

**COMPILING A NEW BIOMETRIC VOTER'S REGISTER
AMIDST THE PANDEMIC**

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JUNE, 2020

1. Introduction

Ghana like many other countries has been greatly affected by the ongoing Corona Virus (Covid-19) pandemic which is not only fatal to human lives but also causing global economic recession. Since the nation recorded her first case, the President has taken the initiative of implementing the “whole of Ghana approach” by rallying the leadership of political parties, faith-based organizations, the military, academia, industry and all relevant stakeholders in an effort to deal with this pandemic. To achieve this “whole of Ghana approach” and support the President, we must quickly defuse any issue that is likely to intensify polarization and undermine efforts towards national cohesion, convergence and collaboration to deal with the pandemic.

Such matters must be tackled expeditiously with all the effort, goodwill, and resources at our disposal, and ought to be resolved in a manner that ensures mutual gratification. This requires that we tame all divisive tendencies in this critical election year in order to manage the crisis not only in a reactive form but in a proactive manner which confidently directs us towards national cohesion. One issue that continues to threaten national cohesion and peaceful elections is the controversy over the acquisition of the new Biometric Voter Management System (BVMS)¹ for the December 7 2020 general election. Despite the surge in the number of recorded cases², the Electoral Commission (EC) has remained adamant not to renege on its decision amidst all caution. The EC at its last IPAC meeting held on 27th May officially confirmed that the general registration is scheduled from the last week of June to the last week of July.

This decision by the EC appears to inhibit the President’s effort towards national cohesion and threatens the “whole of Ghana” approach that has been adopted by the President to fight this pandemic. Already, some functionaries of the NDC have insinuated that the President’s decision to lift the lockdown is a ploy to allow the EC to compile the new BVR³. On 26 April, 2020, some members of the largest opposition party, the National Democratic Congress (NDC) besieged the City Escape Hotel where the EC was purportedly holding a national workshop on the new register in defiance of the court injunction. It took the intervention of the police to calm these aggrieved members. Furthermore, the Inter-Party Resistance against the New Voter Register (IPRAN) has threatened to disrupt the general registration exercise if the EC proceed with it⁴.

In line with the ongoing discussion, this paper seeks to provide a detailed analysis of the EC’s decision to acquire a new BVMS during pandemic. We acknowledge that other Civil Society Organisations (CSOs) like IMANI Africa have provided painstaking analysis on the decision to procure new equipment. Therefore, the focus of this paper is on the decision to compile a new BVR during this Covid-19 period.

2. Background

Since the inception of the Fourth Republic, every election has been fraught with conflict between the contending parties over the Voters’ Register. It has become a norm that prior to each general election (both presidential and parliamentary elections), a lot of time, energy and resources are devoted to questioning the state of the Register. These conflicts over the acceptance of the Register have become a defining element of the parties’ trust, mistrust, confidence, or suspicion

¹ This involves the decision to procure new equipment (Biometric Voter Device and Biometric Voters Register Kits) and compile new BVR.

² As at May 15, 2020, the total number of recorded cases in the country is 5,638.

³ <https://www.myjoyonline.com/news/national/easing-lockdown-was-only-to-pave-way-for-compilation-of-new-voters-register-sammy-gyamfi/>

⁴ <https://www.myjoyonline.com/news/politics/inter-party-resistance-against-new-register-threatens-to-disrupt-mass-registration-exercise/>

in the EC and its disposition towards these threats affect whether election results are widely accepted or disputed.

With the general elections barely seven months away, the integrity of the elections and the credibility and acceptance of its outcome seem to hang in the balance due to the unresolved dispute on the need to compile and deploy a new Biometric Voters' Register (BVR) for the December 2020 elections. Whilst the governing NPP and some parties fully support the EC's decision to compile and deploy a new register, the main opposition party, the NDC together with some minority parties and CSOs have expressed their reservations about the decision. The opposing stance taken by these two major parties had intensified the political tension in the country before the outbreak of the pandemic.

