

A REVIEW OF ARTICLE 55 OF THE 1992 CONSTITUTION OF GHANA

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1. Introduction

President Nana Addo Dankwa Akufo-Addo in his February 8, 2018 Message on the State of the Nation to Parliament announced that Article 55 - an entrenched provision of the 1992 Constitution - should be amended in order to allow political parties to participate in decentralized local governance. This will enable Metropolitan, Municipal, and District Chief Executives (MMDCEs) and membership of MMDAs as well as sub-district structures to be elected on multiparty basis. Currently, political parties are constitutionally debarred from participating in district level elections (DLEs). The amendment of Article 55 has been limited to the election of MMDCEs, membership of MMDAs and sub-district structures such as Unit Committees which is only covered in Clause 3 of Article 55. However, Article 55 has 17 clauses and covers political parties in Ghana.

Given the narrow or limited discussion of the Article, this review seeks to examine the 17 clauses of Article 55 with the aim of contributing to the debate on political parties in Ghana even though it is not all the 17 clauses of the Article that have been slated for amendment.

The paper is divided into three parts. First, there is a brief discussion of the architecture of electoral legislation in Ghana. Second, there is an analysis of the clauses of Article 55. Third, the paper highlights some of the implications and lessons learnt.

2. The architecture of electoral legislation in Ghana

The architecture of electoral legislation in Ghana is quite extensive (Box 1). It is underpinned by the 1992 Constitution as amended in 1996, which serves as the anchor for the Acts of Parliament, Constitutional Instruments (C.Is.) and Legislative Instruments (L.Is.) (Box 1). These other laws either amplify a provision of Article 55 of the Constitution or other articles by fleshing it out into greater detail or introduce an entirely new element (Afari-Gyan, N.D.).

The constitutional and legal framework is on balance adjudged as generally in line with “international standards and best practices, addressing the majority of areas related to the electoral process” (EU Election Mission 2016: 10). This is notwithstanding “some areas that need to be better enforced and more precisely regulated so as to ensure greater transparency and

legal certainty, rather than being left to the discretion of political parties and the EC, notably with regard to candidate nomination and the funding of political

parties and campaigns” (EU Election Mission 2016: 10).

Furthermore, the political parties lack research and policy departments and public policy education are not central preoccupations of the parties. Their formulation of manifestos and translating them into actionable programmes may be described as ad hoc and tenuous (IDEG 2014).

management of fiscal policies of government, undermines macroeconomic stability, propels inflation and generally destabilizes the economy. These have resulted in the cynical perception of political parties by the majority of Ghanaian populace. The challenge to the political parties therefore is to prove Ghanaians wrong by doing the right thing (for instance, being development-oriented and allowing to be regulated) and not the acceptable thing which has largely characterized politics in most of Sub-Saharan Africa.

The uncontrolled party financing and non-enforcement of regulations have led to monetization of elections and multi-party politics in the country; and, unfortunately, interfere with prudent

Box 1: Electoral Legislation in Ghana

- i) 1992 Constitution as amended by the Constitution of the Republic of Ghana (Amendment) Act, Act 527 of 1996 (Chapter 7);
- ii) Electoral Commission Act (451) 1993;
- iii) Political Parties Law (Act 574) 2000;
- iv) Representation of the People Law (PNDCL 284) 1992;
- v) Presidential Election Law 1992 (PNDCL 285);
- vi) Public and Political Party Office Holders Declaration of Assets and Eligibility Law (PNDCL 280) 1992;
- vii) Citizenship Act (Act 527) 1996 and (Act 591) 2000;
- viii) National Media Commission Act (Act 449) 1993;
- ix) Criminal Code 1960, as amended by the Criminal Code (Amendment) Act, 1998 (No.554);
- x) Representation of the People Parliamentary Constituencies Instrument (C.I.78) 2012;
- xi) Citizenship Regulations (L.I.1690) 2001;
- xii) Supreme Court Rules (C.I.16) 1996; and
- xiii) Public Elections Regulations (C.I. 94), 2016.

