

# THE INSTITUTIONAL FRAMEWORK OF THE 2012 ELECTIONS IN GHANA

## *Consolidating or Reversing Democratic Achievement?*

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### ABSTRACT

*The 2012 elections were peaceful, but the results were contested by the New Patriotic Party in a petition brought to the Supreme Court challenging the National Democratic Congress and the Electoral Commission of Ghana. Revelations during the hearing of the petition raised some disquiet about the abilities of the ECG and the integrity of Ghana's electoral institutions. The fallout from the 2012 elections demands a critical intellectual engagement with the institutional foundation of the elections. There were several institutional changes in the Ghanaian system in the build-up to the elections as well as changes in the general political economy of the country that have made access to public office particularly attractive. This article reviews the institutional context of the elections and examines the constitutional and non-constitutional rules relating to electoral governance, focusing on such issues as electoral management, delimitation of constituencies and assembly size, electoral formula, voting procedure and ballot structure and the party system. It demonstrates how these institutions were implicated in the challenges relating to the electoral process during the 2012 elections, providing insights into how to overcome them.*

## INTRODUCTION

Ghana's transition to democratic rule in 1992 held little promise because the transition process, which was guided by the military regime of Jerry Rawlings, saw the transformation of Rawlings from military dictator to civilian ruler. He not only appointed the members of the Interim National Electoral Commission (INEC) that administered the elections but also supervised the writing of the Constitution that was to govern the Fourth Republic. Furthermore, the parliamentary election of 1992 was largely boycotted by opposition parties and the voter turnout was 26%.

However, contrary to expectations, the elections of 1996, 2000, 2004 and 2008 were not only peaceful, the results were broadly accepted by both ruling and opposition parties. Ghana, which has, since the restoration of multiparty democracy in 1992, enjoyed relative political stability, with alternations of parties in government, has not only been touted as an emerging political success for other African countries, the success has been attributed to the character of its democratic institutions, especially its electoral commission and party system (Omotola 2012).

The December 2012 elections, the sixth since the restoration of multiparty democracy, constituted a major step in the march towards the consolidation of democracy in the country. They took place within the context of increasing popular demands for better living standards, especially with the enhanced government revenue derived from the discovery of oil, and intensifying competition between the National Democratic Congress (NDC) and the New Patriotic Party (NPP), Ghana's two major parties.

The 2008 elections were decided in a run-off, which the late John Atta Mills won by a narrow margin of 0.46%. They also took place in a changing institutional context. A major review of the 1992 Constitution had reached an advanced stage, although the process had not been concluded before the election. Indeed, certain consensus over the electoral process inspired some of the decisions and regulations that guided the 2012 elections.

In addition, the Electoral Commission of Ghana (ECG), which had been central to the country's democratic stability since 1992, introduced several innovations into the electoral process. An important aspect of these innovations was the introduction of a biometric voter registration and verification method. Thus Ghana went into the 2012 elections with a new voters' roll and the turnout was a remarkable 79.43%. Important, too, is the creation of 45 new constituencies 90 days before the elections, increasing the number of parliamentary seats from 230 to 275.

The elections, which were declared free and fair by both local and international observers, were conducted without any major outbreak of violence. However,

despite the accolades enjoyed by the country over the 'credibility' of the polls, the NPP raised doubts about the integrity of the elections, alleging irregularities, malpractice and collusion between the incumbent government and the ECG.

In a petition filed on 28 December 2012 before the Supreme Court of Ghana, Nana Dankwa Akufo-Addo, presidential candidate; Mahamudu Bawumia, his running mate and Jake Obetsebi-Lamphey, chairman of the NPP, asked the court to declare that John Dramani Mahama was not validly elected president. They claimed that in 11 916 (nearly 46%) of the 26 002 polling stations the elections were marred by gross and widespread irregularities, infractions and violations of electoral rules, which fundamentally undermined the integrity of the elections.

In a judgement handed down on 29 August 2013 the Supreme Court upheld the results.

This legal challenge was the first of its kind in the electoral history of Ghana. It is also noteworthy that this was the first time since the 1992 elections that a majority of the political parties (five of seven) that participated in the elections publicly rejected the outcome on the basis of widespread irregularities and malpractices.

