

Chapter 3

The Electoral Framework and Election Administration

Background

The President of Ghana is elected for a four-year term and can serve a maximum of two terms in office. The President is elected in a single national constituency on the basis of a majority system. In order to be elected in the first round a candidate needs to secure at least 50%-plus-1 of the valid votes cast. If no candidate secures such a majority then the leading two candidates contest a run-off election. In the run-off whichever candidate secures the most votes is the winner.

The Parliament of Ghana now consists of 275 members, who are elected from single-member constituencies on the basis of the first-past-the-post system. The term of a Parliament is also four years.

International and regional commitments and national legal framework

Ghana has signed or agreed to all the major regional and international commitments and instruments relating to human rights and the conduct of elections. These include:

- Port of Spain Affirmation of Commonwealth Values and Principles (2009)
- AU African Charter on Democracy, Elections and Governance (2007)
- ECOWAS Protocol on Democracy and Good Governance (2001)
- International Convention on the Elimination of All Forms of Racial Discrimination (1996)
- African Charter on Human and Peoples' Rights (1981)
- Convention on the Elimination of All Forms of Discrimination Against Women (1979)
- International Covenant on Civil and Political Rights (1966)
- Universal Declaration of Human Rights (1948)

The Ghana Constitution guarantees fundamental rights and freedoms, including freedom of expression, assembly, association and participation in elections.

The key documents providing the legal and regulatory framework for the conduct of the elections are:

- Constitution of Ghana (1992, as amended)
- Representation of the People Act (1992, as amended)
- Presidential Elections Act (1992, as amended)
- Electoral Commission Act (1993, as amended)

- Political Parties Act (2000)
- Representation of the People (Constituencies) Instrument (2004)
- Public Elections (Registration of Voters) Regulations – CI 72 (2012)
- Public Elections Act – CI 75 (2012)
- Political Parties Code of Conduct (2012)

The Electoral Commission of Ghana (EC)

Article 43.1 of the 1992 Constitution provides that the EC shall consist of seven members: a Chairman, two deputy Chairmen plus four other Members. Collectively the seven members of the Commission constitute the policy-making and management body of the organisation and exercise general supervision over the activities of its staff. The current Chairman of the EC is Dr Kwadwo Afari-Gyan.

The Constitution and the Electoral Commission Act provide for the establishment of the EC as an independent body. The President, on the advice of the Council of State, appoints members of the Commission for an unspecified period.

The key responsibilities of the Electoral Commission are to:

- Compile the register of voters and revise it at such periods as may be determined by law;
- Demarcate the electoral boundaries for national and local government elections;
- Conduct and supervise all public elections and referenda;
- Educate the people on the electoral process and its purpose;
- Undertake programmes for the expansion of the registration of voters; and

There are seven departments at the Head office of the EC in Accra, each headed by a Director. The departments are: Elections; Finance; Information Technology; Human Resource and General Services; Research and Monitoring; Training; and Public Affairs.

The EC has an office in each of the ten Regions. The Regional Office is headed by a Regional Director, who is appointed by the EC. The EC also has an office in each of the 226 Districts, headed by a District Electoral Officer (DEO), who is also appointed by the EC.

The EC appoints a Returning Officer and two Deputy Returning Officers for each electoral constituency. Over the election period the EC will hire in excess of a hundred thousand staff, including Presiding Officers and other poll officials, to administer the process and manage polling stations (Chapter 5).

Voter eligibility and voter registration

Article 42 of the Constitution states that, 'Every citizen of Ghana of eighteen years of age or above and of sound mind has the right to vote and is entitled to be registered as a voter for the purposes of public elections and referenda'.

The Registration of Voters Regulation, established as a Constitutional Instrument and laid before and considered by Parliament, provides for the continuous registration of voters as well as for a national registration of voters. The Regulation sets out exactly how these are to be conducted, who is to conduct these activities as well as their duties and responsibilities.

A national registration of voters utilises the same locations for registration that an elector would eventually vote at. The Electoral Commission is obliged to locally publicise the details of the national registration of voters. Registration staff will complete the application on behalf of the elector who must themselves provide the information to complete the application. An applicant's photograph and biometric details are then captured.

Any person who is entitled to be in the register can challenge the inclusion of any other person at the time of their application for registration. An EC Registration Officer and any Supervisor also has this same right. These challenges are then the subject of a very well defined, time delineated process to consider whether the challenge is bonafide, and this challenge process utilises Magistrates at the District level and provides for an appeal to be heard by a Judge of the High Court.

