parties resort to redress at appropriate platforms including competent judicial systems. In that regard, electoral processes capture three main phases namely, pre-voting, voting and post-voting.

1.1: Electoral Disputes/Conflicts across the Globe /Causes and Effects

Electoral disputes are not the preserve of only fledgling democracies but even well-seated democracies across the globe. For instance in the just ended United States of America (USA) 2020 presidential elections, an electoral dispute arose as then incumbent President Donald Trump alleged that the election of the President of Joe Biden was ridden with electoral malpractices and that the court should set the results aside. Earlier in 2000, the election of President George W. Bush (Jnr) was contested before the US Supreme Court by Al Gore, the

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presidential candidate of the Democrats on allegation of vote padding in the State of Florida (Shapiro, 2009). Similar occurrences happened in other parts of the world such as the Cambodian election dispute where the electoral process was marred by systematic problems that prevented the scheduled July 28, 2013 national election, on grounds of lack of independent and impartial dispute resolution mechanism, alleged manipulation of results in favor of then incumbent ruling Cambodian People's Party and impartial conduct of security and electoral officers, amongst others. In Latin America, examples of many electoral disputes can be cited in Paraguay, Mexico, and Chile; while in Asia, the electoral dispute or conflict cases of Bangladesh, India, Indonesia, Nepal, Pakistan, Philippines and Thailand can be listed.

The 1990s period witnessed positive changes regarding the process of democratization in Africa, leading to growth in participatory politics (Basedau, Erdmann & Mchler, 2007; Bekoe, 2012). In the 2010s, African countries holding democratic elections had increased from 7 in the 1990s to 40 (Freedom House, 2010). As Collier observed (2009), the democratization process though afforded Africans an opportunity to hold political leaders accountable, it was not an easy one. To buttress this point, in many instances elections in Africa have been manipulated to perpetuate the stay of incumbent regimes; sometimes leading to violent conflicts and Civil Wars which have so far witnessed thousands of deaths, displacements, the destruction of properties and the destabilization of democratic regimes (Bekoe, 2010; Human Rights Watch, 2008). Such high profile electoral dispute cases as the Zimbabwean 2000 and 2008 electoral crisis, the Kenyan 2007/8 post-election crisis, the 2010/11 electoral crisis in Cote d'Ivoire, the Democratic Republic of Congo 2006 and 2011 crisis, the Egypt election crisis, the Libyan electoral dispute crisis, the recent 2019 Nigerian electoral dispute, the 2021 Ugandan electoral dispute, the Malian crisis of 2012 and the Guinea Bissau electoral crisis which led to Coup d'états in the two last, immediately come to mind.

As stated earlier, electoral violence is a sub-category of political violence where a coercive and deliberate strategy is used by political actors (incumbents and opposition parties) to advance their interests and achieve specific political goals in relation to electoral contests. The causes of such electoral disputes or violence are multifaceted, cutting across political, economic, social or cultural lines. The unending list include just these few: where elections are not conducted within appropriate institutional frameworks; political actors employ the youth to indulge in pre-and post-Election violence; the adoption of unlevelled playfield that aim at benefiting incumbent governments; unreliability and the manipulation of voter lists; unfair and inequitable electoral systems; coercive intimidation, harassment, imprisonment of candidates and voters; politicization of security, judicial and electoral officials and the manipulation of election results leading to fraud, *inter alia* (Hoglund, 2009; Nwolise, 2007).

The costs associated with electoral disputes and conflicts are usually high including: deaths; internal and external displacement of populations that may have spill-over effects on neighboring countries; humanitarian crisis; destruction of state and private properties; the halting of socio-politico-economic development of nations; destabilization of democracies;

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human rights aberrations; and the risk of armed conflict or civil wars, amongst others (Human Rights Watch, 2008; Nwolise, 2007).

1.2: Defining Conflict/Dispute Resolution

Electoral dispute resolution systems in modern democracies aim at building stable political systems and also build legal systems, protect fundamental human rights, render prompt unbiased decisions, provide transparent complaint mechanisms and provide confidentiality during investigation. For these reasons, the effective resolution of electoral complaints by the courts in particular, is integral to the integrity and legitimacy of electoral democracies. This study looks at the role of the Ghanaian judiciary in that regard.

The term dispute connotes a disagreement or argument over positions or a situation where one questions the truth of something or even engages in a fight for leadership. Conflict Resolution on the other hand, is the informal or formal process through which two or more parties adapt to find a peaceful solution to their disagreement. In other words, it is the process by which two or more parties reach a peaceful resolution to a dispute (Harvard Law School, 2020). Conflict resolution can also be said to be a social situation where armed conflicting parties voluntarily agree and resolve to live peacefully with-and/or dissolve-their basic incompatibilities; thus ceasing to use arms against one another (Wallenstein, (2015:15). The processes involve negotiation, mediation, arbitration and litigation. While negotiation involves deal making between the disputants, mediation disputants enlist trained neutral third party(ies) to aid them come to a consensus rather than imposing a solution on them (Pirie, 2000). Arbitration could be a trial of a neutral third party similar to a court system where the third party judge makes or imposes a decision to end the dispute (Marrie, 2011). Finally, litigation which falls within the purview of this study, involve a court system trial where a judge or judges make(s) a ruling after hearing the disputants through their legal representatives.

