

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

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ABSTRACT

Since becoming a constitutional democracy in 1993, many electoral disputes have arisen in Ghana following elections, with both state and non-state agencies playing key roles in the resolution of these disputes at the levels of general elections, bye-elections, assembly elections, inter alia. The focus of this paper, however, is an examination of the effectiveness of the electoral dispute resolution role of the judiciary arm of state, as mandated under Articles 64(1) and 99(1) of the 1992 Fourth Republican Ghanaian Constitution. Additionally, this paper seeks to identify the underlining causes of electoral disputes in Ghana, as well as, assess the potency of the electoral structure of the country. The study adapted the qualitative research approach in gathering data from 120 respondents that were purposively selected across 16 administrative regions in the country, in addition to the use of secondary and tertiary data. The study argues that the Apex Court namely, the Supreme Court of Ghana has been largely effective in terms of electoral disputes resolution, with a bigger chunk of the credit, however, going to the citizens who are law abiding and peace loving. Furthermore, actions and inactions of the Electoral Commission (EC) as well as political parties in Ghana, have gravely contributed to the spate of electoral disputes in Ghana. Against the backdrop of these findings, it is recommended amongst others that, judges of the Superior Court of Judicature dispense justice fairly and impartially and devoid of material and political underpinnings; whilst electoral officials are urged to play the role of impartial umpires throughout election processes. The researcher argues further that, should stakeholders carefully implement recommendations of this study; the confidence of the electorate in the Ghanaian electoral system will soar once more.

1. Introduction

It is upheld globally, that constitutional democracies are the best forms of government. In its simplest explanation, democracy as suggested by President Abraham Lincoln, “...is the government of the people, for the people and by the people” (Borrit, 1978, p.276; Wilentz, 2015, pp.53-54). In broader terms, democracy is a majority system of government where power is solely vested in the citizens and exercised either directly or indirectly by them

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(Diamond, 2015). Berman (2019) suggests that the most applied of the two types of democracies at the global scale today, is indirect or representative democracy. In this type of democracy, elected representatives of the people, exercise the power on their behalf. Representatives and leaders of the people as submitted by Diamond (2008) and Paludan (1994) are held accountable for their actions and inactions as long as they remain in those positions of trust.

Lindberg (2009) opines that the beauty of every democracy is where an enabling platform is created and the will of the supreme owners of power is reflected through free, fair and transparent elections. For him, that is the bedrock of every democracy---free, fair and a transparent way of electing and replacing leaders within determined periods. On his part, Hoglund (2006, p.4) aptly asserts, “*elections facilitate communication between the government and the governed, and also have symbolic purposes by giving voice to the public*”. Sad to note, however, that throughout our recent electoral history, several elections and electoral processes across every part of the globe, are conducted under skewed premises, unfair and fraudulent circumstances. Elections as such have come to be characterized by widespread electoral irregularities that have tended to ignite electoral disputes and violent conflicts, especially within fledgling democracies.

The term conflict denotes a situation where incompatible goals, attitudes, emotions and behavior lead to disagreement, contradictions or protestation between parties that may be individuals, communities or organizations (Benson, 2022). Bekoe (2010) suggests that conflicts are characterized into violent (where arms and dangerous weapons are used leading to loss of lives and properties) and non-violent (peaceful means of protests, demonstrations and advocacy). Disputes and for that matter electoral disputes are usually on the lighter side but if not checked timeously, could result into violent clashes that have the capacity of destabilizing democracies. The domain of this paper is electoral disputes and how they are resolved within judicial systems. The United Nations Development Programme (UNDP, 2009), posits that electoral violence usually entails acts, threats of coercion, intimidations and the use of physical harm by parties to skew electoral processes to their advantage. The UNDP (2009) further observes that, other elements that are perpetuated in the course of electoral competitions with the aim of influencing election outcomes include delays, disruptions or derailments of polls.

Going further, Hoglund (2009) and Nwolise (2007) have observed that electoral violence (a sub-category of political violence) is a channel through which political actors elect to achieve their political goals within the terrain of electoral contests, using coercive and deliberate strategies. They further asserted that causes of electoral disputes, which are multifaceted, cut across political, economic, social or cultural barriers to include the following (Hoglund, 2009; Nwolise, 2007):

- (a) The use of inappropriate institutional frameworks;
- (b) Hiring of thugs by political actors to engage in violent activities against opponents;
- (c) Incumbents normally do not level the playfields for the accommodation of fair electoral engagements;
- (d) Managers of many electoral systems manipulate voters’ registers to favour incumbent governments;
- (e) Managers of electoral systems sometimes do manipulate election results to suit their paymasters or the highest bidders;
- (f) Highly politicized election officials, security personnel and judicial staff, usually orchestrate skewed election outcomes using intimidating tactics, *inter alia*.

Human Rights Watch (2008) lists high profile outcomes of electoral disputes or conflicts as loss of lives, displacement of populations that consequently have spillover effects on neighboring countries and the eruption of humanitarian crisis. Nwolise (2007) adds that destruction of properties, destabilization of democracies, the underdevelopment of countries, human rights aberrations, and ignition of civil wars and armed conflicts are part to of the consequences of electoral disputes.

As argued above, election-related disputes which derive from inaccurate and manipulative electoral processes that are three-phased processes on the main (pre-voting, voting and post-voting), come with regrettable consequences that must be circumvented or resolved as a matter of urgency. To that end, parties have often sought redress on non-violent platforms such as judicial systems, as is happening in Ghana under the Fourth Republican dispensation. At this stage, suffice the researcher to outline a few notable electoral dispute cases that have been resolved through judicial systems and have drawn global attention. Indeed, the phenomenon is not limited to just fledgling democracies but to developed democracies as well.

Landmark judgements and resolutions of electoral disputes through judicial systems are replete across all regions of the world, affirming the important roles courts play in such matters that fall in consonance with Articles 2(3) and 14(1) of the International Covenant on Civil and Political Rights (Mansfield & Snyder 2007). For the start, an electoral dispute arose consequent to the 2020 United States (US) presidential election, between Mr. Donald Trump of the Republican Party and Mr. Joe Biden of the Democratic Party, where redress was sought in the court. The former who was at the time the incumbent president alleged that the election of his opponent was fraudulent, as there were widespread electoral malpractices that favored him. The courts dismissed all applications brought before them by the petitioner, reinforcing the election of Joe Biden as 46th President of the US. The other presidential election dispute that readily comes to mind in recent times in respect of the US is the 2000 presidential election dispute. Al Gore, a former Vice-President and then candidate for the Democratic Party had alleged issues of vote padding in the State of Florida in favor of George W. Bush (Jnr) who stood on the ticket of the Republican Party and become the 43rd President of the US (Bush v. Gore, 531 U.S. 98 (2000)). The Supreme Court of the US subsequently declined the relief that sought to annul the election in that State (Haven-Smith, 2005; Shapiro, 2009). In many Southern American countries including Guatemala (2003), Venezuela (2004), Paraguay (2018), and Mexico (2000), Supreme and Special Electoral Tribunals have settled many electoral disputes to an appreciable extent (Carter Centre, 2004; Hellinger, 2005). While in Europe, the Spanish Electoral Court (Supreme Court) readily comes to mind. The court did declare three Basque nationalists/separatist parties that relate with terrorist groups namely; Herri Batasuna, Euskal Herritarrok and Batasuna as illegal and unconstitutional (Bourne, 2010). Elsewhere in Asia, mention can be made of the Cambodian (2013), Bangladesh, India, Indonesia, Nepal, Pakistan, Philippines and Thailand electoral disputes that were settled within judicial platforms.

Finally, in Africa many more electoral disputes have been recorded, with the resolution of many of these disputes coming before Constitutional Courts and Tribunals for determination. This has been so because elections in Africa in many instances have been manipulated to perpetuate the stay of incumbent regimes, thus leading to violent conflicts and sometimes Civil Wars that come with painful consequences (African Union, 2010; Bekoe, 2010; Human Rights Watch, 2008). This phenomenon therefore, accounts for Bekoe's (2010) description of the continent, as the platoon for electoral disputes, consequent to systematic democratization failures. The numerous disputes worthy of noting are the Zimbabwean (2000 and 2008 electoral crises), Cote d'Ivoire (2011/11), Nigerian (2019 electoral dispute), Malian (2012

electoral crisis), Libyan (2019 electoral dispute), Ugandan (2021 electoral dispute) and the Democratic Republic of Congo (2006 and 2011 electoral crises). For particular reference and emphasis, there was a historic ruling in Kenya in 2017 in respect of an electoral dispute resolution *via* judicial means. For the first time in Africa, the Kenyan Supreme Court did nullify the 2017 presidential elections in which the opposition leader Raila Odinga, brought a presidential election petition before it, on grounds of electoral irregularities that allegedly favored incumbent President Uhuru Kenyatta who sought re-election (Opalo, 2017). The Court which showed fortitude and judiciary independence, ordered a new vote within 60 days (Burke, 2017). While this survey is ongoing, Raila Odinga has again instituted a presidential election petition before the Kenyan Supreme Court over alleged electoral malpractices and padding of votes in favor of the president-elect, William Ruto, during the 9 August 2022 presidential elections (Chason & Ombuor, 2022). However, on 5 September 2022 the Apex Court unlike in the case of the 2017 petition decision, unanimously dismissed Odinga's plea because he had failed to prove his claims, thus upholding the election of Ruto as valid. That said about widespread electoral disputes in Africa, the democratic experiences that have been brought to bear on the continent, however, have led to significant gains in many sectors in particular, in the area of participatory politics (Basedau, Erdmann & Mehler, 2007; Bekoe, 2012; Collier, 2009; Freedom House, 2010).