Political Party Agents are entitled to be present at the time of the initial application, and are entitled to the same right to challenge any application at the time of initial registration. Similarly, the Electoral Commission can provide authority to other 'interested' organisations to observe the registration application process, and to challenge the initial registration of an individual.

Should there be no challenge at the time that an application for voter registration is completed, the Registration staff are obliged to produce and provide a Voter registration card to the applicant, and to include them in the provisional register of voters.

The EC is then obliged to produce a Provisional register of voters, and to exhibit it at the same polling station for the purposes of allowing electors to confirm that they have been included, and for purposes of identifying and correcting any of the information therein. Any person authorised to vote in the same electoral area is entitled to challenge the provisional registration of any other voter.

After determination of all challenges and objections, the EC is free to certify the register and to publish it. All persons included in the certified register are entitled to vote provided they have registered more than 60 days in advance of any election.

Candidate eligibility and nomination

There are no unreasonable requirements to stand as a candidate for elections in Ghana. Freedom of association and participation are fairly provided for.

To be eligible as a candidate for the Presidential elections a person must be a citizen of

Ghana, over 40 years of age and be a registered voter. For the nomination process, prospective candidates had to submit to the EC certain relevant documents, signed by the candidate plus two other persons registered in each District Assembly, by a specified date.

To be eligible as a candidate for the parliamentary elections a person must be a citizen of Ghana, over 21 years of age and be a registered voter. In order to qualify to stand for a particular Constituency a person must be resident in that Constituency or have been born there. For the nomination process, prospective candidates had to submit nomination papers to the relevant Returning Officer for the Constituency by a specified date, with 20 signatures of registered voters of that Constituency.

Candidates for either election could be a representative of a registered political party or could stand as an independent.

A person is prohibited from standing as a candidate for either election if he/she is a public employee (unless he/she resigns from their post); a Chief; or, have been ruled to be unfit for public office, convicted of treason or another offence concerned with state security.

Complaints, appeals and election petitions

Ghana has established an effective mechanism for dealing with election disputes, including a fast-track dispute resolution mechanism for dealing with election-related complaints during the electoral period.

Decisions of the EC can be challenged through the Courts as can challenges to election results. A challenge to the results of the Presidential Election must be submitted to the Supreme Court within 21 days of the declaration of results. A challenge to the results of the parliamentary elections must be submitted to the High Court within 21 days of declaration of the results.

A challenge to the validity of the process on the grounds of corrupt practice et cetera, must be done prior to the publication of results.

Criminal activities are to be dealt with by the appropriate law enforcement agency. Non-criminal complaints relating to the Code of Conduct can be dealt with through the Inter-Party Advisory Committee (IPAC) mechanism. The IPAC mechanism is informal.

Key Issues

1. Constituency delimitation

In September 2012 the EC announced that it would create 45 new constituencies, thereby increasing the total number from 230 to 275. The EC's decision was taken in response to two key developments. Firstly, population data from the 2010 census was only made available in early 2012, and, secondly, the relatively late decision taken by Government to

create 21 new Districts.

Under Article 47 of the Constitution, the EC has responsibility for delimitation of constituency boundaries. The principles underlying the demarcation of boundaries are also established in the Constitution, according to which each Constituency should be located in a single region and the population of a single constituency should be as equal as possible but with geographic and demographic considerations provided for.

Whenever there is a new census the EC is obligated to conduct a review of the data with a view to ascertaining the requirement for potentially amending the existing demarcation of constituency boundaries. The EC conducted such a review and applied its established formula and determined that the new constituencies were required. The EC was not obligated to create them at this time but was mandated to do so as it saw fit.

The Chairman of the EC stressed to the Group it was his constitutional duty to review constituencies given that the Government created a series of new Districts, as constituency boundaries cannot cross District boundaries, and due to the fact that the new census indicated noticeable population growth in certain areas. Further, it appears that the EC created additional constituencies in order to ensure balance across the country as a whole.

The Chairman also highlighted that if the new Constituencies were not created for these elections then they could not be created until after the dissolution of the parliament in January 2013. This would mean that the new Districts would not have proper constituency representation until after the 2017 elections. Thus to a large extent the EC's hands were forced in this regard even though the timing was unfortunate.

It was not disputed that new Constituencies needed to be created. However, the timing of the creation of the new constituencies, less than 90 days before the election, did cause concern among opposition parties, which claimed it would cause problems for them in organising the nomination of their candidates. Some also claimed that the timing raised suspicion that somehow the Government stood to benefit from the new constituencies. However, even the opposition acknowledged that the main population areas where the new constituencies were located provided potential advantages to both of the main political parties. The EC's decision to create the Constituencies was challenged in the Supreme Court, but the Court upheld the EC's decision.