Regardless of this impasse, the EC has not relented in its efforts to compile the new Register. Although the EC has currently suspended its planned compilation of a new Register (which was scheduled for 18th April 2020) due to the coronavirus pandemic, it has still served notice of the intent to conduct in June the exercise once the pandemic is brought under control. The Commission's determination to proceed with this decision has been evident in relaying of a new Constitutional Instrument (C.I.) in Parliament on April 1, 2020, to compile a new Voters Register for the 2020 general elections. The NDC, in response, has proceeded to court after a series of demonstrations, meetings, and negotiations proved futile.

The inability of the Eminent Advisory Committee (EAC) appointed by the EC to effectively mediate and resolve the impasse over the Register in a manner that is acceptable to all parties involved is quite worrying. This will be the first election since the changes in the leadership of the EC occurred, and if this conflict is not well managed and becomes politicized, it could further damage the reputation of the EC.

3. Electoral Calendar and Complex Timelines

The EC operates a strict electoral calendar during election years especially where such years coincide with the compilation of new register. With barely seven months to the general elections, this pandemic has presented an unprecedented challenge on the electoral processes and calendar and has the potential to compromise the integrity and acceptance of outcome of the elections. To acquire a new BVMS as the EC seeks to do requires a laborious process which can take a toll on the electoral processes and heighten political tension in the country especially, when there is no consensus among the major stakeholders and such decisions are implemented close to the elections. Due to the herculean nature of the process coupled with rigid statutory dates, these processes are usually started ahead of time to avoid unnecessary pressure on the electoral calendar.

Replacing an entire BVMS begins with the tendering and procurement of all the necessary equipment, then after a pilot test is conducted on the equipment to test the registration kits. The EC then proceeds with an in-depth training for registration supervisors, officers/assistants, data entry clerks, technicians and political parties before it embarks on the mass registration. After the mass registration, there is a period dedicated to adjudication where individuals disqualified during the registration exercise meet with the District Registration Review Committee (DDRC) before the provisional register is released for exhibition. The exhibition is to allow the electorate to verify their details on the register, after which the EC finally cleans the register and releases a certified copy to political parties for the elections.

In 2012, the tendering process was completed in October 2011, a pilot voter registration was carried out over four-day period (25 – 28th February) and the mass registration over a period of forty days (24th March – 4th May, 2012). It is reasonable to assume that the 24-day period between the piloting and the actual registration was used for the training of officials. In essence, the EC needs about 68

days from the pilot registration till the end of the mass registration. This does not include the period for adjudication (14 days), exhibition (14 days)⁵ and the period allotted for cleaning the provisional register before a certified register is released which also takes about 14 days. This suggests that the EC needs a total of at least 110 days from the pilot exercise till a certified register can be released during normal times. In addition, the fact that the contract was awarded on 4th October 2011 and the pilot testing was started on 24th February suggests that, all other things being equal, it took about 143 days for the EC to get the full complements of the registration kits. The rational conclusion here is that, based on the 2012 experience, to replace an entire BVMS requires at least 253 days⁶ (a little over 8 months) with no interruptions.

According to the agreement signed, the contract for the hardware was awarded on 20th February, 2020 (as at then, the tender for the software had not been completed). Per the tender, the selected company (Thales) requested for 84 days to deliver the 8000 BVRs and 150 days to deliver the 80,000 BVDs (although the EC reduced the number of days in the offer to Thales)⁷. Aside this, the EC had estimated to conduct the registration exercise over a forty-three-day period (April 18-May 30). Adding the period for testing, training, adjudication, exhibition, and cleaning of the provisional register will give almost the same number of days as was used in 2012. Therefore, given that the tendering process was completed on 20th February, 253 days after that will lead to 30th October, 2020 for the certified register to be ready. This affirms the November 4 deadline that the EC gave to release the final certified register to the political parties.