This turn of events may be ascribed to several factors, including the usual claim by the losers of elections in Africa that the elections were rigged. Given the recent electoral history of Ghana and the fact that the NPP candidate did not contest the result of the 2008 election, which he lost to John Atta Mills, factors such as changes in social structure, population movement, urbanisation, economic conditions and labour markets, legal framework, electoral institutions and party competition need to be explored (Alvarez, Hall & Hyde 2008).

This article reviews the institutional context of the 2012 Ghanaian elections as a response to the compelling need to examine critically their fundamental challenges. Importantly, it seeks to provide insights into the relationships among the specific innovations in the electoral institutions, the changing political economy and the character of the elections.

The article proceeds from a theoretical exploration of the relationship between electoral institutions and democratic development. It then examines the institutional context of the 2012 elections and identifies and discusses central issues relating to election management, assembly size and constituency delimitation, voting procedure, electoral formula, the party system and election disputes.

## THEORISING ELECTORAL INSTITUTIONS AND DEMOCRATIC DEVELOPMENT

The worldwide spread of democracy in the 1990s has attracted scholarly attention to the central role of elections in democratic transition and democratic development. In the measurement of democracy elections must meet various

standards to ensure democratic legitimacy. More importantly, changes in electoral rules about voting thresholds, electoral formulas, assembly size and party systems have been viewed as key to managing tensions in plural societies (see Aiyede 2012).

A growing number of studies have investigated the various electoral systems and their implications for democratic stability. Some of these efforts have classified formal rules, their consequences, and how voters respond to the electoral choices before them. Indeed, since the work of Duverger (1954) and Rae (1967), it is believed that altering the formal rules has implications for the behaviour of political actors and citizens. A variety of institutionalist theories have emerged to explain the role played by formal rules and electoral institutions in the behaviour of actors and the trajectory of electoral development.

Norris (2004), for example, identifies three patterns in research in this regard. The first seeks to understand how social norms, political attitudes, cognitive opinions and cultural values shape the choices of voters and their support for a particular party by comparing electoral behaviour. The second investigates the impact of a variety of electoral rules and systems on cleavage politics, partisan identification, issue-voting or leadership popularity over time and across countries. The third uses case studies to analyse changes over time, especially 'before' and 'after' major electoral reforms are implemented.

Recently a growing interest has developed in cases of electoral fraud, especially their character, occurrence and how they can be detected, deterred and prevented. This has also spurred efforts to focus on institutional factors, especially the electoral system in use, economic interests, partisanship and incumbency and urbanisation (Alvarez, Hall & Hyde 2008).

What links these efforts is not merely the desire to improve our understanding of the electoral process but also the need to improve the conduct of elections. More importantly, they are driven by the need to build public confidence in elections and strengthen the democratic legitimacy and stability of states by ensuring that voters' intentions are successfully transmitted through the electoral process.

This article contributes to these efforts by examining the 2012 presidential elections in Ghana, focusing on constitutional and non-constitutional rules of electoral governance in relation to emerging issues of electoral management, delimitation of constituencies and assembly size, electoral formula, voting procedure, the party system and electoral disputes.

## THE INSTITUTIONAL AND CONSTITUTIONAL FRAMEWORK OF ELECTIONS IN GHANA

The constitutional and legal framework of elections in Ghana is contained primarily in the Constitution of Ghana (1992) and relevant statutory frameworks,

among them the Elections Act, Electoral Commissions Act, the Presidential and Parliamentary Elections laws and the Political Parties Act and attendant regulations (Debrah 2004). The Constitution is the most important law governing the elections and its supremacy vis-à-vis other laws is anchored in Article 22. As the basis for citizen participation in the political and electoral process, the Constitution makes detailed provision and creates safeguards for fundamental human rights and freedoms and the protection of such rights by the courts. It encapsulates representation of the people and affirms the right to vote as a fundamental right.

The Constitution also establishes the elective offices and provides the eligibility criteria for contesting office, both for the presidency and for Parliament. Key institutions that play a critical role in the electoral process, such as the ECG and the political parties, also have their foundation in the Constitution (Article 22).