The judicial resolution of electoral disputes as already alluded to, is a fundamental feature of any electoral democracy. And according to both legal-electoral theory and political science, a system that resolves electoral disputes satisfactorily is one that provides an even platform through which appeals, electoral actions or procedures are legally challenged and where justice is dispersed (Hasen, 2016). Indeed, when matters of election-related legal appeals are brought before judicial or political bodies, the objective is to correct the mistakes of unlawful electoral actions (Hasen, 2020; Kovick & Young, 2011). Hence, the system must ensure the real protection for the effective enforcement of political rights to elect or to be elected, as well as ensuring that all participants of the electoral processes including political parties, election bodies, citizens, voters and candidates, have their votes counted (Merloe, 2008). Moreover, the decision of an independent, impartial and technically proficient judicial body, should be based on the values of legality, certainty, objectivity, impartiality, authenticity, clarity and justice (Dahl & Clegg, 2011).

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So far, landmark rulings of electoral courts across the globe have affirmed the important roles they play in the protection of human rights and legal elections in line with Articles 2(3) and 14(1) of the International Covenant on Civil and Political Rights (Mansfield & Snyder 2007). Key examples include, the review of the electoral Courts of Guatemala regarding the presidential aspiration of Efraim Rios Montt in 2003; as was in the 2004 Venezuelan court decision that reviewed the presidential referendum that sought to remove the president in office. Furthermore, the USA Supreme Court played a decisive role in the 2000 presidential electoral dispute between George Bush and Al Gore. Moreover, the Spanish Electoral Court declared as illegal and unconstitutional parties that relate with terrorist groups in 2003.

Ghana the pride of African democracy, has witnessed many electoral disputes under the Fourth Republican Constitutional Rule, though not at a level that threatens the derailment of the young democracy. In the given milieu, institutions of state including the Electoral Commission, religious and traditional bodies and highly-placed individuals in society and above all the courts, have tended to resolve the matters with measurable success. This paper assessed the role of the Judiciary in respect of electoral dispute resolution, as stipulated under Articles 64(1) and 99(1) of the 1992 Ghana Constitution. To that end, the paper examined the effectiveness with which Ghanaian courts do resolve electoral disputes, and factors that often inform their decisions. Be that as it may, the paper also briefly considered the electoral regime of Ghana.

Part 2: The Ghanaian Electoral Regime and Electoral Reforms Since 1992

2.1: Brief Updates on Ghana's Electoral Processes and Challenges So Far

A lot has gone under the bridge since Ghana returned to constitutional rule on January 7, 1993 under the Fourth Republic. Its resolve and commitment to choose leaders at the various levels of the governance structure through fair and transparent democratic elections, has since not waned despite challenges of low profile electoral disputes that may have turned violent in a few instances. One can say in these circumstances that Ghana has come to develop an electoral system which, at least satisfies the aspirations of its people to a reasonable extent.

Before the advent of the Fourth Republican Ghanaian dispensation, the country has gone through elections at various phases of its constitutional history. First in the list is the pre-Independence Assembly elections of 1951, 1954 and 1956. The 1956 Assembly elections in particular, ushered the country into new nationhood as the first African country south of the Sahara to gain independence on March 6, 1957. Next in line are the four post-Independence elections of 1960, 1965, 1969 and 1979. The 1960 presidential election featured Kwame Nkrumah of the Convention People's Party (CPP) and J.B. Danquah of the United Party (UP) on April 27, 1960, which saw the former winning the executive presidency elections with 81.1 percent of valid votes cast. In 1965 at a time Ghana became a one-party state, 198 Members of Parliamentary stood unopposed on the ticket of CPP in that election as were appointed by the president and his party (About the Parliament of Ghana. Archived 2010-.04-06). The third post-Independence parliamentary elections came on August 29, 1969 under the Second Republic, which saw Dr. Kofi Abrefa Busia being elected as Prime

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Minister with his Progress Party (PP) winning 105 majority seats in the 140-seat Parliament, over the pro-CPP National Alliance of Liberals which had 29 seats (Nohlen, Krennerich & Thibaut, 1999). The general elections of July 9, 1979 which ushered in the Third Republic, saw Dr. Hilla Limann winning the presidential race with 62 percent in a run-off over Mr. Victor Owusu of the pro-UP Popular Front Party. Dr. Limann's People's National Party having also slimly won 71 out of 140 seats in parliament (Jeffries, 1980).

Under the Fourth Republican Constitutional rule, 8 presidential and parliamentary elections have been successfully conducted. The 1992 presidential and parliamentary elections took place on different dates. The November, 3 1992 presidential election had Ft. Lt. Jerry John Rawlings, the immediate past military ruler and candidate for the National Democratic Congress (NDC) winning with 58.4 percent of valid votes cast. Following alleged irregularities, other political parties spearheaded by the largest opposition party at the time, New Patriotic Party (NPP), boycotted the parliamentary elections that was patronized by only the NDC and its progressive affiliate parties to form the first parliament of the Fourth Republic (Nohlen, Krennerich & Thibaut, 1999). The other seven general elections of 1996, 2000, 2004, 2008, 2012, 2016 and 2020, respectively; had the winners as: J.J. Rawlings (57.4 %) and NDC 133 from the 200-seat parliament; Mr. John A. Kufuor (57 %-run-off) and New Patriotic Party (NPP) 99 parliament seats out of 200; Mr. John A. Kufuor (52%) and NPP 128 from the 230-seat Parliament; Prof. John Atta Mills(50.2 %-run-off) and NDC 116 in the 230-seat Parliament; Mr. John D. Mahama (50.7 %-contested in Supreme Court) and NDC 148 seats from the 275-seat Parliament; Nana A. D. Akufo-Addo (53.72 %) and NPP 169 seats; and Nana A. D. Akufo-Addo (51.3%-contested at the Supreme Court) with no clear winner where obtained NPP 137 seats and NDC 137 with 1 seat going to pro-NPP Independent Candidate (Abdulai & Sackeyfio, 2021; Ayee, 2002; Benson & Ngaaso, 2021; Boakye, 2018; Nohlen, Krennerich & Thibaut, 1999).

