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Presidential election petitions in Ghana: A catalyst for democratic maturity

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Ghana's multiparty democracy continues to attract global attention. While every election comes with its dynamics, it also provides valuable lessons for the country's democratic maturity. Drawing mainly from desk study and using Linz and Stepan's three dimensions of democratic consolidation, the study examined how the two presidential election petitions, 2012 and 2020, have catapulted the democratic drive of the country. The paper unearthed that the Ghanaian political demagogues are largely willing to stick to the rules of the game for democratic maturity. In addition, the judiciary in their rulings upheld the results of the two respective elections as declared by the Electoral Commission. However, the actions and the inactions of the jurists and rulings in the two cases have different implications for electoral reforms and democratic maturity in Ghana.

Key words: Presidential election petitions, democratic maturity, elections, Supreme Court, electoral commission, Nana Addo Dankwa Akufo Addo, John Dramani Mahama,

INTRODUCTION

Elections affirm the sovereignty of the people (Lindberg, 2008:10-14). Through elections, citizens constitute a government and give her the legitimacy to govern and see to the authoritative decisions and allocation of resources of the state (Lasswell, 1936). Victors in elections are therefore in charge of the largesse of the state. The control and responsibility for the authoritative allocation of resources have made elections very competitive across the globe with the compliance and consent of losing candidates in multiparty democracies far from being guaranteed (Przeworski, 2003; Erlich et al., 2021:1). This has made disputed elections more of a

norm rather than an exception (Lindberg, 2008:10 -14).

Ghana returned to multiparty competitive electoral politics following the founding election of 1992. This marked the beginning of the fourth republic right after the promulgation of the 1992 Republican Constitution on January 7, 1993. Since then seven successive elections have been held in 1996, 2000, 2004, 2008, 2012, 2016 and 2020. These elections have witnessed three peaceful alternation of political power from the incumbent to the opposition party in 2000, 2008, and 2016 (Graham et al., 2017). In addition, the country also witnessed the death of a sitting president in July, 2012 and as enshrined in

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Article 60(6) of the 1992 Republican Constitution (Republic of Ghana, 1992:52), the sitting vice president was sworn into office without interruption of the country's stability. In 2016, a sitting president lost the election to the opposition political party and there was a peaceful transition. With these upsides, there have been issues of electoral disputes. For example, the general elections of 1992 were disputed by the New Patriotic Party (NPP) but there was no formal petition. Again, the 2004 elections were disputed by the National Democratic Congress (NDC) and there was an official petition but it was not amplified (Owusu-Mensah and Frempong, 2015:20). The outcome of the 2016 elections was also accepted in spite of the allegations that the Electoral Commission's system was hacked. One thread that ran through these elections were that there were issues that qualified the elections to be declared flawed and the results not to be accepted by the defeated candidates yet they conceded defeat. On the contrary, the 2012 and the 2020 presidential elections saw a novelty in the electoral politics of Ghana. This time the losing candidates challenged the declared results at the Supreme Court per Article 64(1) of the 1992 Republican Constitution (Republic of Ghana, 1992:55).

Though it is apparent that Ghana continues to be the object of fascination in Africa due to the modest progress made towards democratic consolidation, her electoral process has been associated with a multiplicity of institutional and structural challenges. Unfortunately, these identified lapses have not received sufficient scholarly attention. For instance, perennial problems of vote-buying, excessive politicization of all electoral issues, abuse of incumbency, bloated electoral register, the phenomenon of political vigilantism have all undermined the legitimacy of successive elections in one way or the other (Afrobarometer, 2017:1-3; Ayee, 2019: xiii-xxii).

Additionally, studies on election petitions in Ghana are at the embryonic stage; as such, a handful of studies exist. Mostly the studies focused on the judiciary and elections in Ghana (Owusu-Mensah and Frempong, 2015; Adams and Asante, 2020; Adu, 2015). The scholarship of Gyampoh (2018) concentrated on the 2012 presidential election petition and electoral reforms. It is significant to state that Asante and Asare (2016) discussed the contribution of the 2012 presidential election petition to democratic consolidation in Ghana. This paper therefore complements the study of Asante and Asare (2016) by comparatively examining the contribution of both 2012 and 2020 presidential election petitions towards democratic maturity in Ghana. The paper deploys Linz and Stepan (1996) behavioural, attitudinal and constitutional dimensions of democratic consolidation to explain the deepening trajectory of Ghana's democracy using the two presidential election petitions.

Focusing on Ghana's experience is important because

the country is regarded as a shining example within the sub-Saharan African region in terms of democratic development and institutional reforms (Adams and Asante, 2020:244). The country is among the eight countries (18%) in sub-Saharan Africa rated by Freedom House as "free, with the others (82%) rated as either partly free or not free" (Freedom House, 2017). Furthermore, the same report indicated that by the end of 2016, the country has consolidated her position as an example of the most stable democracies in Africa. The orderly transfer of power from the defeated incumbent John Mahama to the opposition candidate Nana Akufo-Addo after the December 2016 presidential elections was cited as the main reason for the assertion. Besides, Ghana became a pacesetter on the continent to pass Huntington's threshold for the consolidation of democracy (Huntington 1991) and for these reasons, the country represents an interesting case for the study of electoral politics in Africa. The paper proceeds in six sections. Following the introduction, the rest of the sections are as follows: section 2, theorizes election petitions and democratic consolidation, section 3; focuses on Ghanaian scholarship on election petitions, section 4 was devoted to methodology, section 5 deals with findings and discussions, and section 6 is conclusion and recommendation.

