
Ghana's 2008 Elections, the Constitution and the Unexpected: Lessons for the Future

Kofi Quashigah

Introduction

The 2008 elections took Ghana to the precipice and back. Ghana was held hostage over the results. The two main political parties, the New Patriotic Party (NPP) and the National Democratic Party (NDC), deliberately manipulated the electoral process and the legislative system to hopefully achieve desired ends. As argued by the Danquah Institute, 'in part this was the result of a deliberate strategy pursued by some parties over several months prior to the elections to cast doubt about the reliability of the results. In part it is based on credible charges against both parties of vote tampering and manipulation of results' (Danquah Institute 2010). In general so much money is spent on Ghana's electioneering campaign and related activities that the stakes become extremely high and loss becomes devastating. Consequently everything possible is done to win an election, even without regard to its repercussions for the whole democratic process or for the integrity and stability of the nation as a whole.

The 2008 elections were very keenly contested and stretched the electoral commission, the candidates and the electorate to the limit. The tension was felt even at the stage of second registration of voters; the electoral commission was overstretched and it became very clear that many potential voters were disenfranchised because they could not be registered before the close of the registration exercise. This was compounded by allegations of a bloated voters' register. The election itself was characterised by accusations and counter-accusations of intimidation of polling station agents, allegations of double voting and inflation of voting figures.

The timing of the election itself, the need for the organisation of the presidential re-run and the time required for a handover of government with its attendant complications of co-ordination of the handover process all created additional hiccups that damaged the 2008 electoral process.

On the other hand, the 2008 elections exposed a number of legal weaknesses inherent in both our constitutional provisions on elections and the ordinary legislation. The issues of concern are:

- Timing of elections
- The handover/transition process
- Lack of smooth voter registration process
- Disputes over counted votes
- Possibility of vacuum in the presidency due to delayed resolution of election disputes.

This chapter examines the possible legal response to these concerns. Could the legal position as it now exists have contributed to the situation, and how would a reform of the law address the matter? We intend to highlight weaknesses in the Constitution and the law, and suggest solutions.

Implication of Aspects of the 1992 Constitution Provisions on Elections

The 1992 Constitution of Ghana commits the country to democratic governance springing from the sovereign will of the people that is nurtured by the principle of universal adult suffrage.¹ Pluralism is the bedrock of the electoral system guaranteed by the Constitution. Article 3 (1) prohibits parliament from enacting a law to establish a one-party state and Article 3 (2) makes it unlawful for any person or group of persons to suppress or seek to suppress the lawful political activity of any other person or class of persons. It is to further guarantee the plural electoral process that the Constitution devotes a whole chapter (Chapter Seven) to the representation of the people. This chapter determines who qualifies to vote, the composition and functions of the Electoral Commission, and the process of election. Further, Article 63 imposes constitutional limits on the period during which presidential elections could be held (discussed further below). This constitutional mandate creates an inherent constraint on the electoral process with respect to the timing of elections and the time for a smooth handover to the incoming administration.

The Timing of Elections

The period between the declaration of the election results and the handing over of administrative authority to an incoming one has often posed a problem because of the short period in between the two events. By Article 63 (2) of the Constitution, a presidential election, where there is a President in office, shall not be held earlier than four months or later than one month before his term of

office expires. Constitutionally therefore, since in 1993 the President was ushered into office on 7 January just as was the case in 2001 and 2009, the Presidential elections could not have been conducted before 7 September or after 7 December of those years. We have decided consistently to conduct Presidential elections in the month of December thus leaving barely four weeks between an election day and the handover date of 7 January. The matter is further complicated by the provision in Article 63 (3) which provides that to be elected as President the contestant must obtain more than fifty per cent of the total number of valid votes cast at an election. In the event of failure to secure that number, there shall be a run-off, within twenty-one days after the previous election (Article 63 (4)), between the two candidates who obtained the highest number of votes at the previous election (Article 63 (5)). This was the scenario in the 2000 and 2008 Presidential elections. The Electoral Commission and indeed the whole country were caught up in an electoral tension in the rush to keep within the constitutionally prescribed periods. The consequence is that there is barely any sufficient time left for a handover of political and administrative authority.