Conflict Resolution as a term, is the informal or formal process through which two or more parties adapt a peaceful solution to their disagreement--- it is that process by which, two or more parties reach a peaceful resolution to a dispute (Harvard Law School, 2020). In other words,--- *conflict resolution is a social process where armed conflicting parties voluntarily agree and also resolve to live peacefully with-and/or dissolve-their basic incompatibilities; thus ceasing to use arms against one another* (Wallensteen, (2015, p.15). On the main, these processes include conciliation, collaboration, negotiation, mediation, arbitration and adjudication mechanisms (Marrie, 2011; Pirie, 2000). Institutions that utilize these channels of conflict resolution include judicial systems, political institutional frameworks, international state organizations, non-governmental organizations and civil society organizations, amongst others.

As stated earlier, this paper tends to focus on electoral dispute resolution through judicial and semi-judicial systems. Through these neutral and confidential complaints systems, political and legal systems have progressively found stability within the comity of states, while fundamental human rights of global citizens' and their voting rights are well anchored (Pirie, 2000). It is for these reasons that Marrie (2011) observes that judiciary systems have engendered the integrity and legitimacy of electoral democracies the world over. It is held within the legal-electoral theory and political science studies that, for a conflict resolution system to be able to resolve electoral disputes satisfactorily, it is basic that the system provides an even platform upon which appeals, electoral actions or procedures are legally challenged in order that justice is equitably dispensed (Hasen, 2020; Hasen, 2016; Kovick & Young, 2011). Moreover, Dahl & Clegg (2011) and Merloe (2008) have argued that for independent judicial bodies to justify their relevance in the scheme of affairs, they must ensure at all times that, the political rights of the citizens are enforced to the 'letter' and 'spirit' of the law.

The typology of electoral conflict resolution systems are classified into five strands (Henriquez, 2006). First, Political Bodies, Assemblies, or Representative Electoral colleges are the oldest traditional political conflict-resolution systems, which have come to be used in the English Parliament, French États Generaux (General Estates), and in the United States House of Representatives and Senate. In these countries, electoral colleges are made up of electors who are chosen by popular vote to sit on electoral disputes. Second, Nonspecialized

Judges are usually placed under the Supreme Court Jurisdiction, who though are ordinary judges without specialization in electoral matters, decide electoral disputes. In 1868, this model existed in England and also exists today in Australia, Canada and India. Third, Constitutional Courts are constitutionally established tribunals that are given a final say in electoral disputes such as in Spain and Germany. Fourth, Electoral Courts are the most recent type that are of permanent nature, as seen in many Latin America countries such as Uruguay, Chile, Bolivia and México, amongst others. Decisions from these courts are definitive and uncontestable as observed in some countries like Costa Rica and Peru. Lastly, Ad Hoc Provisional Bodies exist in transitory regimes, established to resolve specific electoral conflicts as was established in Liberia following the Civil War in that country.

Under Ghana's Fourth Republican Constitutional space, many electoral disputes have been witnessed over the years from the outset of the constitutional practice. In the given circumstances, most of the disputes are brought before courts of competent jurisdiction as directed under Articles 64(1) and 99(1) of the 1992 Fourth Republican Ghanaian Constitution for resolution, with appreciable successes. For emphasis once more, this study assesses the role that the Judiciary arm of Ghana (Supreme Court) plays in this regard, extensively relying on public perceptions. The study having taken close to two years. In terms of objectives, the survey sought to identify the underlining causes of electoral disputes in Ghana, as well as, unearthing effective ways in which electoral disputes can be circumvented, eliminated or minimized. More importantly, the study sought to ascertain the effectiveness of judicial systems in Ghana in respect to electoral dispute resolution, and an assessment on the performance of the Electoral Commission in the discharge of its constitutional duties since 1992.

2. Theoretical Framework of the Study

Two theoretical frameworks guided this study---Mimetic and Legal-electoral theories. The French historian and philosophy, Rene Girard, propounded the mimetic theory in 1977 in his quest to interpret human behavior in line with cultural practices. The theory, which highlights the inevitability of conflicts arising between individuals who desire a common object that only one of the parties can possess eventually, explains on the main how natural rivalry propels conflicts in society (Girard, 1977; Nietzsche, 1968). Put in simpler terms, Girard (1977) and Barash (2015) posit that clashes over desires often generate 'mimetic rivalry'. However, the rivals Girard (1977) argues shift their attention from the original desired object with time, thus transforming the competing interests of the parties into sources of social antagonism. In the given circumstances rather than focusing on the initial desired object, the parties may tend to concentrate on how each one of them will limit the ability of the opponent from obtaining the object of interest, which may also lead to a violent conflict (Anspach, 2011; Girard, 1977). Furthermore, in the event where parties fail to limit the abilities of their opponent's capacity to attain the desired object, Girard (1977) suggests that the parties tend to vent their anger on surrogate victims (scapegoatism). In building upon this theory, Thomas (2015) asserts that in addition to explaining the nexus of religion and violence; the mimetic theory of desire as represented in 'scapegoatism', derives from the origins and maintenance of culture (Haidt, 2012).

The mimetic theory as propounded by Rene Girard, 'fits' well into this study, in as far as it explains the incidence of electoral disputes in democracies where both intra-party and inter-party competitions for political power are replete. The two presidential disputes (2012 and 2020) as discussed in this paper were propelled by the stiff competition between two dominant Ghanaian political parties in their quest to achieve political power. In both

occasions, the losing parties having failed to limit the capacity of their opponent in pursuit of political power, vented their anger on the Electoral Commission of Ghana (EC), being as it is the scapegoat. To that extent and in both cases, the EC became a party to the petitions brought before the Supreme Court of Ghana. Furthermore, this theory has relevance in this study for the fact that the two presidential elections ended in violence (where lives were lost in the particular case of the 2020 general elections), stemming from the ‘mimetic rivalry’ between the two parties and the unquenchable desire of both parties to acquire political power.

The mimetic mechanism as employed in this study is pictured below in the Tolkienian Triangle that emphasis on the double modelling effects of rivalry between Rival A and Rival B, in their attempt to attain the common desire, which is located at the apex of the triangle. Within the context of this study, Rival A and Rival B represent the New Patriotic Party (NPP) and the National Democratic Congress (NDC), respectively.

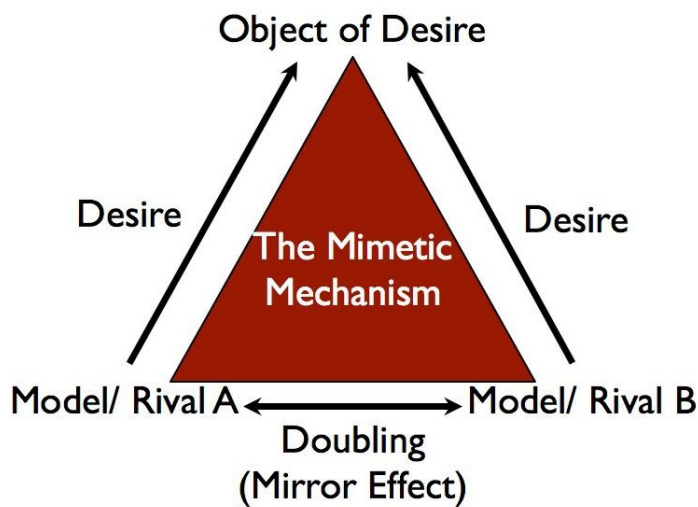


Figure 1: The Mimetic Triangle

Source: Tolkien (2014)

The second theory that guided this study is the legal-electoral theory, which alludes to the fact that the resolution of electoral disputes in modern democracies remains fundamental in as long as they build stable political systems that ensure good governance and the protection of the human rights of citizens (Orr, 2018). The proponents of the theory further suggest that disputes are inevitable in the course of electoral competitions, which if not effectively checked have the potential of undermining the integrity of electoral processes that may eventually lead to either overt and covert social conflicts (Petit, 2000). To that end, the employment of effective and vital electoral dispute resolution mechanisms become imperative---systems of appeals through which every electoral action or procedure can be legally challenged (Maurer & Barrat, 2017). Such systems (judicial and political agencies) according to Alan Bogg, et al. (2020), aim at regularizing legal elections, correcting unlawful electoral action, and protecting the political rights of both the electorate and those who seek offices. To that extent, the system need must ensure the satisfaction of all participants in an election---political parties, citizens and candidates alike, where foremost the voter’s decision is the one that prevails (Orr, 2015; Orr & Gauja, 2015). In upholding these values, judicial systems that are the fundamental features of every electoral democracy and bed-rocked on the principles of independence, impartiality, and technical proficiency; must be seen to be supporting electoral procedures within the frameworks of legality, certainty, impartiality,

authenticity, objectivity, clarity and above all justice (Dahl & Clegg, 2011). Moreover, the legal system must ensure that the channels of complaints are transparent, understandable, and devoid of unnecessary obstacles including high cost of proceedings (Ibid). Clearly, the objectives of this study that examined the role of the judiciary in electoral dispute resolutions within the Ghanaian context fall within the postulations of the legal-electoral theory. In fact, proceedings of the Supreme Court of Ghana in the two historic cases were evaluated by this study, using the benchmarks as set in the legal-electoral theory---the neutrality index of the court, high-level proficiency requirement of judges, the extent to which the will of the voter was protected, and the extent to which justice dispensed, *inter alia*.

