MANUAL ON
ELECTION
ADJUDICATION
SECOND EDITION

BY

THE JUDICIAL SERVICE OF GHANA
FOREWORD TO THE SECOND EDITION

Once again, it is with great pleasure that I introduce this Manual on Election Adjudication in Ghana, coincidentally in an election year. This Second Edition of the Manual reflects our continuing commitment and promise to fellow Ghanaians to be steadfastly a part of the process for the sustained socio-economic and political development of our country.

In our contemporary world, in a representative democracy, the timeliness with which a judiciary decisively determines electoral disputes without fear or favour, affection or ill-will, is part of the package of mirrors through which civilised societies, view a people. We, the Judiciary in Ghana, recognise that we have a major contribution to make to ensure that our country is seen in the best possible light and given the highest regard globally.

This Second Edition of the Manual attempts to build on the foundation laid by the maiden issue. However, the philosophy and justification for its production remain the same. In other words, the publication is designed and intended to provide a lucid, user-friendly, easily accessible but seriously compiled information resource to Judges, Lawyers, Politicians and ordinary Ghanaians. Of course, the benefits to each category are different. But the destination is the same, namely, to provide a reliable handbook through which all of us will come to have a better understanding of the complex process of election dispute resolution.

In furtherance of the rationale for developing the Manual, this Second Edition has been completely re-written and re-arranged. Whereas the Maiden Edition consisted of eleven chapters, apart from the Appendices, the chapters of the Second Edition consist of nine chapters. A major change in the Second Edition is that it includes a new chapter on the fundamental right to vote in Presidential and Parliamentary Elections (chapter 3). In addition, all matters or issues relating to Parliamentary
Election Disputes have been brought together and dealt with in chapter 5. Similarly, all matters and issues relating to Presidential Election Disputes have been brought together and dealt with in chapter 6. And significantly, all issues relating to Electoral Offences and Sanctions have been briefly dealt with in chapter 7. Chapter 8 briefly touches on the all important issue of The Use of ADR in resolving Election Disputes. A significant feature has been added in the form of Appendices which have been expanded, consisting of Digests of Selected Cases on Parliamentary and Presidential elections by the Superior Courts in Ghana, which critically expound the electoral process and its adjudication. The Appendices also contain up-to-date legislation which govern electoral disputes including relevant provisions of the 1992 Constitution and the Public Elections (Registration of Voters) Regulations, 2012 (CI 72), which has replaced the Public Elections (Registration of Voters) Regulations, 1995 (CI2).

There is no doubt that the Maiden Edition and the training based on it achieved the desired objectives. Available statistics show that the election disputes after the 2008 Elections were disposed of much more expeditiously and effectively than in previous years. I have no doubt that the clarity, with which this Second Edition addresses the fundamental issues relating to election adjudication, would definitely show a marked improvement in our scorecard in the coming years.

This publication is evidence of the Judiciary’s determination to contribute to the consolidation of Constitutional Rule in Ghana by dealing competently, efficiently and in a timely manner with all matters relating to the election of the President and the representatives of the people.

This work would not have been possible without the combined generosity of mind, energy, intellect and time of a group of indefatigable compatriots who I constituted into a Committee on 23rd November 2011 “to review, update and re-publish a Second Edition of the Manual”. The Committee consisted of: The Chairman, Dr Seth Y Bimpong–Buta, Retired Director
of the Ghana School of Law and the Editor and Publisher of *The Supreme Court of Ghana Law Reports*; Professor Kofi Kumado, Professor of Law, Faculty of Law, University of Ghana; and three Justices of the Supreme Court, namely, Hon Justice Jones Dorste, Hon Justice Paul Baffoe-Bonnie and Hon Justice Sule Gbadegbe. The Committee was ably supported by a secretariat staff led by the Judicial Secretary including his deputy and Miss Eva Herman–Condobery.

I am especially indebted to them as well as all others who I cannot name here. Their assistance has contributed in no small measure to the preparation and publication of this *Manual*.

The Department for International Development (DFID) of the United Kingdom, one of our strategic development partners, generously provided the financial resources for the publication of this *Manual on Election Adjudication in Ghana* as well as the training of the Judges who will handle electoral disputes. We are also deeply grateful to DFID for this timely assistance.

DPI Print Ltd, the printers of this *Manual*, remains great allies to the Judiciary and has, once again, done a wonderful job in printing this edition with a magnificent professional touch. I extend my deepest appreciation to them as well.

Lady Justice GEORGINA T. WOOD (MRS.)
Chief Justice of the Republic of Ghana
Chief Justice’s Chambers
Supreme Court
Accra
Ghana

July, 2012
FOREWORD TO THE MAIDEN EDITION

The principle of universal adult suffrage by which the Executive and Legislative branches of State are elected every four years has been firmly rooted in the 4th Republican Constitution 1992.

Indeed, it should be noted that the Electoral Process is not confined to the casting of votes on an election day and the subsequent declaration of election results thereafter.

There are series of other processes, such as the demarcation of the country into constituencies, registration of qualified voters, registration of political parties, the organization of the whole polling system to manage and conduct the elections ending up with the declaration of results, and so on.

Articles 45 to 56 of the Constitution 1992 deal with the functions and powers of the Electoral Commission and the organization of Political Parties. From these constitutional provisions, it is clear that the duties imposed on the Electoral Commission are onerous and naturally, there are bound to be conflicts and disputes or both arising in the course of the performance of these functions.

The 1992 Constitution has by the provisions contained in article 125 mandated the Judiciary as the Institution of State responsible for the administration of justice and vested with the exercise of judicial power and, in that regard, the Judiciary shall be entirely independent.
It is therefore important that the Judiciary position itself to deal promptly, efficiently, effectively and fairly with all electoral disputes that may be brought before the courts before and after the December 2008 elections.

It was in pursuit of the above ideals that I made a promise to the people of Ghana on the 17th day of July, 2008 in a speech delivered by me at the formal launch of the PEACE AND DEVELOPMENT CONCERT at the British Council, Accra wherein I stated:

"I would like to assure the good people of Ghana who have entrusted us with the exercise of judicial power that we are committed and ready to contribute to bringing peace and good governance. I appreciate the sobering fact that an important safeguard of election integrity lies in an effective resolution of complaints and appeals with minimum delay."

There is no doubt that the slow pace of adjudication of electoral disputes is contrary to the philosophical underpinnings of the 1992 Constitution which mandates the smooth operation of the democratic culture in Ghana.

The process by which electoral disputes are to be adjudicated is procedurally different from the processes available for initiating other disputes in the Law Courts. There is therefore the real need to equip and apprise judges, lawyers, political parties and indeed all other stakeholders of the substantive law, as well as the rules of procedure for the adjudication of electoral disputes.
This *Manual on Election Adjudication in Ghana* is therefore a fulfillment of the pledge I made on 17th July, 2008 in the speech referred to (supra) I made the following promise:

“To aid judges in their work, we will publish an easy to read, clear and concise booklet or handbook, on election dispute adjudication.”

It is therefore my hope that all who will use this *Manual* will find it really useful; as a ready access to election disputes and adjudication.

Once again, may I assure our compatriots that the Judiciary is well-positioned and equipped to deal competently, expeditiously and efficiently with all election disputes within reasonable time lines.

I would like to conclude by acknowledging the invaluable contribution of colleague Justices of the Supreme Court, who assisted in putting the *Manual* together, and acted in other ways to make this work complete.

Finally, I recognise with deep gratitude, the assistance and advice given by the two pro bono Editors of this *Manual*: Dr Seth Y Bimpong-Buta, Consulting Editor/Editor-in-Chief of *The Supreme Court of Ghana Law Reports* and Retired Director of the Ghana School of Law; and Professor Kofi Kumado, Director, Legon Centre for International Affairs (LECIA), Faculty of Law, University of Ghana. I would like to register my profound
gratitude to them and also to all others who by their assistance, have contributed in no small measure to the preparation of this *Manual*.

The UNDP, one of our strategic development partners, readily provided funds to cover the publication of this *Manual* and the training of judges who would handle electoral disputes. We are deeply grateful to them for this timely assistance.

LADY JUSTICE GEORGINA T WOOD (MRS)
Chief Justice of The Republic of Ghana
Chief Justice’s Chambers
Supreme Court
Accra
Ghana

November 2008
# Table of Contents

*Foreword to the Second Edition*  
2  
*Foreword to the Maiden Edition*  
5  

*Appendix 1 - Legislation on Election Adjudication in Ghana*  
91  

*Appendix 2 - Digest of Selected Cases on Presidential and Parliamentary Elections*  
196  

## CHAPTER 1: INTRODUCTION  
12  

## CHAPTER 2: HIERARCHY OF THE COURTS IN GHANA SHOWING THEIR JURISDICTIONAL LIMITS IN ELECTION DISPUTES  
16  

## CHAPTER 3: RIGHT TO VOTE IN PRESIDENTIAL AND PARLIAMENTARY ELECTIONS  
18  
(a) Introduction  
18  
(b) Right to vote  
18  
(c) Taking practical steps to register as a voter  
21  

## CHAPTER 4: ELECTION DISPUTE RAISING ISSUES OF INTERPRETATION OR ENFORCEMENT OF THE 1992 CONSTITUTION  
24  

## CHAPTER 5: JURISDICTION OF THE SUPERIOR COURTS IN DETERMINING PARLIAMENTARY ELECTION DISPUTES  
29  
(a) Original jurisdiction  
29  
(b) Appellate jurisdiction  
31  
(c) Commencing election dispute in parliamentary elections  
33  
(d) Procedure of petition against parliamentary election  
35
<table>
<thead>
<tr>
<th>(a)</th>
<th>Contents of petition against parliamentary election</th>
<th>36</th>
</tr>
</thead>
<tbody>
<tr>
<td>(b)</td>
<td>The answer to the election petition</td>
<td>39</td>
</tr>
<tr>
<td>(c)</td>
<td>Time for presentation of petition against</td>
<td>39</td>
</tr>
<tr>
<td>(d)</td>
<td>parliamentary election</td>
<td></td>
</tr>
<tr>
<td>(e)</td>
<td>Grounds for cancelling results of parliamentary election</td>
<td>45</td>
</tr>
<tr>
<td>(f)</td>
<td>Scrutiny as further ground for cancelling of election of a parliamentary election</td>
<td>48</td>
</tr>
<tr>
<td>(g)</td>
<td>Reliefs which may be granted by the court</td>
<td>51</td>
</tr>
<tr>
<td>(h)</td>
<td>Certification of decision</td>
<td>51</td>
</tr>
<tr>
<td>(i)</td>
<td>Report of court to the Attorney-General as to corrupt or illegal practices</td>
<td>52</td>
</tr>
<tr>
<td>(j)</td>
<td>Determination of qualification for election to Parliament</td>
<td>53</td>
</tr>
<tr>
<td>(k)</td>
<td>Prohibition of disclosure of vote</td>
<td>54</td>
</tr>
</tbody>
</table>

**CHAPTER 6: JURISDICTION OF THE SUPREME COURT IN PRESIDENTIAL ELECTION DISPUTES**

<table>
<thead>
<tr>
<th>(a)</th>
<th>Introduction</th>
<th>55</th>
</tr>
</thead>
<tbody>
<tr>
<td>(b)</td>
<td>Commencing election petition</td>
<td>55</td>
</tr>
<tr>
<td>(c)</td>
<td>Contents of the petition</td>
<td>57</td>
</tr>
<tr>
<td>(d)</td>
<td>Answer to the contents of the petition</td>
<td>58</td>
</tr>
<tr>
<td>(e)</td>
<td>Evidence at hearing of petition</td>
<td>58</td>
</tr>
<tr>
<td>(f)</td>
<td>New Part VIII of Supreme Court Rules, 1996 (CI 16)</td>
<td>59</td>
</tr>
</tbody>
</table>

**CHAPTER 7: ELECTORAL OFFENCES AND SANCTIONS**

<table>
<thead>
<tr>
<th>(a)</th>
<th>Introduction</th>
<th>60</th>
</tr>
</thead>
<tbody>
<tr>
<td>(b)</td>
<td>Registration offences</td>
<td>60</td>
</tr>
<tr>
<td>(c)</td>
<td>Offences relating to nomination papers and the ballot</td>
<td>62</td>
</tr>
<tr>
<td>(d)</td>
<td>Offences of unauthorised voting: section 29</td>
<td>63</td>
</tr>
<tr>
<td>(e)</td>
<td>Offences by election officers: section 30</td>
<td>64</td>
</tr>
<tr>
<td>(f)</td>
<td>Offences of requirement of secrecy: section 31</td>
<td>64</td>
</tr>
<tr>
<td>(g)</td>
<td>Offences of personation: section 32</td>
<td>65</td>
</tr>
<tr>
<td>(h)</td>
<td>Offences relating to bribery: section 33</td>
<td>66</td>
</tr>
<tr>
<td>(i)</td>
<td>Offence of treating: section 34</td>
<td>66</td>
</tr>
<tr>
<td>(j)</td>
<td>Offence of undue influence: section 35</td>
<td>67</td>
</tr>
</tbody>
</table>
(k) Offences of interference with electioneering activities of other persons: section 36 68
(l) Activities prohibited on polling day: section 37 68
(m) Offence of defacement of notices: section 38 69
(n) Offences of publication of false statements: section 39 69
(o) Offences of obstruction of officers: section 40 70
(p) Conclusions on sanctions 71

CHAPTER 8: USE OF ADR MECHANISMS IN RESOLVING ELECTORAL DISPUTES 72

CHAPTER 9: THE ROLE OF THE HIGH COURT JUDGE AND DISTRICT COURT MAGISTRATE IN MATTERS RELATING TO BIOMETRIC REGISTRATION OF VOTERS UNDER CI 72 75

CHAPTER 10: CONCLUSIONS 88
CHAPTER 1

INTRODUCTION

The Preamble to the 1992 Constitution states as follows:

“In the Name of the Almighty God
We the People of Ghana,

In Exercise of our natural and inalienable right to establish a framework of government which shall secure for ourselves and posterity the blessing of liberty, equality of opportunity and prosperity;

In a Spirit of friendship and peace with all peoples of the world:

And in Solemn declaration and affirmation of our commitment to;

Freedom, Justice, probity and accountability;

The principle that all powers of Government spring from the sovereign Will of the people;

The Principle of Universal Adult Suffrage;

The Rule of Law;

The protection and preservation of fundamental Human Rights and Freedoms, Unity and Stability for our Nation

Do hereby Adopt, Enact and Give to ourselves this Constitution”
In order to demonstrate very clearly and effectively the principle that all powers of Government spring from the sovereign Will of the people and also to make meaningful the Principle of Universal Adult Suffrage, we have, as a Nation, adopted the holding of public elections every four years to elect our President and Members of Parliament. For any election to be credible, it must be free, fair and transparent. For an election to be fair, the electoral system must provide credible, transparent, impartial and expeditious mechanisms for the adjudication of disputes.

By their very nature, the conduct of elections under the principle of Universal Adult Suffrage, in a pluralist political party system such as we have adopted in Ghana, imposes enormous responsibilities on the institutions of State constitutionally mandated to adjudicate electoral disputes that arise from the conduct of general elections.

In Ghana, it is the Judiciary that is constitutionally mandated to adjudicate all electoral disputes under article 64(1), (2) and (3) with regard to the election of the President; and under article 99 of the 1992 Constitution for Parliamentary Elections.

In order for the Judiciary to carry out this mandate in a credible manner, it must have mechanisms to deal promptly, effectively and efficiently with all the complaints that will arise from any election.
Her Ladyship the Chief Justice, Mrs Georgina Wood on 17 July 2008 at the formal launch of the Peace and Development Concert at the British Council Hall, stated in part as follows:

“One constant source of trouble is disputed elections. Elections are supposed to be the most transparent way of settling political choices of the people and Ghanaians would like and indeed are justifiably entitled to know what measures we have put in place to deal with election disputes, particularly post electoral disputes that may find their way into our courts.”

This *Manual on Election Adjudication in Ghana* (2nd ed) is therefore to aid the various stakeholders involved in adjudication of election disputes to enable them to be fully apprised of the 1992 Constitution and the laws applicable.

It is hoped that this *Manual* would help achieve the desired results with respect to the election dispute resolution mandate of the Supreme Court in respect of the Presidential Election, and the High Court for all other elections, especially election of Members of Parliament.