The inability of ex-President Rawlings to complete the nomination and confirmation of his ministers at the commencement of his second term of office resulted in the Supreme Court decision in the case of *J.H. Mensah v. Attorney-General* (1996-97 SCGLR 320). The facts of the case were that upon his re-election as President and assumption of the second term of office on 7 January 1997, the President announced the retention of a number of his previous ministers and also that since they had already been approved by the previous Parliament there was no need for them to go through a new process of Parliamentary approval. The Supreme Court held that prior approval is a constitutional mandate that must be respected. In his contribution to the judgment in the case of *J.H. Mensah v. Attorney-General*, Justice Hayfron-Benjamin opined that:

...such is the nature of our 1992 Constitution that every President and every Parliament are assigned definitive terms of office and no more. There is no provision in the Constitution for an interregnum or 'caretaker government.' Consequently in order to prevent a failure of government, reasonable time must be allowed after the inauguration of the President and Parliament to enable the new institutions to be set in place and ensure smooth administration to avoid absurdity and unconstitutional action. Thus speaking for myself, I would incline to the view that not until the expiry of a reasonable time after a general and presidential election, ministers and deputy ministers may hold over their respective offices (ibid. per Hayfron-Benjamin JSC p. 35).

The fact that even a self-succeeding President was not able to quickly put together the Ministers for the new administration should have provided an insight into the inconvenience of the dates we have gradually settled with as our election dates.

Article 63 per se is not a problem if the elections are organised in September, for instance. There would be enough time to organize a run-off within twenty-one days if necessary and still leave enough time to conduct a smooth transfer of administrative authority of state. The problem is therefore not a legal one but self-inflicted.

The above proposition is possible but the difficulty with it is that there is the generally accepted position that it is preferable to have both the parliamentary and presidential elections conducted on the same day. It is the view that such an approach will save costs and also eliminate the influence of the outcome of one election on the other. Although constitutionally the presidential elections could be held four months to the date of expiration of the term of office of the incumbent president, the Constitution requires parliamentary elections to be organised within a period of thirty days before the end of the term of the incumbent Parliament as is prescribed by Article 112 (4).

The Constitution Review Commission's recommendation on this problem is intended to provide a solution. The Constitution Review Commission recommends and the White Paper accepts that Articles 112 (4) on the timing of parliamentary elections and Article 63 (2)(a) on the timing of presidential elections be amended to ensure that both elections are held within 60 days of the installation of a new government.

Voter Registration – Right to Be Registered

It is a constitutional right of every citizen to vote. That entitles every qualified Ghanaian citizen to be registered as a voter for the purpose of public elections (Article 42). The Electoral Commission therefore has the constitutional duty to facilitate registration by all qualified citizens who want to be registered. This is what the Electoral Commission sought to do when it re-opened the voter register to make it possible for those who though qualified were not captured in the register of voters, particularly those who turned eighteen after the last registration exercise. The re-opening of the voter register exposed the inability of the electoral commission to handle the backlog of unregistered potential voters. At the end of the stipulated period a large number of qualified voters remained unregistered and therefore effectively barred from participating in the electoral process. This of course is unconstitutional and goes contrary to the decision in the case of *Tehn-Addy v. Electoral Commission* (1996-97 SCGLR 589). In the said case the plaintiff was a 57-year old Ghanaian citizen who sought to invoke the jurisdiction of the Supreme Court to compel the Electoral Commission to register him as a voter. According to the plaintiff he was out of the country when the Electoral Commission embarked on a compilation of a register of voters in October 1995. Upon his return to the country in November 1995, he wrote to the Electoral Commission applying for registration and a voter's card. In May 1996, the Electoral Commission announced a re-opening of the register of voters from 1-9 June 1996. The announcement

indicated that only citizens who had attained the age of eighteen since the beginning of the current registration exercise and those who were above eighteen years but could give tangible reasons for their inability to register in October 1995 would be allowed to register. The plaintiff claimed that when he presented himself for registration as announced, the Electoral Commission failed or refused to show up at the designated place to register him. In response, the Electoral Commission explained that it was compelled to abort the planned re-registration exercise because of an injunction from the High Court issued as a consequence of an action pending before the High Court initiated by two political parties.