3. Ghana's Judiciary, Electoral System and Electoral Dispute Resolution

The paper discusses three themes under Part III---Ghanaian electoral processes and reforms that have so far been implemented under the Fourth Ghanaian Republican constitutional dispensation, the role of non-judicial electoral dispute mechanisms in electoral dispute resolution, and the role of Ghana's Judiciary in electoral dispute resolution.

3.1. Brief Updates on Ghana's Electoral Processes, Reforms and Challenges Since 1992

Ghana returned to constitutional rule under the Fourth Republican dispensation on January 7, 1993, after eleven long years (11) of military dictatorship. However, since then, several successes have been chalked in significant areas such as good governance and the socio-politico-economic development of the nation, some challenges notwithstanding (Benson & Ngaaso, 2021). So far, eight (8) free and fair general elections have been conducted to elect leaders into the executive and legislative arms of state on a four-year term basis. Within this arrangement, parliamentarians are elected through simple majority, while the president is deemed dully elected by at least 50 percent and one (1) vote of valid votes cast in a presidential election (Article 63 subsection 3, 1992 Ghana Constitution). Overall, general elections in Ghana since 1992 have been significantly successful owing to an effective electoral system that has constantly undergone relevant reforms, in line with the democratic aspirations of majority of Ghanaians. Nevertheless, each of these occasions has never escaped at least low-profile electoral disputes, which in a few instances turned violent, resulting in the loss of lives and destruction of properties. For example, the most recent 2020 general elections recounts the loss of lives in the Techiman-South Constituency as a result of the indiscriminate shooting of security personnel into an irate crowd in an attempt to scare protestors of parliamentary results at a collation centre.

Amidst a cheaqured constitutional history of rude military interventions, Ghana has gone through varied electoral phases and processes in its pre-independence and post-independence eras. The pre-independence phases included the 1951, 1954 and 1956 Assembly elections. Notably, the 1956 Assembly elections ushered Ghana into the international arena as the first country in Africa to gain political independence on 6 March 1957. The post-independence elections on the other hand, included the 1960, 1965, 1969, 1979, 1992, 1996, 2000, 2004, 2008, 2012, 2016 and 2020 general elections. In brief, outcomes of the post-independence elections were as follows:

- (a) Dr. Francis Kwame Nkrumah of the Convention People's Party (CPP) won the 27 April 1960 presidential election with 81.1 percent of valid votes cast to become the Executive President of the First Ghanaian Republic;
- (b) In the parliamentary elections of 1965 when Ghana had assumed the status of a one-party state, the CPP retained 198 seats in parliament (unopposed) (About the Parliament of Ghana. Archived 04-06-2010);

- (c) Under the Second Republican parliamentary constitutional practice which spanned from 1969 to 1972, Dr, Kofi A. Busia was elected as Prime Minister of Ghana, with 105 majority seats out of 140 going to the Progress Party (PP) which he led (Nohlen, Krennerich & Thibaut, 1999);
- (d) Having obtained a 62 percent win in the 9 July 1979 presidential elections run-off that ushered in the Third Republican constitutional dispensation, Dr. Hilla Limann of the People's National Party (PNP) became the Executive President of the Republic with 71 of the 140 seats in Parliament going to his party (Jeffries, 1980);
- (e) Flt. Lt. Jerry John Rawlings (a past military ruler) became the first President under the Fourth Republic constitutional practice in the 1992 presidential election with a win of 58.4 percent margin, while a majority of 198 out of 200 seats went to his National Democratic Party (NDC)---the opposition parties boycotted the parliamentary elections on grounds of alleged electoral malpractices and rigging; (Nohlen, Krennerich & Thibaut, 1999); while,
- (f) The results of the rest of general elections under the Fourth Republican constitutional practice in descending order are as follows: First, Mr. Jerry Rawlings (57.4 percent) and NDC (133 seats out of 200) (1996). Second, Mr. John .A. Kufuor (57 percent-presidential elections run-off) and the New Patriotic Party (NPP) (99 parliamentary seats) (2000). Third, Mr. J.A. Kufuor (52 percent of valid votes cast) and NPP (128 seats in a 230-parliament) (2004). Fourth, Prof J.A. Mills (50.2 percent- presidential elections run-off) and his NDC party (116 parliamentary seats out of 230) (2008). Fifth, Mr. John Dramani Mahama (50.7 percent) and NDC (148 out of 275 seats) (2012). Sixth, Mr. Nana Akuffo-Addo (53.7 percent) and NPP (169 seats out of 275) (2016). Lastly, Mr. N. A.D Akuffo-Addo (51.3 percent) (2020). However, the 2020 parliamentary electione produced a hanged parliament (NPP 137 seats, NDC 137 seats and 1 independent candidate) (Aye, 2002; Benson, & Ngaaso, 2021).

Clearly, from this picture, general elections since 1992 have seen the dominance of NPP and NDC within a two-party system (Duverger, 1964); while other parties have only managed an insignificant presence in parliament occasionally. Ghana's place as a beacon of Africa's democracy as submitted above, owes a lot to the reforms that have taken place in the electoral system since 1992 following lessons learnt from previous elections.

3.2.1. Reforms in Ghana's Electoral System Since 1992

The list of electoral reforms in Ghana since 1992 is a long one that include the following (Gyampo, 2017):

- i. The replacement of opaque electoral boxes with transparent electoral boxes;
- ii. The replacement of black and white pictures of voters with coloured pictures;
- iii. The replacement of manual registration of voters with bio-metric registration;
- iv. Institutionalization of Inter-Party Advisory Committee (IPAC) that include all political parties that make inputs for the strengthening of the electoral system;
- v. Period of notice for the voter registration exercise was extended from 14 to 21 days;
- vi. Biometric Virus Detection (BVD) came to be used for the exhibition of the provisional register and the implementation of continuous voter registration;
- vii. Election officials and party agents have since been taking oath before magistrates instead of officers of the EC;
- viii. The expansion of the list of special voters to include accredited media personnel and election observers;

- ix. Training of election officials to improve their knowledge on the conduct of elections;
- x. EC gives copies of the final voters register to political parties 21 days to elections;
- xi. Setting-up of national collation centres to replace the 'strong room', *inter alia*.

Other recommendations outside the ambit of EC yet to see implementation include the shortening of periods for determination of electoral disputes and spelling out grounds for the annulment or invalidation of the election of a president. Others are the establishment of special election tribunals to hear and determine electoral cases and petitions, the limitation of office of the chairperson and members of EC to two five-year periods, amongst others. For the reasons that IPAC plays an important role within the electoral system, issues leading to the withdrawal of the NDC (Ghana's largest opposition party) from meetings of IPAC should be addressed as a matter of urgency by both leadership of the NDC and the EC, since development remains a drawback on the work of IPAC.

Nonetheless, the electoral journey of Ghana under the Fourth Republic cannot be described as one without challenges and electoral disputes. Indeed, on several occasions, individual candidates and political parties have contested results of assembly, bye-parliamentary, parliamentary and presidential elections at the collation centers at all levels of the electoral structure. These contestations usually come up as a result of electoral irregularities, alleged rigging of elections, electoral violence, misconduct of personnel of the Electoral Commission (EC) and security personnel, alleged vote-buying and misconduct of political parties, amongst others. Many of these contestations end up in Courts of competent jurisdiction as stipulated under the 1992 Ghana Constitution (Amankwaah, 2013; Boakye, 2018; Jockers, Kohnert, & Nugent, 2009; Meissner, 2010). Examples in this regard include foremost, *Akufo-Addo, Others Vrs. Mahama and Another presidential election dispute [2012]*, and *Mahama Vrs Akuffo-Addo, and Another presidential election dispute [2021]* as were determined by the Supreme Court of Ghana and detailed below. At the level of the High Court of Ghana, cases such as the *Biebel Vrs Dramani and others in respect of the Bawku Central parliamentary election dispute [2011]*, and *Ankomah-Nimfa Vrs. Quayson in respect of the Assin North parliamentary electoral dispute [2021]* are reviewed below as well. In addition, more than ten (10) electoral disputes are before various courts across the country for determination, following the 2020 general elections alone that include *Techiman South parliamentary election dispute*, and the *Santrokofi/Akpafu/Lolobi/Likpe (SALL) area* where residents are unrepresented in the current Parliament of Ghana against their fundamental and constitutional rights.

On the darker side, however, many other contestations end up in non-violent street protests, and violent demonstrations and actions. Such examples that readily come to mind in this regard are the 31 January 2019 *Ayawaso West Wuogon* and the 29 September 2009, *Chereponi bye-elections* that ended up in violence where lives were lost, people maimed and properties destroyed. The most recent of the cases as reported earlier, is the *Techiman-South parliamentary election electoral dispute* that saw the unprofessional shooting and killing of five people by unidentified security personnel.

3.2. Non-judicial Electoral Dispute Resolution Mechanisms in Ghana

Several state institutions, civil organizations, religious bodies, traditional rulers and individuals are effectively involved in the resolution of electoral disputes as they arise in Ghana. Conflict resolution and preventive techniques including workshops, mediation, negotiation, arbitration and dialogues amongst others, are the techniques that these bodies and individuals usually use. It is understood that, their constant and timeous relentless efforts and

influence have positively influenced this national agenda in an appreciable manner. Notably, state agencies such as the EC itself and the Peace Council of Ghana have spearheaded this agenda.