The general elections since 1992, have been dominated by the NDC and NPP as perhaps predicted in the Duverger's law where single-ballot plurality-rule elections structured within single-member districts tend to favor two-party systems (Duverger, 1964). Both the president and the current 275 Members of Parliament (MP) are elected for a four-year term through universal adult suffrage. While the presidential election is won by 50 percent plus 1 of the valid votes cast (Article 63 (3) of the 1992 Constitution), MPs are elected by simple majority.

Ghana's electoral journey under the Fourth Republic has not been an entirely smooth one, as there have been pockets of electoral disputes that sometimes turned violent and have kept stakeholders awake. Indeed, every election in Ghana whether or not it is general elections, bye-elections, party elections or assembly elections are characterized by disputes of varied forms (Amankwaah, 2013; Jockers, Kohnert, & Nugent, 2009; Meissner, 2010;). First, many bye-elections in Ghana organized by the EC to fill vacancies created in parliament for reasons listed under Article 97 of the 1992 Constitution, are many times marred by electoral violence. This perhaps is as a result of incumbent governments deeming such elections as a referendum on their performance and would therefore, go to any length including the use of money, intimidation and rigging of polls to retain or capture the parliamentary seat in question. The opposition parties would equally want in those circumstances, to prove that the incumbent government has failed when they retain or capture

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the seat(s). The Ayawaso West Wuogon January 31, 2019 and the Chereponi September 29, 2009 bye-elections are two of the many bye-elections which left many injured, some dead and properties destroyed. Second, there have always been pockets of violence and parliamentary electoral disputes during general elections. In the 2020 general elections alone, close to ten electoral disputes are currently before High Courts for determination, following alleged election irregularities including the Techiman South and Assin North Constituencies. So far, five people have been reported dead through violent actions perpetuated by security forces. The Santrokofi/Akpafu/Lolobi/Likpe (SALL) area have been denied representation by the EC in the current 8th parliament and the case is before the Supreme Court at the time of writing this article is being written. Thirdly, on the main, three presidential results namely 1992, 2012 and 2020 have been heavily disputed. The 1992 dispute led to the boycott of the 1st parliament by the opposition parties whilst the 2012 and 2020 presidential electoral disputes were settled by the Supreme Court adequately recounted below.

2.3: Brief Review of Electoral Reforms and Dispute Resolution Mechanisms in Ghana

Electoral disputes are resolved in Ghana using several channels including state institutions, courts and personalities namely; the EC, Peace Council, Supreme Court, Court of Appeal, High Court, religious clerics, traditional leaders, *inter alia*. In most of these cases, the technique of negotiation and dialogue are brought to bear in the resolution processes. The Peace Council has through its early intervention approach methodology, prevented several electoral disputes as well as resolved many disputes before their escalation into violent conflicts. While a notable figure such as Asantihene Osei Tutu II, has played a key role in settling electoral disputes between top echelon politicians. Religious clerics and traditional rulers are equally not left out in this effort. Finally, the judiciary has played an overwhelming role in resolving electoral disputes, and as Diedong (2012) asserts, a country cannot be seen to be democratic where there are no courts to ensure justice.

Ghana's transformation into a stable democracy is one of Africa's success stories. The establishment of the Inter-Party Advisory Committee in 1994 and the National and Local Peace Councils established in 2006, account for this achievement that has contributed to the acceptance of election results in Ghana. Through deliberate and calculative responses, Ghana's electoral system has risen to the occasion of resolving electoral disputes and misgivings of election results. These collective efforts have contributed to the overall improvement of the electoral system. Major reforms include: the replacement of the onetime opaque ballot boxes with transparent boxes; voters registration cards that initially had no pictures of voters now incorporate their color pictures; registration of voters are now done biometrically where they are biometrically verified before voting; results are basically declared at the polling centers in the open; party agents play important roles in the authentication of results before declarations, amongst others. Indeed, political party participation in the electoral process has been deepened with the setting up of the Inter Party Advisory Committee where political parties make inputs in electoral policies and decisions other than a one-way determination of such issues by the EC alone as was the case before 1994. Perhaps explaining why it is worrisome that the Jean Mensah-led EC is being criticized by political parties and the civil society for the noninvolvement of parties in decision-making this time around. Also, parliament of Ghana has enacted many ICs or laws that have aided

this process, as well, Ghanaian courts in particular the Supreme Court have made many appropriate rulings and determinations that have strengthened the electoral laws.

Part 3: Ghana's Judiciary and Its Role in Electoral Dispute Resolution

The Judiciary plays an important role in the resolution of electoral disputes in Ghana. Per Article 64 (1), whenever the validity of the election of the President is challenged by a Ghanaian citizen who presents a petition following an election, the Supreme Court is empowered to determine the merit of the case. Also, where there is a dispute regarding the validity of the election of a Member of Parliament or Speaker of Parliament, Article 99(1) grants the High Court first instance jurisdiction to hear and determine the case question. Sub-theme 3.1 and 3.2 briefly and yet comprehensively outline electoral disputes handled so far by the courts. For space constraints, I will highlight only three high profile cases.