This *Manual* is therefore to serve as a user-friendly and easy-to-read information resource on substantive and procedural requirements for the resolution of election disputes. Accordingly, this Second Edition seeks to bring to the attention of all stakeholders, recent developments in and amendments to the election laws through legislative reform and recent
case law as determined by the Superior Courts in the country after the publication of the Maiden Edition of the *Manual* in 2008. See for example, the new Public Elections (Registration of Voters) Regulations, 2012 (CI 72), published by the Electoral Commission in exercise of its powers under article 51 of the 1992 Constitution. CI 72 has replaced the repealed Public Elections (Registration of Voters) Regulations, 1995 (CI 12). See also the recently enacted Supreme Court (Amendment) Rules, 2012 made by the Rules of Court Committee under articles 33(4), 64(3) and 159(2) of the 1992 Constitution. The purpose of the Supreme Court (Amendment) Rules, 2012 is to substitute Part VIII of the Supreme Court Rules, 1996 (CI 16) with a new “PART VIII – CHALLENGE OF ELECTION OF PRESIDENT”.

Developments in case law after the publication of the Maiden Edition of the *Manual* include: *Ahumah-Ocansey v Electoral Commission; Centre For Human Rights & Civil Liberties (Churcil) v Attorney- General & Electoral Commission (Consolidated)* decided by the Supreme Court on 23 March 2010, [2010] SCGLR 575; digested in the Appendix of this *Manual*; and *Republic v High Court, Koforidua; Ex parte Asare (Baba Jamal & Others Interested Parties)* also decided by the Supreme Court on 15 July 2009, [2009] SCGLR 460; digested in the Appendix to this *Manual*. Recent decisions by the High Court include: *Salifu v Electoral Commission and Ambrose Dery (Application to set aside petition - Ambrose Dery – Applicant)* – digested in the Appendix to this *Manual*. 
CHAPTER 2

HIERARCHY OF THE COURTS IN GHANA SHOWING THEIR JURISDICTIONAL LIMITS IN ELECTION DISPUTES

SUPERIOR COURTS OF JUDICATURE

SUPREME COURT
1. Has original jurisdiction in all election disputes in Presidential Election

APPEAL COURT
1. Has appellate jurisdiction in Parliamentary Election disputes.

HIGH COURT
2. Has original and appellate jurisdiction in dealing electoral offences.

REGIONAL TRIBUNAL
1. Has no original or appellate jurisdiction in election disputes.
2. Has jurisdiction in electoral offences.

LOWER COURTS

CIRCUIT COURTS
1. Has no jurisdiction in election disputes of any kind.
2. Has Jurisdiction in dealing with electoral offences.

JUVENILE COURTS
Has criminal jurisdiction over juveniles in electoral offences.

DISTRICT COURT
1. Has no civil jurisdiction of any kind in electoral disputes.
2. Has criminal jurisdiction in handling electoral offences.

FAMILY TRIBUNAL
Has no civil or criminal jurisdiction of any kind in electoral disputes or electoral offences.
It should be noted that appeals from circuit courts in respect of criminal cases whenever electoral offences are dealt with lie to the High Court and from there, further appeals are allowed to the Court of Appeal and to the Supreme Court. Similarly, criminal appeals lie from decisions of the Regional Tribunals to the Court of Appeal and thereafter to the Supreme Court as of right in a civil or criminal matter in respect of which an appeal has been brought to the Court of Appeal from a judgment of the High Court or a Regional Tribunal in the exercise of its original jurisdiction; or with the leave of the Court of Appeal, in any cause or matter, where the case was commenced in a court lower than the High Court or a Regional Tribunal and where the Court of Appeal is satisfied that the case involves a substantial question of law or is in the public interest.

In the case of minors or juveniles dealt with by the juvenile court, in respect of election offences appeals lie from there to the High Court, Court of Appeal and the Supreme Court.
CHAPTER 3

RIGHT TO VOTE IN PRESIDENTIAL AND PARLIAMENTARY ELECTIONS

(a) Introduction

(b) Right to vote
Article 42 of the 1992 Constitution confers on every Ghanaian citizen aged eighteen years and above and of sound mind, the right to vote and is entitled to be registered as a voter for the purposes of public elections and referenda. In addition to the qualifications specified in article 42, section 7(5) of the Representation of the People Law, 1992 (PNDCL 284), had imposed a disqualification as a voter, namely, that a patient in a mental hospital or a prisoner, ie “a person being detained in legal custody” was to be treated as a non-resident in a polling division of a constituency. Such a person was thus disqualified from voting in any public election. It should also be noted that, that disqualification was reinforced by regulation 1(1)(d) of the Public Elections (Registration of Voters) Regulations, 1995 (CI 12).
It should however be emphasised that both section 7(5) of PNDCL 284 and regulation 1(1)(d) of CI 12 were declared null and void as contravening articles 42 and 45(a) of the 1992 Constitution by the Supreme Court in the recent case of *Ahumah-Ocansey v Electoral Commission; Centre for Human Rights and Civil Liberties (CHURCIL) v Attorney-General and Electoral Commission (Consolidated)* – a decision given on 23 March 2010, reported in [2010] SCGLR 575 and also digested in the Appendix to this Manual.

The Supreme Court in this case held that the effect of the impugned section 7(5) of PNDCL 284 and regulation 1(1)(d) of CI 12, was to effectively take away the fundamental human rights of remand and convicted prisoners to register and vote at public elections. Following the Supreme Court decision in the *Ahumah-Ocansey Case*, the new Public Elections (Registration of Voters) Regulations, 2012 (CI 72) ( reproduced in the Appendix to this *Manual*), has provided in its regulation 1(1)(d) and (2) that a person resident or ordinarily resident in an electoral area is entitled to have his or her name included in the register of voters in an electoral area: and that: “for the purposes of paragraph (d) of sub-regulation 1, a person who is confined in a penal institution located in an electoral area is resident in that electoral area”. The effect of this provision is that a person on remand in prison and all convicted persons in prison are entitled to register and vote at any public elections or referenda.

The provisions in the repealed Public Elections (Registration of Voters) Regulation, 1995 (CI 12), have been, in the main, re-enacted in the new
Public Elections (Registration of Voters) Regulation, 2012 (CI 72), with the exception of three significant changes: First the provision in section 1(1)(d) and (2) of CI 72, unlike the repealed CI 12, reg 1, defines a resident or ordinarily resident person to include a prisoner in a penal institution as indicated above.

Second, on the issue of “Registration and issue of identification card” where “there is no objection to the application”, there is a marked difference between the identical regulation 11 of the repealed CI 12 and regulation 13 of the new CI 72. Whereas under regulation 11 of CI 12, “the registration officer shall enter the name of the applicant in the register” which shall be provisional only; under regulation 13 of CI 72, “the registration officer shall enter the name and data of the applicant in the provisional register”. Under regulation 12(7) of CI 72, the biometric data of the person to be captured by the registration assistant shall consist of the ten finger prints and the photograph of the head, showing the bare face and two ears without any obstruction of the applicant.

The third significant change brought about by CI 72, reg 15 relates to the “use of biometric information”. The said regulation 15 provides as follows:

“15. (1) The biometric information of a person registered as a voter shall not be made available to any other person or authority except on the orders of the High Court.”
(2) A person who contravenes subregulation (1) commits an offence and is liable on summary conviction to a fine of not more than two thousand penalty units, or to a term of imprisonment of not more than four years or to both.”

(c) **Taking practical steps to register as a voter**

It must be emphasised that the fundamental right to vote is meaningless unless the prospective voter takes practical steps to register and ensures that his or her name is entered in the register of voters in the electoral area where he or she is resident. In that regard, special attention should be drawn to regulation 9 of the new Public Elections (Registration of Voters) Regulations, 2012 (CI 72) which provides that:

“**Period of registration**

9. (1) The Commission shall register voters on a continuous basis.

(2) Despite subregulation (1), the Commission may by notice in the *Gazette* and in the media specify a period during which a national registration of voters shall take place.

(3) The Commission may by notice published in the *Gazette* and in the media review the original period set aside for registration.
(4) The Commission shall include in the register of voters, the name of a person who qualifies for registration as a voter and is registered.

(5) Despite subregulation (4), the Commission shall not include in the register of voters the name of the person who qualifies to register as a voter for an election but who registers less than sixty days to that election.”

It should be noted that the 40-day biometric registration exercise for the 2012 Presidential and Parliamentary Elections ended on Saturday 5 May 2012. See the Daily Graphic, front page headed: “Biometric registration ends. Over 12 million people register”. According to the Daily Graphic publication (as stated at page 3), the Chairman of the Electoral Commission, Dr Afari-Gyan, “was reported to have expressed satisfaction with the exercise but gave hint of an extension of the exercise in some parts of the country.” Such an extension would be in line with regulation 9(3) of CI 72 which states that “The Commission may by notice published in the Gazette and in the media review the original period set aside for registration.” It must be emphasised, however, that under regulation 9(5) of CI 72, the Commission is prohibited from including in the register of voters “the name of the person who qualifies to register as a voter for an election but who registers less than sixty days to that election.”

In conclusion, it could be said that any Ghanaian citizen who is qualified to register as a voter, but who took no practical steps to register during the
period of the 2012 Biometric Registration Exercise, has lost his or her fundamental right to vote in the December 2012 Presidential and Parliamentary Elections unless the Electoral Commission decides to extend further the period for the registration exercise, provided the extension does not infringe regulation 9(5) of CI 72.
CHAPTER 4
ELECTION DISPUTE RAISING ISSUES OF INTERPRETATION OR ENFORCEMENT OF THE 1992 CONSTITUTION

Under article 130(1)(a) of the 1992 Constitution, all matters relating to the enforcement or interpretation of the Constitution should be exclusively determined by the Supreme Court. Consequently, whenever, in determining a dispute relating to parliamentary election, the High Court finds that an issue relating to the enforcement or interpretation of the Constitution arises, the High Court must, under article 130(2) of the Constitution, stay proceedings and refer the constitutional issue to the Supreme Court for determination.

On the crucial question of the timing for making referrals to the High Court, attention should be drawn to the decision of the Supreme Court in the case of Republic v High Court (Fast Track Division), Accra; Ex parte Electoral Commission (Mettle-Nunoo & Others Interested Parties) [2005-2006] SCCLR 514; digested in the Appendix to this Manual. The Supreme Court in this case held (per Georgina Wood JSC (as she then was), said (as stated at page 539 of the Report) that:

“… whenever there are no disputed facts to be resolved, for either a determination of whether or not a genuine question for interpretation has arisen, or for a formulation of the issues for referral, it [the referral] ought to be made without delay.”
Indeed, in the Mettle-Nunoo case, the Supreme Court held that the question as to whether on the facts of any given case, a real or genuine interpretative issue for referral had arisen for the Supreme Court’s opinion, would depend on, inter alia, the nature of the pending action, the reliefs sought and the pleadings. And in the case of Republic v Fast Track High Court, Accra; Ex parte CHRAJ (Richard Anane Interested Party) [2007-2008] 1 SCGLR 213, the Supreme Court (per Georgina Wood JSC (as she then was) at page 235) affirmed the observation of Prof Ocran JSC in the Mettle-Nunoo case (as stated at page 59) that:

“…the trial court should not presume that there is no issue of interpretation; it will be a safer course of action for the trial court to refer the matter to the Supreme Court rather than to assume there is no real issue of interpretation, or that his or her view of the constitutional provision is more likely to be correct than that of five or seven Supreme Court Justices put together.”

In the case of Ahumah-Ocansey v Electoral Commission; Centre For Human Rights & Civil Liberties (CHURCIL) v Attorney-General & Electoral Commission (Consolidated) [2010] SCGLR 573; digested in the Appendix to this Manual, the Supreme Court was called upon to decide whether or not section 7(5) of the Representation of the People Law, 1992 (PNDCL 284), and regulation 1(1)(d) of the now repealed Public Elections (Registration of Voters) Regulations, 1995 (CI 12), were in contravention of article 42 of the 1992 Constitution. The Supreme Court unanimously held that article 42 of the 1992 Constitution had
expressly conferred the right to vote, being a fundamental human right, on all Ghanaians save those below eighteen years of age and persons of unsound mind. Consequently, the impugned legislation, ie section 7(5) of the Representation of the People Law, 1992 (PNDCL 284), which had defined what constituted residence and thus refused to recognise prisoners as resident there for purposes of voter registration, effectively took away the fundamental human rights of persons detained in legal custody, ie both remand and convicted prisoners to register and vote under article 42 of the 1992 Constitution.

The court therefore granted a declaration in respect of Suit No J1/4/2008 that: (i) non-registration of remand and convicted prisoners for voting by the Electoral Commission was in contravention of articles 42 and 45(a) of the 1992 Constitution; (ii) that in respect of the second Suit No J1/5/2008, a further declaration that section 7(5) of the Representation of the People Law, 1992 (PNDCL 284), was inconsistent with and in contravention of article 42; and that consequently, to the extent of such inconsistency, the said section 7(5) of PNDCL 284 was a nullity; (iii) that section 7(5) of PNDCL 284, to the extent that it had restricted the right of prisoners to vote, was a nullity, pursuant to article 1(2) of the Constitution, because the enactment, by virtue of article 11(6) of the Constitution, even though an existing law on the coming into effect of the Constitution, was in excess of the powers conferred on Parliament by article 93(2) of the Constitution; and (iv) a declaration that section 1(1)(d) of the Public Elections (Registration of Voters) Regulations, 1995 (CI 12), to the extent that it restricted the right of prisoners to vote was also null and void, pursuant to
article 1(2) of the 1992 Constitution. In throwing further light on its unanimous decision, the Supreme Court (per Her Ladyship Georgina Wood CJ) said (as stated in the headnote at pages 578 and 579):

“It bears emphasis that the 1992 Constitution did not set down the residency criteria, which is the product of the subordinate legislation, ie PNDCL 284. But the people of Ghana adopted and enacted for themselves a democratic regime of constitutionally-guaranteed adult suffrage for all Ghanaians, save only persons under eighteen years of age and persons of unsound mind. We crafted for ourselves a Constitution that set out its own limitations on the right to vote and perhaps having regard to the value it places on the right in question, never ceded any of its authority to either the Electoral Commission or some other authority to add further to the list of who shall not have the right to vote... On the crucial issue of who qualifies to vote, there is a vast difference between Ghana’s constitutional arrangement and that of other countries, including Australia, as is clearly borne out from the case of Roach v Electoral Commissioner [2007] HCA 43 (26 September 2007). In such countries, the disfranchisement of some category of serious criminal offenders is a deliberate constitutional choice. These offenders are, by express constitutional provisions, forbidden from participating in public elections, in order, as was explained in the Roach case: to ‘deliver a message to both the community and offenders themselves that serious criminal activity will not be tolerated by the community.’ Such disfranchisement is
therefore a product of the supreme law, not a subordinate law, in contravention of the superior law... I have considered the Attorney-General’s counter arguments that the impugned legislation is reasonably required in the public interest, in that access to prisons must be restricted, and further that violators of the law must be punished, kept away from the public, under lock and key, disfranchised and not allowed to have any say in who governs them. These, counsel contend, do serve as their just deserts for causing pain and suffering to others. In short, counsel contends that the legislation meets the proportionality test. These arguments, examined in the best of lights, I am afraid, would have no place in participatory democracy, with the guaranteed rights that are enshrined in the Constitution... I have based the call on Ghana to join the league of nations [which] place a high premium on prisoners’ fundamental right to vote, not on sentimentality or some other non-legal reasoning, but on the just requirements of the Constitution, the supreme law of the land, which we voluntarily enacted for ourselves.”
CHAPTER 5

JURISDICTION OF THE SUPERIOR COURTS
IN DETERMINING PARLIAMENTARY ELECTION DISPUTES

(a) Original Jurisdiction

Article 99(1)(a) of the 1992 Constitution confers jurisdiction on the High Court to hear and determine any question concerning whether a person has been validly elected as a Member of Parliament or the seat of a member has become vacant. What this means is that exclusive jurisdiction in respect of any complaint or dispute touching the election of any person as a Member of Parliament as constituted under the 1992 Constitution has been conferred on the High Court. The High Court is therefore the commencement point of any election dispute so far as the election of a Member of Parliament is concerned. This point was emphasised by the Supreme Court in the case of Yeboah v JH Mensah [1998-99] SCGLR 492 at 493 and 494: digested in the Appendix 2 to the Manual.

Thus the Supreme Court in Yeboah v JH Mensah held by a four to one majority decision – Kpegah JSC dissenting - that the High Court, and not the Supreme Court, was the proper forum under article 99(1)(a) of the Constitution and Part IV of the Representation of the People Law, 1992 (PNDCL 284) – reproduced in Appendix 1 to the Manual – for determining the plaintiff’s action, which was, in substance, an election petition to challenge the validity of the defendant’s election to Parliament.
The plaintiff could therefore not ignore the provisions of article 99(1)(a) of the 1992 Constitution, which had provided for a specific remedy at the High Court for determining challenges to the validity of a person’s election to Parliament, and resort to the enforcement jurisdiction of the Supreme Court under articles 2(1) and 130(1) of the 1992 Constitution.