First, the National Peace Council as established by the National Peace Council Act 818 [2011] on the main promotes peace in the country and provides for other related purposes. To this end, the Council facilitates the development of mechanisms for conflict prevention, management, resolution and the fostering of sustainable peace across the country. Furthermore, as stipulated under Article 3 of Act 818, the Council performs several other functions including the harmonization and coordination of conflict management and peacebuilding activities in collaboration with traditional councils, women and youth groups, state agencies and the civil society. It also facilitates the amicable resolution of conflicts including electoral disputes through mediation, as well as, facilitates the implementation of agreements and resolutions reached between disputing parties. In past, the Council at all three levels of operation---national, regional and district, has made successful interventions in the area of electoral disputes across the country.

Second, the EC itself through its internal conflict resolution mechanisms, has successfully resolved many electoral disputes which otherwise would have escalated into full-fledged violent conflicts. In addition, the contributions of other state agencies such as the National Commission for Civic Education (NCCE) in this regard cannot be underestimated.

Third, laudable interventions by traditional councils (National House of Chiefs), religious bodies (Christian Council of Ghana, National Muslim Council, the Catholic Bishop Council, etcetera) and civil society organizations (West Africa Peace Ambassadors Network and West African Network for Peacebuilding, etcetera), have contributed significantly towards the prevention and resolution of several electoral disputes.

Lastly, eminent persons including former Presidents of Ghana (Rawlings, Kufuor and Mahama), the late former Secretary-General of the United Nations Kofi Annan (a son of Ghana), and religious clerics such as the National Chief Imam Sheik Osuman Nuhu Sharubutu and eminent individuals including the person of Otumfio Osei Tutu Asantihene II, have awesomely resolved electoral disputes in Ghana (Diedong, 2012).

3.3. Ghana's Judiciary and Electoral Dispute Resolution

The Judiciary arm of state plays a central role in the resolution of electoral disputes. While the Supreme Court of Ghana decides cases involving presidential election petitions and the interpretation of the 1992 Ghana Constitution (per Article 64 (1) of the 1992 Ghana Constitution), the High Court of Ghana under Article 99 clause 1, is the Court of first instance that hears and determines cases involving the validity of election of Members of Parliament. Since 1992, these courts of nobility, independence and impartiality have handled many cases in the regards of parliamentary and presidential election disputes, some of which are noted above. Two notable cases that were brought before the High Court and two high-profile cases brought before the Supreme Court are discussed below. In the case of the two High Court cases, aspects of the determinations were referred to the Apex Court of the land, hence justifying their inclusion in this discussion.

(1) Ankomah-Nimfa Vrs. Quayson (11 of 2022)[2022] GHASC 19 (05 April 2022) in respect of the Assin North Parliamentary Electoral Dispute [2020]

Mr. James Gyakyee Quayson stood and won the 2020 parliamentary elections on the ticket of the NDC and was subsequently sworn into the eighth Parliament of Ghana under the Fourth Republic. Consequently, Mr. Michael Ankomah-Nimfa a resident of Assin Bereku in the Central Region of Ghana filed a petition at the Cape Coast High Court, seeking to annul the declaration of Mr. Quayson as Member of Parliament (MP) for Assin North Constituency. The petition was based on the grounds that, Mr. Quayson at the time he filed his papers with the EC for the parliamentary elections, had not renounced his Canadian citizenship and per the 1992 Ghana Constitution, Ghanaians who hold dual citizenship cannot occupy the office of Member of Parliament.

On 28 July 2021, the Court presided over by Justice Boaky declared the 2020 parliamentary election held in the Assin North Constituency as invalid, thus ordering for fresh elections since in his considered opinion, Mr. Quayson had breached provisions of the constitution with regard to dual citizenship. The honorable judge cited Article 94 (2) (a) of the 1992 Constitution of Ghana. Following this ruling, the embattled MP filed two motions at the Court of Appeal in Cape Coast to challenge the annulment of his election by the Cape Coast High Court, which was struck out over breaches of procedural rules (Court Case GHASC 19 (05 April 2022; Graphic online, 2022). He sort redress in the Supreme Court and following a 5-2 majority decision of the Apex Court, Mr. Quayson was barred from holding himself out as MP pending the final determination of the suit challenging his eligibility. Speaking on behalf of his colleagues at the bench, Justice Jones Dotse said that serious constitutional breaches would occur if the appellant were not restrained until the court of first instance decides otherwise. Disagreeing to this ruling, Mr. Quayson filed a supplement to his statement of case by the Supreme Court (SC) to the effect that SC lacked jurisdiction to entertain the originating writ seeking to invalidate his election as MP (Sullemana, 2022).

As at the time of this research, the case is still undetermined by the Courts in its finality, except that Mr. Quayson can no longer hold himself as MP for the Assin North Constituency, at the same time, the constituents of the area are unrepresented in Parliament---completely at variance with earlier case law.

(2) Biebel Vrs. Dramani and others (JI/2/10)[2011]GHASC 51 (04 July 2011) GHASC (26 October 2011)

Unlike the presidential election, the NPP in 2008 won the parliamentary seat of the Bawku Central Constituency through their candidate Mr. Adamu Dramani Sakande. Mr. Sumaila Biebel, a resident of Bawku who deals in cattle, filed a writ of summons on 9 February 2009 in a Fast Track High Court in Accra seeking to annul the election of Mr. Sakande as MP for the area. His plea was on the ground that the NPP MP at the time of his election held both British and Burkinabe passports. Further citing Article 94 (2) (a) of the 1992 Constitution of Ghana, the petitioner alleged that the respondent who held other citizenships in addition to Ghanaian citizenship, was barred from occupying the Office of MP. Moreover, according to the petitioner, the embattled MP apart from breaching the dual citizenship provision also made a false statement while registering as a voter in 2008.

Following this, the MP entered conditional appearance applying to the High Court to set aside the writ on the ground that the said court lacked jurisdiction to entertain the matter, since the cause of action was in effect an election petition and ought to commence by a Petition rather than a Writ of Summons. The honorable High Court judge dismissed the application. Being dissatisfied with the ruling, the applicant herein appealed to the Court of Appeal, which upheld the appeal on the ground that the Respondent was challenging the

validity of the applicant's election to Parliament, which in effect was an election petition but not a Writ of Summons. Thereafter, the respondent filed a writ on 30 March 2010 seeking consequential orders from the Supreme Court, which overruled the Court of Appeal decision by majority decision (Ghana Law Reports, 2013).

On 15 July 2009, the original court based on default judgement ruled that Mr. Sakande vacates the seat as MP, and as affirmed by the Supreme Court decision on 27 July 2012, he was incarcerated for two years. The court held Mr. Sakande guilty on counts of perjury, false declaration by voting and deceit of public officer (General News, Ghana Home Page/12-07-2012). He was subsequently granted Amnesty by President John D. Mahama on grounds of ill health.

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

The first presidential election petition to come before the Supreme Court was on 22 December 2012, shortly after the EC had declared incumbent President Mahama as the winner of the 2012 presidential election. Even though the presidential election results of 1992, 2004 and 2008 were not wholly accepted by political parties and participating candidates, they were not brought before the Apex Court of the land as other non-judicial conflict resolution mechanisms intervened in those cases. It can also be argued that it was so because the allegations of electoral irregularities were not sufficiently serious as to warrant the petitioning at the SC (Graphic online, 2013).

In this particular case, the NPP presidential candidate Mr. Nana Akuffo-Addo, his running mate Dr. Mahamud Bawumia and the NPP National Chairman Mr. Jake Obetsebi-Lamptey, jointly brought a presidential election petition before the highest Court of the land on grounds of electoral irregularities. To the extent of the irregularities that included voting without biometric verification by some voters, issues of over-voting, and the non-signing of EC presiding officers, amongst others, the Petitioner sort to invalidate the election of the Respondent, Mr. Mahama as President of the Republic. The EC that effected the declaration of the 2012 presidential election results also became a joint Respondent in this case.

After eight months of legal battle between the parties in the court, the nine-panel Supreme Court presided over by Justice William Atuguba on 29 August 2013, came out with a majority 6-3 verdict that confirmed the election and the declaration of Mr. Mahama as President of the Republic of Ghana. However, while dismissing the petition on several grounds of demerit, the Court also acknowledged the existence of some infractions. To that end, they called for reforms within the electoral system such as the legitimization of the use of serialized pink sheets to be in tune with unique polling station codes, *inter alia* (Ghana Law report, 2013). The Petitioner though disagreed with the decision of the SC, accepted the results. In much the same way, the divided country accepted the decision so that peace would prevail in the country (Asante & Asara, 2016; Brenya, 2014).

(4) Mahama Vrs Electoral Commission and Another (JI 5 Of 2021) [2021] GHASC 12 (04 March 2021)

In alleging the unconstitutional declaration of the results of the 2020 presidential election by the Electoral Commission (1st Respondent in the case) amidst largescale electoral irregularities, Mr. Mahama the presidential candidate of NDC, petitioned the Supreme Court to invalidate the results of the said election. The alleged widespread irregularities included over voting, widespread cases of padding in favor of the NPP presidential candidate, discovery of stuffed ballot boxes with already thump-printed ballot papers of 2nd Respondent within the strongholds of the NPP, widespread change of electoral figures in favor of Mr.