The Supreme Court upheld the right to vote as a constitutional right following from Article 42 and that 'As a constitutional right therefore, no qualified citizen can be denied of it, since the Constitution is the supreme law of the land' (per Acquah JSC p. 594). The Supreme Court took particular note of the far-reaching consequences that attach to non-registration, particularly as provided by Article 94 (1)(a) which disqualifies any person not registered as a voter from qualifying as a member of parliament. Furthermore, disqualification as a member of parliament precludes one from holding office as a minister of state (Article 78 (1)), a member of the Electoral Commission (Article 44 (1)), as President or Vice-President (Article 62 (c)), as member of the Public Services Commission (Article 194 (3)(a), or as a member of the National Commission for Civic Education (Article 232 (3)).

The right to be registered as a voter is therefore not just a subsidiary to the right to vote. It is a substantive right in itself and the Electoral Commission breaches the Constitution anytime citizens are frustrated in their efforts to vote due to the often exhibited lack of capacity of the Electoral Commission to register all qualified voters within the brief registration period usually scheduled. The frustration of prospective citizens to vote also gives room for allegations that the Electoral Commission intends to favour the political party that is assumed to be lacking support in the particular area affected by the registration problem.² These accusations derogate from the integrity of the Electoral Commission and prepare the ground for orchestrated electoral disputes.

Biometric Registration

The 2008 Ghana elections called for a re-consideration of the manual registration and voting systems and gave support to the call for biometric voter registration and electronic voting systems to become the acceptable processes. The events in Kenya³ and Cote d'Ivoire⁴ related to disputes over the authenticity of the votes cast make the search for more credible vote ascertainment system even more urgent. Whatever the amount of money and time is spent to guarantee a credible electoral system can be justified because it is when our democratic enterprise is guaranteed that even the economy can grow to produce the wealth needed for the betterment and welfare of the people.

Going by the recurring inability of the Electoral Commission to efficiently register all qualified voters within the declared registration period it is questionable whether we should continue the strict adherence of the Electoral Commission to paragraphs 7 (1) and 10 (1) of the Registration of Voters' Public Elections (Registration Regulations) 1995, CI.12. This Constitutional Instrument requires that the Electoral Commission shall specify by notice in the Gazette the period during which the registration of voters shall take place and that the person entitled to be registered as a voter should apply for registration during the period specified. That the registration exercise should be completed within a reasonable period prior to the election time is without doubt very important. But if the right to be registered as a voter is that important as a constitutional right, and if our experience over the years has clearly shown that the periodic registration process has rather led to the disenfranchisement of large numbers of Ghanaians, then there is so much to be said for the review of paragraphs 7 (1) and 10 (1) of the CI.12 to make the registration process a continuous exercise. The continuous registration process is not impossible; the National Health Insurance Scheme (NHIS) registration is almost continuous and nothing should make it impossible to adopt a continuous registration process for the voter registration exercise. Indeed paragraph 26 (1) of CI.12 requires the Electoral Commission to revise the register annually.

A smooth voter registration exercise will be the prelude to a smooth electoral process because it is the misgivings and tensions that are started in the registration process that eventually seep into and pollute the whole electoral process. The confusion and recriminations that follow upon the heels of elections are not the best for the strengthening of our democratic enterprise.

E-voting

The tendency of the two major political parties, the National Democratic Congress (NDC) and the New Patriotic Party (NPP), to dispute election results is becoming established. The consequences of the refusal of a losing party to accept the results have been played out with dire consequences in Kenya and Cote d'Ivoire as well as a number of other African countries. Allegations of double voting and inflation of voting figures are regular renditions that follow our elections (Oquaye 2004 and NPP 1993). The potential of these events to degenerate into conflict and even physical violence is high. The allegations relating to the presidential elections run-off between President Atta-Mills and Nana Akufo-Addo, the presidential candidate for the New Patriotic Party, were such as could have plunged the country into turmoil. It has become very obvious that so long as we continue with the manual ballot system, the problem of allegations of double voting and inflation of figures will continue to damage our electoral process.