THEORIZING ELECTION PETITIONS AND DEMOCRATIC CONSOLIDATION

This section is divided into two: election petitions and democratic consolidation.

Election petition

The phenomenon of election petition has globally been accepted as an integral part of election administration. The first recorded case in history was championed by Matthew de Cranthorn in 1318 against Robert Buedyn before King Edward II and his Council (Owusu-Mensah and Frempong, 2015:20). The concept of election petition takes its root from the electoral history of the British (Jack and Thomas, 2011). The evolution of elections, the extension of franchise and the development of British electoral democracy in the 19th century were associated with power contestation, corruption and improper practices that threatened electoral outcomes (O'Leary, 1961 cited in 'Nyane, 2018:4). Historically, the adjudication of election petitions was the preserve of the legislature to the exclusion of the traditional courts and non-judicial in nature ('Nyane, 2018:4). The partisanship of the legislators eroded the credibility of their decisions on election petitions. Consequently, the credibility deficit associated with such decisions culminated into a complete depletion of public confidence in elections as a

whole. This therefore led to the shift from parliament-based electoral disputes adjudication to judicial resolution ('Nyane, 2018:5). The judiciary was initially reluctant and averse to execute this arduous task of settling election petitions. However, the operationalization of the Parliamentary Elections Act of 1868 facilitated the change from the parliamentary electoral dispute resolution mechanism to a judicial resolution. Antiquated as the legislation may appear, it still remains very critical in understanding election petitions as they are often applied and used today in many countries ('Nyane, 2018:5).

Huefner (2007:265-326) has highlighted three key factors that must drive the process of election petition adjudication. He intimated that apart from the fact that the entire process must be fair from the perspectives of both the litigants and the public, transparency and prompt determination of the petition are crucial; as this is premised on the assumption that justice delayed is justice denied.

Kaaba (2015:334-335) enumerated five distinctive problems that have regularly characterized domestic adjudication of presidential election petitions in Africa, namely;

- (i) "All cases are decided in favour of the incumbent candidate, the candidate sponsored by the ruling party, or the presumptive winner"
- (ii) "Many cases are dismissed on minor procedural technicalities without consideration of the merits".
- (iii) "There is misuse of the substantial effect rule".
- (iv) In other countries, "the resolution of disputes is inordinately delayed to render the whole process nugatory".
- (v) "Judges simply fail to address the issues presented before them by constraining themselves from making appropriate decisions".

Generally, challenging presidential election results through the judiciary has hardly ever been successful. Countries in Africa where election petitions filed against the results of their presidential elections have failed include: Ghana, Uganda, Kenya, Nigeria, Sierra Leone, Zambia and Zimbabwe (Azu, 2015:151). The Cote d'Ivoire case of 2010 was a departure from the norm because the Côte d'Ivoire Constitutional Council reversed the announced results. Scholars however, argued that the effect of this ruling was similar to other decisions that upheld the results of the other disputed elections. This is because the judgement was made in favour of the incumbent, President Laurent Gbagbo, who had clearly lost the election (See Verdict of the Constitutional Council of Côte d'Ivoire of 3 December 2010 147) (Kaaba, 2015; Owusu-Mensah and Frempong, 2015; Adams and Asante, 2020; Azu, 2015). In effect, the available evidence suggests that with the exception of Ukraine

where a presidential election petition was successful, judicial challenges to presidential election results have rarely been ruled in favour of the petitioners (Azu, 2015:151). It has been established that overturning election results, managing political reputation, using the court cases as leverage to obtain a government appointment, and fulfilling psychic needs have been identified as the motivation behind politicians challenging the outcome of election results (Erlich et al., 2021:3). The scope of this study covers the 2012 and 2020 presidential election petitions and their respective contributions to Ghana's democratic maturity.

Democratic consolidation

Etymologically, democracy as a word and a form of political life both began in ancient Greece (Asante and Asare, 2016). The word is derived from two Greek words: "*demos*" which stands for common people and "*kratein*" meaning to rule (Sargent, 2008:62). For the Greek, democracy represents rule or government by the common people. That is those who were uneducated, unsophisticated and poor. Abraham Lincoln at the Gettysburg Address eulogized the virtues of democracy and aptly described it as "government of the people, by the people and for the people" (Asante and Asare, 2016:2).

Democracy as a concept, while it is being considered as an important notion in comparative politics, is also elusive and does not lend itself to easy conceptualization and measurement (Khorram-Manesh, 2013:5), as such scholars have defined it variously. Huntington (1991:6) has intimated that contemporary definitions of democracy could be classified into three (3) distinct families:

- (i) "the sources of authority for government",
- (ii) "the purposes served by government", or
- (iii) "the procedures for constituting the government".