Per the CI 72, the EC is required to release a certified copy of the register to the political parties at least 21 days to the elections. However, given that the fulfilment of other statutory requirements for the election depends on the certified register, it is best practice that such a register is made available well ahead of time. For instance, transfer of votes should be done not less than 42 days to nominations and a proxy voter list or special voter list must be generated 30 days before the elections. All these require a certified voters register before they can be done. What is even more significant is the filing of nomination for either presidential or parliamentary elections which must take place between 30-90 days to the elections.

According to the CI 94, *“A candidate for President must be endorsed by at least two registered voters in the area of authority of each District Assembly whilst Parliamentary candidate must be supported by a minimum of 20 registered voters who are resident in the constituency s/he seeks to represent”*. This invariably means that candidates must have the certified register before they can file their nominations and must do so before November 7th. This is particularly important when in 2016, the EC disqualified some political parties for not meeting this criterion. However, due to complexities associated with such managing process, it has been the practice that nominations are filed ahead of this deadline to give ample time to resolve any challenges that may arise before the election. For instance, in 2012, nomination for both Presidential and Parliamentary elections occurred on 17-18th October, 2012 and 29-30th September, 2016 respectively. Therefore, the November 4 deadline of releasing the certified register means that the EC is left with only 3 days to deal with any unforeseen circumstances and as such any major disruption such as the COVID-19 pandemic will greatly affect the electoral calendar.

4. The Impact of COVID 19 on the Registration Process

⁵ In fact, in 2016, the exhibition was done 21 days instead of the usual 14 days:

<https://www.ghanabusinessnews.com/2016/07/14/voters-register-exhibition-exercise-will-open-from-july-18/>

⁶ This includes the 143 days for the manufacturing, shipping and delivering of equipment plus the 110 days for the registration exercise.

⁷ These figures are based on documents read on Good Morning Ghana (March 5, 2020). Retrieved from: <https://web.facebook.com/OfficialGoodMorningGhana/videos/616857712499712>

The risks of compiling the register have been exacerbated by the ongoing COVID-19 pandemic. All over the world, stringent measures such as lockdowns, ban on public gatherings and social distancing protocols have been introduced to fight the pandemic. Non-essential services have been put on hold by countries until the pandemic is over. For instance, about forty-four countries have postponed their national and subnational elections⁸. Ghana is not an exception to these stringent measures above.

Already, some parts of the country have been on lockdown for three weeks, there is still a ban on mass public gatherings, Parliament has been suspended from regular sitting, most workers are working from home, social distance is the new norm, citizens have been advised to stay at home as much as possible and come out only when necessary. All non-essential programs and activities that include public gatherings have been suspended. Indeed, the EC itself suspended its planned registration due to the COVID-19. As the number of recorded cases continue to surge, these measures are likely to last for a few more months till a vaccine for the virus has been discovered. The logical conclusion is that the EC may not meet the statutory deadlines should it proceed with the registration exercise due to obvious delays. There are a number of reasons why delays may be inevitable.

First, it is possible that the vendors of the new BVRs will not be able to supply them within the stipulated period, as most countries and businesses all over the world are on lockdown. Most companies have either shut down or shifted from their normal line of production and dedicated their resources, time and energy for the production of essential goods needed in the fight against the pandemic. For instance, the world's leading 3D printing manufacturers such as Hewlett-Packard, Johnson and Johnson, General Electric, Royal DSM have all united through the World Economic Forum to shift production to address equipment shortages and rising medical demands in order to meet global needs⁹.

Second, with the NDC suing the EC over its decision to compile a new Register, there may be possible injunctions and legal battles along the way which might further delay the registration exercise. On 24th April, 2020, a member of the NDC secured an injunction against the EC on a workshop it intended to hold over the registration. These may be just the first of many injunctions that the EC may face in any attempt to compile the register until the substantive case is determined by the court.