The 2012 election was expected to have been conducted within the legal frame of the 1992 Constitution, which came into effect on 7 January 1993, and the electoral rules formulated by the ECG. The Constitution was the outcome of a constitution-making process that began in 1991 with the establishment by the Consultative Assembly Law of 1991 of a Consultative Assembly. After a draft constitution was submitted to the Provisional National Defence Council on 31 January 1992 a national referendum was organised through which Ghanaians approved the draft constitution.

Since the Constitution came into effect it has been subjected to only one review process – in 1996. Indeed, even though a constitution review process is ongoing it is a testament to the quality of the 1992 Constitution that the chairman of the Constitution Review Commission, Professor Albert Kodzo Fiadjoe, has stated that ‘the current constitution is good and care must be taken not to engage it in an unwarranted amendment’ (Fiadjoe 2011). The Constitution was undergoing a review process when the 2012 elections were conducted.

In addition to the Constitution, which provides the legal foundation for the electoral system, the conduct of elections is guided by rules and regulations provided by the ECG and by the Public Elections Regulation Law (2012), which replaced the Public Elections Law of 1992) and the Public Elections (Registration of Voters) Regulation 2012 (C1.72), which validated the biometric registration system and verification of registered voters and any matters connected to any public election process in Ghana. The Electoral Commission Act (1993), which provides for the establishment of the electoral commission, its functions, qualifications and appointment, was amended in 2003.

The detailed procedure for elections in Ghana is contained in the Elections Act and the relevant statutory instruments. Specifically, the instruments deal with the salient aspects of elections, including voter registration, delimitation of constituencies and procedures for election to the office of the president and to

Parliament. Incidental matters such as qualification of voters, definition of polling stations and voting procedures are also laid down in the Elections Act and other statutory instruments. The Representation of the People Act 1992, a major part of the institutional framework of elections in Ghana, specifies how constituencies are to be delimited and includes the review of constituencies and the division of polling units among other issues. It has been subjected to three amendments – in 1992, 1993 and 2006.

### *The Electoral Commission*

During the transition to democratic rule an interim commission, then known as the Interim National Electoral Commission (INEC), was established to organise the 1992 general elections. The less than formalised or institutionalised nature of the commission at the time was purported to have been responsible for compromising the 1992 election results, with allegations of unprofessional conduct, among other issues, levelled against the chairman, hence Gyimah-Boadi (1994) emphasised the flawed nature of the process, describing it as ‘transition without change’.

The institutionalisation of the electoral process has since taken on a life of its own with the passage into law of an Act, known as the Electoral Commission of Ghana Establishment Act (ECG) of 1993 (amended in 2003). Article 43 of the Constitution provides for an electoral commission which consists of a chairman, two deputies and four members. Article 44 states the criteria for qualification to serve on the commission as well as the conditions of service. Article 45 spells out the functions of the commission to include:

- compiling the register of voters and revising it at such periods as may be determined by law;
- demarcating the electoral boundaries for both national and local government elections;
- conducting and supervising all public elections and referenda;
- educating the people on the electoral process and its purpose;
- undertaking programmes for the expansion of the registration of voters; and
- performing such other functions as may be prescribed by law

Constitution of the Republic of Ghana 1992

Apart from these constitutional provisions, the Electoral Commission Act provides for two additional functions – the creation of identity cards and the proper storage of election materials. Both the Constitution (article 46) and the Electoral Commission Act (article 4) guarantee the independence of the ECG and these

clauses have played a major role in the institutional evolution of the electoral process. To ensure the financial independence of the ECG, its 'administrative expenses, including salaries, allowances and persons payable to, or in respect of person serving with the commission' are be charged to the Consolidated Fund (article 11 Electoral Commission Act 1993). Articles 4 and 5 reaffirm the basis for qualification to serve on the commission as well as the conditions of service of the chairman (Electoral Commission Act 1993).

Since it is the responsibility of the commission to administer the electoral process it has, in line with the constitutional provision, formulated certain legal instruments to enhance its capacity to do so. This is in line with article 12 of the Electoral Commission Act and article 51 of the Constitution, which empower the commission to make regulations for the effective execution of its functions (Constitution 1992). These regulations include the Public Election Regulation of 1996 and the Public Elections (Registration of Voters) Regulations of 2012. Both of these were replaced in 2012 by the publication of Elections Regulation 2012. It is generally believed that the ECG has been relatively independent of the government and has received credit for the successful alternation of government between the NDC and NPP.