Regulation 18 of the Public Elections Regulation, 1996 CI.15 prescribes the equipment necessary for the polling exercise to include ballot boxes and ballot

papers. Other materials for voting shall include instruments for perforating or stamping the ballot papers with the official mark; instruments for making the means of identification of the voter; a copy of the divisional register, the transferred voters list; the proxy voters list; the election officers list and the absentee voter list relevant to a polling station. This provision presupposes the utilisation of a manual voting system. The problems inherent in a manual system, coupled with the distrust and political tension that it generates, necessitate a review of the electoral process. The opportunity now exists for a shift to an electronic voting system. The National Identification biometric registration process provides an example for a move to an electronic voter registration and voting system.

Examples of the successful use of e-voting in India are available. Some have doubted the security of the e-voting system but if e-banking and other e-processes related to financial transactions have been deemed feasible then e-voting should be possible. In a situation where the major political parties have made it their stock-in-trade to dispute all election results, the electoral process cannot for long be based on a manual system.

Transition from One Administration to Another

The transfer of the administrative power of state from a defeated political party in government to a victorious party has been confused and acrimonious, particularly in 2000/2001 and 2008/2009 when the country experienced transitions of the type mentioned above. As stated above, this has been exacerbated by the incessant delay in the conduct of the Presidential elections. In 2001, there were six days for the transfer process while in 2009 the process had to be completed in only four days (Presidential (Transition) Bill 2010).

The absence of a clearly specified structure for the transfer of administrative authority is quite obvious, and the confusion that the whole exercise carries is pestilential. In well tested circumstances, where the working of the democratic system is entrenched and respected, the transition process should pose no problems. In the USA, for example, the transition process is regulated by the Presidential Transition Act 1963 which states its purpose in Section 2 as:

‘to promote the orderly transfer of the executive power in connection with the expiration of the term of office of a President and the inauguration of a new President.’

It further recites in that same Section 2 that:

the national interest requires that such transitions in the office of President be accomplished so as to assure continuity in the faithful execution of the laws and in the conduct of the affairs of the Federal Government ...

A smooth transition from one administration to the other is a legitimate expectation of the generality of the citizenry from the political players who are mere trustees.

In Ghana the fact of limited time coupled with other human factors render the whole exercise chaotic and vitriolic. It is to change this unpleasant trend that the *Presidential (Transition) Act, 2012 Act 845* has been formulated. The Bill recounts in its Memorandum a catalogue of problems that bedevilled previous transitions as including:

- a) the shortness of the periods between the declaration of the results and the commencement of the transfer process in the two cases did not allow the losing party sufficient time to properly re-orientate itself for the transfer;
- b) there seems to have been a lack of will on the part of both the incoming and outgoing officials on the teams to continue to work together beyond the handover date of 7 January in both 2001 and 2009;
- c) the euphoria of victory and the disappointment of losing brought about some form of discord in the work of the teams and conflicting postures introduced irritation on both sides;
- d) the ill-will developed during the acrimonious political campaign period unfortunately prevailed in the work of the teams and denied them much needed co-operation and good-will;
- e) the absence of established procedures resulted in the use of discretion that was sometimes abused by the teams;
- f) an intermediary or third party was not in place to help resolve differences that surfaced and the resultant stalemate;
- g) deep-seated hostility between the two parties seemed to have influenced the process instead of factors that favoured the national interest (*Presidential (Transition) Bill 2009*).

This chronicle of frustrations and disaffection with our transition processes actually represents a lack of the political will to properly manage the democratic process. Nevertheless, it is believed that the putting in place of the proper legal structure may refine the process to a large extent. Hence, the *Presidential (Transition) Act 2010, Act 845* which was initiated by four political parties with representation in Parliament, that is, NDC, NPP, PNC and CPP (*Presidential (Transition) Bill 2010*).