Third, even if all the equipment is received on time and no legal scuffles are encountered along the way, the stringent measures adopted by the country in the fight against the pandemic may further disrupt the registration exercise. The EC has stated that it is going to use 30 days instead of the initial 44 days for the registration exercise. However, with the current COVID-19 restrictions and social distancing protocols, it is doubtful whether this duration will be sufficient for the registration given that an estimated 600,000 voters are expected to be registered daily. The EC has decided to maintain strict COVID-19 precautions and protocols at each registration centre. These are gun thermometers for taking temperatures, compulsory wearing of face masks, handwashing and sanitization facilities, maintenance of strict social distancing as well as the disinfection of certain equipment after each person. Moreover, a maximum of 25 people will be allowed at a registration centre at a time. Clearly, the effect of these measures will be to slow down considerable the pace of the registration process

In the face of the above precautions, it is only reasonable to assume that the EC will require more time to conduct the exercise. By our estimation, this could double the time required (88 days) for the registration or at best 66 days, unless additional resources are devoted to purchasing machines

⁸ A detailed list of countries that have postponed their elections can be assessed here; <https://www.idea.int/news-media/multimedia-reports/global-overview-covid-19-impact-elections>

⁹ <https://www.weforum.org/agenda/2020/03/how-are-companies-responding-to-the-coronavirus-crisis-d15bed6137/>

and hiring personnel. Aside this, the decision to provide Personal Protective Equipment (PPE) to registration officers as well as hand sanitizers, water, soap and tissue at every registration centre will further pose financial burden on the Commission in particular and the nation at large. Additionally, the EC will require more security personnel for effective crowd management during the registration. These will significantly increase the cost of the registration exercise and therefore defeat the EC's own argument of cost minimization.

Another compelling factor that will likely exacerbate interruptions to the proposed timelines of the EC is the issue of proof of identification for the registration exercise. The EC has currently re-laid a new CI before Parliament seeking to make the passport and national ID the sole sources of identification for registration. This implies that birth certificates, old voters' ID cards and driver's license will no longer be eligible IDs for registration. With the passport and the national ID as the recognized primary source of identification for registration, the EC will need the National Identification Authority (NIA) to complete its nationwide mass registration before it proceeds with its registration. This is to avoid disenfranchising many Ghanaians, as a majority of citizens do not own a passport.

As at 15th May, 2020, the NIA has registered a total of 11,069,270 people, printed 10,789,784 cards and issued 7,091,776 cards¹⁰. This suggests that about 30% of the target group (Ghanaians 15 years and above) are yet to be registered and an overwhelming 61% yet to receive their ID cards¹¹. Meanwhile, the NIA has currently suspended its operations due to the pandemic and is yet to determine the appropriate time to resume the mass registration exercise. Clearly, a delay to the EC's voters' registration exercise appears inevitable unless the EC decide to disenfranchise Ghanaians.

Admittedly, there is a third provision where a person will be allowed to register if guaranteed by two registered voters. However, since this particular provision has always been a source of suspicion between the two major parties especially in their strongholds, it might not be of much help. Moreover, this particular provision will further slow the registration process as applicant will have to rely on guarantee by two registered voters who will have to complete an elaborate form, especially when majority of potential voters will have to rely on this provision to register.

Furthermore, the stipulated period, which also falls within the peak rainy season, could disrupt the process and cause a lower turnout of voters for the registration. In 2012, the general biometric voters' registration was completed ahead of the peak rainy season by May 4th. Given that the EC intends to use only outdoor places for the general registration, the potential effect of the rainy season on the registration exercise should not be underestimated.