Reviewing Three High Profile Cases and their Resolution

(a) Biebel Vrs Dramani and others (J1/2/10)[2011]GHASC 51 (04 July 2011)

An aggrieved constituent and cattle dealer of the Bawku Central Constituency, Sumaila Biebel, in 2009 brought before an Accra Fast Track High Court, a case against the NPP MP for Bawku Central, Adamu Dramani Sakande in respect of a breach of the electoral laws of Ghana. Mr. Biebel alleged that Hon. Sakande did not qualify to be an MP as he held both British and a Burkinabe passport. And that, beside his dual citizenship status that disqualified him from occupying the office of MP in Ghana, he also made a false statement that enabled him include his name in the voters register before the 2008 parliament elections in which he won.

The court upheld the plea on July 15, 2009 and based on default judgement, ordered Sakande to vacate his seat as MP for Bawku Central. Subsequently, he was jailed for 2 years concurrently and affirmed by the Supreme Court of Ghana on July 27, 2012 following charges on perjury, false declaration by voting, and deceit of public officer (MP found guilty of forgery, jailed for two years. General news. Ghana Home Page. 12 July 2012. Retrieved 30 July 2012). He was later pardoned by the NDC government on health grounds.

(b) Akufo-Addo and Others V Mahama and Another (Ruling) (JB/31/2013)[2013]

On December 22, 2013, Akufo-Addo and two Others of the NPP, brought a presidential election petition before the Supreme Court of Ghana. The Respondents were John Dramani Mahama and the Electoral Commission of Ghana. The Petitioner challenged the validity of the election of the Respondent as President of the Republic of Ghana, pursuant to the 2012 presidential election. The core charges included allegations of over-voting, voting without biometric verification, and absence of the signature of a presiding officer, duplicate serial numbers on pink sheets for two polling stations, duplicate polling station codes and unknown polling stations.

On August 29, 2013 after several months of judicial battle between the legal counsels of the petitioners and respondents, the nine Supreme Court judges per majority decision, dismissed the petition on several grounds of demerit of the case. The apex court, however, acknowledged that some infractions existed, thereby recommended for some electoral

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reforms including foremost the need for the Inter Party Advisory Committee (IPAC) to consider legislation to legitimize the use of serialized pink sheets in line with the unique polling station codes. While accepting the results, Akofu-Addo nonetheless disagreed with the decision of the court. The Respondents on the other hand, expressed gratitude to the court for affirming the 2012 presidential results based on its genuineness. The country generally was divided on the issue though they came to accept the decision, which engendered the peaceful resolution of the dispute (Asante & Asara, 2016; Brenya, 2014).

(c)Mahama V Akofu-Addo and Another (Ruling) [2021]

The 2020 general election as was in a few earlier election cases was characterized by instances of electoral disputes and pockets of violence. Mr. John Dramani Mahama of the NDC challenged the validity of the election of Nana Addo Dankwa Akofu-Addo (2nd Respondent), as the President of the Republic of Ghana as was declared allegedly unconstitutionally by the Electoral Commission of Ghana (1st Respondent). The grounds for the petition included: allegations of largescale electoral irregularities that had to do with widespread cases of padding in favour of the 2nd Respondent, several ballot boxes were stuffed in the stronghold of NPP with thumb printed ballot papers of the 2nd Respondent, widespread change of electoral figures in favour of 2nd Respondent, vote buying, *inter alia*.

The Petitioner sought the following main reliefs: that the Court orders a mandatory injunction directing the EC (1st Respondent) to conduct a second election between 2nd Respondent and the Petitioner as required under Articles 63(4) and (5) of the 1992 Constitution since both contestants failed to obtain the more than 50 percent win as stipulated under Article 63; that the Court annuls the already gazetted Declaration of President-Elect Instrument, 2020 (C.I. 135) dated 9th December 2020, issued under the hand of 1st Respondent as it was unconstitutional; and that the 2nd Respondent should be restrained from holding himself out as President-elect.

After 21 days of judicial battle between counsels of both Petitioner and Respondents, the 7 panel justices of the Supreme Court on 4th March, 2020, unanimously dismissed the case as one lacking merit. In his response to the Court's ruling, the Petitioner while withholding that he was legally bound by the decision, sharply disagreed with their lordships on grounds of unfair process of court proceedings, bias on the part of justices of the court who elected to be more of the counsel of the Respondents rather than members of the bench, the court's overly protection of the EC Chairperson, and the miscarriage of justice. On the part of both Respondents, the court's ruling was fair and based on the laws of the land, which sought to affirm the will of the people. Once again, the country was sharply divided on mainly political lines as to the rightfulness and lawfulness of the court's decision (Benson & Ngaaso, 2021).

Part 4: Methodology/Approach

The study which took three months of field work from December 20, 2020 to March 11, 2021, adapted the qualitative approach and exploratory design where it drew data from One Hundred and Twenty (120) participants made up of 81 (67.5 %) males of the purposively sampled population and 39 (32.5 %) females, across all 16 regional administrations in Ghana. The male dominance of the participants is explained in the fact that in Ghana, females are more reluctant, unwilling and unavailable whenever issues of participation in studies as this

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come up. The respondents were purposively selected based on their knowledge and interest in the subject area, covering a wide terrain of categories of people namely; the electorate, lawyers, judges, religious and traditional leaders, politicians, journalists, academia, political parties, civil society organizations and ordinary people (Bartlett & Vavrus, 2017; Prasad, 2005).