Democracy in the opinion of Huntington (1991:1) "is a political system where the most powerful decision makers are selected through fair, honest and periodic elections in which all the adult population are eligible to vote" He further argued that at the heart of democracy are contestation and participation (Huntington, 1991:1). Przeworski, et al., (2000) believe that contestation through elections is an essential feature of democracy. Collier (2009:15) succinctly corroborated it by intimating that elections are not only essential defining characteristics of democracy but also the most visible feature in any democratic environment

Consolidation is derived from the Latin word, "consolidare" which simply means to "make firm" (Asante and Asare, 2016). Pridham (1990:8) exposition that democratic consolidation was a "nebulous concept" still

remains valid. Till date “no clear consensus has emerged” regarding the exact meaning of democratic consolidation (Gunther et al. 1996:5). Diamond (1997) argued, “consolidation is the process of achieving broad and deep legitimation, such that all significant political actors, at both the elite and mass levels, believe that the democratic regime is the most right and appropriate for the society, better than any other realistic alternative they can imagine”.

From the perspective of Linz and Stepan (1996:5), democracy cannot be described as consolidated unless a number of conditions are established including the cultivation of certain unique attitudes and habits. In highlighting the key characteristics of a consolidated democracy, they emphasized on a narrower definition which combined behavioral, attitudinal and constitutional dimensions (Linz and Stepan, 1996:5). They argued that democracy is said to be consolidated whenever three key dynamics are firmly established. First, the behavioral dimension is fulfilled when there is absence of significant national, political, economic social, or institutional actors spend substantial resources in an attempt to create a nondemocratic regime or try to secede from the state. Second, is the attitudinal dimension which becomes operational when a vast “majority of the public believes that democratic procedures and institutions are the best way to govern collective life, even in the midst of major economic problems and deep dissatisfaction with incumbents”. In this vein, the support for anti-system alternatives in such a regime must be insignificant compared to the pro-democratic forces. The third criterion to be fulfilled is the constitutional dimension. They explained that the attainment of this requirement becomes real when the “governmental and nongovernmental forces alike become subjected to and habituated to the resolution of conflict within the bounds of the specific laws, procedures, and institutions sanctioned by the new democratic process” (Linz and Stepan, 1996:5).

In addition to the above three dimensions, Linz and Stepan (1996:6-7) prescribed other five interconnected and mutually reinforcing factors as prerequisites of democratic consolidation. One, conducive condition which supports the development of a free and lively civil society must be created. Two, the existence of a reasonably autonomous political society. Three, within the entire territory of the state, all the key political actors, particularly the state apparatus as well as the government, should be “subjected to rule of law that protects associational life as well as individual freedoms”. Four, a state bureaucracy which is fit for purpose must exist to be used by the new democratic government, and five, the existence of institutionalized economic society. Linz and Stepan (1995) further declared that a democracy becomes consolidated, “when it is the only game in town”. This study applies these time tested

dimensions of democratic consolidation framework aptly developed by Linz and Stepan (1995), thus behavioural, attitudinal and constitutional blueprint for democratic consolidation to examine democratic maturity in Ghana within the context of the two presidential election petitions. The choice of Ghana is timely and intriguing because it has successfully conducted eight general elections from 1992–2020, with 2012 and 2020 being the most contentious and controversial, and yet they did not lead to violence but the actors played according to the rules of the game by resorting to battle their differences at the Supreme Court. The objectives of the study are to:

- (i) discuss the two petitions, the actions and inactions of the actors and
- (ii) examine the rulings of the Supreme Court’s and the contribution to consolidating Ghana’s democracy.

Ghanaian scholarship on Election Petitions

Election petitions are universally sanctioned as vehicles for addressing election impasse. Since returning to multiparty democracy in 1993, election petitions have been part of Ghana’s democratic journey. Studies on election petitions in Ghana are at the formative stage as such few empirical studies exists on the subject matter. Some of these are reviewed below.

Adams and Asante (2020:249) examined the judiciary’s role in the consolidation of democracy in Ghana with special focus on the Supreme and High Courts. They identified three key factors that led to conflicts in elections under the country’s Fourth Republic. These factors include the general misconduct of some EC officials and temporary staff such as polling agents, security personnel as well as non-compliance with the electoral laws by both EC officials and contesting candidates, and the uncertainty associated with the qualification status of candidates. Discussing the role of the Judiciary in the adjudication of election petitions, Adams and Asante (2020:250-251) enumerated the interpretation of some electoral laws, clarification of procedures and basis for dismissing some petitions as part of the roles played by the Courts in election petitions. They also highlighted the roles of other stakeholders like the politicians, legal practitioners and the staff of the Electoral Commission. They singled out the negligence of some experienced legal practitioners in filing their election petitions (Adams and Asante, 2020:151-152) as well as EC staff not doing due diligence as far as their roles were expected as factors resulting in the withdrawal of election petitions.

Adams and Asante (2020:152-153) reported that politicians in Ghana are devotedly resorting to the existing legal provisions to settle electoral disputes. They further revealed that after the 1996 general elections, Ghanaians began to develop some confidence in the

democratic institutions especially the judiciary. A number of election petitions have subsequently been filed at the various High Courts in the country. Contrary to the expectation, majority of those petitions have been dismissed by the court due to procedural errors. They also opined that the Courts in general have also learnt from the past experiences and consequently become innovative. Among some of the key reforms, they highlighted in their study included: the replacement of oral statement with written witness statement, massive improvement in the accessibility of the courts such as ensuring that the election petition process become transparent through the live streaming of proceedings on television as witnessed during the 2012 and 2020 election petitions. In their estimation, these have contributed to entrenching Ghana's democratic drive.