The *Presidential (Transition) Act* provides for a Transition Team that shall be constituted within twenty-four hours after the declaration of the results of the presidential election. Where an incumbent President is re-elected for a second term the President shall designate the members of the Transition Team (*Presidential (Transition) Act 2012, Act 845*, Section 1(3)). Where however a person other than the incumbent is elected Section 1(1) of the Act mandates the incumbent President to appoint a team from certain specified office holders mentioned in Section 1(1) (a) while the President-elect is also at liberty to appoint an equal number of persons as the incumbent might have appointed (*ibid.* Section 1(1.b)). The Act further requires that the Head of the Civil Service, the Head of the Local

Government Service, the Secretary to the Cabinet and the National Security Co-ordinator shall be members of the team (*ibid.*) while the incumbent President and the President-elect will serve as co-chairpersons but with the proviso that each could delegate that function (*ibid.* Section 1(2)).

Taking into account the nature of previous transitions and the vitriolic approach of chasing out outgoing officials from official residences and the seizure of cars, the Act provides for how such matters should be handled. Hopefully this Act will introduce some civility and decorum into our transition exercises.

Possibility of a Vacuum in the Office of President

Another potential for a constitutional hiatus is the spectre of a vacuum in the office of the President on the eve of 7 January, when power must be handed over to a new President, as a result of unresolved challenges to the election of the President by the Supreme Court. According to the Constitution a person elected as President holds office for a term of four years beginning from the date on which he is sworn in as President (Article 66 (1)). It has become the practice to swear in the President-elect on 7 January following an election. The implication therefore is that the term of office automatically expires precisely four years thereafter at midnight on 6 January.

From the country's brief experience under the 1992 Constitution, and taking from the behaviour and disposition of our major political parties and their leaders, it is not inconceivable for things to be orchestrated to create a political crisis through the manipulation of the electoral process particularly from the judicial process with the consequence of a vacuum at the set date of 7 January.

Various scenarios can play out to frustrate a President-elect from assuming office on 7 January, as has become the tradition. The first is by the incidence of death of the President-elect just before 7 January. The second is by a legal challenge to restrain the Electoral Commission from declaring the results of the presidential election; and the third is a legal challenge of the validity of the election of the President. A fourth, though not a legal challenge, is an outright rejection of the declared results by the losing candidate(s) and the refusal to accept the winning candidate as elected. This fourth circumstance may create political tension in the country but cannot frustrate the constitutional process by which the President-elect assumes office on 7 January in accordance with Article 66. The possible steps to be taken in the scenario of the President-elect dying before his investiture on 7 January have not been provided for in the Constitution. Nevertheless, it is not beyond conjecture to project by analogy that just as how by Article 60 (4) of the Constitution ('a candidate shall be deemed to be duly elected as Vice-President if the candidate who designated him as candidate for election to the office of Vice-President has been duly elected...') it follows that the death of the President-elect will not derogate from the fact that the Vice-President has also become 'Vice-President-elect'.

In that circumstance, and again by analogy, going by Article 60 (6) which provides that 'whenever the President dies, resigns or is removed from office, the Vice-President shall assume office as the President with effect from the date of the death, resignation or removal of the President', it should be possible to argue that the Vice-President-elect shall step into the shoes of the President-elect and be sworn in as President. Thereafter, a new Vice-President shall be selected according to the process provided for in Article 60 (10) of the Constitution. The legal position as described is similar to that of the USA which has been described as follows: that 'if the President-elect dies before noon of 20 January, the Twentieth Amendment states the Vice-President becomes President.'⁵ History recounts a near occurrence of this on 15 February 1933 when President-elect Franklin D. Roosevelt was fired at by one Giesepe Zangara who missed him.