Akuffu-Addo, intimidation of NDC members by both electoral and security officers, *inter alia*.

The Petitioner sought amongst others that the Court orders a mandatory injunction that would direct the 1st Respondent to conduct a fresh election between the two leading candidates since none of them, had obtained the more than 50 percent requirement, as stipulated under Article 63 (4) and (5) of the 1992 Constitution of the Republic of Ghana. Second, that the SC annuls the C.I. 135 President-Elect Declaration Instrument of 9 December 2020, unconstitutionally issued by 1st Respondent. Third, that the Court restrains the 2nd Respondent from holding himself out as President-elect.

Unlike the 2012 presidential petition, which took eight months of legal battle between the counsels of the Petitioners and Respondents that of the 2020 presidential petition, took only 21 days. The seven-panel court presided over by Chief Justice Kwasi Anin-Yeboah unanimously dismissed the petition on grounds of demerits on 4 March 2021. Again, the country was divided over the Court's decision, while the Petitioner only accepted the decision as he was legally bound (Abdulai, & Sackeyfio, 2021; Benson & Ngaaso, 2021). He, however, cited instances of unfair court proceedings that were partially allowed by their lordships as they virtually held themselves as counsel for the respondents, the overly protection of the chairperson of the EC by their lordships from being quizzed by the counsel of the Petitioner, and the miscarriage of justice; as reasons that marred their judgement (Graphic online, 2021).

4. Methodology/Analysis and Discussions

Part 4 comprises the methodological approach used in the collection of data, analyzed data and discussions of the findings.

4.1. Methodology/Approach

This study took close to two years spanning from 20 December 2020 to 25 August 2022. Adopting a qualitative approach and an exploratory design model, the survey gathered data from 120 purposively sampled respondents across the 16 administrative regions of Ghana, of which 67.5 % (81) were males while 32.5 % (39) were females. As may be expected within the traditional Ghanaian setting, females are less willing and less available even under circumstances of strict confidentiality to participate in engagements as this, hence explaining the male dominance in this survey. Motivated by Merriam & Tisdell's apt description of research undertakings (2016), the study adopted the qualitative research approach for reasons of reliability as would prevent or lessen the researchers influence and perspective over the views of respondents. However, to an appreciable extent, the study also made use of both secondary and tertiary data, consisting of books, journals, newspapers, and internet sources, *etcetera*.

It is equally worth noting that, respondents as suggested by Bartlett & Vavrus (2017) and Prasad (2005), were selected based on their knowledge and interest in the subject area that included the academia, politicians, members of the Bar, members of the Bench, traditional rulers, ordinary citizens, state institutions, civil society organizations, trade unionists and clerics, amongst others. The instruments employed in the survey under strict confidentiality, included in-depth structured interview guides, observation and focus group discussion sessions. The researcher used the quota sampling procedure to gather views across the country in order to fulfill the requirement of fair representation in an important matter as this, and in very limited instances, the snowballing technique was used to interview victims of

electoral violence (Bernard, et al., 2017; Howard & Berg, 2017; Lewis & Sheppard, 2006). In fact, the survey, which was largely descriptive of the participants' knowledge base, reflected the understanding of human experiences, thoughts and behavior in such given circumstances (Cox, 2010).

The discussion of survey findings that were largely descriptive and exploratory of the perceptions and opinions of respondents as freely provided, were grounded on a case study of the role of Ghana's judiciary in respect of electoral dispute resolution as stipulated under the 1992 Ghana Constitution, and in line with the observations of Ravitch & Carl, (2016) regarding research designs. Multi-purpose investigative approaches that are adoptive of the triangulation regime were employed to address shortfalls of the study results in terms of validity, generalizability and reliability (Bryman, 2008; Edmonds & Kennedy, 2017). Lastly, the data as gathered from the investigation was analyzed using the Qualitative Content Analysis Technique. This technique as suggested by Judd et al. (2017) and Pallant (2016), best presents a reflexive and interactive summary of verbal and visual data.

4.2. Data Analysis, Results and Discussions

Five major research questions guided the study. They are the following:

- (1) What accounts for the numerous electoral disputes at the end of every general election in Ghana, and to what extent have they affected the country's democratic practice?
- (2) In the discharge of its duties over the years, can one say the Electoral Commission is truly a neutrally independent state institution regarding its dealings with all stakeholders, and has it performed creditably?
- (3) Per your assessment, how effective has being Ghana's electoral dispute resolution processes in the last twenty-nine years?
- (4) With regard to dispute resolution, what is your take on the role of the judiciary arm of state and what factors in your opinion influence decisions of the judges?
- (5) As a nation, how do we prevent the cycling occurrences of electoral disputes, as well as, strength our electoral system?

The categories of participants is shown in Table 1 and Figure 2. The category with majority respondents as shown in the Table 1 is the electorate category with 21 respondents, representing 17 percent, while the Peace Council category registers the least with two respondents, representing 1.7 percent of the sample size. For all other categories, please see Table 1. Regarding gender distribution, eighty-one respondents out of the one hundred and twenty respondents are males, representing 67.5 percent, while thirty-nine are females representing 32.5 percent. Figure 3 depicts the gender distribution of respondents.

Table 1.
Categories of Participants Interviewed

Respondents Category	Number	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

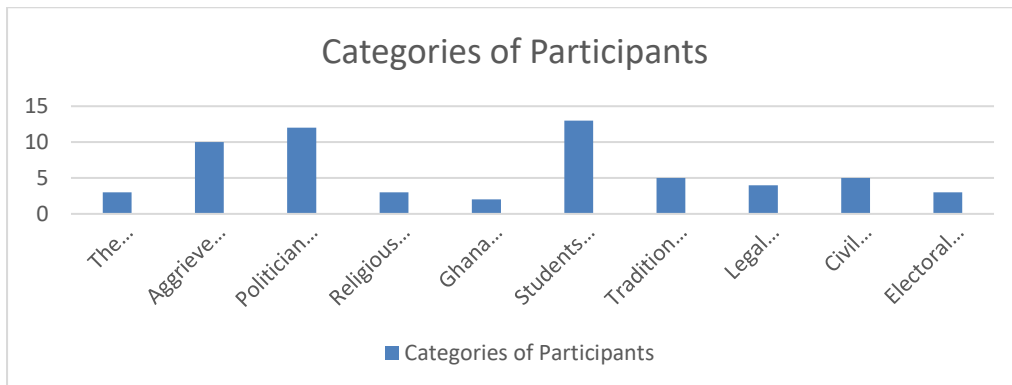


Figure 2: Categories of participants

Source: Field Work, 2021

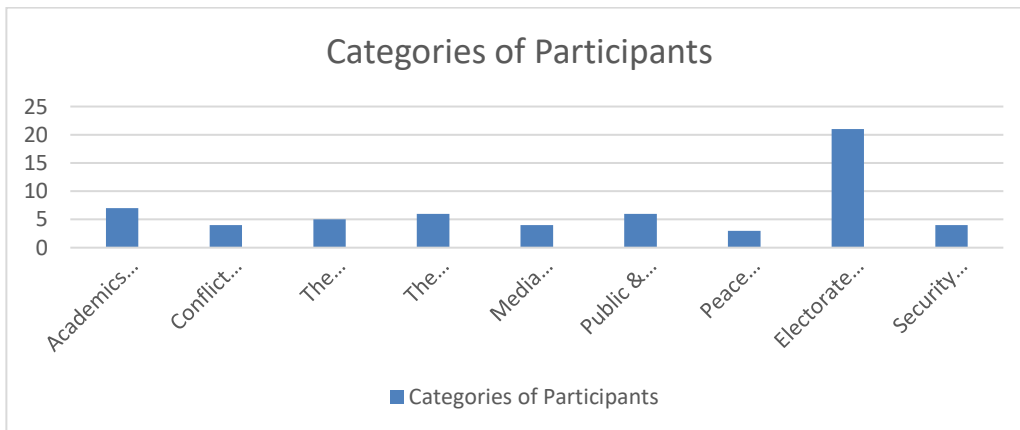


Figure 2: Categories of participants(continued)

Source: Field Work, 2021

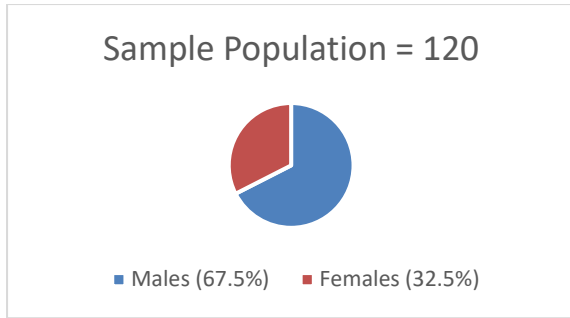


Figure 3: Gender Distribution

Source: Field Work, 2021

Table 2 in general encompasses the socio-demographic characteristics of respondents of the survey. It shows the age distribution of participants and their respective frequencies as follows: 18-30 (15 respondents, 12.5 %), 31-40 (30 respondents, 25 %), 41-60 (55 respondents, 45.8%) and 61 and above (20 respondents, 16.7 %) years.

Table 2.