3. Analyzing clauses of Article 55

Political parties have attracted negative perceptions from some Ghanaians in the past and currently because of their generally ineffective performance while in government, corruption, excessive politicization and partisanship, violence especially during and after elections, political vigilantism, and lack of regulation. On some occasions the attitude of Ghanaians towards political parties has been ambivalent. For instance, in the report of the National Commission for Democracy, “the generality of the population is not against political parties as an ideal

instrument that may give the fullest expression to the freedom of association, nonetheless several of our fellow citizens are, for good reasons, unhappy about political parties as a mechanism of representation” (Republic of Ghana 1991a: 4).

The negative perception of political parties in Ghana is equally extended to the rest of Africa. Accordingly, the failure of political parties in Africa to achieve genuine democracy in contrast to the practice in Europe and North America is attributable to the “behavior of political leaders and the responses of the citizenry to that behavior. Most African leaders

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However, the last leg of the clause, namely, “sponsor candidates for elections to any public office other than to District Assemblies or lower local government units” contradicts Article 35(6d) of the 1992 Constitution which reads: “The State shall take appropriate measures to ... make democracy a reality by decentralization the administrative and financial machinery of government to the regions and districts and by affording all possible opportunities to the people to participate in decision making at every level in national life and in government”.

3.3 Registration of a Political Party

An organization must register with the Electoral Commission (EC) as a political party before it can operate as such. There is no cap put on the number of political parties that can be formed. This has led to the registration of 26 political parties even though only nine (9) participated in the 2016 elections.

This notwithstanding, certain requirements or conditions must be satisfied before an organization is registered as a political party. These requirements or conditions are intended to ensure that a political party has a national character and not based on ethnic, religious, regional or other sectional divisions (Article 55(4)). These requirements are as follows:

- i) The organization must have at least one founding member who is ordinarily resident or registered as a voter in each of the districts of the country (Article 55(7a);
- ii) The organization must have branches in all the ten regions of Ghana and it must be organised in not less than two-thirds of the districts in each region (Article 55(7b).
- iii) The symbols of the organizations, namely, its name, emblem, motto, colours, etc. – must not have any ethnic, religious, regional or other sectional connotation; nor give the appearance that its activities are limited to only a part of Ghana (Article 55(7c);
- iv) The members of the national executive committee

must be chosen from all the regions of Ghana (Article 55(9)).

- v) To be a founding member or leader or a member of the executive of a political party, a person must be at least 21 years of age and a registered voter qualified as a member of Parliament (MP).

These requirements of having a national character before a party is registered is seen as “highly cumbersome and arguably somewhat restrictive” (EU EOM 2016: 10).

3.4 The practice of intra-party democracy

Article 55(5) stipulates that the “internal organization of a political party shall conform to democratic principles and its actions and purposes shall not contravene or be inconsistent with this Constitution and any other law”. This is an important clause as political parties are expected to practice what they preach. The internal democracy in political parties, also known as intra-party democracy, refers to the level and methods of including party members in the decision making and deliberation within the party structure. Intra-party democracy is usually known to nurture citizens’ political competencies and/or producing more capable representatives which in turn ensures that the party produces better policies and political programmes. Others are skeptical about intra-party democracy as it is argued that too much democratization may hinder parties to keep their electoral promises and also dilute the power of a party’s inner leadership (Scarrow 2005).

Even though intra-party democracy is important, Ghanaian political parties have largely not practiced intra-party democracy leading to either defections or aggrieved candidates standing as independent candidates or outright loss for the party in either the presidential or parliamentary elections as the electorate are convinced to vote “blouse and skirt”, that is, a party winning the presidential election while losing the parliamentary one or vice versa (Debrah 2014; Frempong 2017).

Despite the acknowledgment of the need for

democratic culture insider political parties, it has not been the center of international attention because political parties:

“...have long been commonly regarded in liberal theory as private associations, which should be entitled to compete freely in the electoral marketplace and govern their own internal structures and processes. Any legal regulation by the state, or any outside intervention by international agencies, was regarded in this view as potentially harmful by either distorting or even suppressing pluralist party competition with a country” (Norris 2004).