The threat of low turnout during the registration is likely to be intensified for fear of contracting the virus. At the time lockdowns were imposed in certain parts of the country, areas which were not affected by the virus were on voluntary lockdowns due to fear. Even after the country has recovered from the pandemic, it will take some time for life to return to normal. In Wuhan, where the outbreak was first recorded, although the city has recovered from the pandemic and the 76 days old lockdown lifted on April 1st, life is yet to return to normalcy with schools still closed, businesses struggling to make ends meet and stringent measures in place. Ghana might undergo the same slow return to normalcy and this will adversely affect the turnout for the registration by electorate who are already disenchanted with party politics. Therefore, the EC may end up compiling a register that is legal but not legitimate.

¹⁰ This information was retrieved from: <https://nia.gov.gh/index.html>

¹¹ These figures were computed using the total population figure (29,530,519) as stated on the NIA website and the average population distribution of Ghanaians 15 years and above of 62%

Finally, the arguments put out that all the two previous Registers were compiled during an election year hence doing same this year, is an oversimplification of the issue. In 2012, the voter registration exercise ended by 4th May, 2012. Similarly, there was no major opposition to the compilation of the new Register; the tendering process had been already completed in 2011; there was no suit in court challenging the validity of the EC to compile a new Register; and most importantly, there was no pandemic that created glaring uncertainties around planned programs. Merely comparing 2012 and 2020 because they are both election years, therefore, without recourse to context and changing circumstances is frivolous and untenable.

5. Way Forward

5.1. Addressing the Mistrust

The sources of mistrust and a lack of confidence in the Voters' Register are well known to the Ghanaian political elite and the public. They consist of practices such as cross-border registration of non-Ghanaians, registration of minors, and the use of multiple ID cards as evidence of citizenship for purposes of registration, multiple registration, and multiple voting. These problems have been compounded by the inadequate and late financing of the electoral processes, episodic registration of qualified voters, and late recruitment and deployment of inadequately-trained and temporary polling staff.

There is evidence that the EC's resort to the compilation and utilization of the BVRs in the 2012 and 2016 elections did not tackle all the major disruptive factors that continue to undermine the integrity of the voters' register and the misconceptions of its outcomes. For instance, in 2016, the Westminster Foundation estimated that the BVR was bloated by some 1.3 million names. Clearly, the factors that account for a bloated Voters' Register cannot be solved by simply compiling a new one. It is unsustainable to spend so much on an Electoral Register and discard it only after 8 years. What assurance or justification has been provided that the compilation of a new Register will make it last beyond this duration and address the challenges with the current one?

These problems can be addressed if there is a single multipurpose ID card which contains harmonized data with information on the citizenship and voter registration status of all Ghanaians. This will deal with the issue of alien names in the Register. The NIA's ongoing national ID registration, when completed, can provide the EC with such data. The NIA boss has already indicated the readiness of his outfit to provide the EC with the relevant data required to compile a new Register once the mass registration is completed.

Moreover, the issue of the over-bloated Register can only be determined if there is reliable population data. As a national census only occurs in every tenth year, it is difficult to know the exact size of Ghana's population within that interval. It is true that for a developing country like Ghana, the voter-population ratio of about 52% is higher than the global average (which is estimated to be 48%). However, in the absence of accurate population data, it is difficult to determine whether or not the current Register is indeed bloated. In 2012, the Statistical service had released the 2010 Population and Housing data which provided a basis for comparison with the voters' register. Accordingly, it will be prudent for the EC to wait for the Statistical Service to finish the 2020 Population and Housing Census, which will form a basic repository of concrete and reliable data for the compilation of a new Register.

Furthermore, the inability of the Births and Deaths Registry to promptly provide credible data to the EC to facilitate the clearing of ghost names on the Register accounts somewhat to the bloating of the BVR. Until this is dealt with, the Register will always be fraught with ghost names as there will be no credible way through which such names can be eliminated.