Socio-demographic characteristics of participants

	Frequency (N=120)	Percentage
<u>Age</u>		
18-30	15	12.5
31-40	30	25.0
41-60	55	45.8
Above 60	20	16.7
Total	120	100.0
<u>Education</u>		
No formal	10	8.3
Basic	15	12.5
Secondary	45	37.5
Tertiary	50	41.7
Total	120	100.0
<u>Political Party Affiliation</u>		
NPP	38	31.3
NDC	37	30.8
Others	22	18.3
None	23	19.2
Total	120	100.0

Source: Field Work, 2021

The educational background of participants as shown in Table 2 and Figure 4 is numerically recorded as follows: No formal education (10 respondents, 8.3 %); basic education (15 respondents, 12.5 %); secondary education (45 respondents, 37.5 %); and tertiary education (50 respondents, 41.7%). From the figures, participants without formal education are the least. However, for the reasons that the study sought to solicit participants with sufficient knowledge on the subject matter, this scenario fits well.

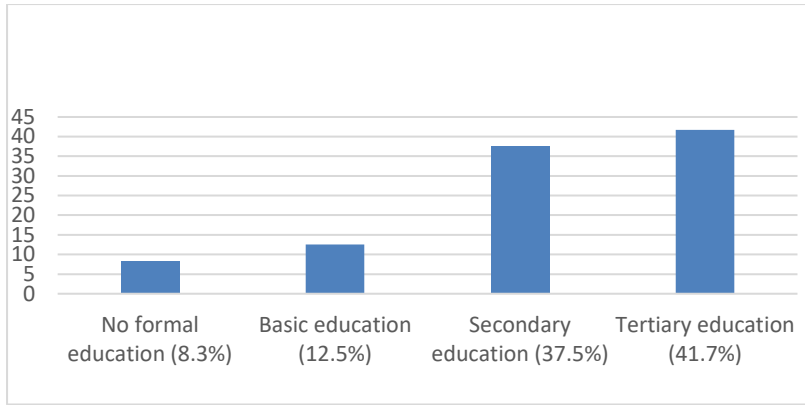


Figure 4: Educational background of participants

Source: Field Work, 2021

Lastly, Table 2 as shown and Figure 5 as shown, both depict the political affiliation of respondents, thus: NPP 38 (31.7%); NDC 37(30.8 %); other parties 22(18.3%) and none affiliated 23 (19.2 %). As readily deduced, while majority of participants are affiliated to the ruling NPP party, those who have no political affiliation are in the minority.

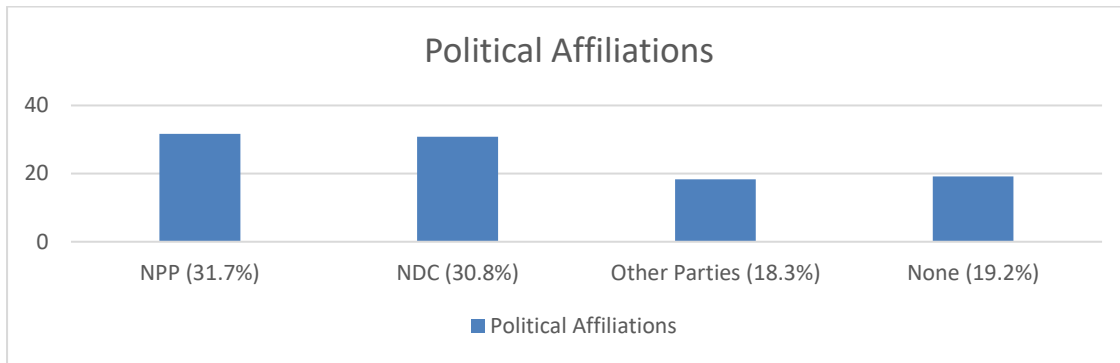


Figure 5: Political Affiliation of participants

Source: Field Work, 2021

Question 1: What accounts for the numerous electoral disputes at the end of every general election in Ghana, and to what extent have they affected the country’s democratic practice?

Indeed, all 120 respondents gave their views on question one though with variations. The major causes listed include mistrust between opposition political parties and the EC on one hand, and mistrust between incumbent governments and opposition parties; inclination of EC commissioners and state agencies towards the appointing authorities, usually stimulating unfair electoral processes and therefore unlevelled playfields for electoral participation; and electoral malpractices that include rigging of electoral results. Furthermore, intimidation and detention of opponents by biased and unprofessional security forces of state on one hand, and violent activities of hired thugs by political activists on the other, do generate violence mostly during the voting and post-voting phases. Lastly, bad electoral laws enacted by the EC in favor of incumbent governments, as well as, lack of sincerity and inactivity on the part of supposed neutral observers, usually negatively affect electoral outcomes as observed elsewhere by Høglund, (2009) and Nwoliise (2007) as causes of electoral disputes. Coincidentally, the causes of electoral disputes as noted by respondents of this survey do have global appeal. On the impact of electoral disputes on Ghana’s democracy, 91 respondents representing 75.8 percent affirm that the impact is insignificant, as 29 others, representing 24.2 percent induce gravity on Ghana’s democratic governance. See Figure 6.

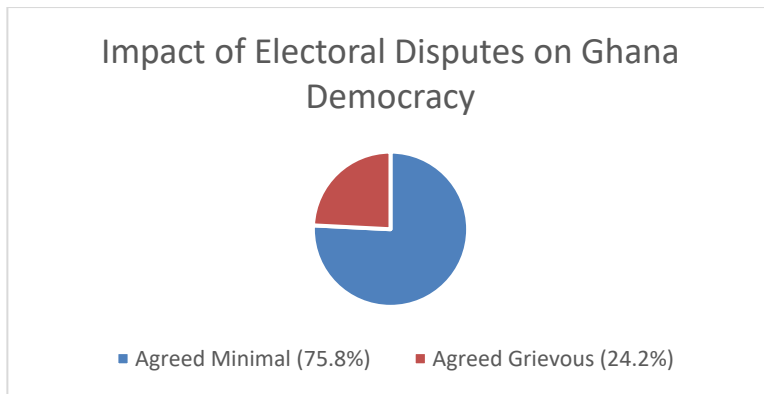


Figure 6: Impact of electoral disputes on Ghana's democratic practice
Source: Field Work, 2021.

In backing their claims, minority view holders suggest that the country's socio-politico-economic development and its democratic practice would have achieved higher feats, but for the numerous electoral disputes that have engulfed every general election since 1992, as alluded to by Human Rights Watch (2008) and Nwolise (2007) on the consequences of electoral conflicts on national development. A respondent lamented as follows: *"Every election year, the youth are engaged in violent actions under the influence of their paymasters which sometimes result in the loss of lives, while public and private property are vandalized by feuding factions within the political divide. Ehh! It's awful to think about this."* It is keen to note that out of the 29 respondents who held a minority viewpoint, 20 (70 %) of them are females, while 37 (40%) of those who held majority viewpoint are youth. To that extent, the paper argues that while majority of the Ghanaian youth underestimate the threats and demerits of electoral disputes, as they may be beneficiaries of violent behavior, Ghanaian women appreciate the dangers posed by electoral disputes to our fledgling democracy. This was confirmed by a middle-aged female participant who expressed her fears in this manner, *"Anytime an election year draws near my brother, I have sleepless nights because I have come to know that all the politicians care about, it is power but not our lives, certainly not our welfare. As a result, I have refused to vote in the past three elections"*.

Question 2: In the discharge of its duties over the years, can one say the Electoral Commission is truly a neutrally independent state institution regarding its dealings with all stakeholders, and has it performed creditably?

Question 2 sought the views of participants in respect of EC's performance since Ghana returned to constitutional rule in 1993. Seventy-two (60.0 %) of the sample size confirmed the EC has done a very good job in all 8 general elections, while 31 respondents (25.8%) in their judgment placed the EC's performance as being average. The remaining 17 respondents representing 14.2 percent of the sample size think the EC's performance is abysmal to say the least. See Figure 7.

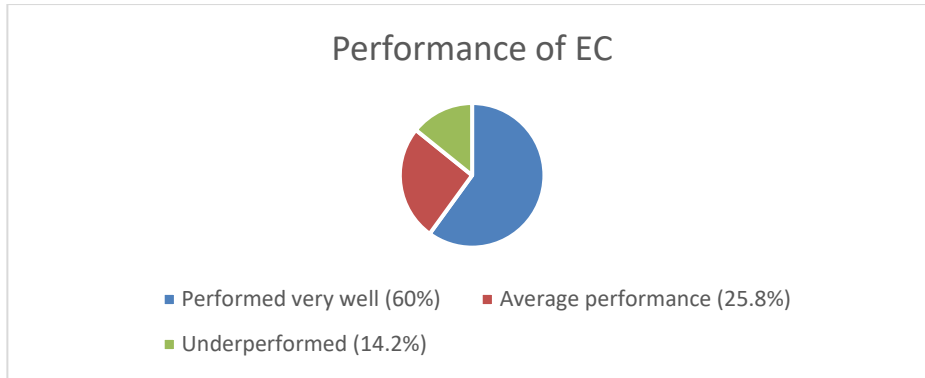


Figure 7: Rating of Electoral Commission's performance

Source: Field Work, 2021

Premised on the overall responses of respondents, citizens of Ghana are appreciative with the manner in which the EC handles electoral processes since the inception of the 1992 constitutional dispensation.