Azu (2015) examined the evidentiary rules with special focus on the burden of proof and standard of proof, which ought to be discharged in the process of resolving disputes in presidential election. The study discussed the conditions under which the Ghanaian courts would invalidate presidential elections results. He also interrogated a number of extra-legal matters that appear to be considered by the judges during the adjudication of presidential election disputes. The outcomes from the judgments of both 2012 and 2013 presidential elections petitions in Ghana and Kenya, respectively revealed apparent breaches of the key electoral laws. It further found that while the Kenyan Supreme Court unanimously ruled that the non-compliance was insignificant to affect the validity of the results and therefore failed to grant a declaration of invalidation, the jurists in Ghana were divided in their ruling, though majority of them held the position of their counterparts in Kenya. The ruling of judges is not always based on law. Extra-legal matters such as public policy and public interest sometimes influenced judges in their verdicts. This assertion was clearly echoed when Justice Atuguba intimated that "the Judiciary in Ghana, like its counterparts in other jurisdictions, does not readily invalidate a public election but often strives in the public interest to sustain it" (Supreme Court Verdict, 2012; Presidential Election Petition Judgement, 2013:33).

Owusu-Mensah and Frempong (2015:32) examined Ghana's 2012 presidential elections petition and its ramifications for the organisation of future elections. In their opinion, the 2012 presidential election petition conveyed the degree of vulnerability of the political system, particularly the extent of impartiality with regards to the judiciary and the citizens' trust in democratic institutions. The final ruling by the Supreme Court communicated to all political stakeholders that the electoral politics in Ghana has been reduced to what they referred to as "polling station politics". It revealed that state institutions charged with the responsibilities of delivering public goods could not be trusted with any

meaningful post electoral adjudication. The outcome sent a strong signal to all participating political parties in subsequent elections to use all available lawful mechanisms to ensure that the rights of voters and votes are well protected during the elections to prevent post-election judicial disputes settlement.

Gyampoh (2017) interrogated the 2012 presidential election petition *visa-vis* electoral reforms. In his estimation, the ruling on the 2012 presidential election highlighted a number of flaws in the electoral process which could not be overlooked in Ghana's quest to promote consistent free and fair elections. Consequently, the Electoral Commission (EC) requested for proposals from about thirty eight (38) key stakeholders which included political parties, civil society organizations, professional bodies and faith-based organizations for electoral reforms. On November 20, 2013 these stakeholders submitted as many as twenty five (25) important proposals to the Electoral Commission for the electoral reforms to commence. The EC accepted a significant number of the proposals, though with slight modifications, and others too were scheduled for further deliberation with political parties for their acceptance and implementation (Gyampoh, 2017:100). While the proposals on continuous voter registration, the usage of biometric verification devices for voter registration and exhibition, the extension of the period of notice for voter registration, the reduction of the number of voters per polling station – as well as the move to shift elections from December to November, which was turned down by parliament were sufficiently made public, scanty or no information was provided regarding the implementation of the other electoral reform proposals for the 2016 general elections. Ayee (2017) has argued that the peaceful conduct of the 2016 general elections could not be credited to the implementation of serious electoral reform proposals (Ayee, 2017). It is important to stress that prior to the 2016 general elections only few reform proposals were truly implemented. To this end Gyampo et al. (2017: 16), have succinctly described the 2016 elections as "miraculously successful," since in their view "no concrete and detailed proposals for electoral reform were implemented" They concluded that even though the general elections appeared to be free, fair, credible, and transparent, the entire electoral processes were virtually on "auto-piloting".

On presidential election petition and democratic consolidation, Asante and Asare (2016), espoused that Ghana made a great leap towards democratic consolidation through the 2012 presidential election petition. They applauded how the conflicting parties subjected themselves to the full rigour of the laws of the country to resolve their differences. In their view, they could have chosen to battle it out on the streets, as happened in other places across the world over election result disputes. Though the study of Asante and Asare

(2016) was situated within the framework of Linz and Stepan (1996), it was limited to the 2012 presidential election petition. This study therefore expands the existing knowledge on presidential election petitions and democratic consolidation in Ghana by examining the 2012 and 2020 petitions within the three dimensions of Linz and Stepan (1996).

METHODOLOGY

The paper is mainly a desk study and it applied Linz and Stepan's three dimensions of democratic consolidation framework to examine how the two presidential election petitions, 2012 and 2020, have catapulted the democratic drive of Ghana. It is also a case study type of qualitative research methodology. Ghana's 2012 and 2020 presidential elections petitions were both test cases for establishing the nexus between presidential election petitions and democratic maturity in the country. The study predominantly made use of secondary source of data such as the Supreme Court rulings on the two presidential election petitions, journal articles, chapters in text books and recorded behaviour and responses of the key actors before and after the petitions as the basis of analysis within Linz and Stepan (1996)'s three dimensions of democratic consolidation (behavioural, attitudinal and constitutional). The study also capitalized on the growing popularity of online websites and the traditional media in Ghana, and gathered additional information on the two presidential election petitions and the data were analyzed qualitatively.