#### *Assembly size and constituency delimitation*

Article 47 of the Constitution contains the rules governing the delimitation of constituencies. The Constitution empowers the electoral commission to delimit constituencies for the purpose of the election of members of Parliament and states that each constituency should be represented by one member (article 7(1)). Constituencies are also expected to fall with one region (article 7(2)); the boundaries are to be delimited in such a way that the number of inhabitants in the constituency is, as far as possible, equal to the population quota (article 47(3)). The population quota is derived by dividing the number of inhabitants of Ghana by the number of existing constituencies.

Clause 4 clarifies article 3 by stipulating that while the number of inhabitants should be more or less equal to the population quota it is important that constituencies be delimited in such a way that means of communication, geographical features, density of population and area and boundaries of the regions and other administrative or traditional areas are taken into account.

Constituencies must be reviewed at an interval of not less than seven years or within 12 months of the publication of enumeration figures after the holding of a census. Where such reviews are undertaken and the boundaries of constituencies are altered the alteration shall come into effect upon the next dissolution of Parliament (Article 47(6)).

Article 48 empowers an aggrieved person to contest a decision of the electoral commission in respect of the demarcation of a boundary by appealing to a tribunal consisting of three persons appointed by the chief justice. The decision of the tribunal shall be effected by the electoral commission (clause 1). A person aggrieved by a decision of the tribunal may file an appeal with the Court of Appeal, whose decision on the matter shall be final (clause 2).

The Representation of the People Act of 1992 is another source of rules guiding the delimitation of constituencies. Essentially it confirms the provisions contained in Articles 47 and 48 of the Constitution. But beyond that it provides for the division of constituencies into polling divisions and the division of polling divisions into polling units (s 42). Section 5 empowers the commission to appoint an election committee for every constituency which shall be a committee of the commission. Members are to be chosen from registered voters in each constituency. Section 6 empowers the commission to appoint a presiding officer for each polling division and as many deputies and assistants as it may consider necessary.

### *Voter registration*

The ECG is charged with registering voters and maintaining the voters' register. Article 42 of the Constitution explicitly provides for the right to vote and the right to be registered as a voter. Registration is therefore a constitutional right. The Constitution also deals with issues of citizenship, which is a major requirement for voter registration in Ghana. The detailed procedure for registration of voters is further contained in the Registration of Voters Regulations of 1995 which detail the eligibility criteria for voters, registration centres, registration officials, complaints, claims and objections, and offences related to the registration exercise.

### *Voting procedures*

Both the Constitution and the Representation of the People Act 1992 set out voting procedures and ballot structure during elections. Article 49(1) of the Constitution specifies that voting shall be done by secret ballot. Clause 2 of the same article mandates the presiding officer, in the presence of the candidates or their representatives and their polling agents, to count the ballots in that polling station and record the votes cast in favour of each candidate after voting had been concluded.

Thereafter the presiding officer, the candidate or representative and their polling agents shall sign the pink paper on which the number of votes cast in favour of each candidate is recorded. The presiding officer shall there and then announce

the result of the voting at the polling station before communicating the result to the returning officer. The provisions contained in section 13 under the heading 'Voting at Public Elections' merely repeat the provisions contained in Article 49.

### *Party system*

The Constitution does not specify a party system for the Republic of Ghana, instead it empowers citizens to form political parties and, indeed, guarantees that right (Article 55(1)). Hence it implicitly makes Ghana a multiparty state. The Constitution empowers citizens of voting age to be members of political parties and affirms the rights of political parties to participate in the political process whether in the form of political education or by shaping the political will of the people.