5.2. Ideal Time

Even if the EC has cogent reasons for compiling this new Register, the ideal solution for us as a country within the time constraint imposed by this pandemic is to call off the compilation of the new Register and undertake the exercise in 2021/22. By that time, the NIA would have completed its nationwide registration and issues of ID card would have been resolved, and a standard card such as the Ghana card would have been acquired by every citizen. We may also, by then, have been able to fix our birth and death registry and link it to a central database. By 2021/22, also, the population census would have been carried out, and since it is not an election year, the registration will be insulated from political pressures, with greater cooperation among the parties.

Fears that the investment already made by the EC will become waste should not be encouraged. More likely than not, the purchasing orders made in this “Corona world”, as indicated earlier, could result in delays anyway because of the shutdown of factories across the world. The devices that the EC intends to procure could be reprogrammed for next year, when hopefully the world has recovered from this pandemic.

5.3. Using the Existing Register

If the EC decides to abort the decision to compile new BVR, is there an alternative to such a decision? The existing Register can be technologically enhanced to give us a decent one. The current Register has been a work in progress, and for this reason it can be polished up and used in these dire circumstances to save money, and work within the time constraints imposed by the pandemic. This Register went through 8 months of judicial adjudication after the 2012 presidential elections. In 2016, it was tested in several cases in the Superior Courts, and some of the decisions of the Courts contributed to delivering to us the most peaceful elections with credible outcomes which were widely accepted, respected, and honoured by all stakeholders.

Indeed, this is the only Register that has delivered electoral victory to each of the two main presidential candidates and therefore the acceptance of this Register should not be in doubt. It is also important to note that, the credibility and integrity of the existing Register has never been questioned by the EC. As a matter of fact, the EC affirmed the credibility of the current Register during the last District Assembly elections when two of its Commissioners stated that all ghost names have been deleted and that the Register is very credible. Just recently, the EC through its Director of Operations stated that, it may consider using the existing register for the election if the pandemic lasts beyond June. However, according to him, the Commission may have to conduct a limited registration and validate the existing register before it can be used for the election which may involve the same risk as compiling a new one. This obviously cannot be the case.

The risk involved in compiling a new register cannot be the same as embarking on limited registration exercise. If not for anything, the amount of time and resources that is required for a limited registration is significantly lower than that of new register. Also, the degree of risk of exposure to contracting COVID-19 is far higher when compiling a new register of over 18 m voters than limited registration of 1.2m people¹². This is due to the number of people involved and the arduous processes required for new registration which usually necessitate public gatherings. Besides, in the interest of public health and national safety, the EC can decide to forgo a limited registration exercise as well. As the President has rightly stated, we are not in normal times; our freedom of movement and association as well as other rights have been curtailed for national interest, and therefore disenfranchising just about 7% of voters for similar reason should not be a problem. In any case, so far as the EC does not do continuous registration, there will always be people who will be disenfranchised before elections since limited registration are seasonal.

On the issue of validation and verification, the EC can forgo validation since it is not essential in this crises period. All names already on the register may have been one way or the other validated

¹² Per the EC’s calculations, it estimates to register about 1.2m during its limited registration exercise

during previous elections. In 2019, during the District Level Election (DLE), there was no validation exercise and therefore it is wrong to create the impression that a validation exercise is a necessity. For verification, it does not necessarily have to involve physical contact or gathering. In 2012, the EC launched an SMS platform which facilitated 500,000 registered voters to easily verify their personal details on their mobile phones. Therefore, the EC can introduce a similar system to allow voters to verify their details.

6. Conclusion

From the analysis, three main lessons can be distilled from this paper. First, merely compiling a new BVR without addressing the source of the mistrust will not solve problem. Second, it will not be prudent for the EC to proceed with the registration exercise within the time constraint that the pandemic has imposed on the nation. Thirdly, it is also evident that the EC has a credible alternative should it decide to abort the registration exercise. The cogent decision will be for the EC to postpone the compilation of the new BVR to at least next year. This will afford the Commission enough time and resources to focus on other essential activities on the electoral calendar. It will further reduce the political tension in the country and strengthen our resolve as nation to conquer this pandemic within the shortest possible time.

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