COMPARATIVE ANALYSIS OF THE 2012 AND 2020 PRESIDENTIAL ELECTION PETITIONS

This section of the article examines the two presidential election petitions in Ghana's Fourth Republic. Ghana's 1992 Constitution, provides for the contestation of election results. Specifically, article 64(1) provides that "the validity of the election of the President may be challenged only by a citizen of Ghana who may present a petition for the purpose to the Supreme Court within twenty-one days after the declaration of the results of the election in respect of which the petition is presented". The clause 2 of Article 64 further opined that "A declaration by the Supreme Court that the election of the President is not valid shall be without prejudice to anything done by the President before the declaration" (Republic of Ghana, 1992:55).

On 29th December, 2012, Nana-Addo Dankwa Akufo Addo, Dr. Mohamadu Bawumia and Jake Obetsebi Lamptey, the presidential and vice presidential candidates and the national chairman respectively of the New Patriotic Party exercised this right by filing the maiden election petition in Ghana. This petition was considered a novelty in Ghana's democratic journey and a test case for democratic consolidation in Ghana. The parties to the petition were John Dramani Mahama who was the President-elect and the Electoral Commission as the 1st and 2nd Respondents respectively. The NDC filed

a joinder motion to be a party to the case as a 3rd respondent. The premise for the motion was that it sponsored John Dramani Mahama as its presidential candidate and must be part of the judicial process to provide evidence that the two respondents may not be privy to at the time (Owusu-Mensah and Frempong, 2015:24). The claims of the petitioners were based on six constitutional violations, electoral malpractices and commissions. These were:

1. Over-voting
2. Absence of signatures of presiding officers contrary to Article 49(3) of the Constitution and Regulation 36 (2) of C.I.75.
3. Voting without biometric verification in breach of Regulation 30(2) of C.I.75.
4. Duplicate serial numbers on statement of poll with different poll results
5. Duplicate polling station codes contrary to the Electoral Commission assigning each polling station with a unique serial number to prevent conflicting results and
6. 23 locations that were not part of the 26, 002 designated polling stations of the Electoral Commission.

The Court by a unanimous decision dismissed three constitutional violations, that is: items 4 to 6 above.

Issues such as over-voting, voting without biometric verification and unsigned statements of poll (pink sheets) by the presiding officers emerged as the three key contesting issues, which the court decided on. The panel of jurists in a majority decision also dismissed the three issues set aside for trial namely; voting without biometric verification, over voting and absence of signatories of presiding officers.

On the flip side, John Dramani Mahama filed a petition on 30th December, 2020 at the Supreme Court of Ghana to challenge the outcome of the December 7, 2020 presidential election. He specifically went to the court to challenge the results declared by the Chairperson of the Election Commission of Ghana on 9th December, 2020. The Electoral Commission was the first respondent and the incumbent Nana Addo Dankwa Akufo-Addo, the Presidential candidate of the New Patriotic Party (NPP) was the second respondent.

The petitioner just as in the 2012 petition also sought six reliefs against the Electoral Commission and the Presidential Candidate of the NPP. The reliefs were in the nature of three declarations and three orders. They were:

- a. A declaration that "Mrs. Jean Adukwei Mensa, Chairperson of the 1st Respondent and the Returning Officer for the Presidential Elections held on December 7, 2020 was in breach of Article 63(3) of the 1992 in the declaration she made on 9th December, 2020 in respect of the Presidential Election that was held on 7th

December, 2020”;

b. A declaration that “based on the data contained in the declaration made by Mrs. Jean Adukwei Mensa, Chairperson of the 1st respondent and the Returning Officer for the Presidential Election held on 7th December, 2020, no candidate satisfied the requirement of article 63(3) of the 1992 Constitution to be declared President-elect”;

c. A declaration that, “the purported declaration made on 9th December, 2020 of the results of the Presidential Election by Mrs. Jean Adukwei Mensa, Chairperson of the 1st respondent and the Returning Officer for the Presidential Election held on 7th December, 2020 is unconstitutional, null and void and of no effect whatsoever”

d. “An order annulling the declaration of President-Elect Instrument, 2020 (C.I. 135) dated 9th December, 2020, issued under the hand of Mrs. Jean Adukwei Mensa, Chairperson of the 1st respondent and the Returning Officer for the Presidential Election held on 7th December, 2020 and gazetted on 10th December, 2020”.

e. “An order of injunction restraining the 2nd respondent from holding himself out as President-elect” and

f. “An order of mandatory injunction directing the 1st respondent to proceed to conduct a second election with Petitioner and 2nd respondent as the candidate as required under article 63(4) and (5) of the 1992 Constitution”.

In the wisdom of the panel of jurists, relief (b) was the major relief on which the other 5 reliefs were buttressed. The other five reliefs were dependent on the success or failure of relief (b). The Court intimated that relief (b) raises an arithmetical question and cannot be resolved without resorting to some calculations.

Consequently, the Court set down five issues for determination. These were:

1. “Whether or not the petition discloses any reasonable cause of action”
2. “Whether or not based on the data contained in the declaration of the 1st respondent of the 2nd respondent as President-elect, no candidate obtained more than 50% of the valid votes cast as required by Article 63(3) of the 1992 Constitution”
3. “Whether or not the 2nd respondent still met the Article 63(3) of the 1992 Constitution threshold by the exclusion or inclusion of the Techiman South Constituency presidential election results”
4. “Whether or not the declaration by the 1st respondent dated 9th December, 2020 of the results of the presidential election conducted on the 7th December, 2020 was in violation of Article 63(3) of the 1992 Constitution”; and
5. “Whether or not the alleged vote padding and other errors complained of by the petitioner, affected the outcome of the presidential election results of 2020”.