The constitutional provision in article 99(1)(a) of the 1992 Constitution is also to be found in the Representation of the People Law, 1992 (PNDCL 284), as amended: Section 16 of PNDCL 284 as amended states as follows:

“16. Methods of questioning election

(1) The validity of an election to Parliament may be questioned only by a petition brought under sections 17 to 26.
(2) An election petition shall be presented before the High Court for hearing.”

The effect of article 99(1)(a) of the Constitution and section 16(1) and (2) of PNDCL 284 is that before a person brings or files a petition against the election of a candidate as a Member of Parliament, the person must show that the Electoral Commission had conducted a parliamentary election and had declared the result of that election. In the case of Republic v High Court, Koforidua; Ex parte Asare (Baba Jamal & Others Interested Parties) [2009] SCGLR 460; digested in Appendix 2 to this Manual, the Supreme Court unanimously held that an electoral exercise in which the
Electoral Commission had not declared a result in relation to that election as required by article 99(1)(a) of the 1992 Constitution and sections 18(1) and 50(1) of the Representation of the People Law, 1992 (PNDCL 284), would be construed as an incomplete or premature election. Since in the instant case no person had been declared by the Electoral Commission as a Member of Parliament for the Akwatia Constituency, the electoral exercise that had taken place in that constituency was an incomplete or inchoate election and did not constitute an election. Consequently, the trial High Court had no jurisdiction to hear and determine the action commenced by the writ of summons issued by the interested parties. The decision of the trial judge, dismissing the motion by the applicant to strike out the writ, was an error of law apparent on the face of the record and would therefore be quashed by an order of *certiorari*.

(b) Appellate jurisdiction

(1) Article 99 (2) of the 1992 Constitution provides as follows:

“A person aggrieved by the determination of the High Court under this article may appeal to the Court of Appeal.”

In pursuance of this right of appeal, it should be noted that it is provided in article 131(1)(a) of the 1992 Constitution as follows:

“An appeal shall lie from judgment of the Court of Appeal to the Supreme Court.”
(a) as of right in a civil or criminal cause or matter in respect of which an appeal has been brought to the Court of Appeal from a judgment of the High Court or Regional Tribunal in the exercise of its original jurisdiction.”

However, the Supreme Court in its decision in the case of In re Parliamentary Election for Wulensi Constituency; Zakaria v Nyimakan [2003-2004] 1 SCGLR 1; digested in Appendix 2 to this Manual, held by a four to one majority decision (as stated in holding (1) on the Report) as follows:

“There was no right of further appeal from the Court of Appeal to the Supreme Court in respect of an appeal from an election petition determined by the High Court under article 99 (1) of the Constitution 1992 because: (i) notwithstanding the general appellate jurisdiction of the Court of Appeal stated in article 137(1) of the Constitution, article 99(2) had expressly provided that a person aggrieved by the determination of an election petition by the High Court under article 99(1) might appeal to the Court of Appeal. That provision had the effect of taking it, ie such an appeal out of article 131(1) jurisdiction of the Court of Appeal in respect of appeals to the Supreme Court.”
The Supreme Court has thereby firmly decided that there was only one right of appeal from the High Court to the Court of Appeal in respect of an appeal from an election petition determined by the High Court.

(c) **Commencing election dispute in parliamentary elections**

Pursuant to section 17 of the Representation of the People Law, 1992 (PNDCL 284), as amended, an *election petition* may be presented *within twenty-one days from the publication of the results in the Gazette* by one or more of the following:

1. (a) person who lawfully voted or had a right to vote at the election to which the election petition relates;
2. (b) a person who claims that he had the right to have been elected at the election;
3. (c) a person alleging to have been a candidate at the election; and
4. (d) a person claiming to have had a right to be nominated as a candidate at the election.

For an example of a person who “had a right to vote at the election to which the election petition relates” in terms of section 17(a) of PNDCL 284: see *Tehn-Addy v Electoral Commission* [1996-97] SCGLR 589; digested in Appendix 2 to this Manual. In this case the Supreme Court, in granting an order for the Electoral Commission to register the plaintiff as a voter, unanimously held that every sane Ghanaian citizen of eighteen years and above, had the right under article 42 of the 1992 Constitution to
be registered as a voter. The exercise of that constitutional right of voting was indispensable in the enhancement of the democratic process and it could not be denied for the sake of organisational or administrative convenience in the absence of a constitutional provision to that effect. In so holding the court said:

“A heavy responsibility is ... entrusted to the Electoral Commission under article 45 of the Constitution, in ensuring the exercise of the constitutional right to vote. For in the exercise of this right, the citizen is able not only to influence the outcome of the elections and therefore the choice of a government but also he is in a position to help influence the course of social, economic and political affairs thereafter. He indeed becomes involved in the decision-making process at all levels of governance.”

What should be noted is that a petitioner in an election petition must satisfy the High Court that he has the requisite capacity to initiate the petition. Once the court is satisfied that a petitioner is clothed with the capacity to institute the petition, the court can go ahead to commence hearing on the substantive petition. On the other hand, if the court is satisfied upon examination that the petitioner does not have the capacity as stated in PNDCL 284, s 17 (as amended) to initiate the election petition, then there will be no need to entertain the petition. The petition should then be dismissed for lack of capacity on the part of the petitioner.
(d) Procedure of petition against parliamentary election

Even though article 99(1)(a) of the 1992 Constitution has clothed the High Court with jurisdiction to determine disputes in respect of parliamentary election, the Constitution did not specify the procedure for doing so. However, as earlier pointed out, sub-sections (1) and (2) of section 16 of the Representation of the People Law, 1992 (PNDCL 284), as amended, make some provisions on how these disputes are to be handled by the High Court.

By the said provisions, disputes to question the validity of an election of a person to Parliament may be questioned only by a petition pursuant to sections 17 to 26 of that Law. The Law also by its section 26 provides that the rules of procedure applicable in the High Court in the presentation and hearing of civil causes or matters shall be applicable in respect of election petitions in the High Court. See in that regard, the decision of the High Court in Salifu v Electoral Commission & Ambrose Dery (Application to set aside the petition - Ambrose Dery – Applicant), High Court, Wa, Suit No E12/12/09, 30 March 2009 per Koomson J – digested in Appendix 2 to this Manual. On examination of Order 19 of the High Court (Civil Procedure) Rules, 2004 (CI 47), which dealt with application generally, the court held that, in asking for an order from the court by way of an application, a party was not bound to state the rule of court under which the application had been brought. Contrary to the contention of counsel for the respondent, the failure to indicate in the motion paper, the Order under which the application had been brought, did not render it
incompetent. Similarly in making an application, the applicant did not need to indicate that he was coming under the inherent jurisdiction of the court.

It bears stressing that the procedure provided by law for challenging election results is by petition. Counsel must particularly remember this when contemplating an action. For, it is distressing to note from the statistical data relating to the election disputes instituted after the 2008 Parliamentary and Presidential Elections that seventy per cent of the cases were commenced by writ of summons instead of by petition and were accordingly struck out. Indeed, the total number of actions instituted in one place, seventeen, were all commenced by writ of summons. Clearly, the commencement of legal action by the wrong process and the attendant consequences can heighten post-election unease and must be avoided at all cost.

(e) **Contents of petition against parliamentary election**

What should an election petition contain? The High Court (Civil Procedure) Rules, 2004 (CI 47), is silent on what a petition should contain. Under the circumstances, one has to look to decided case law for guidance. The Court of Appeal held in the *Wulensi* case decided on 11 April 2002 as follows:

‘There are various methods of initiating proceedings in our courts. A petition, separate and distinct from
the well known method of beginning proceedings by a writ of summons is one of them. It being the method sanctioned by Law for questioning the validity of parliamentary elections, the Law would look to that method alone’.”

After reviewing the necessary legislation and legal authorities like Atkins Court Forms and Odgers on Pleadings, Georgina Wood JA (as she then was) who delivered the opinion of the Court of Appeal, concluded this issue of what the contents of a petition should be in these terms:

“A written document, presented to the court, praying that a particular order be made. Its form is not prescribed. It is addressed to the court and not to the other party; it includes a concise statement of the nature of the claim made or the relief or remedy required in the proceedings, which it begins, but it is not a pleading…

No form of petition is prescribed by the Rules of the Supreme Court but the general form is well settled: It must be titled in the matter of the company, patent or other matter, or the person, to which the order sought relates and of the Act of Parliament conferring jurisdiction on the court to entertain the petition.”

From the above judgment, it could or may be stated that, as a guide, an election petition should contain the following particulars at the minimum:
(1) Name and address of the petitioner and his or her counsel (if any) and which shall be the address for service.

(2) Name and address of the respondent and his or her counsel (if any) and which shall be the address for service.

(3) The petition must be in writing and signed by the petitioner and/or his or her counsel.

(4) The petition must be addressed to the High Court where the action is to be commenced.

(5) It must contain a statement of the nature of the claim, the nature and extent of the reliefs being sought and the grounds upon which the reliefs or remedies are being sought.

(6) It must contain a statement of the facts relied on to be verified by an affidavit and the law in support of the petition.

(7) The number of witnesses to be called, if any.

(8) It must be properly headed. For example: In re Article 99 of the Constitution 1992 and In re the Representation of the People Act, 1992 (PNDCI 284) as amended and In re of Parliamentary Election for (Kojokrom) Constituency, etc etc.

Care should be taken to ensure that fetish is not made out of non-use or use of prescribed forms. What is important is that, the court has sufficient information or guidelines in the manner stated (supra). If these are present, then a court must proceed to hear the petition. This is because a court must look at the substance rather than the form and ensure that substantial justice is done to all, especially when all the parties to the petition have been notified. It is often said that equity looks at the
substance rather than the form. In the particular case of an election petition, the court must bear in mind that the issue to be determined, in essence, is about the elected representative of the people in the particular constituency. Such an inquiry should not be unduly submerged under matters of form.

(f) The answer to the election petition

In petitions in respect of parliamentary election (the same as in presidential election) the form of the answer must follow closely that of the petition. The only difference is that while the paragraphs of the petition would contain matters including the relevant law in support of it, the answer responds to or is opposition to the petition.

(g) Time for presentation of petition against parliamentary election

Sub-sections (1)-(3) of section 18 of the Representation of the People Law, 1992 (PNDCL 284), govern the time for presentation of an election petition against parliamentary election. Thus after every parliamentary election, the results shall be published, under section 18(1), in the Gazette and an election petition must be presented within twenty-one days after the publication in the Gazette. It is further provided that the Gazette Notification of the election results must be in respect of the election to which the petition relates. It is further provided in the same section 18(1) of PNDCL 284, as amended, that an election petition on allegation of
corrupt practice, eg alleging payment of money or other award to have been made by the person whose election is questioned, must be presented within twenty one days after the date of the alleged payment; and, under section 18(3), the time limit of twenty-one days shall not be extended.

It should be further noted that a strict computation of time from the time of the alleged corrupt payment was made, would work injustice against the person affected. Time should under the circumstances be expanded to start running from when the petitioner became aware of the fact of the corrupt payment or ought to have known within reasonable time limit. This will ensure that the strict time limits within which an election petition is to be filed is not unduly compromised.

The corrupt payment must have been made to the knowledge of the person whose election is being questioned. There is a further provision in sub-section (2) of section 18 of PNDCL 284 which stipulates that even though an election petition must have been filed within the twenty one days after the results have been published in the Gazette, it is not valid if the petitioner does not pay as security for costs an amount of money determined by the High Court. Reference may be made to the case of Republic v Electoral Commission; Ex parte Amoo [1997-98] 1 GLR 938 at 939. In this case an election petition filed at the High Court was struck out due to the failure of the petitioner to pay the costs for security within the statutory period.
What this means, in effect, is that this security for costs must be
determined by the High Court and must also be paid within the twenty one
days allowed under the law. It follows that, for example, if an election
petition is filed within the period of twenty one days, but the security is
not paid within the statutory period, the election petition would be struck
out: see case of Isaac Amoo v Rebecca Adotey unreported ruling of the
High Court, Accra mentioned in the headnote to the case of Republic v
Electoral Commission; Ex parte Amoo [1997-98] 1 GLR 938 at 939.
Regarding the prevailing Rules governing payment of fees: see Civil
Proceedings (Fees and Allowances) Rules, 2007 (CI 55).

The provision in section 18(3) of PNDCL 284 as amended stipulates that
the time limit provided under the law, to wit, filing of an election petition
within twenty one days, shall not be extended. What this means is that, the
time-honoured discretion that Superior Court Judges have in such
situations has been completely ousted by the law. The courts therefore
have no discretion whatsoever under the law to grant an extension of time
to any person who, for one reason or the other, is unable to file his or her
petition within the twenty-one days prescribed by PNDCL 284, s 18(1).

Thus in the case of Salifu v Electoral Commission & Ambrose Dery
(Application for Joinder as Co-Petitioner – Kunbuor Applicant), High
Court, Wa (Suit No E12/12/2009, 26 February 2009; *digested* in
Appendix 2 to this Manual. Koomson J held that the combined effect of
section 18 (1) and (3) of the Representation of the People Law, 1992
(PNDCL 284), was that after the expiration of the twenty-one days, any
person who had a cause of action arising out of the parliamentary election held for a particular constituency could not, except where the person was alleging corrupt practice and specifically alleging a payment of money or other award, bring an action to seek judicial reliefs; and no court had the power to even extend the time. In so holding Koomson J said:

“In my view, the applicant having been caught by time has awaken from his slumber and now wants to pursue his cause of action by seeking an order of the court to join him to the suit. It must be noted that a court of law cannot be simply over-reached by such planks. To grant the application would amount to assisting the applicant to surreptitiously pursue a cause of action, which is now statute-barred. In my opinion, a court of law should not be an avenue for persons who are tardy to pursue rights, which they have failed to prosecute when the cause of action arose but went to sleep. I am in total agreement with counsel for the second respondent on his submission that the effect of granting the application is to permit the applicant to pursue his cause of action through the ‘back door.’ I concede that the applicant has an interest in the outcome of the case. However, having an interest in the outcome of a case alone cannot justify the grant of joinder. The circumstances of the case must be examined... I cannot therefore exercise my discretion in the particular circumstances of this case to grant the application for
equity aids the vigilant and not the indolent. Where a party sleeps on his rights he cannot run to equity for relief.”

See also the decision of Novesi-Aryene J in *Ofei Agyemang v Electoral Commission & IC Quaye, High Court (Fast Track Division)*, Accra Suit No AE/10/2009, 12 March 2009; *digested* in Appendix 2 to this *Manual*. The High Court in this case held that the provisions in section 18 of the Representation of the People Law, 1992 (PNDCL 284), were clear. An aggrieved person had twenty-one days from the date of publication of the results of the elections in the *Gazette*, to bring an action. However, under section 18(2) of the PNDCL 284, the petition would be invalid unless the petitioner had paid security for costs within the period; such security for costs was to be determined by the High Court. A petitioner did not have to serve the respondent, wait for him to enter appearance before making the application. That was because security for costs was a pre-condition to the validity of the petition and it was a condition that he did not need the presence of the respondent to satisfy. An aggrieved person must lodge his petition within the twenty-one days. He must soon thereafter (within the twenty-one days) make an *ex parte* application to the court under section 18(2) of PNDCL 284, for the court to determine security for costs. In the instant case, what the petitioner did was to disregard the clear and mandatory provisions in section 18(2) of PNDCL 284. The mere lodging of the petition at the registry of the court within twenty-one days was not sufficient compliance with the requirements of the Law; neither was the payment by the petitioner of 20,000 (old) cedis or Ghs2 so long as it was not the court that determined the amount of money paid.
The same point was made in the decision of Koomson J in *Dani Baah v Halutie, Electoral Commission & Attorney-General (Application to set aside petition - Electoral Commission Applicant)*, High Court, Wa, E12/10/08, 30 March 2009; digested in Appendix 2 to this *Manual*. In this case, it was held that the duty to satisfy the court that the security for costs had been paid did not lie on the applicant. The onus was on the respondent, ie the petitioner, who was making the assertion that he had paid the security for costs. The burden of persuasion was on the respondent in terms of section 14 of the Evidence Act, 1975 (NRCD 323). In the instant case, all that the respondent had succeeded in doing was to state in the submissions of his counsel that he had paid the security for costs. No evidence either in the form of an affidavit or a receipt had been filed or tendered to demonstrate evidence of payment. The mere assertion by counsel for the respondent in his written submissions that the security for costs had been paid, could not constitute proof of payment. The failure to pay was in violation of section 18(2) of the Representation of the People Law, 1992 (PNDCL 284).