Article 55(3) of the Constitution also empowers them to participate in specific social and economic programmes. Clauses 4 and 5 specify the characteristics that are key to the democratic functioning of parties. These include the requirement that political parties be internally democratic and have a national character. Clause 6 states that parties must be duly recognised by law. Clause 7 stipulates the conditions for registration. These include the submission of the names and addresses of a party's national officers. Other conditions include the following:

- There is ordinarily resident, or registered as a voter in each district of Ghana, at least one founding member of the party;
- The party has branches in all the regions of Ghana and is, in addition, organised in not less than two-thirds of the districts of each region; and
- The party's name, emblem, colour, motto or any other symbol has no ethnic, regional, religious or other sectional connotations or gives the appearance that its activities are confined only to a part of Ghana.

Clause 11 clearly spells out the disposition of the state towards political parties, allowing them equal access to state-owned media. Clause 12 allows all presidential candidates an equal amount of time on state-owned media and clause 13 allows every candidate to conduct his or her campaign freely.

Interestingly, while the Constitution does not stipulate a party system for Ghana it is very clear in its rejection of any attempt to impose a one-party system or a unified programme, whether religious or political. This is clearly spelt out in Article 56, which states that: 'Parliament shall have no power to enact a law to establish or authorise the establishment of a body or movement with the right or power to impose on the people of Ghana a common programme or a set of objectives of a religious or political [nature].'

### *Electoral formula*

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 must secure at least 50%-plus-1 of the valid votes cast. If no candidate secures such a majority the two leading 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 for a four-year term from single-member constituencies on the basis of the first-past-the-post system.

### *Electoral disputes*

Dispute resolution mechanisms are an institutionalised aspect of the electoral process. Pre- and post-election complaints are dealt with within the framework of the electoral laws. While some disputes over voter registration are resolved through the ECG's internal structures, disputes over results are handled by the courts. The Supreme Court has exclusive jurisdiction over petitions related to presidential elections.

## AN EMPIRICAL REVIEW OF INSTITUTIONAL PERFORMANCE AND CHALLENGES<sup>1</sup>

President Atta Mills catalysed and prosecuted an elaborate Constitution review process prior to the 2012 election. In January 2010 the Constitution Review Commission of Inquiry Instrument 2010 (CI64) appointed the Constitution Review Commission (CRC), chaired by Prof Albert K Fiadjoe, to facilitate the process of amending the 1992 Constitution for the first time. The Constitution review made remarkable recommendations for the reform of the electoral process.

The 'Report of the Constitution Review Commission', submitted to President Mills on 20 December 2011, contained several recommendations that relate directly to the electoral system. It recommended that parliamentary elections be held together with presidential elections within 60 days of the inauguration of a new government, to make the transfer of power from one administration to another smoother. It also recommended that the Rules of Court be amended to limit interlocutory applications, adjournments and delays in electoral disputes to ensure the disposal of such cases within a period of six months and that the

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1 This section draws copiously on the reports of the various election observation teams listed in the references.

ECG be allowed to study the system of proportional representation for possible application in Ghana, strengthen the Inter-Party Advisory Committee (IPAC) for improved self-regulation of political parties and submit annual reports to Parliament.

In July 2012 the government responded with a 'White paper on the Report of the Constitutional Review Commission', which accepted most of the main recommendations, although it sometimes differed with the CRC on methods of achieving the goals. The government differed on how the manner in which districts and constituencies are created could be better regulated and accepted that parliamentary elections be held together with presidential elections and that the transfer of power from one administration to the other be made smoother.

It accepted the amendment of the Rules of Court to limit delays in electoral disputes, but felt that the six-month period for the disposal of cases was too short, preferring 12 months. It also accepted that the Inter-Party Advisory Committee should be strengthened to enable improved self-regulation of political parties and that the Electoral Commission should be required to submit annual reports to Parliament. Government's recommendation that it should be 'mandatory for a Presidential candidate to win at least 4 regions before he or she can be elected to serve as President of the Republic of Ghana' sparked national debate (*Statesman* 2011).

Although the issues were not finalised before the December 2012 elections, some of the CRC's recommendations were put into practice, including holding the presidential and parliamentary elections simultaneously.