The other two possible situations were what the NDC and the NPP respectively had contrived to orchestrate in 2000 and 2008. In 2001 when the NDC party bigwigs sensed their obvious defeat after a large portion of the results had been declared decided to reject the totality of the results. The situation was saved by the then Presidential candidate, Prof. Atta-Mills, who came out to openly congratulate the winning candidate, Mr. John Agyekum Kuffuor, and thereby frustrated the designs of the NDC leadership. In 2008 when the NPP sensed defeat in the run-off of the Presidential elections, the Party proceeded to court seeking an injunction to restrain the Electoral Commission from releasing the final results. The court process was however aborted when the NPP withdrew the matter from court.

In the first case, the Electoral Commission could nonetheless have declared the results and the winner could still have been sworn into office on 7 January even without the blessing of the NDC. On the other hand if the 2008 scenario had continued, resulting in a possible judicial restraint on the Electoral Commissioner to release the final results and therefore incapacitated from declaring one of the candidates elected before the due date of 7 January, there would have been a constitutional uncertainty. There would have been no president-elect on that date to be invested with the authority of office. In consequence there would have been no president in office if Article 66 (1) is strictly interpreted. This was a prospect that troubled many during the events sequel to the presidential elections run-off in 2008.

There was the conjecture that, should that happen, the Speaker of Parliament should be able to step in to act as President according to Article 60 (11) which provides that:

where the President and the Vice-President are both unable to perform the functions of the President, the Speaker of Parliament shall perform those functions until the President or the Vice-President is able to perform those functions or a new President assumes office as the case may be.

This is a possible solution taking into account the fact that it has become the tradition for the new Parliament to become constituted before the President-elect is sworn into office. The importance of the Speaker and Parliament in the transition process has been captured in the *Presidential (Transition) Act* with the suggested provision that within forty eight hours after the declaration of the results of the parliamentary election and the general election, the Clerk of Parliament shall summon a meeting of the elected members of Parliament to elect the Speaker (Presidential (Transition) Act, Section 11). The Speaker and Parliament would then have been properly constituted and ready for the swearing-in of the President that should take place on 7 January following the presidential election (ibid. Section 12). Should the new Parliament itself not be in place before the lacuna in the political structure occurs then the doctrine of necessity should be deployed to save the political situation.

The Doctrine of Necessity

The doctrine of necessity which is implied in law operates to legitimize that which is otherwise illegal or unconstitutional. The justification for any such otherwise unconstitutional act would be for the purpose of the protection of the constitution itself. Examples of circumstances in which actions that were otherwise unconstitutional but held to be permitted abound; for example, in the 1779 case of *R. v. Stratton and others* (21 St. Tr 1046) the accused were charged with arresting and imprisoning and deposing Lord Pigot, Commander-in-Chief of the Forces in Fort St. George and President and Governor of the settlement of Madras in the East Indies. In response to these charges the defendants claimed to have acted under necessity in order to preserve the constitution. Lord Mansfield in his direction to the jury exhorted them that:

But the only question for you to consider is that whether there was that necessity for the preservation of society and the inhabitants of the place as authorizes private men... to take possession of the government, to be sure it was necessary to do it immediately. If you can find that there was that imminent necessity for the preservation of the whole, you will acquit the defendants.

For the doctrine of necessity to be applicable, there must be no other remedy available to avoid the impending consequences of the situation; the necessity, according to de Smith, must be proportionate to the evil to be averted (de Smith 1973). In this respect, Lord Mansfield was reported as follows:

... to amount to a justification, there must appear imminent danger to the government and individuals; the mischief must be extreme, and such as would not admit a possibility of waiting for a legal remedy. That the safety of the government must well warrant the experiment... The necessity will not justify going further than necessity obliges: for though compulsion takes away the criminality of the acts, which would otherwise be treason, yet it will not justify a man in acting further than such necessity obliges him or continuing to act after the compulsion is removed.⁶

If therefore for any reason it should become impossible for the electoral process to yield a president-elect by 7 January, and if it should also be impossible for the Speaker of Parliament to step in to fill the vacuum thereby created, it should be possible for the Chief Justice to take interim control of the executive arm of government until a substantive president is subsequently sworn into office.