The rationale for such stringent provisions in section 18(1)-(3) of PNDCL 284 is understandable. This is because, it is very important that the finality of a disputed election must be known within a reasonably short time. This can only happen if those interested in contesting the election results are compelled to do so within a short space of time to prevent the delay in the contest of such an election petition.
(h) **Grounds for cancelling results of parliamentary election**

Under section 20(1) of the Representation of the People Law, 1992 (PNDCL 284), the election of a candidate shall be declared void on an election petition if the High Court is satisfied:

- (a) that general bribery, general treating, general intimidation or other misconduct or circumstances, whether similar to those specified in the Law or not, have so extensively prevailed that they may reasonably be supposed to have affected the result of the election;
- (b) that there has been non-compliance with a provision of the Act or of the regulations and that it appears that the election was not conducted in accordance with the principles laid down by law and that the non-compliance affected the result of the election;
- (c) that a corrupt or illegal practice was committed in connection with the election by the candidate or with the knowledge or consent of the candidate or by an agent; or
that at the time of the election the candidate was not a qualified person to stand for election.

Notwithstanding the existence of the above-mentioned grounds which may lead to the cancellation of the election results by the High Court, the court shall not declare the results of the successful candidate a nullity on proof of two factors specified in article 20(2) of PNDCL 284: namely:

(a) where at the hearing of an election petition, the High Court finds that a candidate has been guilty through his agent or representative of corrupt or illegal practice, and the High Court further finds that the candidate has proved to the satisfaction of the High Court:

(i) that the corrupt or illegal practice was not committed by the candidate or with the knowledge or consent or approval of the candidate; or

(ii) that even though there was corrupt or illegal practice at the election, the candidate took reasonable steps to prevent the commission of such events; and
(iii) that in all other respects, the election was free from a corrupt or an illegal practice on the part of the candidate; and

(b) where the High Court finds that there has been failure to comply with a provision of the Act or of the regulations, and the court further finds:

(i) that election was conducted in accordance with the Act and the regulations, and

(ii) that the failure did not affect the result of the election.

The effect of article 20(1)(d) as a ground for cancelling the election of a person as a Member of Parliament was considered by the Supreme Court in the case of Yeboah v JH Mensah [1998-99] SCGLR 492; digested in Appendix 2 to the Manual. The Supreme Court held that if section 20(1)(d) of PNDCL 284, ie the violation of article 94 of the Constitution was retained as a legitimate ground for an election petition, it would render unconstitutional certain provisions of PNDCL 284 which would otherwise have been constitutional. Thus section 20(1)(d) has to be removed and that, that could be achieved through the application of the principle of severability on the ground that the legislature had failed to observe the constitutional prohibition imposed on its legislative powers by enacting in section 20(1)(d) of PNDCL 284 that the breach of the
constitutional requirement in article 94 could be a ground of an election petition, thereby expanding the High Court’s jurisdiction to cover a matter within the exclusive preserve of the Supreme Court.

From the foregoing, the High Court has discretionary power in relation to the grounds upon which it may cancel an election result.

As with all discretionary powers, this discretion should be exercised in accordance with sound judicial practices. Such a discretion under article 296 of the 1992 Constitution, should be exercised devoid of any arbitrary and/or capricious use of power and in all things the discretionary power shall be deemed to imply a duty to be fair and candid.

(i) **Scrutiny as further ground for cancelling of election result of a parliamentary election**

Under section 21 of PNDCL 284, another ground or basis for the possible cancellation of election results is *scrutiny*, that is, the examination directed by the High Court of the votes cast at an election. This situation arises where on an election petition, the election is claimed for an unsuccessful candidate on the ground that, that candidate had the majority of lawful votes. In that event, the court may direct an examination of the votes cast at the election by the Electoral Commission or any other person authorised by the court. On a scrutiny, votes cast by the following persons shall be struck off and not counted in the tabulation:

(a) The vote of a person,
(i) whose name was not included in the divisional register of the polling station where the vote was recorded;

(ii) a person whose name was not included in that part of the register which contained the names of the voters assigned to the polling station where the vote was recorded; and

(iii) a person who did not have the right under the Act or regulations to vote at the polling station at which the vote was recorded;

(b) the vote of a person whose vote was procured by bribery, treating or undue influence;

(c) the vote of a person who committed or procured the commission of personating at the election;

(d) the vote of a person proved to have voted more than once at the election or in more than one constituency; and

(e) the vote of a person who is disqualified from voting at the elections because of a conviction for a corrupt or illegal practice or because of a report made by a court under the Law.

It should be emphasised that under section 21(3) of PNDCL 284, a tendered ballot paper, proved on scrutiny to be a valid vote, shall be added to the poll.
In order to appreciate the legal implications and effect of scrutiny, it is important that the decision of Iris Heward-Mills J (as she then was) in the case of Enos v Electoral Commission [1999-2000] 1 GLR 564 at 565 be seriously considered and applied. In this case, the High Court held that even though the election itself had been conducted in accordance with the law, the court found that had the breaches by the returning officer of the Electoral Commission not occurred, the petitioner would have been declared the winner. The petitioner had therefore been caused incalculable harm by the breaches caused by the officer, which had substantially affected the results. Accordingly, in compliance with section 19(b) of PNDCL 284, the court declared the petitioner, and not the respondent, as duly elected. Furthermore, in compliance with section 22(1) of PNDCL 284, the court certified its decision to the Electoral Commission.

The court further stressed that a whole election is not to be invalidated by the High Court because an irregularity had been established. If the trial judge is satisfied that, the established irregularity/irregularities apart, the results, taken as a whole, reflect the expressed will of the majority of voters at that constituency, then the results should be upheld by the trial judge.
(j) **Reliefs which may be granted by the court**

Under section 19 of PNDCL 284, after hearing an election petition, the High Court may make any of the following orders or decisions:

(a) declare that the election to which the petition relates is void and order a fresh election;

(b) declare that a candidate other than the one whose election is questioned was duly elected; or

(c) dismiss the petition, and declare that the one whose election is in question was duly elected.

From the above, it is clear that the High Court has been vested with power to declare the election to which the petition relates as being void, and therefore of no effect whatsoever. In that event, a bye-election would have to be held in that particular constituency. On the other hand, where the breaches are not so serious as to result in the invalidating of the election, then, either the petitioner is declared as the winner of the disputed election or the person whose election is disputed, is confirmed as duly elected: see case of *Enos v Electoral Commission* [1999-2000] 1 GLR 564 (supra).

(k) **Certification of decision**

After the conclusion of the hearing of an election petition, and after the High Court has taken any of the decisions or made any of the orders referred to (supra) or as is contained in section 19 of PNDCL 284, the
court shall certify its decision to the Electoral Commission under section 22 of PNDCL 284.

The Commission shall request the returns by the returning officer in respect of the election to which the petition relates to be confirmed or altered accordingly as the dictates of the case warrant. However, if the decision certified by the High Court to the Commission is to the effect that the election to which the petition relates is void, a writ shall be issued for a fresh election in the constituency concerned as decided by the High Court in *Enos v Electoral Commission* [1999-2000] 1 GLR 564 at 565 referred to above.

(l) **Report of court to Attorney-General as to corrupt or illegal practices**

At the conclusion of the hearing of an election petition, the High Court, under section 23 of PNDCL 284 shall, if satisfied that a person has been proved to have committed the offence of corrupt or illegal practice in connection with the election to which the petition relates, do the following things:

(i) send a written report to the Attorney-General giving the name and description of that person;

(ii) the nature of the corrupt or illegal practice; and

(iii) any other information that the High Court considers relevant and appropriate.
(m) Determination of qualification for election to Parliament

One of the fertile areas of election disputes is that of the qualifications for election to Parliament. The qualifications and eligibility for Parliament are set out in article 94 of the 1992 Constitution and section 9 of PNDCL 284. Under these provisions, candidate must, among other things, have the following qualifications:

- resides in the constituency or hails from that constituency or locality
- be a citizen of Ghana whether by birth, registration or naturalisation
- be a registered voter
- must not have been convicted of certain specified offences
- must not be disqualified by a law in force from contesting the election
- must have the requisite age – 21 years for election as a Member of Parliament (40 years for election as President)

It should be noted that under article 99(1) of the 1992 Constitution, any time a question arises as to whether in a public election the seat of a Member of Parliament has become vacant or not maybe referred to and
determined by the High Court on a petition filed against the Attorney–General and/or any other person.

The State Proceedings Act, 1998 (Act 555), waives the requirement of giving one month’s notice before the commencement of legal proceedings against the Republic in election petitions against any act or omission of the Electoral Commission.

(n) **Prohibition of disclosure of vote**

Under section 26 of PNDCL 284, the High Court shall not require a person who has voted at an election whose results are being contested to disclose the person for whom he voted.
CHAPTER 6

JURISDICTION OF THE SUPREME COURT IN PRESIDENTIAL ELECTION DISPUTES

(a) Introduction

The 1992 Constitution, art 64(1) provides that the validity of the election of the President may be challenged only by a citizen of Ghana by a petition presented to the Supreme Court within twenty-one days after the declaration of the results. Article 62(2) provides that a declaration by the Supreme Court that the election of the President is invalid, shall be without prejudice to anything done by the President before the declaration. Article 64(3) stipulates that the Rules of Court Committee shall make rules for the practice and procedure for the petitions to the Supreme Court. The Rules of Court Committee has accordingly made Rules, namely, the Supreme Court Rules, 1996 (C1 16), PART EIGHT, headed: “Challenge of Election of President.” The said Part Eight contains: Rule 68 (Petition for challenging the election of President; Rule 69 (Answer to petition); Rule 70 (Evidence at hearing of petition); and Rule 71 (Announcement of decision).

(b) Commencing election petition

Rules 68 of the Supreme Court Rules, 1996 (C1 16), makes provision for commencing an election petition in presidential election. The said rule 68(a) stipulates as follows:
“68. Petition for challenging the election of President

A petition presented pursuant to clause (1) of article 64 of the Constitution shall be filed with the Registrar, and shall state

(a) the full name and address of the petitioner and of counsel for the petitioner which shall be an address for service;”

Pursuant to article 64 (1) of the 1992 Constitution, any citizen of Ghana who is duly registered as a voter may present a petition to the Supreme Court within twenty-one days of the declaration of the Presidential results, challenging the election of the President.

What constitutes a valid challenge was decided in the case of Mettle-Nunoo v Electoral Commission, dated 31 July 2008; [2007-2008] 2 SCGLR 1250; digested in the Appendix 2 to this Manual. The court held in that case that, the action by the plaintiffs did not constitute a challenge to the validity of the Presidential Election because their action was not an election petition. The object of the petition was to challenge the validity of the Declaration of the President-Elect Instrument, 2004 (CI 49), under which the winner of the election was declared. The plaintiffs were therefore not estopped or debarred from challenging the validity of CI 49.
In order to determine who is a citizen of Ghana, one has to turn to Chapter 3 of the 1992 Constitution and the Citizenship Act, 2000 (Act 591), both of which deal with citizenship.

It is to be noted that whenever a challenge is made to the capacity of a person who seeks to challenge any presidential election result, the Supreme Court shall take into consideration the provisions of the 1992 Constitution on citizenship and Act 591. This is because there are different methods by which citizenship is conferred on a person, ie by birth, by operation of law, by registration and/or by naturalisation.

Once this issue of capacity as to whether the petitioner is a citizen or a registered voter has been decided, then the way is set for the court to proceed with the hearing of the petition.

(c) Contents of the petition

Sub-rules (b) – (e) of rule 68 deal with the contents of the petition. They provide as follows:

“(b) the grounds for challenging the validity of the election;

(c) a statement of the facts relied on to be verified by affidavit, and of the law in support of the petition;

(d) the number of witnesses to be called; and

(e) any other matters as the Court may determine.”
(d) **Answer to the contents of the petition**

Rule 69 provides that the Attorney-General and any other person upon whom a petition is served may file with the Registrar, within twenty one days of the service, an answer to the petition which shall state the following:

“(a) the grounds of opposition to the petition;
(b) the law in support of the answer in opposition to the petition; and
(c) the number of witnesses to be called.”

The answer to the petition shall be filed with the Registrar.

(e) **Evidence at hearing of petition**

Rule 70 of CI 16 provides that the petitioner may, with the leave of the court, call any witnesses; and the court may, on its own motion, call a witness whose evidence is, in the opinion of the court, likely to be relevant to the matter before the court. Rule 71 also states that the court, at the conclusion of the hearing of the petition, shall deliver its judgment and the Registrar shall, within seven days of the delivery of the judgment, forward a copy of the judgment to the Electoral Commission.
(f) **New Part VIII of the Supreme Court Rules, 1996 (CI 16)**

There is currently pending before Parliament, the Supreme Court (Amendment) Rules, 2012. These Rules seek to amend the Supreme Court Rules, 1996 (CI 16) by substituting for its Part VIII, a new Part VIII, namely; “PART VIII – CHALLENGE OF ELECTION OF PRESIDENT” – to be reproduced in the Appendix to this *Manual*. The new Part VIII consists of the following Rules: Rule 68 (Petition for challenge); Rule 68A (Mode of presentation); Rule 68B (Service); Rule 69 (Respondent’s address for service); Rule 69A (Respondents’ answer and preliminary objection); Rule 69B (Electronic service); Rule 69C (Hearing); Rule 70 (Consolidation of petition); Rule 70A (Extension or abridgment of time); Rule 70B (Death of petitioner); Rule 71 (Death of respondent); Rules 71A (Withdrawal of petition); Rule 71B (No review, ie rule 55 of CI 16, dealing with application for review, shall not be applicable to a decision of the Supreme Court in respect of petition challenging the election of a President).
(a) Introduction

What are electoral offences and when are electoral offences committed? The Representation of the People Law, 1992 (PNDCL 284), as amended, devotes fourteen sections, ie sections 27-40 to deal with what constitutes electoral offences.

Electoral offences may be committed when seeking to register as a voter (section 27); requirement of secrecy of voting (section 31); personation (section 32); bribery (section 33); treating (section 34); undue influence (section 35); interference with electioneering activities of other persons (section 36); and certain activities prohibited on polling day such as campaigning for votes for a particular candidate (section 37). An electoral offence could also be committed by individuals, party activists and agents parties, candidates and even election officials.

(b) Registration offences

Sub-sections (a)–(c) of section 27 of PNDCL 284 state that a person commits an election offence when:

(a) he knowingly makes false statement to have his/her name on the voters’ register;
(b) engages in double registration; and

(c) prevents or attempts to prevent another person from exercising his right to register as a voter through the use of force or threats.

SANCTIONS
The sanctions for the offences under section 27 are:

(a) a fine not exceeding 500 penalty units; or

(b) imprisonment not exceeding two years; or

(c) both fine and imprisonment; and

(d) five-year disqualification.

It should be emphasised that the new Public Elections (Registration of Voters) Regulations, 2012 (CI 72), s 27 has created additional registration offences as in PNDCL 284, s 27 and new registration offences totalling nineteen offences including:

(a) registers as a voter when that person does not qualify to be registered;

(b) registers as a voter more than once either at the same registration centre or at different registration centres;

(c) registers as a voter in the name of another person whether that other person is dead or alive;

(d) by force or threat of use of physical or spiritual force, prevents a person from exercising the right to register as a voter;
(k) challenges or objects to the inclusion of the name of another person in the register of voters on a ground that that person knows to be false;
(l) disrupts proceedings at a registration centre or in any way interferes with the work of an official connected with registration of voters;
(s) intentionally brings an electronic device that interferes with the performance of the equipment to a registration centre or any data centre of the Commission.

The sanctions for the summary conviction for these offences are: a fine of not more than five hundred penalty units or to a term of imprisonment of not more than two years or both.

(c) **Offences relating to nomination papers and the ballot**

Under section 28, a person commits an election offence if he/she:

(a) forges or destroys a nomination paper or any other document relating to the registration of a voter;
(b) sells, offers for sale or purchases a ballot paper;
(c) is found in possession of an officially marked ballot paper if he is not designated to be in possession of such a ballot paper;
(d) destroys, takes or otherwise interferes with a ballot box or ballot paper intended to be used;
(e) prints a ballot paper without authority; and
(f) attempts to vote for somebody without proper authorisation.
SANCTIONS

(a) a fine not exceeding 500 penalty units; or
(b) imprisonment not exceeding two years; or
(c) both fine and imprisonment; and
(d) five-year disqualification.

(d) Offences of unauthorised voting: section 29

A person commits an offence if:

(a) he votes at an election he is not eligible or entitled to vote by reason of disqualification or non qualification.