Comparatively, the two petitions sought six reliefs from the Supreme Court. However, in 2012 three of the six reliefs were unanimously dismissed by the apex court whilst in 2020, the Supreme Court singled out relief (b) as the substantive issue from which the other five reliefs derived their merit. As a result, the court set out five issues for hearing as indicated above.

The verdicts of the two petitions

After eight months of legal battle, the apex court set August 29, 2013 for the ruling. By a majority 5-4 decision, the results of the 2012 presidential elections were upheld as announced by the EC (Table 1).

The 2012 election petition brought to the fore several weaknesses in the electoral process that could have negative consequences for democratic maturity in Ghana. Consequently, the President of the panel of jurists, Justice William Atuguba in reading the ruling averred, “This petition, however, has exposed the need for certain electoral reforms. I mention some of them” (Supreme Court Verdict, 2012; Presidential Election Petition, 2013). The Supreme Court therefore made seven recommendations for electoral reforms in Ghana (Supreme Court Verdict, 2012 Presidential Election Petition, 2013). These were;

1. “The voters’ register must be compiled and made available to the parties as early as possible”,
2. “A supplementary register may cater for late exigencies”,
3. “The calibre of presiding officers must be greatly raised up”,
4. “The pink sheet is too elaborate, a much simpler one to meet the pressures of the public, weariness and lateness of the day at the close of a poll etc”,
5. “The carbon copying system has to be improved upon”,
6. “The Biometric Device System (BDS) must be streamlined to avoid breakdowns and the stress on the electorate involved in an adjournment of the poll”,
7. “Invalidating wholesale votes for insignificant excess numbers is not the best application of the administrative principle of the proportionality test”.

Just as the 2012 presidential election outcomes were upheld as declared by the EC, so was the 2020 (Table 2).

Besides, the 2020 election petition panel of judges led by the Chief Justice who doubled as the president of the panel unanimously ruled that the petition was without merit and consequently dismissed it. However, whereas in the 2012 election petition, the panel of eminent judges made recommendations for electoral reforms based on the evidence before them to improve future elections, the panel of judges in the 2020 election petition surprisingly did not make any recommendation for electoral reforms

Table 1. Election 2012: Presidential results in percentages.

Political Party	NDC	NPP	PPP	GCPP	PNC	CPP	IND. CAND.	UFP
Percentage of Votes	50.7	47.7	0.6	0.4	0.2	0.2	0.1	0.1

Source: Electoral Commission, 2012.

Table 2. Election 2020: Presidential results in percentages.

Political Party	NPP	NDC	UGM	CPP	PNC	IND. CAND.	LPG	APC	PPP	NDP
Percentage of Votes	51.30	47.36	0.80	0.09	0.08	0.07	0.06	0.05	0.05	0.05

Source: Electoral Commission, 2020.

though substantial flaws were pointed out during the hearing.

Discussion of the Presidential Election Petitions within the ambit of Linz and Stepan's (1996) three dimensions of democratic consolidation

In the view of Linz and Stepan (1996:5-6), any true consolidated democracy possesses three essential characteristics which can be tested through the people's behaviour, attitude, and adherence to the constitution. Behaviourally, they argued that a democracy becomes consolidated when political groups in the country do not make any effort to overthrow a democratic rule. With the attitudinal dimension, they intimated that it is where the vast majority of the citizens believe that any political change must happen within the framework of the existing democracy. Constitutionally, they held the view that in such political space any political conflict must be settled within the ambit of specific laws, procedures and institutions of the new political system.

Taking clue from the behavioural proposition to assess Ghana's democracy, shortly after the declaration of both the 2012 and 2020 presidential election results, the presidential candidates of the NPP and NDC respectively made their intentions known that the elections were flawed due to electoral irregularities. The two presidential candidates that is Nana Addo Dankwa Akufo Addo petitioned the Supreme Court in December 2012 whilst his counterpart John Dramani Mahama replicated same in December 2020. As indicated by Asante and Asare (2016:5) that there were options such as the use of force and violence as happened in other African countries but the two petitioners in the two presidential elections decided to use the democratic structures. On the part of the victors in both elections, the NDC in 2012 was magnanimous in celebrating its victory same as the NPP in 2020. In the same vein, the two victors willingly subjected themselves and their political parties to the

judicial and legal processes at the Supreme Court for eight months in the case of the 2012 petition and three months for the 2020 petition instead of deciding to boycott the processes. It can be deduced from the behaviour of the political parties in the two presidential elections that, they were eager to create room for democratic growth in Ghana hence putting their political interest and joy after a fierce political contest at the back burner.

Attitudinally, the authors (Linz and Stepan, 1996) explained that in a consolidated democracy, majority of the citizens holds the view that political changes must happen in accordance with the tenets of the existing democracy. Since 1992, Ghanaians have accepted elections as the modus operandi for ascending to political power. As such are prepared to protect its sanctity and purity. This is demonstrated by the high degree of zeal and zest with which the populace monitored the two presidential election petitions. The media, which is considered as the fourth estate of the realm both public and private monumentally contributed to this through the live broadcasting of court proceedings, providing platforms for the parties to express their views after each court hearing among others. This provided the grassroots the latitude to be abreast with happenings. These interests point to the fact that "the power to make and unmake governments no longer resides in the barrel of the gun" but with the thump of individual voters (Boafo-Arthur, 2008). Similarly, Armah-Attoh and Robertson (2014:3-5) in Afrobarometer Briefing indicated that majority of Ghanaians prefer democratic governance to any other form of government and have high disapproval for autocratic/non-democratic forms of government such as one-man rule, one party rule and military rule.