It is noted that despite the requirement for constituencies to be as equal as possible there are in fact quite wide variances in size. Based on figures released for the 2012 elections, while the average number of registered voters per constituency across the country is some 50,000, the smallest constituency has just 12,082 while the largest has 126,659. Equal suffrage is therefore not adequately provided for.

Further, the number of constituencies has been increased quite substantially over the last decade. The Constitution states that the minimum size of the parliament is 160 members, but it is currently at 275. It is not sustainable for Ghana to continue the cycle of creating

more and more Districts and thus driving further increases in the size of the parliament. In the interests of good governance and financial sustainability there needs to be a more rational process.

2. Voter registration

Concerns about voter registration were in the forefront of considerations approaching the 2012 election, given the experiences of the 2008 election where the accuracy and quality of the voter register was universally questioned. By implementing biometric technology, the EC was able to address several issues such as multiple registrations and the existence of the deceased on the voter registration. Issues continued to exist regarding persons who are not residents, and those who were not eligible for other reasons (see underage voters below).

The registration process is underpinned by a system of electronic biometric voter identification. The EC procured upwards of 40,000 Biometric Verification Devices in order to ensure that a machine available for each of the 26,000+ polling stations, and providing for sufficient spares in case of breakdown. Biometric verification, using the photographic image and a fingerprint, provides absolute certainty that the person who appears at the polling station to vote is the same person who applied for registration as an elector.

The registration process set out in CI 72, providing the opportunity for political party and civil society organisation representatives to be involved at the initial time of registration, appears on its face to enable sufficient scrutiny to the process, should EC registration officials not exercise their own authority to challenge registration applicants. However, such participation would have required significant planning by all parties, and would require they all be given reasonable notice. What is clear is that the COG received no indication of any significant participation in the initial and provisional registration review processes in this regard by parties and others.

There was information received that the entire registration application process and the provisional register review processes were compressed into a very short time period, with little advance notice being given. More specifically, from the perspective of all of the Political Parties who made presentations to the COG, provisional and final voters list were not provided within the timelines set out in CI 72, with some final lists of voters still being outstanding just days before the election.

All stakeholders should review the processes and associated timelines as set out in CI 72, and determine if a consensus can be built around actions necessary to ensure that its potential for ensuring the transparency and effectiveness of the registration process can be fulfilled.

3. Underage persons on the voter register

As mentioned above, there were reportedly some 20,000 underage persons on the voter register. In an extract of the register provided to the COG it was clear from the photographs

of registrants that a number of persons appeared to be children.

It was incomprehensible to the members of the COG why EC Registration staff did not exercise their clear authority to challenge the registration of these persons during the initial registration process.

After the initial registration process is completed without a challenge, there is no capacity to challenge provided for in the legislation for a Registration Official or the representative of a Political Party or other organisation during the process of the exhibiting of the provisional voter register.

If the involvement of the participation of persons observing at the time of the initial registration process cannot be assured, a change in who can participate in the second stage, the exhibition of the provisional register, should be explored.

4. Women's participation and representation

More than 50 per cent of the population of Ghana is female and a majority of the registered voters are female, yet the level of women's representation as candidates was low.

None of the Presidential candidates was a woman; though three of the running mates were. Further, only some 10 per cent of the parliamentary candidates were women, and the level of women's representation in the new parliament remains relatively low, with just 29 of the 275 new parliamentarians being female.

At present there is no formal incentive or requirement for political parties to promote women's participation as candidates and they appear disinclined to do so. The only positive feature is that both of the larger parties reported that women pay just 50 per cent of the nomination fee to be a candidate.

Recommendations

- Changes to the electoral framework, such as the creation or alteration of constituencies, should not be done in the lead-up to the election, as this can cause uncertainty and tension. Further, the creation of new Districts should also be avoided during this same period as this has the effect of driving a review of Constituencies. Further, these factors result in an increase in the size of the parliament beyond what might be deemed reasonable.
- The current balance between the size of constituencies across the country should be reviewed to ensure a more equal balance and thereby ensure that equal suffrage is better provided for.
- The process for challenging the registration of underage and other unqualified voters needs to be more effectively implemented, or otherwise additional

opportunities for EC officials and others may need to be provided for after initial registration is completed.

- There is a need to explore mechanisms to encourage and increase the participation of women as candidates and as elected representatives in Ghana. Alternatively, or in parallel, political parties are strongly urged to take account of the need for women's participation as candidates.