### *Challenges for the ECG*

Ghana's Electoral Commission evolved as part of the institutional transfer of the superstructure of British colonial rule (Jinadu 1995). Post-World War Two political developments triggered constitutional reforms leading to multiparty politics in the Gold Coast (Austin 1964; Apter 1972). Since elections lie at the heart of multiparty politics, the search for an efficient system of election management became a priority. Initially, the machinery for administering elections was located within the colonial government – a department under the Ministry of Local Government (Aye 1998, p 54). The overthrow of the one-party regime of Dr Kwame Nkrumah on 24 February 1966 opened up a long search for the most viable way of achieving a credible election authority.

This led to the establishment of an independent sole electoral commissioner, with legal autonomy to manage the electoral process. INEC was set up in 1991 to conduct the 1992 elections. Its job was later taken over by the ECG, which has proved to be different from its predecessor. Studies have shown that before the

2012 elections it had started to enjoy the trust and confidence of Ghanaians (Ayea 2001, Agyeman-Duah 2005, Armah-Attoh 2006, Berger 2009, Omotola 2012).

The chairman of the ECG, Dr Kwadwo Afari-Gyan, who has been in office since 1993, has become a celebrity of sorts in election management in Africa. He has worked hard with his team to improve the electoral process in Ghana by asserting the authority and independence of the ECG. The ECG has also introduced a biometric registration system to improve the security of the voter registration process and enhance the integrity of elections.

However, the 2012 election will go down as among the most trying for Afari-Gyan. Shortly before the announcement of the results, on 9 December, the NPP and its presidential candidate requested a 24-hour delay to enable it to investigate and report instances of voting malpractice and irregularities but the ECG went ahead and announced the results, declaring John Dramani Mahama of the NDC the winner.

On the basis of tallied results from 275 constituencies Mahama won 5 574 761 votes (50.70%). He was followed by the NPP presidential candidate, Nana Dankwa Akufo-Addo, who won 5 248 898 (47.74%) of the total votes cast. The other candidates garnered less than 2% of the total votes cast. The NDC also won the majority of seats in Parliament, closely followed by the NPP. The NPP petitioned the Supreme Court to annul 4 381 votes from 11 138 polling stations, arguing that those stations were bedevilled by constitutional and statutory violations, malpractice and irregularities, involving the collusion of ECG officials.

### *Issues associated with Assembly size and constituency delimitation*

Article 47 of the Constitution empowers the ECG to determine the number of single-member constituencies and demarcate their boundaries. However, in performing this task the ECG is expected to consult with traditional authorities, opinion leaders, political parties, district assemblies, members of Parliament and other stakeholders (ECG 2012). Article 47(5) of the Constitution states:

The Electoral Commission shall review the division of Ghana into constituencies at intervals of not less than seven years, or within twelve months after the publication of the enumeration figures after the holding of a census of the population of Ghana, whichever is earlier, and may, as a result, alter the constituencies.

As far as the delimitation process is concerned, Article 47 of the 1992 Constitution of Ghana prescribes that no constituency may straddle administrative districts and the population of a single constituency should be as equal as possible to the population quota, taking into account the means of communication, geographical

features, density of population and boundaries of administrative or traditional areas.

In September 2012 the ECG announced that it would create 45 new constituencies, thereby increasing the total number from 230 to 275. The 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, government decided relatively late to create 21 new districts (African Union Commission 2012). The constituencies were created less than 90 days before the election, which caused some concern among opposition parties (Coffie 2012).

The ECG's decision to create the constituencies was challenged unsuccessfully in the Supreme Court. Despite the requirement that constituencies be as equal in size as possible, there are, in fact, quite wide variations. Based on figures released for the 2012 elections, while the average number of registered voters per constituency across the country is about 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 increased quite substantially in the past decade. The Constitution states that the minimum size of Parliament should be 160 members and it currently has 275. The last time the ECG re-delimited constituencies was in 2003, when it added 30 to the original 200 (Asare 2012). The responsibility for creating and reviewing administrative districts is vested in the minister for local government, who is an appointee of the president. When new districts are created the Electoral Commission must review the constituency boundaries to conform to the new district. It is not sustainable for Ghana to continue to create more and more districts, thus increasing even further the size of Parliament. In the interests of good governance and financial sustainability there needs to be a more rational process, or a ceiling.