When participants were asked to evaluate the performances of the past and present Chairpersons of the EC since 1992, 65 respondents representing 54 percent of the sampled population affirmed Dr. Afare-Gyan as the best performing EC Chairperson, while 82 out of 120 respondents, representing 68 percent said Mrs. Jean Mensah is the least performed Chairperson. Chairpersons of the EC since 1992 are namely; Justice Josiah Ofori Boateng, Dr. Kwadwo Afare-Gyan, Mrs. Charlotte Osei and Mrs. Jean Mensah. As to why Dr. Afari-Gyan was adjudged the best, a respondent from among the academia responded thus, *"Throughout this period, Dr. Afare-Gyan has brought many more reforms to the electoral system 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 before the Supreme Court, even though majority of Ghanaians had wished so"*. Another respondent had this to say, *"Remember Dr. Afare-Gyan showed level headedness and high professional competence even under very trying moments. At every point in time, he knew exactly what to do, unlike Mrs. Mensah who hasn't shown neutrality so far. Besides, Kwadwo had a listening ear and took on board advises from all stakeholders, unlike his two successors who gave less attention to divergent views from political parties and the civil society."*

However, a responded who thought Mrs. Charlotte Osei outperformed Dr. Afare-Gyan argued, *"Longevity of service gave DR Afari-Gyan the rare opportunity of bringing about so many reforms in the electoral system of Ghana, that none of his colleagues could do. It had less to do with competence"*. When a respondent who thought Mrs. Jean Mensah has been the least performed Chairperson of the EC was put to further questioning, she said, *"So far she is the only Chairperson who ever declared multiple-results of presidential elections. To that end, she was regarded at the spare of the moment by both the NDC and NPP, as being incompetent. She has not exhibited an engaging spirit since her appointment and thus perceived by many as arrogant and extremely bias towards the one who appointed her"*. The assertions of the respondents have gone to affirm the views of Bekoe (2010) that, electoral disputes are preventable where electoral officers show neutrality in the course of their work without favor or fear.

On the question of the independence of the Electoral Commission of Ghana from the control of incumbent governments as provided under Article 46 .of the 1992 Ghana Constitution, all but 15 participants representing 12.5 percent of the sampled population affirmed the Commission’s independence. The information is depicted in Figure 8.

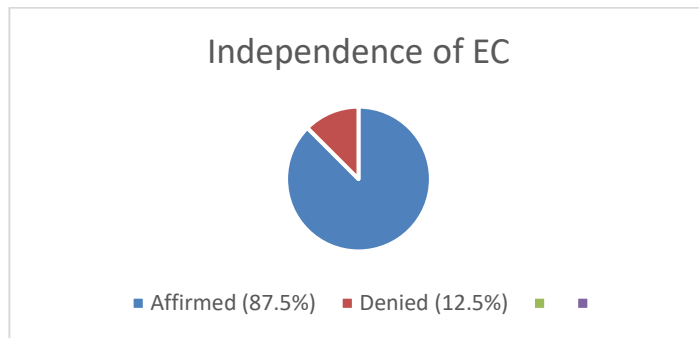


Figure 8: Independence of the EC

Source: Field Work, 2021

For these reasons the study deduces that majority of the Ghanaian population upholds that the EC is an independent constitutional institution which does not work to the ‘whims’ and ‘caprices’ of people in authority as perceived by some people. However, one of the participants who thought otherwise said, “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 bidding while in office. And when they refuse to do so, they are kicked out the next minute on flimsy charges”.

On grounds of neutrality, 57 out of the 120 respondents (47.5%) affirmed EC Commissioners and officials have always endeavored to be neutral when discharging their duties, irrespective of the fact that politicians put them there. On the other hand, 53 respondents (44.2%) said EC Commissioners and officials are far from being neutral. Ten respondents (8.3%) were undecided. To the extent of these findings, it can be argued that Ghanaians are divided over the issue of neutrality of EC officials. This information is captured in Figure 9.

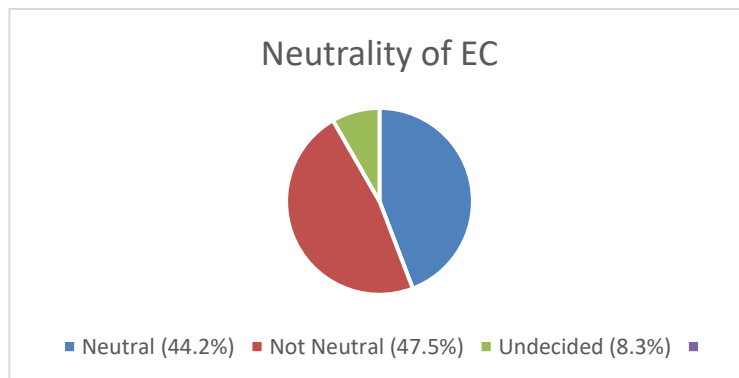


Figure 9: Neutrality of EC Officials

Source: Field Work, 2021

In a follow up question that sought to find out whether results declared by the EC always reflect the overall will of the electorate, 73 out of the 120 respondents (60.8%) agreed it did, 37(30.8%) disagreed, while 10 (8.3%) said they were not sure, as shown in Figure 10.

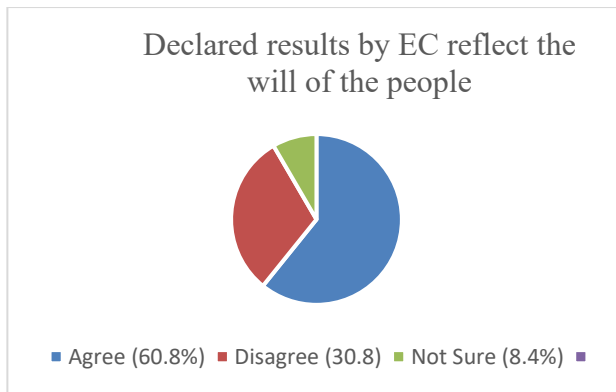


Figure 10: Authenticity of Declared Results

Source: Field Work, 2021

From the findings, it can be deduced that more than half of the Ghanaian population think results declared by the EC usually reflect the general will of the electorate. That said, during a group discussion in one of the newly created administrative regions of Ghana, the group of ten participants unanimously disagreed with this general viewpoint, and insisted results hardly reflect the will of the electorates who queue up in long lines to vote. According to this group, the multiple declaration of results in the 2020 presidential elections by the EC Chairperson broke the very foundation of their trust for the system. Thus, explaining why one of the group members asked the rhetorical question, “Which of the varied results of Jean Mensah at the just ended presidential results reflect the will of the people?”

Question 3: Per your assessment, how effective has being Ghana’s electoral dispute resolution processes in the last twenty-nine years?

There was a sharp division when participants responded to the question as to the effectiveness of Ghana’s electoral dispute resolution processes, with particular reference to the Superior Courts of Judicature. On one hand, 62 out of 120 respondents representing 51.7 percent did say dispute resolution mechanisms in particular the judicial system, have been satisfactorily effective, even though 80 percent of this number agreed there is still room for improvement. On the other, 58 respondents (48.3%), slammed the systems saying they were ineffective and for that reason needed restructuring and overhauling urgently. To buttress their point, they advocated for neutrality on the part of judges in particular, whose decisions they suggested, should be beyond reproach where the rules and laws are religiously and impartially applied.

Of those who chided the system, 90 percent of them see the need for the assembling of a national dialogue that will endorse the establishment of an independent bipartisan electoral dispute resolution system; outside the control of any arm of state or governmental agency. Even though a minority viewpoint, this study agrees that the call for a national dialogue on this matter is valid and long overdue. The call is in consonance with Dahl and Clegg’s (2011) observation that, strong independent electoral dispute resolution bodies are bedrocks of all democracies, because disputes in such systems are inevitable. While supporting the creation of a single independent body that should be tasked mainly with the resolution of electoral disputes in a prompt and impartial manner, a legal brain and politician within the minority group made a fantastic suggestion. He had this to say about the composition of the electoral dispute resolution tribunal, “The eleven (11) member Tribunal should comprise, two (2) justices of the Superior Court of Judicature to be nominated by the Judicial Council of Ghana, and two (2) traditional rulers to be nominated by the National House of Chiefs. In addition, three (3) senior lawyers nominated by the Ghana Bar Association and four (4) conflict experts, on a one term four-year tenure of office”.

The study found out that some of the contributions of the minority valuable, and if implemented to the core, needful reforms would be brought to bear on the electoral processes of the country. However, the study also found out that some of their recommendations were unachievable. For example, in citing lessons from the fallouts in respect of the 2012 and 2020 presidential election petitions brought before the Supreme Court, and other petitions brought before the High Courts of the land, 45 percent of the slim minority suggested electoral disputes should be outside the domain of the courts. That for now, seems impossible as it calls for the amendment of entrenched provisions of the 1992 Ghana Constitution that gives a special place for the judiciary in the resolution of electoral disputes. Besides, the role of the judiciary in electoral dispute resolution processes the world over, cannot be underestimated. To conclude discussions on this theme, the study deduced that most Ghanaians see the need for the refurbishment of electoral dispute resolution systems in the country; whether or not they think such systems are effective.

Question 4: With regard to dispute resolution, what is your take on the role of the judiciary arm of state and what factors in your opinion influence decisions of the judges?

In response to the first leg of question 4, 47 respondents (39.2 %) agree court systems have proven to be effective electoral dispute resolution mechanisms as witnessed within the Fourth Ghanaian Republican constitutional practice, while 25 respondents (20.8%) think court systems have performed averagely. Forty-eight respondents (40 %) say the court system has failed to meet the expectations of majority of Ghanaians, regarding electoral dispute resolution. The picture is presented graphically in Figure 11.