(b) engages in double voting

SANCTIONS

(a) a fine not exceeding 500 penalty units; or
(b) imprisonment not exceeding two years or both fine and imprisonment; or
(c) both the fine and imprisonment; and
(d) disqualification from being registered as a voter or voting at an election for a period of five years from the date of the expiration of the term of imprisonment.
(e) **Offences by election officers: section 30**

(a) making of false entries;
(b) permitting an un-incapacitated person to vote in a manner reserved for incapacitated persons;
(c) refusing to permit an incapacitated person to vote in a manner reserved for such persons;
(d) preventing an otherwise qualified or eligible voter from exercising his franchise;
(e) willfully counting a ballot as being cast for a candidate when he knows it was not cast for that person; and
(f) fails to or acts in breach of official duty.

SANCTIONS

(a) a fine not exceeding 500 penalty units or
(b) imprisonment not exceeding two years or
(c) both a fine and imprisonment.

(f) **Offences of requirement of secrecy: section 31**

An electoral officer, clerk, interpreter, candidate, agent, or polling agent on duty at a polling station shall endeavour to maintain utmost secrecy and unless authorised by law, shall not communicate certain information relating to the name of a voter or the number on the register of a voter
who has not applied for a ballot paper or voted at a polling station or the official mark.

A person present at the counting of votes shall:

(a) maintain secrecy of voting;
(b) not attempt to obtain information as to how a voter is voting or voted;
(c) not interfere with a voter who is voting;
(d) not induce or compel a voter to disclose how a voter voted or whom he voted for; and
(e) a person who has assisted a blind man or any person incapacitated from voting by any physical cause shall not divulge any information about how his charge voted.

SANCTIONS

(a) a fine not exceeding 500 penalty units; or
(b) imprisonment not exceeding two years; or
(c) both a fine and imprisonment.

(g) Offences of personation: section 32

A person commits an offence of personation if that person votes:

(a) votes as another person whether that person is dead or alive or is a fictitious person; or

(b) for a person whom that person knows or has reasonable grounds to believe to be dead or to be a fictitious person.
(h) Offences relating to bribery: section 33

A person commits the election offence of bribery under PNDCL 284, s 33 if that person directly or acting through another person:

(a) gives money or financially induces a person to vote or refrain from voting;
(b) makes a gift to or induces a voter to vote in a certain way;
(c) if before or during an election that person directly or indirectly receives money, gift, a loan, etc to vote or refrain from voting in a particular way; and
(d) if after an election that person directly or indirectly receives money or valuable consideration as payment for voting or having refrained from voting in a particular way.

SANCTIONS

(a) a fine not exceeding 500 penalty units; or
(b) imprisonment not exceeding two years; or
(c) both fine and imprisonment; and
(d) five year disqualification.

(i) Offence of treating: section 34

A person commits an election offence of treating under section 34 of PNDCL 284 when a person corruptly pays wholly or in part the expenses
of giving or providing meat, drink, entertainment or provision to or for any person or group of persons for purposes of influencing voting by that person or an account of that person having voted in a particular way.

SANCTIONS

(a) a fine not exceeding 500 penalty units; or
(b) imprisonment not exceeding two years; or
(c) both fine and imprisonment; and
(d) five-year disqualification.

(j) Offence of undue influence: section 35

The offence of undue influence is committed by threats of a temporal or spiritual injury, damage, harm or loss to compel or induce a person from voting in a particular way or by abduction, duress or fraudulent method prevents the free exercise of the franchise of a voter.

SANCTIONS

(a) a fine not exceeding 500 penalty units; or
(b) imprisonment not exceeding two years; or
(c) both fine and imprisonment; and
(d) five-year disqualification.
(k) **Offences of interference with electioneering activities of other persons: section 36**

(a) seeking to excite or promote disharmony, hatred, or enmity against another person or group of persons by words, written or verbal, songs, etc;

(b) organizing persons or group of persons with the intention of training them in the use of force, violence, be it physical or verbal against other persons;

(c) obstructs or attempts to obstruct the free exercise of franchise by other persons; and

(d) compels or induces a candidate or voter from voting or withdrawing from election by threats of harm be it physical or spiritual or fetish displeasure or censure.

**SANCTIONS**

(a) a fine not exceeding 500 penalty units; or

(b) imprisonment not exceeding two years; or

(c) both fine and imprisonment; and

(d) five-year disqualification.

(l) **Activities prohibited on polling day: section 37**

(a) seeking to influence voting pattern in whatever manner within 500 meters of polling station; and

(b) selling intoxicating liquor within 500 meters of a polling station.
SANCTIONS

(a) a fine not exceeding 200 penalty units; or
(b) imprisonment not exceeding twelve months; or
(c) both a fine and imprisonment.

(m) Offence of defacement of notices: section 38

A person commits an offence if without lawful excuse he destroys, defaces or removes a document exhibited under authority of the law, i.e. PNDCL 284 or regulation made under the Law.

SANCTIONS

(a) a fine not exceeding 200 penalty units; or
(b) imprisonment not exceeding five months; or
(c) both fine and imprisonment.

(n) Offences of publication of false statements: section 39

A person commits an election offence if he:

(a) before or during an election for the purpose of effecting or preventing the election of a candidate makes or publishes or causes to be made or published by words whether written or spoken, or by song a statement which is false or which that person knows or has reason to believe is false in relation to the personal character of another person or a political party for the purpose of effecting or preventing the election of another candidate or the conduct of a political party; or
(b) before or during an election knowingly publishes a false statement of the withdrawal of a candidate for the purpose of promoting or procuring the return of another candidate.

It should be noted that section 39 of PNDCL 284 does not take away the right of a person to sue for defamation of character.

SANCTIONS

(a) a fine not exceeding 500 penalty units; or
(b) imprisonment not exceeding two years; or
(c) both a fine and imprisonment.

(o) Offence of obstruction of officers: section 40

A person commits an offence if he interferes or obstructs an electoral officer in the performance of his official duties.

SANCTIONS

(a) a fine not exceeding 500 penalty units or
(b) imprisonment not exceeding two years or
(c) both a fine and imprisonment.
(p) Conclusions on sanctions

It should be noted that the sanctions for the various offences are varied and diverse as sanctioned under sections 27, 28, 29, 32-36; sections 30, 31, 39 and 40; and section 38.
CHAPTER 8

USE OF ALTERNATIVE DISPUTE RESOLUTION (ADR) MECHANISMS IN RESOLVING ELECTORAL DISPUTES

The ADR Mechanisms are not provided either in the 1992 Constitution or the Supreme Court Rules, 1996 (CI 16), or the High Court (Civil Procedure) Rules, 2004 (CI 47). However, the Courts Act, 1993 (Act 459), provides in section 72 that a court of law with civil jurisdiction shall promote reconciliation. The section states as follows:

“72 Promotion of reconciliation in civil cases

(1) Any Court with civil jurisdiction and its officers shall promote reconciliation, encourage and facilitate settlement of disputes in an amicable manner between and among persons over whom the Court has jurisdiction.

(2) Where a civil suit or proceeding is pending, a Court with jurisdiction in that suit or proceeding may promote reconciliation among the parties, and encourage and facilitate the amicable settlement of the suit or proceeding.”

And section 135 of the Alternative Dispute Resolution Act, 2000 (Act 798), which came into force on 31 May 2010, provides as follows:
“‘Alternative Dispute Resolution’ means the collective description of methods of resolving disputes otherwise than though the normal trial process.”

These provisions clearly provide the legislative framework for the use of Alternative Dispute Resolution (ADR) mechanisms for the resolution of civil disputes in Ghana.

However, whether the electoral dispute relates to a presidential or a parliamentary election, the court must be seised first with jurisdiction by an aggrieved party filing the appropriate process. After the filing, the court would have to determine whether the nature of the dispute or difference, as can be gleaned from a careful reading and consideration of the petition and the relevant applicable rules, makes it safe to encourage the parties to submit the dispute or difference to ADR.

In this respect, a court should be guided by section 1 of the ADR Act, 2000 which provides as follows:

“This Act applies to matters other than those that relate to:

(a) The national or public interest;
(b) The environment;
(c) The enforcement and interpretation of the Constitution; or
(d) Any other matter that by law cannot be settled by an alternative dispute resolution method.”

As far as electoral disputes are concerned, the trickiest consideration will be whether the dispute or difference before the court relates to the national or public interest. Of course, as is well known, these expressions provide special interpretative challenges. Some guidance is given by the Constitution which defines “public interest” in article 295(1) as including “any right or advantage which ensues or is intended to ensue to the benefit generally of the whole of the people of Ghana.”

Clearly then nothing prevents political parties or their members or indeed individual candidates not affiliated to any political grouping from settling electoral disputes amicably without resort to the judicial process. Neither is ADR being ruled out completely after the judicial process has been set in motion. The advantages that can be derived from ADR are enormous and should be encouraged even in the area of electoral disputes where appropriate.

In this respect, all stakeholders are to note that a detailed Manual or Court-connected ADR Programme is available and may be obtained from the National Co-ordinator of ADR or the Registrars of the High Courts.
CHAPTER 9

THE ROLE OF THE HIGH COURT JUDGE AND DISTRICT COURT MAGISTRATE IN MATTERS RELATING TO BIOMETRIC REGISTRATION OF VOTERS UNDER CI 72

Introduction

Under regulation 19(1) of the Public Election (Registration of Voters) Regulations, 2012 (CI 72), a High Court Judge has a role to play “as the Chief Registration Review Officer and shall determine appeals against the decisions of the District Registration Review Committee.” And under regulation 25(1) and (3), a District Court Magistrate has also a role to play as “the District Registration Review Officer” in settling claims and objections on the provisional register.

The examination of these roles of the High Court Judge and the District Court Magistrate in that regard, can only be properly understood if the powers of the Electoral Commission as provided under chapter 7 of the 1992 Constitution, ie articles 42-54 are put in their proper context. For example, CI 72 had been made pursuant to the power conferred on the Electoral Commission under article 51 of the 1992 Constitution which reads as follows:
“51. Regulations for elections and referenda

The Electoral Commission shall, by constitutional instrument, make Regulations for the effective performance of its functions under this Constitution or any other law, and in particular, for the registration of voters, the conduct of public elections and referenda, including provision for voting by proxy.”

Reference may also be made to article 140(1) of the 1992 Constitution which has conferred on the High Court, the following jurisdiction:

“140. Jurisdiction of the High Court

(1) The High Court shall, subject to the provisions of this Constitution, have jurisdiction in all matters and in particular, in civil and criminal matters and such original, appellate and other jurisdiction as may be conferred on it by this Constitution or any other law.”

The jurisdiction and/or role conferred on a High Court Judge under CI 72 is derivable from article 140 (1) of the Constitution. And CI 72 can also be described as having taken its birth from article 51 of the Constitution.

CI 72 is a comprehensive set of regulations that serves as a guide to the biometric registration of voters, which is a novelty in our political dispensation. It is designed to streamline the process of voter registration and spells out the dos and don’ts, what constitutes offences, the sanctions
to be applied, where, and by whom, etc. It is in this regard that the High Court Judge and District Court Magistrate have a critical role to play as spelt out under the Public Election (Registration of Voters) Regulations, 2012 (CI 72).

The Chief Registration Review Officer (CRRO)

Regulation 19 (1) of CI72 provides as follows:

“In each region, a judge of the High Court shall be the Chief Registration Review Officer and shall determine appeals against the decisions of the District Registration Review Committee.”

Under Regulation 19 (2), the CRRO shall determine the practice and procedure for the hearing of the appeals. And under regulation 19(3), the Electoral Commission shall comply with the decision of the CRRO which shall be communicated to the Commission and the parties in writing.

District Registration Review Committee (DRRC) – Regulation 17 (1)

The District Registration Review Committee (DRRC) is the body set up to examine challenges related to the registration of voters in the district. Sub-regulations (2) (a) - (e) of regulation 17 of CI 72, which establish the composition of the DRRC, state as follows:
“District Registration Review Committee

17. (2) A District Registration Review Committee consists of

(a) one representative of each registered political party active in the district;
(b) the district officer of the Commission, who is the secretary to the Committee;
(c) the Police Commander in the district or the representative of that Police Commander;
(d) the District Director of Education or the representative of that District Director; and
(e) one representative of the traditional authorities in the district.”

And regulation 18 (1) and (2), which specifies the functions of the DRRC, states as follows:

“Functions of the Committee

18. (1) On the receipt of the completed voter registration form of a challenged applicant and the completed voter registration challenge form as provided for in regulation 16 (2), the Committee shall within

(a) seven days examine the grounds of the challenge to the application;
(b) seven days decide whether or not the applicant is qualified to be registered as a voter; and
(c) forty-eight hours after its decision communicate the decision in writing to the Commission and the applicant.

(2) In furtherance of its functions under subregulation (1), the Committee
   (a) shall take evidence from the parties concerned;
   (b) shall examine relevant documents;
   (c) may call witnesses to testify; and
   (d) may carry out any investigation relevant to the issue.”

Under regulation 18(3), the District Registration Review Committee is vested with the same powers as a district magistrate court for the purpose of taking evidence and calling witnesses. Under regulation 18 (4), the recommendation of the committee shall be implemented by the Electoral Commission fourteen days after the parties to the dispute have been notified of the committee’s findings unless the Commission has received written notification that either party has appealed against the decision to the CRRO.
Challenging an application for registration

Regulation 16 (1) of CI72 states:

“A person appointed to register voters, a person authorized by the Commission to monitor the registration of voters or a person qualified to be registered as a voter may challenge a person applying to be registered as a voter on the ground that the applicant does not satisfy the requirements provided in regulation 1.”

Under regulation 16(2) (a)–(d), where a person’s application for registration is challenged and that person claims to be qualified to be registered as a voter: (a) the person making the challenge shall complete the voter registration challenge form as set out in Form Three of the Schedule; (b) the registration officer shall complete the registration form on behalf of the applicant but shall not issue the applicant with a voter identification card; (c) the registration officer shall send the completed voter registration form together with the completed voter registration challenge form to the district electoral officer; and (d) the district electoral officer shall send the completed voter registration form together with the completed voter registration challenge form to the District Registration Review Committee.

The question one might ask is; what happened at Odododiodio, Tafo-Pankrano Constituencies and other hot spots during the recent 40-day Biometric Registration Exercise for the 2012 Presidential and
Parliamentary Elections which ended on 5 May 2012? How could they have been resolved under the relevant provisions of CI 72?

There are processes during the registration of voters, before the compilation and exhibition of the provisional register of voters which entitle persons to challenge an applicant for registration. Her Ladyship the Chief Justice has therefore appointed for each region, a Judge of the High Court, as the Chief Registration Review Officer (CRRO). Under regulation 19(3), the decision of the CRRO, on appeal from the decision of the District Registration Review Committee (DRRC), is final.

**Claims and objections after publication of the provisional register of voters**

After the provisional voters register is compiled and exhibited as required by regulations 21 and 22, claims and objections and complaints may arise. Such complaints are addressed under regulation 24(1) – (4) of CI 72. Under the said regulation 24(1), a person who has a right to have the particulars including the name of that person to be included in the provisional register or to object to the inclusion of any name or the omission of any name from the register, may on the publication of the provisional register, submit a complaint as set out in Form Five or Form Six of the Schedule as the case may be to the exhibition officer in respect of any matter relating to the particulars of a person included or omitted in the provisional register.
Regulation 24(2) (a) provides that the exhibition officer shall, within three days after the exhibition period has ended, exhibit in a conspicuous place in the registration centre: (i) a list as set out in Form Seven of the Schedule of persons who have applied to be included in the voters register; (ii) a list as set out in Form Eight of the Schedule of persons whose inclusion in the register is the subject of an objection; and (iii) a list as set out in Form Nine of the Schedule of persons whose names occur more than once. And under regulation 24(2)(b) and (c), the exhibition officer, shall send two copies of each of the lists to the district officer of the Commission; and also send the exhibited provisional register with the corrections of the exhibition officer, to the district officer of the Commission.

Under regulation 24(3) and (4)(a) and (b), the Commission may determine the other relevant particulars that are to be contained in the list; and also the district officer of the Commission shall keep a copy of each of the lists of claims and objections, at the office of the district officer; and send a copy of the lists of claims and objections to the concerned regional director of the Commission.

**Settling claims and objections on provisional registration**

The procedure for settling such claims and objections is addressed under regulation 25. Sub-regulation (3) of regulation 25 provides that: “the District Court Magistrate shall be the District Registration Review
Officer.” Under sub-regulations (1) (a)(i) and (ii) and (b) of regulation 25, within seven days from the date of receipt of the lists of claims and objections from the exhibition officer, a district officer of the Electoral Commission shall submit them to the DRRO for determination, and give notice to each person against whom an objection has been raised, of the objection and the reasons for it, and the person who has made the claim, to attend the hearing presided over by the DRRO for the determination of the objection or claim.