The third dimension is constitutional. According to Linz and Stepan (1996), democracy becomes consolidated in a country when all the key players in the polity, "become subjected and habituated to the resolution of conflict within the specific laws, procedures and institutions sanctioned by the new democratic processes". At the

center of the two presidential elections was the disagreement on the declared election results. In the 2012 election petition, the bone of contention was between the NPP and the John Mahama, EC and NDC on one hand and in the 2020 petition, the dispute was between John Dramani Mahama and Nana Addo Dankwa Akuffo Addo and the EC on the other hand. Though in the two petitions, there was initial violence, however, the violence subsided to pave way for the conflicting parties to settle their differences using the constitutional provisions in Article 64(1) and Constitutional Instruments (CI) 72, 74 and 75. After the petitioners and respondents in each petition subjected themselves to a period of eight and three months legal tussle in the 2012 and 2020 cases respectively, the verdicts were delivered which saw the petitioners losing their cases as the usual norm on the continent of Africa (Murison, 2013; Kaaba, 2015; Nyane, 2018; Adams and Asante, 2020). Though the petitioners were not impressed with the outcome, they both in each case accepted the ruling of the apex court. For instance, Nana Addo Dankwa Akuffo Addo in his concession speech having called the victor John Dramani Mahama to congratulate him remarked, "while author disagrees with the court's decision, author accepts it. Author accepts that what the court says brings finality to the election dispute. We shall not be asking for a review of the verdict, so we can all move on in the interest of our nation" (Akuffo Addo, 29th August, 2013). The incumbent President whose electoral victory was challenged on his part made a very balanced statement after that of the Petitioner, with both parties agreeing that Ghana was the winner in the judgement of the landmarked presidential election petition (Asante and Asare, 2016:5). Similarly, John Mahama, though disagreed with the ruling, he also nonetheless accepted it: "Much as I am aware that we are legally bound by the decision of the Supreme Court, I disagree with the process of trial and ruling of the court" (Mahama, 4th March, 2021). The willingness of the petitioners and respondents to abide by the judgement in the two presidential elections point to the fact that political demagogues in Ghana are prepared to "play by the rules of the game" in resolving their worries by using the existing legal structures. Another point of keen interest is the general populace and civil society organisations' demands on the aggrieved political actors to seek their redress in court also signifies the high confidence and trust that Ghanaians have in the judiciary contrary to the position of Owusu-Mensah and Frempong (2015).

Finally, the two verdicts also have a role in the democratic match of Ghana. The seven recommendations made in the judgement of the jurists will have far-reaching effects on the transformation of Ghana's electoral politics. However, the role of the judiciary in promoting democratic development in Ghana was dampened during the 2020 presidential election petition because of the actions and inactions of the jurists as

they stuck to the legal interpretation of the laws at the expense of the sociological interpretation. In addition, their inability to grant the request of the petitioner to cross-examine the chairperson of the EC may be legally tenable, such action could equally be considered as an affront to democracy and accountability since the EC Chairperson is a public officer whose operations are financed from the public purse. Notwithstanding, the accusation of obvious biases raised against the 2020 election petition panel of judges by the petitioner and his supporters, it is safe to state that the two presidential election petitions have not only contributed to the affirmation of the country's long-celebrated democratic stability but have also significantly elevated democratic consolidation in Ghana.

CONCLUSION AND RECOMMENDATIONS

The study sought to examine the 2012 and 2020 presidential election petitions, *visa-vis* the catalytic move towards democratic maturity in Ghana within the context of the three dimensions of democratic consolidation espoused by Linz and Stepan (1996). The paper found that the behaviour and attitude of the key political actors in the two presidential election petitions situated within the ambit of Linz and Stepan's postulation give credence to the fact that democracy is maturing in Ghana. However, there is the need for the judiciary to be consistent and apply the laws taking into consideration both the sociological and legal perspectives to win the full trust and confidence of Ghanaians in a consistent manner. The entire management of the two presidential election petitions have without a doubt put Ghana in the limelight as a trailblazer in electoral politics and democracy in sub-Saharan Africa. This is because of the acceptance and internalization of the fact that the only way to ascend to political power is through elections and whenever there are disputes, the aggrieved party(ies) are prepared to subject themselves to the laid down democratic and legal structures in addressing their grievances.

CONFLICT OF INTERESTS

The authors have not declared any conflict of interests.