According to Norris (2004) one of the key issues in intra-party democracy is parties’ nomination processes. In other words, who decides and how which citizens are entitled to run for parliament as a candidate of that specific party. Whether such nomination processes are deemed democratic or not, depends on the degree of centralization, that is to say, how much power is given to regional, district, or local bodies in the process of selection. Furthermore, the scale of participation in the nomination is also considered: The more people that are involved in the selection, the more democratic the procedure is. The scope of decision-making – the number of candidates vying for nomination - is equally important. The nomination process is governed by law only in a few countries. In most legal systems, political parties are entitled to decide themselves upon the most appropriate processes and internal regulations. (Norris 2004.)

3.5 Promoting a level playing field

A level playing field promotes competition, fairness, equity, and trust in the electoral process. Accordingly, Article 55 (11; 12; 13) gives equal opportunities to political parties, presidential and parliamentary candidates to ensure a level playing field. Article 55(11) stipulates that the “State shall provide fair opportunity to all the political parties to present their programmes to the public by ensuring equal

access to state-owned media”. Similarly, Article 55(12) and 55(13) stipulate that “All presidential candidates shall be given the same amount of time and space on the state-owned media to present their programmes to the people” and “every candidate for election to Parliament has the right to conduct his campaign freely and in accordance with law” respectively.

In spite of the provision for equal opportunity to all those contesting elections, there is evidence that the government in power has always abused its incumbency and therefore failed to provide the level playing field to the political parties and candidates which are not in government.

3.6 Regulating political parties

Transparency and accountability are essential elements of good governance. Political parties must therefore be transparent in their activities and accountable to not only its members but also to the state. To achieve this end, every political party is required to do the following:

- i) Observe the constitution and operate in accordance with other laws of the country (Article 55(5, 6, 13 and 14);
- ii) Declare to the public their revenues and assets and the sources of those revenues and assets (Article 55(14a); and
- iii) Publish to the public annually their audited accounts (Article 55(14b).

There are basic provisions in relation to regulation of political party finance and campaign finance in the Political Parties Law (Act 574, 2000). The law obliges parties to declare their assets, expenditures and liabilities within six months of each year, within 21 days prior to elections and within six months after elections, and also prohibits foreigners from funding parties directly or indirectly.

However, the constitutional-legal framework does not contain provisions on campaign finance to ensure a level playing field. There is no campaign

spending limit or limit on financial donations to political parties or candidates. Nor does the law provide for direct public funding of political parties or the election campaign (EU EOM 2016).

Article 55(17) gives Parliament the power to make additional laws to regulate the establishment and functioning of political parties. However, in Article 56, Parliament is forbidden to give to a body or movement the power to impose a common religion or political ideology on the people of Ghana.

The regulation of political parties is however, weak. First, there is no specific legal framework regulating campaigning of political parties. The official campaign period is not defined in the law and presidential candidates start to campaign even before the close of the candidate nomination process. Second, the abuse of state resources and incumbency is a recurring problem in Ghanaian elections and has led to an uneven playing field. The campaign period is not regulated by any specific law and no measures to regulate use of state resources have been introduced. Third, there is no provision in the constitutional legal framework on regulating or monitoring political parties apart from the requirement that they must conform with the Constitution and all laws some of which they have infringed without sanctions being applied. In addition, the Electoral Commission (EC) performs a host of demanding functions under the Electoral Commission Act, Act 451 of 1993 and therefore it is not in a position to monitor the political parties in terms of the constitutional expectations of (a) declaring to the “public their revenues and assets and the sources of those revenues and assets”; and (b) publishing to “the public annually their audited accounts”.²

Conclusion: implications and lessons

As stated earlier, the purpose of this review is to highlight the essential elements of Article 55 as they deal with political parties in Ghana and to suggest an amendment of the entire Article. The President’s decision is to amend Article 55(3) which debar the

participation of political parties from decentralized local governance. If, however, after the amendment of Article 55(3) is done there may be the need to revisit other clauses of the Article for amendment.

Political parties are the creation of the 1992 Constitution and the Political Parties Act, Act 574 of 2000 and they have been assigned specific roles to play for the development of the country. They may therefore be seen as one of the frontline agents of development.