DRROs are advised to pay attention to sub-regulations (5)(a)-(c) of regulation 25 in their determination of claims and objections, if they are to avoid appeals from their decisions by aggrieved parties to the High Court as provided for under regulation 25 (8).

The Chief Registration Review Officer (CRRO) of the region shall, under regulation 25(4), appoint a lawyer of not less than three years standing and who is preferably resident in the district to be the DRRO, if a district court does not exist in the district or if the chairperson of the district court is absent.

It is significant to note that, under sub-regulations (5)–(9) of regulation 25, the decision of the DRRO must be communicated to the Commission in writing; and the Commission should act on the said decision unless it has received a certified notification of an appeal to the High Court. The decision of the High Court is final.
Appellate Proceedings

The 1992 Constitution, art 140(5) and the Courts Act, 1993 (Act 459), s 21(1) and (2) have conferred appellate jurisdiction on the High Court in appropriate cases. The said article 140 (5) of the 1992 Constitution and section 21 (1) and (2) of the Courts Act, 1993 respectfully provide as follows:

“140 (5) For the purposes of hearing and determining an appeal within its jurisdiction and the amendment, execution or the enforcement of a judgment or order made on any appeal, and for the purposes of any other authority, expressly or by necessary implication given to the High Court by this Constitution or any other law, the High Court shall have all the powers, authority and jurisdiction vested in the court from which the appeal is brought.”

“21. Right of appeal

(1) The prosecution or a person convicted of an offence in a criminal case, tried by a Circuit Court or tried by a District or Juvenile Court may appeal against the judgment to the High Court.
(2) A person aggrieved by a judgment of a District Court in a civil matter may appeal against the judgment to the High Court.”

It is therefore clear that, the appellate jurisdiction vested in the High Court under regulation 19 of CI 72 has to be exercised in a judicial manner.

It has to be noted that CI 72 has not provided for a further right of appeal to the Court of Appeal and the Supreme Court. But there seems to be an automatic right of appeal from decisions or orders of the High Court to the Court of Appeal and to the Supreme Court, under articles 137 (1) and (2), 129 (1) and 131 (1) and (2) of the 1992 Constitution respectively.

It, however, remains to be seen how the Courts in Ghana would interpret regulation 19 of CI 72 in the light of the Supreme Court’s decision in the case of In re Parliamentary Elections for Wulensi Constituency; Zakaria v Nyimakan [2003-2004] 1 SCGLR 1. That decision has effectively, for now, settled the question of the appellate jurisdiction in parliamentary election disputes as ending at the Court of Appeal.

In view of the fact that the High Court has jurisdiction to determine appeals from decisions of the district and circuit courts in criminal cases, it is logical that persons who have been convicted under regulations 27 (a) to (s) of CI 72, should have the right of appeal to the High Court and thereafter further right of appeal to the Court of Appeal and the Supreme Court.
In all this, the High Court, in the performance of its appellate jurisdiction under regulation 19 of CI 72, has to be guided by the principles of law that regulate and control the conduct of criminal appeals under the Courts Act, 1993 (Act 459), and the Criminal and Other Offences (Procedure) Act, 1960 (Act 30), ss 296 and 297 and the case law developed by the court of Appeal and the Supreme Court.

Conclusions

It is suggested that, the exercise of the jurisdiction, which has been conferred upon the High Court and the District Court Magistrate under CI 72, is very sensitive. Therefore it should be exercised with a lot of circumspection, boldness and courage.

It must, however, be emphasised that in this exercise, the prime object is to do justice while maintaining the integrity of the Judiciary. So Judges and magistrates who sit and adjudicate on election disputes and impose sanctions for electoral registration offences committed under CI 72, must be seen to be exhibiting a high sense of impartiality; and should be extra reticent to avoid being branded as for or against any political party or individual. In this regard, it is also suggested that in the exercise of their discretion in imposing sentences as conferred under the Public Elections (Registration of Voters) Regulations, 2012 (CI 72), the High Court Judges should act impartially and be consistent. This is not to place any fetters on any judge’s discretionary powers in sentencing or determining the
eligibility of an applicant to register. But it is only to alert judges to the fact that election disputes can generate a lot of emotion and the Judiciary must prove equal to the task. The whole nation looks up to the Judiciary as the only bulwark against lawlessness and disorder.
CHAPTER 10

CONCLUSIONS

We have in the preceding eight chapters of this *Manual on Election Adjudication in Ghana (2nd Edition)* dealt with various topics relating to electoral adjudication in Ghana as clearly set out in the *Table of Contents*. These include: introduction (chapter 1); the hierarchy of the Courts in Ghana showing their jurisdictional limits in election disputes (chapter 2); right to vote in presidential and parliamentary elections (chapter 3); electoral disputes raising issues of interpretation or enforcement of the 1992 Constitution (chapter 4); jurisdiction of the superior courts in determining parliamentary election disputes (chapter 5); jurisdiction of the Supreme Court in determining presidential disputes (chapter 6); electoral offences and penal sanctions (chapter 7) and use of Alternative Dispute Resolution (ADR) (chapter 8) in resolving election disputes.

As can be seen, where the law provides an avenue for redress of an election dispute, it would patently be improper to assume jurisdiction if the court is not the designated forum.

At the cost of repetition, it must be re-iterated that, all challenges to Presidential Elections must be commenced in the Supreme Court as stated in chapter 6; whilst all challenges to Parliamentary Elections must be commenced in the High Court with the right to appeal to only the Court of Appeal as clearly explained in chapter 5.
However, where in an election dispute, an issue for determination emerges, touching on the interpretation and enforcement of a constitutional provision, then the Supreme Court is the appropriate forum for such a dispute as explained in chapter 4 of this Manual.

Finally, it should be emphasised that, the policy of the law is to ensure that all presidential and parliamentary election disputes are dealt with expeditiously and within the time frames as laid down by law. Thus the High Court must be commended for strictly upholding the twenty-one day time frame within which a petition against parliamentary election should be commenced and the conditions for so commencing a petition in line with the policy of the law as stated in the Representation of the People Law 1992 (PNDCL 284), section 18(1)-(3). See in that regard the decision of the High Court in the case of Salifu v Electoral Commission & Ambrose Dery (Application for J oinder as Co-Petitioner – Kunbuor Applicant), High Court, Wa (Suit No E12/12/2009, 26 February 2009 per Koomson J; and also the case of Ofei Agyemang v Electoral Commission & IC Quaye, High Court (Fast Track Division), Accra Suit No AE/10/2009, 12 March 2009 per Novosi-Aryene J – both cases digested in the Appendix to this Manual.

It is also important to realise that it is not the form in which a relief is couched that determines the nature of the action, but the substance of the action. Therefore it is also important to re-iterate the concluding
observation made in chapter 5 regarding the grounds for cancelling the results of a parliamentary election (as stated at page 35 ante), namely:

“…a whole election is not to be invalidated by the High Court because an irregularity had been established. If the trial judge is satisfied that, the established irregularity/irregularities apart, the results, taken as a whole, reflect the expressed will of the majority of voters at that constituency, then the results should be upheld by the trial judge.”

It must also be pointed out that in this 2nd Edition of the Manual, the all important question of the fundamental right to vote, which was not dealt with in the Maiden Edition of the Manual, has now been addressed in chapter 3. In that regard, special attention should be drawn to the recent Supreme Court decision in the case of Ahumah-Ocansey v Electoral Commission; Centre for Human Rights and Civil Liberties (CHURCIL) v Attorney-General and Electoral Commission (Consolidated) – a decision given on 23 March 2010 and reported in [2010] SCGLR 575 and also digested in the Appendix to this Manual.
APPENDICES

APPENDIX 1

LEGISLATION ON ELECTION ADJUDICATION IN GHANA

The relevant legislation on Election Adjudication in Ghana reproduced in the Appendix 1 of this Manual includes:

(a) 1992 Constitution, arts 42-56, 64(1)-(3) and 99(1) – pages 91-101;
(b) Public Elections Regulations, 1996 (CI 15) – pages 102-139;
(c) Public Election (Registration of Voters) Regulations, 2012 (CI 72) – pages 140-176;
(d) Representation of the People Law, 1992 (PNDCL 284) – pages 177-195;

The legislation referred to above, respectively provide as follows;

1992 CONSTITUTION, arts 42-56, 64(1) - (3) and 99(1)

42. Right to Vote

“Every citizen of Ghana of eighteen years of age or above and of sound mind has the right to vote and is entitled to be registered as a voter for the purposes of public elections and referenda”.

43. The Electoral Commission

(1) There shall be an Electoral Commission which shall consist of –

(a) a Chairman;

91
(b) two Deputy Chairmen; and

(c) four other members.

(2) The members of the Commission shall be appointed by the President under article 70 of this Constitution.

44. Qualifications, terms and conditions of service of members of the Electoral Commission

(1) A person is not qualified to be appointed a member of the Electoral Commission unless he is qualified to be elected as a member of Parliament.

(2) The Chairman of the Electoral Commission shall have the same terms and conditions of service as a Justice of the Court of Appeal.

(3) The two Deputy Chairman of the Commission shall have the same terms and conditions of service as are applicable to a Justice of the High Court.

(4) The Chairman and the two Deputy Chairmen of the commission shall not, while they hold office on the Commission, hold any other public office.

(5) The other four members of the Commission shall be paid such allowances as Parliament may determine.

(6) If a member is absent or dies, the Commission shall continue its work until the President, acting on the advice of the Council of State, appoints a qualified person to fill the vacancy.
45. Functions of the Electoral Commission

The Electoral Commission shall have the following functions -

(a) to compile the register of voters and revise it at such periods as may be determined by law;

(b) to demarcate the electoral boundaries for both national and local government elections;

(c) to conduct and supervise all public elections and referenda;

(d) to educate the people on the electoral process and its purpose;

(e) to undertake programmes for the expansion of the registration of voters; and

(f) to perform such other functions as may be prescribed by law.

46. Independence of the Commission

Except as provided in this Constitution or in any other law not inconsistent with this Constitution, in the performance of its functions, the Electoral Commission, shall not be subject to the direction or control of any person or authority.

47. Constituencies

(1) Ghana shall be divided into as many constituencies for the purpose of election of members of parliament as the Electoral Commission may prescribe, and each
constituency shall be represented by one member of Parliament.

(2) No constituency shall fall within more than one region.

(3) The boundaries of each constituency shall be such that the number of inhabitants in the constituency is, as nearly as possible, equal to the population quota.

(4) For the purposes of clause (3) of this article, the number of inhabitants of a constituency may be greater or less than the population quota in order to take account of means of communication, geographical features, density of population and area and boundaries of the regions and other administrative or traditional areas.

(5) The Electoral Commission shall review the division of Ghana into constituencies at intervals of not less than seven years, or within twelve months after the publication of the enumeration figures after the holding of a census of the population of Ghana, whichever is earlier, and may, as a result, alter the constituencies.

(6) Where the boundaries of a constituency established under this article are altered as a result of a review, the alteration shall come into effect upon the next dissolution of Parliament.

(7) For the purposes of this article, “population quota” means the number obtained by dividing the number of inhabitants of Ghana by the number of constituencies into which Ghana is divided under this article.

48. Appeals from decisions of the Commission

(1) A person aggrieved by a decision of the Electoral Commission in respect of a demarcation of a boundary,
may appeal to a tribunal consisting of three persons appointed by the Chief Justice and the Electoral Commission shall give effect to the decision of the tribunal.

(2) A person aggrieved by a decision of the tribunal referred to in clause (1) of this article may appeal to the Court of Appeal whose decision on the matter shall be final.

49. Voting at elections and referenda

(1) At any public election or referendum, voting shall be by secret ballot.

(2) Immediately after the close of the poll, the presiding officer shall, in the presence of such of the candidates or their representatives and their polling agents as are present, proceed to count, at that polling station, the ballot papers of that station and record the votes cast in favour of each candidate or question.

(3) The presiding officer, the candidates or their representatives and, in the case of a referendum, the parties contesting or their agents and the polling agents if any, shall then sign a declaration stating -

(a) the polling station; and

(b) the number of votes cast in favour of each candidate or question: and the presiding officer shall, there and then, announce the result of the voting at the polling station before communicating them to the returning officer.

(4) Subject to the provisions of this Constitution, an issue for determination by referendum shall not be taken to be determined unless at least thirty-five percent of the persons
entitled to vote at the referendum voted and, of the votes cast, at least seventy percent voted in favour of the issue.

50. Election of candidates

(1) Subject to the provisions of this Constitution, where at the close of nominations and on the day before a public election -

(a) two or more candidates have been nominated, the election shall be held and the candidate who receives the largest number of votes cast shall be declared elected; or

(b) only one candidate is nominated, there shall be no election and that candidate shall be declared elected.

(2) Where for the purposes of a public election two or more candidates are nominated but at the close of the nominations and on the day before the election, only one candidate stands nominated, a further period of ten days shall be allowed for nomination of other candidates, and it shall not be lawful for any person nominated within that period of ten days to withdraw his nomination.

(3) Where at the close of nominations under clause (2) of this article only one candidate stands nominated, there shall be no election and that candidate shall be declared elected.

(4) Where at the close of nominations, but before the election, one of the candidates dies, a further period of ten days shall be allowed for nominations; and where the death occurs at any time within twenty-five days before the election, the election in that constituency or unit shall be postponed for twenty one days.
51. Regulations for elections and referenda

The Electoral Commission shall, by constitutional instrument, make regulations for the effective performance of its functions under this Constitution or any other law, and in particular, for the registration of voters, the conduct of public elections and referenda, including provision for voting by proxy.

52. Regional and district representatives of the Commission

There shall be in every region and district a representative of the Electoral Commission who shall perform such functions as shall be assigned to him by the Commission.

53. Appointment of staff of the Commission

The appointment of officers and other employees of the Electoral Commission shall be made by the Commission acting in consultation with the Public Services Commission.

54. Expenses of the Commission charged on the Consolidated Fund

The administrative expenses of the Electoral Commission including salaries, allowances and pensions payable to, or in respect of persons serving with the Commission, shall be charged on the Consolidated Fund.

Political Parties

55. Organisation of political parties

(1) The right to form political parties is hereby guaranteed.

(2) Every citizen of Ghana of voting age has the right to join a political party.
(3) 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 programmes of a national character, and sponsor candidates for election to any public office either than to district assemblies or lower local government unit.

(4) Every political party shall have a national character, and membership shall not be based on ethnic, religious, regional or other sectional divisions.

(5) The internal organisation of a political party shall conform to democratic principles and its actions and purposes shall not contravene or be inconsistent with this constitution or any other law.

(6) An organisation shall not operate as a political party unless it is registered as such under the law for the time being in force for the purpose.

(7) For purposes of registration, a prospective political party shall furnish the electoral commission with a copy of its constitution and the names and addresses of its national officers: and shall satisfy the commission that -

(a) there is ordinarily residence, or registered as a voter in each district of Ghana, at least one founding member of the party:

(b) the party has branches in all the regions of Ghana and is, in addition, organised in not less than two thirds of the districts of each region; and

(c) the parties name, emblem, colour, motto or any other symbol has no ethnic, regional, religious or other sectional connotations or gives the appearance that it activities are confined only to a part of Ghana.
(8) A political party shall not have as a founding member, a leader or a member of its executives, a person who is not qualified to be elected as a Member of Parliament or to hold any other public office.

(9) The members of the national executive committee of a political party shall not be chosen from all the regions of Ghana.

(10) Subject to the provisions of this constitution, every citizen of voting age has the right to participate in political activity intended to influence the composition and policies of the Government.

(11) The state shall provide fair opportunity to all political parties to present their programmes to the public by ensuring equal access to the state-owned media.

(12) 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.

(13) Every candidate for election to Parliament has the right to conduct his campaign freely and in accordance with law.

(14) Political parties shall be required by law-

(a) to declare to the public their revenues and assets and the sources of those revenues and assets; and

(b) to publish to the public annually their audited accounts.

(15) Only a citizen of Ghana may make a contribution or donation to a political party registered in Ghana.
(16) A member of an organisation or interest group shall not be required to join a particular political party by virtue of his membership of the organisation or group.

(17) Subject to the provisions of this Chapter, Parliament shall by law regulate the establishment and functioning of political parties.

56. Restriction of certain propaganda

Parliament shall have no power to enact a law to establish or authorise the establishment of a body or movement with the right or power to impose on the people of Ghana a common programme or a set of objectives of a religious or political nature.