In-depth structured interview guides, observation guides and focus group discussions were the main instruments used under strict confidentiality to gain insights into participants' views on five main questions and other follow-up questions, regarding the role of the judiciary in electoral dispute resolution in Ghana; using the quota sampling procedure and snowballing technique (Bernard, et al., 2017; Howard & Berg, 2017; Lewis & Sheppard, 2006). The study derives from an empirical research technique that is largely descriptive of the knowledge base of participants in the subject area surveyed, reflective of the understanding of human experiences, thoughts and behavior in given circumstances and their ability to respond appropriately (Cox, 2010; Gilgun, 2010). As maintained by Merriam and Tisdell (2016), qualitative research is reliable in the fact that the perspective and the influence of the researcher tends to be lessened when eliciting the meaning and viewpoint of respondents in the subject area. This preposition has influenced the adaptation of this research methodology, where discussions of findings were descriptive and exploratory of the perceptions and opinions of respondents who freely answered questions without any iota of hindrance, based on a case study design of Ghana's judiciary (Ravitch & Carl, 2016). Be that as it may, limitations of the study results in terms of validity, reliability and generalizability, were adequately addressed through the use of multi-purpose investigative approaches, adoptive of the triangulation regime (Bryman, 2008; Edmonds & Kennedy, 2017). Finally, data was analyzed using the Qualitative Content Analysis Technique which, as suggested by Judd et al. (2017) and Pallant (2016), is always a reflexive and interactive summary of both verbal and visual data acquired during the investigation.

Part 5: Data Analysis, Results and Discussion

Five major research questions guided the study which are the following:

- (1) What are the causes of electoral disputes in Ghana, and how have these disputes impacted the country's democratic practice?
- (2) In assessing the Electoral Commission's performance in the electoral process so far, can you say it is independent in the real sense and has it been neutral in its dealings with all the political parties?
- (3) How effective has Ghana's conflict resolution mechanisms being in respect of electoral disputes, since it embarked on constitutional rule twenty-eight years ago?
- (4) How effective has been the Court system in resolving electoral disputes in Ghana, and what factors influence decisions of the judges?
- (5) In your opinion what can we do as a nation that will go a long way to preventing electoral disputes and also strengthen the electoral system in Ghana?

Table 1 below shows the categories of respondents. The electorate category have majority respondents of 21 (17%), while the Peace Council category has the least number of

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2 (1.7%) respondents. For the other categories see Table 1. Out of the sampled population of 120, 81 (67.5%) respondents are males whilst 39 (32.5%) are females.

Table 2 below identifies the ages of participants which are classified into four categories as follows: 18-30, 31-40, 41-50 and 60 years and above. In descending order, the frequencies and percentages of the age groupings are as follows: Fifty-Five respondents (45.8 %) are aged between 41 and 60; 30 respondents (25 %) are aged from 31 to 40; 20 respondents (16.7 %) are those above 60, whilst respondents who are aged between 18 and 30 are 15 (12.5 %). The educational background of respondents are as follows: Ten respondents (8.3 %) have no formal education; 15 (12.5 %) have basic education; 45 respondents (37.5 %) have secondary education whilst majority of the respondents 50 in number (41.7%) obtained tertiary education. As seen below, those without formal education came at the bottom. This distribution though fitted well in the study since the survey needed people with sufficient background knowledge on the subject matter. Finally, the political affiliation of respondents which was sought for only after the interviews and discussion sessions, were as follows: NPP 38(31.7); NDC 37(30.8 %); Other parties 22(18.3%) and none 23 (19.2 %). The NPP topped the list of political affiliation with Other parties being lowest in terms of frequency.

Table 1: Categories of Participants/Respondents

Category	Number interviewed	Gender	
		Male	Female
The Judiciary	3 (2.5%)	2	1
Aggrieved parties & victims	10 (8.3%)	6	4
Politicians & Political Party	12 (10%)	8	4
Religious clerics	3 (2.5%)	3	0
Ghana Peace Council	2(1.7%)	1	1
Students	13(10.8%)	8	5
Traditional rulers	5(4.2%)	4	1
Legal practitioners	4(3.3%)	2	2
Civil Society Organization	5(4.2%)	4	1
Electoral Commission Officials	3(2.5%)	2	1
Academics	7 (5.9%)	4	3
Conflict Resolution Practitioners	4(3.3%)	3	1
The Executive	5(4.2%)	3	2
The Legislature	6(5%)	4	2
Media Practitioners	4 (3.3%)	2	2
Public & Civil Servants	6(5%)	4	2
Peace Advocacy Groups	3(2.5%)	2	1
Electorate	21(17.5%)	15	6
Security Experts	4(3.3%)	4	0
Total	120 (100)	81	39

Sources: Field Work, 2021

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Table 2: Socio-demographic characteristics of participants

Age	Frequency (N=120)	Percentage
18-30	15	12.5
31-40	30	25
41-60	55	45.8
Above 60	20	16.7
Total	120	100
Education		
No formal	10	8.3
Basic	15	12.5
Secondary	45	37.5
Tertiary	50	41.7
Total	120	100
Political Party Affiliation		
NPP	38	31.7
NDC	37	30.8
Others	22	18.3
None	23	19.2
Total	120	100

Source: Fieldwork, 2021

Question One

What are the causes of electoral disputes in Ghana, and how have these disputes impacted the country's democratic practice?