### *Problems and challenges of voter registration*

The ECG produced a new voters' roll for the 2012 elections using the biometric voter registration (BVR) system. This system is believed to have greatly improved the security of the registration exercise by means of multiple and complementary identification using photo identification, fingerprints and secure barcodes and serial numbers. The advantage of the biometric system over manual registration is that it reduces the incidence of double registration.

The process of procuring the BVR machine was initiated early and conducted in a manner that conformed to the procurement rules, which require a bidding process in which different companies submit proposals to procure the BRV machines. Companies were scored on the basis of their performance in various

examinable areas. As a further demonstration of transparency and accountability, the results were submitted to the Procurement Board, which affirmed the ECG's decision.

Political parties not only participated in testing the various samples provided by the suppliers but also monitored the registration exercise. Other stakeholders, particularly civil society organisations, were also involved in the various phases of voter registration. At the start of the process the ECG ensured that its personnel were trained and conversant with the functioning of the BVR machines.

The exercise was carried out from 24 March to 5 May 2012. The conclusion of the registration exercise was followed by a 10-day period, from 1 to 10 September, during which the voters' roll could be inspected and claims and objections lodged. The provisional register review processes were compressed into a very short period, with little advance notice given. This is largely because the novelty of the equipment and the lack of ample testing and training time resulted in hitches. The Consolidated Voters' Register was consequently published only two weeks before the election. Challenges faced before and during the registration exercise included the constant breakdown of kits and printers, which affected the efficiency of the registration officers. At the conclusion of the exercise slightly more than 14-million voters were registered to participate in the 2012 elections

### *Challenges relating to voting logistics*

The 2012 presidential and parliamentary elections took place on Friday 7 December. Special voting for registered members of the security services and electoral officials had taken place on 4 December. Those votes were held by the returning officer, to be added to and tabulated with the main vote aggregation at the tabulation stage.

On 7 December polling was scheduled to take place from 07:00 to 17:00 in 26 002 polling stations, most of which were placed outdoors, with tape used to create a designated polling area. Campaigning was prohibited on the day before the election and on election day itself. In addition, a 500m exclusion zone was in effect around each polling station, within which it was prohibited to try to influence voters, for instance, by the placing of campaign posters (Hinshaw 2012).

According to the observer reports voting was generally orderly and voters understood the process. Voters who were uncertain of the process were assisted by polling staff. In most of the polling stations priority was given to the aged, to pregnant women, to voters with infants and to physically challenged persons. In accordance with election regulations voters who required assistance were also allowed to be helped by a person of their choice.

Each polling station was managed by a presiding officer supported by four

polling assistants (a names reference list officer, biometric verification officer/inker, presidential ballot issuer and parliamentary ballot issuer). Each polling station had two ballot boxes, one for the presidential election and one for the parliamentary election. There were also two cardboard voting booths in each station and security was provided.

Accredited party agents and observers, as well as media, were allowed to be present. The counting process was transparent and open and complied with electoral procedures and regulations. Results from polling stations and constituencies were broadcast on TV, radio and online, enabling people to follow as the final results were calculated.

Following the vote count at polling station level and the tabulation of results at the collation centre, the results were transmitted manually to the national office of the ECG from 7 to 9 December. The results were broadcast on national television as they were transmitted to the ECG office in Accra. However, the tallying process was conducted within the context of mounting political tensions and protests by NPP supporters as allegations of fraud and manipulation of results were directed at the ECG.

The ECG had procured more than 40 000 biometric verification devices in order to ensure that a machine was available for each of the 26 002 polling stations and that there were sufficient spares in cases of breakdown. Biometric verification, using photographic images and fingerprints, provided absolute certainty that the person who appeared at the polling station to vote was the same person who had applied for registration as a voter.

In several polling stations voting did not commence on time because of the late arrival of materials. The voter verification process was slow and cumbersome in some stations because the BVR data and verification machines could not read the fingerprints of some voters. There were also cases of incompatibility between the BVR data and the data contained in the verification machine. Because of this some voters' names appeared in the BVR but were missing from the verification machine. In some polling stations machines malfunctioned, resulting in the closure of the polling station and the extension of voting to the next day.

It was reported that, judging from photographs, a number of people who appeared on the list seemed to be children, leading to suspicions that some ECG registration staff had not exercised their clear authority to challenge the registration of these persons during the initial registration process.