64. Challenging election of the President

(1) 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 result of the election in respect of which the petition is presented.

(2) 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.

(3) The Rules of Court Committee shall, by constitutional instrument, make rules of court for the practice and procedure for petitions to the Supreme Court challenging the election of a President.
99. Determination of membership

(1) The High Court shall have jurisdiction to hear and
determine any question whether -

(a) a person has been validly elected as a member
of Parliament or the seat of a member has become
vacant; or

(b) a person has been validly elected as a Speaker
of Parliament or, having been so elected, has
vacated the office of Speaker.
ARRANGEMENT OF REGULATIONS

Part I—General Provisions

1. Appointment of returning officer
2. Writ of election
3. Notice of election
4. Nomination of candidates for parliamentary election
5. Nomination of candidates in presidential election
6. Statutory declaration and deposit by presidential and parliamentary candidates
7. Nominated candidate
8. Withdrawal of nomination and exhibition of names of nominated candidates
9. Where no candidate nominated
10. Unopposed candidate
11. Contested election and death of candidate
12. Allocation of symbols and colours
13. Notice of poll
14. Adjournment of poll
15. Death of a candidate
16. Provision of polling stations

17. Presiding officers and polling assistants

18. Equipment for polling stations

19. Polling agents

20. Transferred voters list

21. Special voters list

22. Absent voters list

23. Voting by proxy

PART II—THE POLL

24. Number of votes and place of voting

25. Poll to be taken by ballot

26. Ballot papers

27. Polling hours and admission to polling station

28. Keeping order at polling station

29. Sealing of ballot boxes

30. Identification of voters

31. Voting procedure

32. Assistance in voting

33. Tendered ballot papers
34. Spoilt ballot papers

35. Adjournment of poll by presiding officer in case of riot, flood, etc,

PART III—AFTER THE POLL

36. Counting of votes and attendance at the count

37. Result of elections

38. Rejected ballot papers

39. Decision on ballot papers

40. Equality of votes in parliamentary elections

41. Declaration and publication of contested election results

42. Special provisions relating to presidential election

PART IV—MISCELLANEOUS PROVISIONS

43. Disposal of deposit

44. Disposal of documents

45. Absence of candidate or agent

46. Public notice and the Gazette

47. Application of Regulations

48. Interpretation

49. Revocation
IN exercise of the powers conferred on the Electoral Commission by Article 51 of the Constitution, these Regulations are made this 4th day of July, 1996.

PART I—GENERAL PROVISIONS

Regulation 1—Appointment of Returning Officer.

(1) For the purpose of holding a public election, the Electoral Commission, referred to in these Regulations as “the Commission”, shall appoint a returning officer for each constituency in which the election is to be held and such other assistants as the Commission may determine.

(2) A returning officer or his assistant shall perform his duties under the general supervision of the District Electoral Officer of the Commission.

(3) A person appointed as a returning officer or assistant shall swear in the presence of a Judge or a judicial officer that he will faithfully and impartially fulfill the duties of his office and shall abide by the laws and regulations governing the conduct of elections.

Regulation 2—Writ of Election.

(1) For the purpose of a public election, the Commission shall issue a writ of election to the returning officer.

(2) The writ shall be in such form as the Commission may determine and shall specify—

(a) the period and place for the nomination of candidates; and

(b) the day on which the poll is to be taken.

(3) The day on which the poll is to be taken shall—
(a) not be less than thirty days or more than ninety days after the last day appointed for the nomination of candidates, in the case of a general election; and

(b) not be less than ten days and not more than fourteen days after the nomination of candidates in the case of a by-election.

(4) As soon as a writ has been issued, the Commission shall publish a notice in the Gazette stating that the writ has been issued and specifying the constituency to which it relates, the day and place for the nomination of candidates and the day on which the poll is to be taken.

Regulation 3—Notice of Election.

(1) On receipt of a writ of an election, the returning officer shall publish notice of the election throughout the constituency in such manner as the Commission shall direct.

(2) Every notice of an election under these Regulations shall be in such form as the Commission may direct and shall specify the day, the place and the time for the nomination of candidates and the day when the poll is to be taken.

Regulation 4—Nomination of Candidates for Parliamentary Election.

(1) A candidate for election to Parliament shall be nominated by a separate nomination paper in such form as the Commission shall determine which shall be delivered in quadruplicate by the candidate himself or the person who proposes or seconds his nomination to the returning officer of the constituency for which the candidate seeks election on the day and at the place specified in the writ between the hours of nine in the morning and twelve noon and the hours of two and five in the afternoon.
(2) The nomination paper for each candidate in an election to Parliament shall be—

(a) witnessed by the signature or mark of two electors as proposer and seconder and supported by eighteen other electors as assenting to the nomination; and

(b) endorsed with the candidate’s consent to nomination

(3) No candidate shall be nominated:

(a) in the case of a general election to Parliament, for more than one constituency; or

(b) in the case of a by-election to Parliament, if he or she is a member of Parliament

(4) No person shall nominate more than one candidate for election to Parliament.

**Regulation 5—Nomination of Candidates in Presidential Elections.**

(1) A candidate for election as President shall be nominated by a separate nomination paper in such form as the Commission shall determine.

(2) The nomination paper for each candidate in an election for President shall—

(a) be signed by the candidate;

(b) be signed by not less than two persons who are registered voters resident in the area of authority of each district assembly; and

(c) designate a person to serve as Vice President; and

(d) be delivered to the Commission on or before the day appointed as nomination day in relation to the election;
(3) The nomination form shall be in quadruplicate and shall be delivered by the presidential candidate himself or the person who proposes or seconds his nomination between the hours of nine in the morning and twelve noon and the hours of two and five in the afternoon on or before the nomination day.

(4) No person shall nominate more than one candidate in a presidential election.

(5) The Chairman of the Commission shall be the returning officer for the purpose of election of President.

Regulation 6—Statutory Declaration and Deposit by Presidential and Parliamentary Candidates.

(1) A candidate for President or Parliament shall, at the time of his nomination—

(a) deliver or cause to be delivered to the returning officer a statutory declaration in such form as the Commission may determine, stating that he is qualified to be and is not disqualified from being elected President or a member of Parliament;

(b) deposit or cause to be deposited such sum as the Commission shall determine; and

(c) deliver or cause to be delivered to the returning officer two postcard size copies of his recent photograph (bust).

(2) The statutory declaration shall be made before a Judge, a judicial officer, notary public, commissioner of oaths, or any person authorized by law to administer an oath who shall certify it under his signature.

(3) The Statutory declaration provided for under paragraph (a) of sub-regulation (1) shall also be made by a person designated as vice-president for the election.
Regulation 7—Nominated Candidate.

(1) Whenever the nomination paper and the statutory declaration of a candidate are delivered and the deposit is paid in accordance with these Regulations, the candidate shall be considered to stand nominated, unless proof is given to the satisfaction of the returning officer of the candidate’s death, withdrawal, or disqualification.

(2) The returning officer shall inform a candidate that his nomination is invalid where—

   (a) the particulars of the candidate or the persons subscribing to the nomination paper are not as required by law; or

   (b) the nomination paper is not subscribed to as required by law, and allow the candidate an opportunity to make any amendment or alteration that the candidate considers necessary.

(3) Where the returning officer decides that a nomination paper is invalid, after complying with sub-regulation (2) of this regulation, he shall endorse and sign on the nomination paper the fact and the reasons for his decision, and inform the Commission accordingly and the Commission shall refer the matter with its observations on it to the Attorney-General.

(4) Nothing in this regulation shall prevent the validity of a nomination being questioned on an election petition.

(5) Before the close of nominations on the nomination day, the returning officer, the candidate, if present, or such of the persons who have nominated the candidate as are present shall sign a declaration to the effect that, at the close of nominations, the nomination of the candidate was presented and received by the returning officer, who shall state in the declaration the time at which each nomination was received by him and the time at which he accepted the nomination.
Regulation 8—Withdrawal of Nomination and Exhibition of Names of Nominated Candidates.

(1) Nomination of candidates shall be submitted and concluded by close of the last day for nominations and a list of the nominated candidates as at close of nomination day shall be prepared and signed by the returning officer.

(2) On the next day following the last day for nomination, the returning officer shall post at the constituency centre, and at such other places as the Commission may direct, a notice providing the names of the candidates nominated and a list of the persons who have sponsored each candidate.

(3) Subject to sub-regulation (2) of regulation 11, a duly nominated candidate may withdraw his candidature at any time prior to the day before election day except that, where a duly nominated candidate whose name appears on the nominated list exhibited under this regulation withdraws his candidature after the printing of ballot papers and related election notices, the ballot papers and related notices may continue to include his name and other particulars and there shall not be refunded to such latter candidate the deposit paid by him for his nomination.

Regulation 9—Where no Candidate Nominated.

(1) Where at the expiration of the time allowed for delivery of nomination papers no candidate stands nominated, the returning officer shall certify the fact by endorsing that on the writ and forwarding the writ to the Commission.

(2) Within thirty days after the receipt by the Commission of a writ endorsed as provided under sub-regulation (1) of this regulation in respect of any constituency, a fresh writ shall be issued for an election in that constituency.
Regulation 10—Unopposed Candidate.

Where at the expiration of the time allowed for the delivery of nomination papers and on the day before the election only one candidate stands nominated, that candidate shall be declared elected.

Regulation 11—Contested Election and Death of a Candidate.

(1) Where at the expiration of the time allowed for the delivery of nomination papers and on the day before the election two or more candidates stand nominated, a poll shall be taken in the manner provided by these Regulations and in accordance with any existing applicable law.

(2) Where for the purpose of a public election two or more candidates are duly nominated at the close of the nominations but before the day of the election only one candidate stands nominated, a further period of ten days shall be allowed for nomination of other candidates, and it shall not be lawful for any person nominated within that period of ten days to withdraw his nomination.

(3) Where at the close of nominations and after the expiry of the further period of ten days under sub-regulation (2) of this regulation only one candidate stands nominated, there shall be no election and that candidate shall be declared elected.

(4) Where at the close of nominations, but before the election, one of the candidates dies, a further period of ten days shall be allowed for nominations; and where the death occurs at any time within twenty-five days before the election, the election in that constituency shall be postponed for not less than twenty-one days.

Regulation 12—Allocation of Symbols and Colours.

(1) Where an election is contested, the Commission shall, as soon as practicable after the nomination day—
(a) allocate to each candidate the symbol of his party in the case of a candidate sponsored by a registered political party; or

(b) allocate to a candidate who is not sponsored by a political party a symbol or colour chosen by him; or

(c) in any other case, allocate such symbols or colours as the Commission considers appropriate.

(2) A symbol or colour shall be chosen or assigned for the purpose of this regulation from among symbols and colours approved by the Commission for the purposes of election.

(3) No person shall be allocated a symbol which is connected with or is attached to the name, status or dignity of a chief or a symbol or a colour which is connected with any religious or racial association within the meaning of the Avoidance of Discrimination Act, 1957 (No. 38).

Regulation 13—Notice of Poll.

Whenever an election is to be held, the Commission shall, as soon as practicable after the allocation of symbols or colours, publish notice of the election in the Gazette and in such places in a constituency as it may direct and the notice shall state—

(a) the day on which and the time at which the poll is to be taken;

and

(b) the full names and photographs or symbols or colours of

Regulation 14—Adjournment of Poll.

(1) The Commission may, at any time between the issue of a writ and the day specified in the writ as polling day, by notice in the Gazette adjourn
the taking of the poll to a day not more than thirty days after the day specified earlier.

(2) Where a notice in the Gazette is issued under subregulation (1) of this regulation, the writ for the constituency to which the notice relates shall be considered as amended by the substitution of the day to which the taking of the poll is adjourned for the day specified in the writ as polling day.

Regulation 15—Death of Candidate.

(1) Where an election is to be held and proof of the death of a candidate is given to the returning officer before the poll is commenced, the returning officer shall inform the Commission and all proceedings in relation to the election shall, subject to sub-regulation (2) of this regulation, be started afresh.

(2) Where proceedings are started afresh, the Commission shall appoint—

(a) a fresh nomination day, which shall be not less than fourteen days and not more than twenty-one days after the day on which proof of the candidate’s death was given to the returning officer; and

(b) a fresh polling day, which shall not be more than fourteen days after the nomination day appointed under paragraph (a) of this sub-regulation.

Regulation 16—Provision of Polling Stations.

(1) For the purpose of taking the poll the existing polling stations prescribed by the Commission shall be used as polling stations.

(2) The Commission may direct a returning officer to establish additional polling stations for any polling division.
(3) Any convenient building, except a dwelling-house or a building or class of buildings exempted by the Commission, may be established by the returning officer as a polling station and used without charge for that purpose.

(4) The government shall repair out of public funds any damage done to a building as a result of its being used as a polling station.

(5) Where two or more polling stations are established for a polling division, the returning officer shall—

(a) assign to each of the stations such number of the voters registered in the division as the Commission considers appropriate; and

(b) give notice in the polling division, in such manner as the Commission may direct, of the polling stations to which the voters registered in the division have been assigned.

Regulation 17—Presiding Officers and Polling Assistants.

(1) The Commission shall appoint a presiding officer to preside at each polling station and such number of polling assistants as it considers necessary to assist the presiding officer in carrying out his duties.

(2) A polling assistant may act as the presiding officer of a polling station during the absence or incapacity of the presiding officer.

(3) A person appointed as a presiding officer or polling assistant shall swear, before a member or senior officer of the Commission, upon penalty of perjury that he will abide by the laws and regulations governing the conduct of elections and will faithfully carry out his duties in a fair and impartial manner.
Regulation 18—Equipment for Polling Stations.

(1) There returning officer shall provide each presiding officer with such number of ballot boxes and ballot papers as the Commission may direct.

(2) Each ballot box shall be so constructed that a ballot paper can be put into it by the person voting but cannot be withdrawn by him.

(3) The returning officer shall provide each polling station with—

   (a) materials for voting;

   (b) instruments for perforating or stamping the ballot papers with the official mark;

   (c) instruments for marking the means of identification of the voter in accordance with sub-regulations (1) and (2) of regulation 31 of these Regulations; and

   (d) a copy of the divisional register, the transferred voters list, the proxy voters list, the election officers list and the absent voters list relating to the polling station.

(4) A notice given directions for the guidance of the voters in the voting shall be exhibited in each polling division in as many languages as the Commission may direct for the benefit of the voters.

Regulation 19—Polling Agents.

(1) A candidate may appoint one polling agent to attend at each polling station in the constituency for which he is seeking election or, in the case of a candidate for President, in every polling station nationwide, for the purpose of detecting impersonation and multiple voting and certifying that the poll was conducted in accordance with the laws and regulations governing the conduct of elections.
(2) Every candidate shall submit in duplicate to the returning officer in charge of the constituency in which he seeks election letters of appointment stating the name and address of each polling agent and the polling station to which each is to be assigned.

(3) On a date set by the returning officer, the polling agent shall appear before the returning officer to be sworn upon penalty of perjury that he shall abide by the laws and regulations governing the conduct of elections.

(4) Upon the taking of the oath by the polling agent, the returning officer shall sign both the original and duplicate copies of the appointment letter and issue to the polling agent the duplicate copy which shall be presented to the presiding officer of the polling station to which the agent is assigned on the day of the poll.

(5) If a polling agent dies or becomes incapacitated from acting as such, the candidate who appointed him may, in accordance with sub-regulations (2) and (3) of this regulation, appoint another polling agent in his place.

**Regulation 20—Transfered Voters List.**

(1) A registered voter who at any time before a general election is resident for not less than two months in a constituency other than that in which he is registered, may apply to the returning officer of the constituency where he is resident for his name to be entered on the transfered voters list of the constituency.

(2) An application under sub-regulation (1) of this regulation shall be made—

   (a) not less than twenty-one days before the last day of nomination to the constituency where the applicant is resident, where the application relates to a nomination; or

   (b) not less than twenty-one days before election day to the constituency where the applicant is resident, where the application relates to voting.
(3) A returning officer to whom an application is made under this regulation shall enter the applicant’s name in the transferred voters list for the assigned polling station in his constituency if he is satisfied that the applicant has met the residency requirement established in sub-regulation (1) of this regulation and is registered in another constituency.

(4) Whenever a returning officer enters the name of any person on the transferred voters list, he shall—

(a) assign that person to a polling station in his constituency; and

(b) send a copy of the entry to the returning officer of the constituency where the person whose name has been entered is registered.

(5) A person whose name is entered on the transferred voters list is entitled to vote at the election in the polling station to which he is assigned as if it were the polling station where he is registered, and the provisions of Regulation 31 of these Regulations shall have effect accordingly.