Having developmental political parties is strategic and transformational because political parties have spearheaded development in Western countries and the developmental states of the Asia (Japan, South Korea, Singapore and Malaysia) and the emerging developmental states such as South Africa, Botswana and Mauritius. Political parties and their leaders in these countries made development their strategic vision and prosecute it to the letter in spite of several challenges (Cheeseman 2015). If political parties have led development in other parts of the world, then Ghanaian political parties can perform a similar role if certain reforms (such as being regulated; becoming more developmental and research-oriented) are initiated and implemented.

Unfortunately, however, as a result of the excessive focus on elections, political parties in Ghana, far from serving as vibrant centers of alternative policies, have become powerful election machines. They come to life when there is election which therefore has become their primary pre-occupation. The election centeredness has led to election overload, the dispersal of various elections within the four-year period of elected governments. There are the presidential and parliamentary elections (every four years), parliamentary primaries, presidential candidate primaries, party executive elections at polling stations, constituency and mid-term district level elections. This has resulted in an overriding focus on campaigning and winning elections and has reduced the capacity of the political parties to function as agents of development (IDEG 2014).

have flagrantly disobeyed the proper rules by which the game of party politics is played. In effect, most African leaders have set up their own rules; and a game cannot be better than the rules by which it is played. On the other hand, by and large, the African people have failed to hold their leaders to the observance of the correct rules of the game of party politics” (Republic of Ghana 1991b: 108).

Notwithstanding the negative perception of political parties, the 1992 Constitution has guaranteed their place in Ghana’s democratic governance under Chapter 7 “Representation of the People” (Article 55).

3.1 The right to form or join political parties and participate in its activities

The 1992 Constitution guarantees the right to form political parties (Article 55 (1)). It also guarantees persons of voting age the right and freedom to form or join a political party, which is a matter of free choice as no one can be forced to join a particular political party irrespective of being a member of a particular organization or civil society organization (Article 55(2)). The right to form and join a political party has more or less become fundamental human rights and reinforce Article 21(1e) of the Constitution, which stipulates that “All persons shall have the right to freedom of association, which shall include freedom to form or join trade unions or other associations” (Republic of Ghana 1992).

Article 55(10) gives the citizen of voting age the right to participate in political activity which is intended to influence the composition and policies of government. This clause shows that political parties are to be avenues for participation of citizens and through legitimate means such as advocacy or voting can impact either the composition of government or its policies and programmes. The evidence of citizens influencing the composition and policies of government is patchy and sometimes difficult to determine because of the ineffectiveness of the

political parties to promote the internal democracy. In spite of the freedom to form and join political parties, Article 55(16) stipulates that “A member of an organization or interest group shall not be required to join a particular political party by virtue of his membership of the organization or group”. This reinforces the unconditional nature of one belonging to a political party.

3.2 Functions of political parties

The Constitution does not specifically define political parties.¹ However, their functions of interest articulation and aggregation, capturing governmental power and exerting significant influence on that power, contesting elections and promoting public education have been captured in Article 55(3). Once registered a political party has the right and freedom to do the following:

- i) Participate in shaping the political will of the people;
- ii) Dissemination information on political ideas, social and economic programs of a national character;
- iii) Sponsor candidates for elections to any public office other than to District Assemblies or lower local government units.

Article 55(3) prohibits political parties from participating in decentralized local governance. According to the clause, “Subject to the provisions of this article, a political party is free to participate in shaping the political will of the people, to disseminate information on political ideas, social and economic programs of a national character, and sponsor candidates for elections to any public office other than to District Assemblies or lower local government units”.

¹ Two of the definitions of political parties are appropriate here to inform what they do. Edmund Burke (1770) defines a political party as “a body of men united for promoting by their joint endeavours the national interest upon some particular principle in which they are all agreed”. Similarly, Ware (1996) defines a political party as an “institution that (a) seeks influence in a state, often by attempting to occupy positions in government, and (b) usually consists of more than a single interest in the society and so to some degree attempts to ‘aggregate interest’”.

² Republic of Ghana, Constitution of the Republic of Ghana 1992 Article 55(14).