REFERENCES

- Adams S, Asante W (2020). The judiciary and post-election conflict resolution and democratic consolidation in Ghana's Fourth Republic. *Journal of Contemporary African Studies* 38(2):243-256.
- Armah-Attoh D, Robertson A (2014). The practice of democracy in Ghana: Beyond the formal framework. *Afrobarometer Briefing Paper No. 137*, Accra: Center for Democratic Development, Ghana.
- Asante W, Asare BE (2016). Ghana's 2012 Election Petition and Its Outcome: A Giant Leap towards Democratic Consolidation. Selected

- issues in Ghana's democracy 1:107-122.
- Ayee JRA (2019). Introduction: Politics, governance, and development in Ghana. The Rowman & Littlefield Publishing Group Inc.
- Ayee JRA (2017). Ghana's elections of 7 December 2016: A post-mortem. *South African Journal of International Affairs* 24(3):311-130.
- Boafo-Arthur K (2008). Democracy and stability in West Africa: The Ghanaian experience. *Claude Ake Memorial Papers No. 4*, Department of Peace and Conflict Research, Uppsala University and Nordic Africa Institute, Uppsala.
- Erlich A, Kerr N, Park S (2021). Weaponizing post-election court challenges: Assessing Losers's Strategic motivations. Available at: <https://osf.io/tsmvz/download> [Accessed 10 August, 2021]
- Azu M (2015). Lessons from Ghana and Kenya on why presidential election petitions usually fail. *African Human Rights Law Journal* 15(1):150-166.
- Afrobarometer (2017). NPP Vigilante group: CDD-Ghana expresses disappointment in Delta. Pulse, com.gh, October, 24. Available at: <https://www.pulse.com.gh/npp-vigilante-group-cdd-ghana-expresses-disappointment> [Accessed 14 August, 2021]
- Collier P (2009.). *Wars, Guns & Vote: Democracy in Dangerous Places*. Vintage London.
- Diamond L (1997). Consolidating democracy in Americas. *The Annals of the American Academy of Political and Social Science* 550(1):12-41.
- Freedom House (2017). Populists and Autocrats: The dual threat to global democracy. Highlights from Freedom House's Annual Report on Political Rights and Civil Liberties. Available at: <https://freedomhouse.org/report/freedom-world/2017/populists-and-autocrats-dual-threat-global-democracy> [Accessed 10 August, 2021]
- Republic of Ghana (1992). *The 1992 Republic Constitution*. Accra: Ghana Publishing Corporation.
- Graham E, Gyampo REV, Faanu P, Yobo E (2017). The third peaceful transfer of power and democratic consolidation in Ghana. *Journal of Pan African Studies* 10(5):99-128.
- Gunther RP, Nikiforos D, Hans-Jürgen P (1996). 'O'Donnell's illusions about consolidation: A rejoinder', *Journal of Democracy* 7(4):151-159.
- Gyampo REV (2017). The state of electoral reforms in Ghana. *Africa Spectrum* 52(3):95-109.
- Huefner SF (2007). Remedying election wrongs. *44 Harvard Journals on Legislation* 265:270.
- Huntington S (1991). *The third wave: Democratization in the late twentieth century*. Oklahoma: University of Oklahoma Press.
- Jack M, Thomas EM (2011). *Erskine May's treatise on the law, privileges, proceedings and usage of Parliament*, 24th ed., LexisNexis, London.
- Kaaba O (2015). The challenges of adjudicating presidential election disputes in domestic courts in Africa. *African Human Rights Law Journal* 15(2):329-354.
- Khorram-Manesh N (2013). Democratic consolidation in Sub-Saharan Africa: Can the variation be attributed to the level of corruption at early stages of democratization? Working Paper Series 2013:1
- Lasswell HD (1936). *Politics: Who gets What, When and How?*. New York: Whittlesey House.
- Lindberg SI (2008). *Democracy and elections in Africa*. John Hopkins University Press.
- Linz JJ, Stepan A (1996). *Problems of democratic transition and consolidation: Southern Europe, South America, and post-communist Europe*. The John Hopkins University Press.
- Mahama JD (2020). John Dramani Mahama's 2020 Election Petition. Available at: https://media.peacefonline.com/docs/202012/643584676_692138.pdf [Accessed 14 March 2021].
- Mahama JD (2021). I disagree with the process of trial and ruling of SC. Available at: <https://www.myjoyonline.com/i-disagree-with-election-petition-i-disagree-with-the-process-of-trial-and-ruling-of-sc-mahamathe-> [Accessed 14 March 2021].
- Nana Addo Dankwa Akufo-Addo, Speech delivered on 29 August 2014 after the Presidential Election Petition judgment, Accra. Available at: <https://allafrica.com/stories/201308300820.html> [Accessed 14 March 2021].
- Nyane H (2018). A critique of proceduralism in the adjudication of electoral disputes in Lesotho. *Journal of African Elections* 17(2):1-24.
- Owusu-Mensah I, Frempong AKD (2015). The Judiciary and Ghana's 2012 Elections: Analysis of 2012 Presidential Elections Petition and its Ramifications for Democratic Development in Ghana. *Developing Country Studies* 5(20):20-33.
- Przeworski A, Alvarez RM, Alvarez ME, Cheibub JA, Limongi F, Neto FP (2000). *Democracy and development: Political institutions and well-being in the World, 1950-1990*, Cambridge: Cambridge University Press.
- Przeworski A (2003). Why do political parties obey results of elections?' In: A Przeworski and J. M. Maravall (eds.). *Democracy and the Rule of Law* 5:114-146.
- Sargent L (2008). *Contemporary political ideologies: A comparative analysis*. 14th edition, Belmont, CA: Wadsworth Publishing.
- Supreme Court Verdict (2012). *Presidential Election Petition*, Aeon International, 2013.
- Supreme Court of Ghana (2021). 2020 Presidential election petition, full judgement. . Available at: www.modernghana.com [Accessed 14 March 2021].