All respondents contributed to this question giving varied and similar answers that include mainly the following: Mistrust amongst stakeholders such as the EC and opposition parties and mistrust between incumbent government and other political parties; Perceived bias of the EC and other state agencies in favor of incumbent parties in government; unlevelled playing fields for participants in elections; electoral irregularities including rigging, vote padding; intimidation and detention of opponents by security forces; unfair electoral processes; bad electoral laws; partiality of the Electoral Commission and other state agencies; use of party thugs to ferment trouble where there is none; and inactivity of observers. Apparently, the listed causes have global appeal as alluded to by Hoglund (2009) and Nwolise (2007).

Regarding the impact of electoral disputes on Ghana's democracy, 91(75.8%) participants agreed that if anything at all, the impact is only minimal, while 29 (24.2%) said the impact was grievous. To back their claim, the minority view held that Ghana's socio-politico-economic development and therefore its democratic leap would have achieved a higher feat by now but for these electoral disputes that have taken a chunk of national attention and resources (Human Rights Watch, 2008; Nwolise, 2007). One of them bemoaned the situation in such terms, *"Every election year, the youth are engaged in violent actions by their paymasters which sometimes result in the lost of lives while public and private property are vandalized by feuding factions within the political divide. Ehh! it's awful to think about*

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this.” Keenly, 70 percent of this minority viewpoint were females, while 40 percent of the majority view are youth. Meaning, while majority of the youth do not appreciate the dangers of electoral disputes as some are beneficiaries of violent behavior, women folk in Ghana are not happy and do not condone anything that may lead to electoral disputes. One elderly female participant exclaimed when I put the question to her, “*Anytime an election year draws near my brother, I have sleepless nights because I have come to know that all the politicians care about is power but not our lives, certainly not our welfare. As a result, I have refused to vote in the past three elections*”.

Question Two

In assessing the Electoral Commission’s performance in the electoral process so far, can you say it is independent in the real sense and has it been neutral in its dealings with all the political parties?

Of the 120 respondents, 72 (60.0%) said the EC has performed very well in its conduct of general elections since 1992; 31(25.8%) adjudged EC’s performance as average, while 17 (14.2 %) said the EC has underperformed. Based on the overall responses, Ghanaians are satisfied with EC’s handling of the electoral processes since 1992, having successfully and professionally conducted 8 peaceful general elections which outcomes were acceptable; sometimes under constraints of time, logistics, and finances and even within chaotic situations.

However, in comparing the performance of the various Chairpersons of the Commission namely; Justice Josiah Ofori Boateng, Dr. Kwadwo Afare-Gyan, Mrs. Charlotte Osei and Mrs. Jean Mensah, 65 (54%) respondents gave Dr. Afare-Gyan tops as the best performing EC Chairperson during the Fourth Republic while 82 (68%) said Mrs. Jean Mensah is the least performed Chairperson. As to why Dr. Afari-Gyan was seen as the best performed Chairperson, one of them said, “*Throughout this period, Dr. Afare-Gyan has brought many more reforms to the process such as the creation of the Inter-Party Advisory Committee. He was very firm and could not be manipulated by any government or top political figure. Let me give you this example, in 2000 when the opposition party won, even though he got his appointment under the NDC, he refused to succumb to pressure from above but declared the NPP candidate as winner at the peril of his security. But that certainly cannot be said of Mrs. Mensah who showed such bias towards the ruling party and has not been responsible enough to account for her stewardship*”. Other reasons alluded to were that Mr. Afare-Gyan showed level headedness and high professional competence in trying moments, knowing what to do; he had a listening ear and took on board advises from all stakeholders, unlike his successors who gave less attention to divergent views from political parties and the civil society. “*But perhaps he brought all the reforms to bear on the process because he has been the longest serving Chairperson*”, another observed. Mrs. Jean Mensah on the other hand, was seen as the least performed and most incompetent so far, as she is the only Chairperson who ever declared multiple-results of the presidential election and seen as being incompetent by both the NDC and NPP. She has not exhibited an engaging spirit since her appointment and perceived by many as arrogant, and extremely bias towards the one who appointed her. But as Bekoe (2010) asserts, electoral disputes are largely prevented where electoral officers show neutrality throughout electoral processes.

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On the question of the independence of the Commission as provided for under Article 46 of the 1992 Constitution, all but 15 (12.5%) of the participants affirmed the Commission's independence. However, one of the participants who decried the independence of the Commission had this to say, "*How can we say the EC of Ghana is independent when the very members of the Commission are appointed by the President or rather politicians to do their bid while in office. And when they refuse to do so, they are kicked out the next minute on flimsy charges*". In the case of neutrality, 53 (44.2%) said the EC and its Commissioners are neutral; 57 (47.5%) said the Commission officials are not neutral, while 10(8.3%) were undecided. From the results it can be concluded that while an overwhelming majority of the population see the Commission as an Independent state agency, a slim majority of 47.5 percent do not see the Commission, especially its Chairpersons as neutral since all Chairpersons in onetime or the other have exhibited bias either consciously or unconsciously towards a preferred particular party or political figure. In a follow up question that sought to find out whether results declared by the EC reflect the overall will of the electorate, 73 (60.8%) agreed it did, 37(30.8%) disagreed, while 10 (8.3%) said they were not sure. In a group discussion of 6 participants who unanimously disagreed that results are not reflective of the electorates will, they cited the multiple declaration of results in the 2020 presidential elections as an example of their mistrust of the system. The leader rhetorically asked, "*Which of the varied results of Jean Mensah at the just ended presidential results reflect the will of the people?*" That notwithstanding, the response suggests that, more than half of Ghanaians believe the results each election year as declared by the EC, is a reflection of the people's will, that the EC is an independent Organization even though leadership may be seen to be doing things that favor their appointers.