Indeed the doctrine of necessity would permit any other person with the ability to initiate remedial action to step in to face the threat that confronts the constitution and save the nation from slipping into total political chaos. In the old Nigerian case of *Lakanmi v. Attorney-General, Western State* (1971 1 UILR 201) the Supreme Court of Nigeria interpreted the assumption of office of the military following the disturbances of 1966 as understandably based on the doctrine of necessity.⁷ Similarly in the Granada case of *Mitchell v. DPP* (1986 LRC (Const) 35) a completely new body of persons that replaced a previous government was held legally capable of administering the country on the doctrine of necessity. Thus a commitment to constitutional rule can always be achieved even in the face of unforeseen circumstances that may threaten to create a lacuna in the political system.

The idea of the outgoing President continuing in office until a new president is found is a possibility under the circumstances of necessity although it might not be politically prudent in an atmosphere of contestation for political power possibly between the incumbent President and his challenger from another political party. To reduce the chance of this happening, the Electoral Commission could as a matter of policy organise the Presidential and the Parliamentary elections, if it so wishes by or just after 7 September, that is exactly or a little into the period of four months. This should provide enough time for any incidental hiccups to be addressed before the handover date of 7 January.

Importance of a Vibrant and Independent Judiciary

So long as there are elections we should anticipate electoral disputes in one form or the other. It is for that reason that we have the superior courts that have been clothed with specific jurisdiction to deal with election disputes; the High Court has original and appellate jurisdiction in respect of electoral offences, while at the same time having original jurisdiction to deal with election disputes in parliamentary elections (1992 Constitution, Article 99 (1)); the Court of Appeal possesses final appellate jurisdiction in parliamentary election disputes⁸ with the Supreme Court assigned original jurisdiction in all election disputes regarding presidential elections (1992 Constitution, Article 64 (1)).

When the disputing parties fail to agree the courts become the last bastion for peace; it is when there is loss of confidence in the judiciary that violence becomes the ultimate result of election disputes. Cote d' Ivoire and Kenya are examples of the consequences of failure of confidence in the judiciary. The Courts in Ghana

have so far held sway in settling judicial disputes. The Supreme Court decision in the petition of the New Patriotic Party against the 2012 election of President John Mahama is the ultimate example of the degree of public confidence in the Ghanaian judiciary. This underscores the belief that a strong judiciary could make the difference even in cases where electoral disputes threaten the stability of the nation.

Conclusion

The success of a democratic system is more a reflection of principally the determination of political attitude rather than a matter of law or the constitution per se. Nevertheless the constitutional provisions could complement political attitude in ensuring a smoother operation of the electoral and transition processes. The experience in Ghana confirms the belief in the need for a complement between the political attitude and the constitutional and statutory aspects. The electoral process in Ghana could benefit from some conscious re-engineering of the timetable for elections as well as a statutorily regulated transitional process as has been the case in the American system.

Notes

1. See the preamble to the 1992 Constitution.
2. The incidence of missing names and mislocation of names from the register was reported even during the 1992 Elections. (See Larvie & Afriyie-Badu, 1996).
3. Electoral violence based on tribal sentiments led to the death of hundreds of ordinary citizens.
4. Disputed election results threw the country into chaos necessitating the forceful removal of the incumbent from office to pave way for the assumed winner of the elections.
5. Based on the Twentieth Amendment of the US Constitution.
6. For another example of the application of the Doctrine of Necessity see the case Mitchell v. DPP which case relates to the events in Grenada in which Mr. Bishop was removed as Head of State.
7. The military itself thought otherwise and preferred to label it a military coup d'état that abrogated the previous legal system.
8. *In re Parliamentary Election for Wulensi Constituency; Zakaria v. Nyimakan* [2003-2004] 1 SCGLR 1.

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- Mitchell v. DPP* [1986] LRC (Const) 35
- Tehn-Addy v. Electoral Commission* [1996-97] SCGLR 589

Constitutions and Legislation

- 1992 Republican Constitution of Ghana
- US Constitution
- Presidential (Transition) Bill, 2009
- Presidential (Transition) Bill 2010
- Presidential (Transition) Act 2012, Act 845