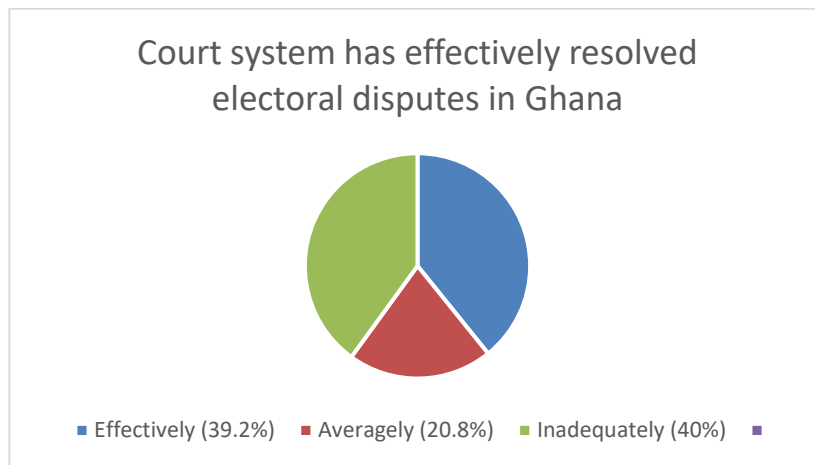


Figure 11: Rating of the Court's handling of electoral disputes
Source: Field Work, 2021

Second, 68 percent of the 48 respondents who expressed misgivings regarding the effectiveness of the court system supported their position with a vast terrain of reasons---judges apart from showing impartiality in arriving at their decisions that are mostly politically tainted; also overstretch their discretionary powers thus arriving at decisions that may lack legal logic. This they assert was reflective in the 2012 and 2020 presidential election petitions. During the survey, it was also perceived that political, financial and material inducements from incumbent governments and political elites usually influence decisions of some judges. They cited the undercover exposé of corrupt Ghanaian judges by the internationally acclaimed undercover Ghanaian journalist, Anas Aremeyaw Anas in 2015. An apparently frustrated respondent bemoaned the situation thus, "What is revealing from the Supreme Court rulings in respect of the presidential election petitions, in particular the 2020

presidential election petition, is the fact that, Ghanaian electorates no longer decide who they want as their leaders. For, Justices of the Supreme Court, other lower courts and Chairpersons of the Electoral Commission do as they have clandestinely taken over the role”.

It is worth noting at this point that, 85 percent of respondents who have absolute confidence in judicial electoral dispute resolution processes, still think the acceptance of the Supreme Court rulings in the two landmark presidential election petitions by Ghanaians, has to do with the peace-loving nature of the people. It is not based on the legal accuracy and uprightness of those decisions. However, all three categories of respondents as to whether the courts were effective electoral dispute resolution channels or not, did hold the views that judges in the discharge of their judicial duties did not adequately uphold the elements of transparency, impartiality and justice. This situation contradicts Hasen’s (2020) observation when he says that any conflict resolution channel that lacks the components of transparency, impartiality and the rule of law cannot be counted among effective systems.

Third, on the question that solicited views on factors that inform decisions of judges in electoral dispute cases, only 40 respondents representing 33.3 percent of the sampled population participated, while the remaining 66.7 percent declined since for them, it was more of a legal question where only those with legal knowledge could answer. Of those who declined to answer the question, 20 respondents were females, 31 were youth and 29 were men. The 40 respondents who proffered answers said law and legal principles, principles of justice and rule of law, national security objectives, legal ideology, deepening of democratic credentials, and political exigencies are the main factors that inform judicial decisions. These views have coincidentally fallen in place with the assertions of Dahl & Clegg (2011), Dworkin (1985), Ellickson, (1994) and Hasen (2016) in that regard.

In summation, it is the view of the respondents that in order to avoid the making of biased decisions by judges, there is the need for the redefinition and demarcation of the discretionary powers of justices of the Superior Courts of Judicature. Some respondents also believe that domestic courts will sit up and render impartial judgements, if aggrieved parties are encouraged and empowered by the system to seek redress in the Human Rights Court of the African Union or even the International Court of Justice when they are dissatisfied with rulings of the Supreme Court of Ghana.

Question 5: As a nation, how do we prevent the cycling occurrences of electoral disputes, as well as, strength our electoral system?

In response to the set of questions under question 5, the varied suggestions included foremost, that the independence and neutrality of the Electoral Commission as an electoral body, as well as, Commissioners and election officials of the EC, should be kept nonnegotiablely intact. Second, a professional or constitutional body other than the President of the Republic (a political figure) should be mandated with the appointment of EC Commission members, a departure from what exists currently. To that end, Articles 43 and 70 Clause 2 of the 1992 Ghana Constitution, warrant amendment. Third, there is an urgent need for the stoppage of the recruitment of party thugs by political parties and other stakeholders, to do their bidding using violent means. Fourth, other non-judicial conflict resolution mechanisms in Ghana that are engaged in electoral dispute management such as the Peace Council and the National House of Chiefs, must be clothed with more constitutional powers to resolve cases of that nature; before a resort to the courts as the final adjudicative body is made. Fifth, a system must be created that ensures that the EC operates neutrally and independently of any state interference or manipulation by political figures, and in addition, the EC and other stakeholders must transparently roll out electoral processes. Lastly, electoral laws that seek to disfranchise people either deliberately or unknowingly must be eschewed. A case in point is

the endorsement of the EC's decision to prevent citizens from registering for voter cards with their birth certificates by the Supreme Court, prior to the 2020 general election. The seemingly absurd case law rather affirmed that potential voters may register with their Ghanaian Passports or the National Identity Card, ironically, documents that are borne out of the birth certificate. There has been a clarion call by Ghanaians for the review of this illogical case law by the Supreme Court, as has been advocated for by the likes of Barnett (2004) and Fallon (2008) at the international platform in respect of the consequences of controversial and biasedly skewed electoral laws.

5. Conclusions/Implications/Recommendations

Ghana has so far witnessed eight (8) electoral cycles in terms of general elections since it adopted constitutional governance in 1992. In almost all these elections, electoral disputes of varied dimensions have erupted, occasionally including violent conflicts. It is needful to recount that; these disputes are mainly grounded on election malpractices and irregularities, alleged vote-buying, misuse of the power of incumbency, rigging, and mistrust on the side of election officials and for that matter the Electoral Commission, *inter alia*. In two of these disputes (2012 and 2020 presidential election disputes), the fledgling Ghanaian democracy had come close to the brink of destabilization, and it only took the Supreme Court of Ghana to restore sanity to the system. The decisions of the highest courts of the land on both occasions (2013 and 2021), though did not satisfy the wishes of members of a heavily polarized and divided political space. Indeed, thanks to the citizens who out of their peaceful nature accepted the verdicts for 'life to go on'.

Many lessons have been learnt from these outcomes, which this paper argues will go a long way to guiding the nation and its institutions (in particular the EC) in the conduction of future elections. This caution is necessary as we approach the 2024 general elections where tensions and stakes are already high. Equally, mistakes of the judiciary and the EC in the immediate past narrative as pointed out in the survey are to guide the revered institutions in reediness for future elections and electoral dispute engagements. Indeed, recommendations of the study are worthy of implementation if this country has to avoid the path of self-destruction, as painfully experienced in the past by many other African countries. As the star of African politics and democracy, Ghana need must shine in the African horizon. Finally, apart from its scholarly appeal as it adds to existing literature in the subject area, this study also has global essence in as far as it sufficiently outlines ways that will enhance electoral dispute resolution techniques across the globe.

Recommendations

The paper has the following suggestions:

- (a) Judges should be seen to be dispensing justice fairly and impartially when resolving electoral disputes, within the remits of the law, their code of conduct, and without political influence and material inducement;
- (b) A ceiling must be put on the extend of discretionary powers given judges so as to avoid abuse, as was clearly the cases of the 2012 and 2020 presidential petition hearings;
- (c) The improvement of electoral processes will circumvent the numerous electoral disputes 'on our hands', globally--- through the conceptualization of elections within the context of broader political engagement and the adequate provision of logistics and financial resources;
- (d) As observed by Utas (2012b), the establishment of appropriate internal electoral dispute resolution mechanisms and the effective implementation of 'well thought

through' conflict preventive programs and policies other than a resort to *ad hoc* measures at the spell of the moment, are key components in the area of electoral dispute resolution;

- (e) The effective monitoring of elections and unblemished reportage on happenings on the ground of elections by both internal and external observer bodies during elections, will reduce electoral irregularities, as well as, prevent rigging of elections by incumbent governments and dominant political parties;
- (f) The deployment and use of professionally trained security forces and election officials who remain impartial and committed to the course of their duties, will significantly curb electoral disputes;
- (g) The role of a robust civil society, an independent media, and an impartial judiciary in the areas of electoral dispute resolution and prevention, can never be downplayed;
- (h) Electoral processes that include pre-voting, voting and post-voting activities as put by Diamond (2015), must come with transparency and reliability since the presence of such elements go to deepen democratic credentials and prevent election-related disputes;
- (i) Last but not the least, the use of modern technological gadgets during electoral processes and the effective and prompt tackling of underlying structural causes of electoral disputes, remain key components with regard to conflict prevention (Dahl & Clegg 2011).

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