Question Three

How effective has Ghana's conflict resolution mechanisms being in respect of electoral disputes, since it embarked on constitutional rule twenty-eight (28) years ago?

The respondents were sharply divided in their answers. Sixty-Two (51.7%) consented that the dispute resolution mechanisms set up and in some cases adopted within the country have shown potency and effectiveness, while 58 (48.3%) contested they are weak, ineffective and need urgent overhauling. Of those who agreed the resolution mechanisms were effective, 80 percent of them though called for the strengthening and improvement of the system. They also advised that the Courts, Peace Council and other bodies normally involved in electoral dispute resolution such as religious clerics and traditional rulers, should stay beyond reproach and impartially apply the rules. Of the number that decried Ghana's electoral dispute resolution systems including the judiciary, 37 (63.8%) of them called for a review on the *modus oparendi* of the systems, while 15(25.9%) called for the scrapping of most of the systems, paving the way for a national dialogue to come up with appropriate modalities that will establish an independent electoral dispute resolution institution. This body they continued, should not come under the control of any government or person, which should compose of professionals including judges, representatives of notable national organizations, amongst others. Even though, it was a minority view, I saw this suggestion as valid and should be given high consideration to by stakeholders including the government. This tallies with Dahl and Clegg (2011) view that, strong independent electoral dispute resolution bodies are needed in all democracies. The other 6 (10.3 %) in agreeing, said even courts should not

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handle electoral disputes as they have shown partiality in the last 2 presidential petitions brought before the Supreme Court but failed to suggest an alternative. One of the respondents who is a top legal brain and politician supported the creation of a single independent body to resolve electoral disputes promptly, impartially; and within its mandate, also work at preventing electoral disputes. He suggested the composition of such a body as, “*Two justices of the Superior Court of Judicature nominated by the Judicial Council of Ghana, 2 traditional rulers nominated by the National House of Chiefs, 3 senior lawyers nominated by the Ghana Bar Association and 4 conflict experts, on a one term four-year tenure of office*”. In analyzing the results, Ghanaians on the main have faith in the dispute resolution mechanisms but would call for improvement of the systems.

Question Four

How effective has been the Court system in resolving electoral disputes in Ghana, and what factors influence decisions of the judges?

Of the 120 respondents, 47 (39.2%) affirm that the court system has effectively and to a very large extent, resolved electoral disputes since the inception of the fourth republic, 25(20.8%) think the system has averagely resolved the disputes, while 48 (40 %) say the court system has not adequately resolved the cases to the expectation of Ghanaians. The 68 percent of respondents who expressed misgivings gave the following reasons: Judges have shown partiality in arriving at decisions regarding political disputes; most of the times, judges subjectively overstretch their discretionary powers so as to twist the law to support their parochial exigencies; judges tend to have a soft spot for political parties and governments that have played a role in their appointment as was perceived in both the 2012 and 2020 presidential petition to the Supreme Court; financial and material inducements influence decisions of judges as exposed by undercover journalist Anas Aremeyaw Anas, *inter alia*. An apparently frustrated respondent had this to say, “*What is revealing from the Supreme Court rulings in respect of the 2012 and in particular the 2020 presidential petitions is the fact that, Ghanaian electorates no longer decide who we want as our leaders, but Justices of the Supreme Court and lower courts and Chairpersons of the Electoral Commission do*”. Interestingly, 85 percent of respondents including some who have absolute confidence in the judicial electoral dispute resolution system have suggested that, the acceptance of the Supreme Court rulings by Ghanaians was mainly premised on the peace-loving nature and let-go spirit of the people, but not entirely on the ability of the courts to resolve such disputes. From the results, however, a slim majority of Ghanaians still have confidence in the court system to resolve electoral disputes. They only demand transparency, impartiality, justice and the application of the law as contained within the constitution, electoral laws and other upright municipal and international laws applied elsewhere, as opined by Hasen, (2020).

On the factors that inform decisions of justices regarding electoral disputes, only 40 (33.3%) participated since the 80 (66.7%) who declined claimed only legal minds could answer such questions effectively. Only 8 (20%) of the 40 respondents were females; while the youth constituted 35 percent of those who declined to answer. The 40 gave the reasons as: law and legal principles; the duty of upholding the will of the people; the call to dispense justice; miscarriage of justice resulting from misapplication of legal principles and errors on the part of judges; national security implications; desire to deepen democracy; political affiliation in respect of ideology; ethno-religious relationships with disputing parties; the

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influence of biases and partiality; manipulation of justices through material, political, economic and financial inducement; and the inappropriate composition of panels by presiding judges after the form of a 'whip' system, *inter alia*. Most of the reasons coincided with the thinking of Dahl and Clegg (2011), Dworkin (1985), Ellickson, R. C. (1994).and Hasen (2016) in respect of factors that influence judges in their decisions.