Some ECG personnel did not follow instructions about the handling of the machines, which caused undue delays. On 8 December voting continued in polling stations in regions that had been affected by the breakdown of the verification machines, the fingerprint system and the backlog of the voting process. The transmission of the results was done manually and was thus slow.

### *The roles of political parties and politicians*

Since the first multiparty election, in 1992, Ghana has evolved into a two-party dominant state. The past two decades have seen an alternation of power between the NPP and the NDC. The 2012 presidential election was, however, contested by candidates from seven parties and one independent candidate. The Inter-party Advisory Committee, which was formed in 1994, has provided a forum for building consensus among the political parties on electoral issues (Ayee 1998, Omotola 2012). The parties developed a Code of Conduct, which the majority have signed. The Political Parties Code of Conduct is not a legal document but is intended to invoke best practice and behaviour within political parties. The Code of Conduct for the 2012 elections set out clearly the roles and conduct of candidates and parties in order to achieve free, fair and peaceful elections. For instance, it provided that political parties and candidates must publicly and without reservation condemn all forms of intimidation and political violence, irrespective of the perpetrators.

### *Challenges relating to the electoral formula*

There is no doubt the winner-takes-all nature of the first-past-the-post formula used in elections in Ghana partly accounts for the keen contest of elections. It is generally believed that this formula punishes minor parties in terms of the ratio of the number of seats to the percentage of the total votes won (Norris 1997, Carey 1997, Taagepera & Shugart 1989). In the future, with the discovery of oil and the increase in natural resource revenue, the contest will become increasingly keen. The government's recommendation that candidates fulfil additional requirements should be carefully considered in this regard. Perhaps Ghana should experiment with a proportional representation formula in parliamentary elections.

### *Challenges arising from the adjudication of electoral disputes*

The handling of the petition by the NPP candidates was quite transparent. Chief Justice Georgina Woods allowed live telecasts of the hearings. The petitioners had access to electoral materials and were able to gather more than 24 000 of the 26 002 pink sheets, which helped them to present their case based purely on documentary evidence, unlike the situation in several African countries where presidential election petitions have failed because of lack of access to such sensitive electoral materials (Ofori-Atta 2013, p 2). It is hoped that the parties will accept the verdict of the court in good faith.

## CONCLUSIONS AND RECOMMENDATIONS

Despite the gravity of the petition brought against the conduct of the 2012 elections, they constituted an important step in democratic consolidation in Ghana. Although the stakes were considerably higher in light of growing popular demands for better living standards, the creation of national mechanisms for fair distribution of oil revenues and the stiff competition between the NDC and NPP, the elections were carried out without any major incidents of violence.

In addition, the resort to due process and the transparency with which the petition brought to the Supreme Court by the NPP was prosecuted demonstrate the gradual entrenchment of democratic values in Ghana. Indeed, the controversial character of the elections provides Ghanaians with an opportunity to assess the strength of the country's institutions and to confirm that it is gradually developing a culture of routine political transition.

The constitutional review process that began with the government of Atta Mills stands to benefit from the fallout from the 2012 elections. This is particularly the case in the area of constituency delimitation, the creation of new local areas and the size of the Assembly, which have remained controversial. The power of the ministry of local government to create local districts automatically constrains the power of the ECG in constituency delimitation. There is a need to place a ceiling on the number of constituencies the country can accommodate so that the increase in population size does not necessarily imply an increase in the number of parliamentary seats.

There is a need for the ECG to review its use of the biometric system, drawing on the lessons learnt during the 2012 elections. It is expected that these will include the provision in each region of facilities for the rapid repair of equipment to address the problems of machine breakdowns as well as proper care of election materials.

In view of the high voter turnout there is a need for further public education geared towards enhancing the quality of participation in the electoral process. The ECG must guard its independence and improve its capabilities, especially in relation to the production and handling of election materials. There is a sense in which the logistic demands of holding both presidential and parliamentary elections simultaneously stretched it beyond its capacity, accounting for some of the lapses observed in the elections.

Ghana might also consider adopting elements of proportional representation for parliamentary elections to mediate the winner-takes-all system currently in place for both parliamentary and presidential elections.

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