Question Five

In your opinion what can we do as a nation that will go a long way to preventing electoral disputes and also strengthen the electoral system in Ghana?

The respondents gave varied suggestions, some of which had a global appeal other than been exclusively a Ghanaian situation. They are: ensuring the independence and neutrality of the EC and Commission members (especially the EC Chairperson); EC Commissioners should not be appointed by the President who is a political figure and to that end, Articles 43 and 70 (2) of the 1992 Constitution must be amended to allow the appointment of Commission members by a professional body; the discretionary powers of the judiciary must be redefined in terms of electoral disputes; political parties and politicians should stop recruiting or engaging party thugs into acts of violence that seek to illegitimately favor their election; though it is agreed that disputes must end somewhere, aggrieved parties must be encouraged and facilitated to seek redress in African Union Human Rights Court or even the International Court of Justice when they are dissatisfied with rulings of the Supreme Court; the Peace Council and other dispute resolution mechanisms must be empowered to resolve electoral disputes before resort to the courts as a last alternative; to prevent electoral disputes the EC must be seen to play a neutral role, while the electoral system and processes are made transparent as possible; electoral laws that seek to disfranchise people either knowingly or unknowingly, as the one endorsed by the Supreme Court in 2020 where voters cannot register for voter cards using their birth certificates but Ghanaian Passports and the National Identity Card (both borne out of the birth certificate as a primary document) should be reviewed by the Supreme Court, amongst others. Again these suggestions have a global touch and replicated by the likes of Barnett (2004) and Fallon (2008). .

Part 6: Conclusions, Implications/Recommendations

All 8 electoral cycles of Ghana since 1992, have been characterized by electoral disputes of varied levels. In these instances, the effects have been regrettable, sometimes leading to the lost of lives, the destruction of properties, and have even cast a dent on the flinching Ghanaian democracy. Some of the causes included the inability of the EC officials to conduct transparent, fair and free elections and also provide equal playing fields for all participants. The negative role played by politicians such as winning elections through vote-buying, engaging in electoral irregularities and the recruitment of thugs to harass, maim, kill and brutalize unsuspecting voters of the opposite side, have been fertile brewing grounds for electoral disputes.

In the given milieu, electoral dispute resolution mechanisms adopted by the state including resort to courts of competent jurisdiction, have provided a platform for the resolution of disputes that would have escalated into violent conflicts, as witnessed in other neighboring countries. That said, there is still the need for electoral reforms, the improvement of the existing electoral dispute resolution mechanisms including the court system as

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suggested by respondents of this study, and perhaps the setting up of an independent and professional electoral dispute resolution body to resolve disputes promptly and impartially and based on law. This national response will address the shortfalls attributed to the judicial dispute resolution system which include partiality, delay in the dispensation of justice, political interference and the influence of judges, amongst others.

In all of this, Ghana's democracy will continue to stand out as a shining example within the West African Sub-region in particular, and the continent of Africa in general. This feat when achieved, will be owed to the Ghanaian culture of peaceful coexistence, even under trying moments. One cannot, however, discount the role political parties, religious clerics, traditional rulers, civil society, state institutions, the Electoral Commission, and the three arms of state (Judiciary, Legislative and Executive), have played to these ends.

Finally, by implication, this modest study seeks to provide information that will assist the judicial system in improving upon its shortfalls, as the Electoral Commission will also avoid repeating earlier mistakes that led to electoral disputes in the past. Political parties, the elite, policy makers and Ghanaians in general will learn from their mistakes and make conscious efforts to improve and support the electoral system under the guidance of this most study, thereby preventing disputes. The work also certainly has academic appeal where it adds to literature in the subject area. Lastly, this study is of global essence in as long as it reviews the Ghanaian story that is of global interest and offers lessons to learn from.

Recommendations

The long list of recommendations put forth here are not only Ghanaian oriented but global in scope to include the following: to enhance the electoral dispute resolution role of the Judiciary, judges are urged to dispense justice within remits of the law outside of political and material motivations and manipulations; cases brought before judges must be fairly and impartially determined; discretionary powers of judges must be regulated by law, since judges may be tempted to overstretch their discretionary powers as may have been witnessed in both the 2012 and 2020 Presidential Petition Cases brought before the Supreme Court of Ghana; to prevent electoral disputes there is the need to improve upon electoral processes such as the conceptualization of elections as an element of broader political engagement where financial resources, logistics and the inclusiveness of all stakeholders in the processes are provided for; the provision of appropriate domestic mechanisms to resolve election-related disputes and the advanced implementation of conflict-prevention policies and strategies other than undertaking ad hoc reactionary measures, are key in the circumstances; intense observation and monitoring of elections by both external and internal bodies that prevent rigging and other electoral irregularities should not be lowered; developing a culture of democracy where well-trained, competent and unbiased security forces and election officials are deployed in elections, helps to curb or reduce electoral disputes; a robust civil society, an independent media, and an independent judiciary can help manage election grievances within the context of a healthy democratic society; the three phases of the election processes (pre-voting, voting and post-voting) should be made reliable where electoral frameworks and laws are developed that enhance free campaigns and the deepening of democracy; polling day activities should aim at preventing misconduct through effective monitoring of security forces, and the use of modern technology that prevents election rigging are critical; and finally in situations of

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electoral conflicts the underlying structural causes must be addressed (Dahl & Clegg 2011; Diamond, 2015; Utas, 2012b).

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