**Regulation 21—Special Voters List.**

(1) A voter who because of his duties on polling day will be unable to be present at the polling station where he is registered, may apply to the returning officer of the constituency in which he is registered to be entered as special voter.

(2) An application under sub-regulation (1) of this regulation shall be made not later than seven days before the polling day in the constituency of the applicant and, except in the case of an applicant who is a returning officer, shall be accompanied by a certificate from the applicant’s superior stating that—

(a) the applicant is registered at a polling station in the constituency of the returning officer to whom the application is made; and
(b) the applicant’s duties will prevent him from being present on polling day at the polling station where he is registered.

(3) A returning officer to whom an application is made under subregulation (2) shall, where the applicant is a person whose duties are related to the elections, ascertain from the applicant where he will be working on election day and—

(a) if the applicant will be working in the same constituency where he is registered but at a polling station other than where he is registered—

(i) enter the name and voter ID number of the applicant on the election officers list for the polling station;

(ii) issue the applicant a certificate that entitles him to vote on election day in the polling station at which he is working; and

(iii) enter the name and voter ID number of the applicant on the absent voters list of the polling station in which the applicant is registered;

(b) if the applicant will be working in a constituency other than where he is registered—

(i) issue the applicant a certificate that entitles him to vote on a day set aside for special voters;

(ii) enter the name and voter ID number of the applicant on the special voters list;

(iii) enter the name and ID number of the applicant on the absent voters list of the polling station in which the applicant is registered; and

(iv) inform the applicant of the date and time set aside for special voting.
(4) Where an application is made to a returning officer under subregulation (1) and the applicant is a person other than an election officer the returning officer shall—

(a) enter the name and voter ID number of the applicant on the special voters list for the constituency;

(b) enter the name and voter ID number of the applicant on the absent voters list of the polling station in which the applicant is registered;

(c) inform the applicant of the date and time set aside for special voting.

(5) A person whose name is entered on the special voters list is entitled to vote at a polling station specified by the Commission and on a day which is not more than seven days before the polling day appointed by the returning officer and advertised in such manner as the Commission may direct;

(6) A person who is entitled to vote as a special voter shall not be entitled to vote otherwise at the election.

(7) No person shall vote at a polling station as a special voter unless his name is on the special voters list for that polling station.

(8) Subject to subregulation (9) of this regulation voting at a polling station for special voters shall be conducted in the same manner as voting on polling day.

(9) The returning officer shall in relation to special voting—

(a) cause the ballot boxes to be kept in safe custody after the poll has closed and the boxes have been sealed; and

(b) arrange for the ballot boxes to be opened at the time of the counting of the votes cast on the polling day and the ballot papers shall be counted in the same manner as those contained in the ballot boxes used on polling day.
Regulation 22—Absent Voters List.

(1) Each returning officer shall, before polling day, prepare for each polling station in his constituency an absent voters list containing the names of any persons registered in the station whose names have been entered on the transferred voters list for another constituency, the election officers list, or on the special voters list for his constituency.

(2) A person whose name is entered on the absent voters list for a polling station shall not be entitled to vote in that station and the provisions of Regulation 31 of these Regulations shall have effect accordingly.

Regulation 23—Voting by Proxy.

(1) A registered voter who, because of ill-health or absence from his constituency, will be unable to present himself to vote on polling day may, not less than fourteen days before the poll in the constituency where he is registered, apply to the returning officer of the constituency where he is registered or to any representative of the Commission for his name to be entered on the proxy list.

(2) The applicant shall complete a proxy form in such manner as the Commission may direct.

(3) The application form shall be endorsed by the returning officer of the constituency of the applicant or the representative of the Commission to whom the application was made and distributed as follows—

(a) the original to the returning officer of the constituency where the applicant wishes the proxy to vote;

(b) the duplicate copy to the Commission

(c) the triplicate copy to the person appointed as proxy; and

(d) the quadruplicate to the applicant.
(4) The returning officer or any representative of the Commission to whom the application is made shall, if satisfied that the proxy is qualified to be registered as a voter and that the applicant is a registered voter, enter the names and the particulars of the applicant and the proxy on the proxy list and—

(a) assign the proxy to a polling station in the constituency;

(b) indicate on the proxy list the polling station to which the proxy is assigned; and

(c) forward a copy of the list to the presiding officer for the polling station to which the proxy is assigned.

(5) A person appointed as a proxy may vote in the elections at the polling station where he is assigned to vote and the provision relating to voting procedure under these Regulations shall have effect accordingly.

(6) No person shall be entitled to have more than one person at a time appointed as a proxy to vote for him at the election.

(7) A person whose application to vote by proxy is accepted and endorsed by the returning officer of the constituency or the Commission shall not vote at the election in respect of which the application was granted.

(8) The appointment of a proxy shall be canceled by the returning officer or the Commission where an application is made for cancellation by the person who made the application for the appointment of the proxy.

(9) An application for the cancellation of proxy shall be made not less than seven days before the election to which the application relates and shall be made in such form as the Commission may determine.

(10) A proxy whose appointment is cancelled shall cease to have the right to vote for the applicant whether or not he is aware of the cancellation.
PART II—THE POLL

Regulation 24—Number of Votes and Place of Voting.

(1) No voter shall cast more than one vote when a poll is taken.

(2) Subject to the provisions relating to transferred voters list, special voters list, election officers list, and absent voters list under Regulations 20, 21 and 22 respectively, a voter shall vote at the polling station allotted to him.

Regulation 25—Poll to be Taken by Ballot.

(1) The votes at the poll shall be given by ballot and the result shall be ascertained by counting the votes cast for each candidate.

(2) The candidate who receives the most valid votes cast shall be declared elected in the case of a parliamentary election.

Regulation 26—Ballot Papers.

(1) The ballot of every voter shall consist of a ballot paper.

(2) Each ballot paper shall—

   (a) contain the names and photographs or symbols or colours of all the candidates contesting the election in the constituency;

   (b) be capable of being folded up;

   (c) have a number printed on it; and

   (d) have attached to it a counterfoil with the same number printed on it.
(3) Notwithstanding sub-regulation (2) of this regulation, a ballot paper shall not be void because it does not bear any number if it is certified by the Commission that it is a ballot paper issued by it.

Regulation 27—Polling Hours and Admission to Polling Station.

(1) The poll shall be taken between the hours of seven in the morning and five in the evening.

(2) The presiding officer shall regulate the number of voters to be admitted to the polling station at each time, and shall exclude all other persons except—

   (a) the candidates, their spouses and their polling or counting agents

   (b) election officers;

   (c) security officers on duty;

   (d) persons authorized by the Commission; and

   (e) persons accompanying voters who are blind or otherwise physically incapacitated.

Regulation 28—Keeping Order at Polling Station.

(1) It is the duty of the presiding officer to keep order at his polling station.

(2) If a person misconducts himself in a polling station or fails to obey the lawful orders of the presiding officer, he may immediately, by order of presiding officer, be removed from the polling station by security officer; and a person so removed shall not, without the permission of the presiding officer, again enter the polling station on the polling day.
(3) Any person removed under sub-regulation (2) may, if charged with the commission in the polling station of an offence, be dealt with as a person taken into custody by a police officer for an offence without a warrant.

(4) The powers conferred by this regulation shall not be exercised so as to prevent a voter who is otherwise entitled to vote at a polling station from having the opportunity of voting at that station.

**Regulation 29—Sealing of Ballot Boxes.**

(1) Immediately before the commencement of the poll, the presiding officer shall show the ballot boxes empty to the persons present in the polling station so that they can see that the ballot boxes are empty, and shall then—

   (a) close the ballot boxes and place his seal upon them in such manner as to prevent their being opened without breaking the seal; and

   (b) place them in view of the public for the receipt of ballot papers.

(2) Polling agents of candidates may affix their seals on the ballot boxes after the Commission’s seals have been affixed.

**Regulation 30—Identification of Voters.**

(1) A presiding officer may, before delivering a ballot paper to a person applying to vote at the election, require the person—

   (a) to produce his or her voter identification card or to furnish such other evidence as may be determined by the Commission to establish that he or she is the registered voter whose name and voter identification number and particulars appear in the register; and

   (b) to make a declaration in the prescribed form that he has not already voted anywhere at the election.
Regulation 31—Voting Procedure.

(1) Every voter desiring to record his vote shall present himself at his allotted station and the presiding officer or a polling assistant, after satisfying himself that the voter is registered and has not already voted, and that any other means of identification determined by the Commission in the possession of the voter is valid, shall deliver the ballot paper to the voter.

(2) Immediately before the ballot paper is delivered —

(a) the ballot paper shall be perforated or stamped with an official mark of the Commission;

(b) a mark shall be placed in the copy of the register against the number of the voter to indicate that the ballot paper has been received; and

(c) a mark, which shall, so far as possible, be permanent shall be made on the voter.

(3) The voter on receiving the ballot paper shall immediately proceed to one of the places set aside in the polling station for the marking of the ballot paper, and shall secretly make on the ballot paper an imprint of his thumb in the box and column provided for that purpose directly against the name and symbol of the candidate for whom he wishes to vote.

(4) The voter shall then fold up the ballot paper and in the presence of the presiding officer and the polling agents and in full view of the general public cast his vote by putting the folded ballot paper into the ballot box.

(5) The voter shall vote without undue delay, and shall leave the polling station as soon as he has put his ballot paper into the ballot box.

(6) This provision shall apply subject to the provisions in these Regulations relating to the transferred voters list, special voters list, election officers list, and absent voters list.
Regulation 32—Assistance in Voting.

(1) The presiding officer, on the application of a voter who is incapacitated because of blindness or other physical cause from voting in the manner directed in these Regulations, shall permit the voter to be assisted by a person of his own choice.

(2) When he accedes to the request of a voter under sub-regulation (1), the presiding officer shall record in the register opposite the name of the voter the fact that the voter was assisted and the reason for the assistance.

Regulation 33—Tendered Ballot Papers.

(1) Where a person representing himself to be a particular voter named in the register applies for ballot paper after another person has voted as such voter, the applicant shall, on making a declaration in the prescribed form, be entitled, subject to this regulation, to vote using a tendered ballot paper.

(2) A tendered ballot paper shall—

   (a) be of a different colour from the ballot paper; and

   (b) instead of being put into the ballot box—

       (i) be given to the presiding officer and endorsed by him with the name of the voter and his number in the register; and

       (ii) be set aside by the presiding officer in a separate packet.

(3) The name of any person voting under this regulation and his number in the register shall be entered by the presiding officer on a list of such voters.
Regulation 34—Spoilt Ballot Papers.

A voter who has inadvertently dealt with his ballot paper in such a manner that it cannot be conveniently used as a ballot paper may, on delivering it to the presiding officer and proving to his satisfaction the fact of the inadvertence, obtain another ballot paper in place of the ballot paper delivered and the spoilt ballot paper shall be immediately cancelled and the counterfoil marked accordingly.

Regulation 35—Adjournment of Poll by Presiding Officer in Case of Riot, Flood, etc.

(1) When the proceedings at any polling station are interrupted or obstructed by riot, open violence, storm, flood, or other natural catastrophe presiding officer shall adjourn the proceedings to the following day and shall immediately file notice to the returning officer.

(2) When the returning officer is satisfied that, because of an interruption or obstruction of the kind mentioned in sub-regulation (1) of this regulation, it is or will be impossible or impracticable for proceedings which have been adjourned to be continued on the day to which they have been adjourned, he may, with the concurrence of the Commission, further adjourn the proceedings for not more than seven days.

(3) Where the poll is adjourned under this regulation, the hours of polling on the day to which it is adjourned shall be the same as on the original polling day.

PART III—AFTER THE POLL

Regulation 36—Counting of Votes and Attendance at the Count, Counting Agents.

(1) Each candidate may appoint one counting agent to attend at the counting of votes at each polling station in the constituency for which he
is seeking election or, in the case of a candidate for President, in every polling station nationwide.

(2) Each candidate shall submit in duplicate to the returning officer in charge of the polling station to which he intends to assign the counting agent, a letter of appointment stating the name and address of the counting agent and the polling station to which he is to be assigned.

(3) On a date set by the returning officer, the counting agent shall appear before the returning officer to be sworn by the returning officer upon penalty of perjury that he shall abide by the laws and regulations governing the conduct of elections and that he will sign the declaration of results following the count of the ballots, or state in writing to the presiding officer the reason for failing to do so.

(4) Upon the taking of the oath by the counting agent, the returning officer shall sign both the original and duplicate copies of the appointment letter and issue to the counting agent the duplicate copy.

(5) Unless otherwise directed by the candidate, the polling agent appointed by a candidate shall act as a counting agent at the counting of the votes at the assigned polling station.

(6) The returning officer shall make arrangements for counting the votes at each polling station in his constituency in the presence of the counting agents as soon as practicable after the close of the poll; and shall take such steps as he considers reasonable to give the counting agents notice of the time at which the counting of the votes will commence.

**Regulation 37— Result of Elections.**

(1) Immediately after the close of the poll, the presiding officer shall, in the presence of the candidates or their representatives and counting agents—

   (a) open each ballot box, take out all the ballot papers in the box;
(b) proceed to count the ballot papers at the polling station; and

(c) record the total number of votes cast in favour of each candidate.

(2) The presiding officer, the candidates, their representatives or their counting agents shall then sign a declaration stating—

(a) the name of the polling station; and

(b) the total number of persons entitled to vote at that polling station; and

(c) the number of votes cast in favour of each candidate, and the presiding officer shall there and then announce the results of the voting at that polling station before communicating them to the returning officer and shall provide each candidate, his representative or counting agent with a copy of the declaration of results.

(3) A candidate or his counting agent may, if present when the counting of the votes is completed, require the presiding officer to have the votes recounted or again recounted, but the presiding officer may refuse to perform the second recount if, in his opinion, the request is unreasonable and report such request to the returning officer who shall recount the ballots for that polling station only at the constituency centre.

(4) As soon as practicable after the announcement of the results of the voting at the polling station, the presiding officer shall, in the presence of such of the candidates and their counting agents as are present, make up into separate packets sealed with his own seal and the seals of such counting agents as desire to affix their seals—

(a) each ballot box in use at the station, sealed so as to prevent the introduction of additional ballot papers;

(b) the unused and spoilt ballot papers placed together;
(c) the tendered ballot papers, the tendered list and any declarations made under sub-regulation (1) of regulation 33 and of sub-regulation (2) of regulation 37 of these Regulations;

(d) the marked copies of the register and the counterfoils of the used ballot papers; and

(c) shall deliver the packets and the ballot boxes to the returning officer.

(5) The packets mentioned in sub-regulation (4) of this regulation shall be accompanied by a statement made by the presiding officer showing the number of ballot papers entrusted to him and accounting for them under the heads of ballot papers in the ballot box and unused, spoilt, and tendered ballot papers.

**Regulation 38—Rejected Ballot Papers.**

(1) Any ballot paper—

(a) which does not bear the official mark of the Commission; or

(b) which is not marked by the voter so as to clearly identify the candidate for whom the vote was cast; or

(c) which is not marked at all;

(d) which has on it writing or mark by which the voter could easily be identified; shall subject to sub-regulation (2) of this regulation, be void and not counted.

(2) Before rejecting a ballot paper as void, the presiding officer shall, taking all proper precautions to prevent any person from seeing the number printed on it, show the paper to each candidate or his counting agent, if present, and give him an opportunity to express an opinion on the matter.
(3) The presiding officer shall endorse the word “rejected” on any ballot paper which under this regulation is not to be counted, and shall add to the endorsement the words “rejection objected to” if an objection is made by a candidate or counting agent to his decision.

(4) The presiding officer shall draw up a statement showing the number of ballot papers rejected under the several heads of—

(a) want of an official mark;

(b) voting for more than one candidate;

(c) writing or mark by which a voter could easily be identified;

(d) unmarked; or

(c) choice of voter could not be ascertained and any candidate or counting agent may copy the statement.

Regulation 39—Decision on Ballot Papers.

The decision of the returning officer on any question arising in respect of a ballot paper is subject to adjudication or review on an election petition to the High Court.

Regulation 40—Equality of Votes in Parliamentary Elections.

(1) Where after the completion of the counting of the votes including recount, in a parliamentary election an equality of votes is found to exist between any candidates and the addition of a vote would entitle any of those candidates to be declared elected, the returning officer shall certify that fact by endorsing the writ and forwarding the writ so endorsed to the Commission.
(2) Within 30 days after receipt by the Commission of a writ endorsed in the manner provided by this regulation in respect of any constituency, a second election shall be held.

(3) The candidates for election under sub-regulation (2) of this regulation shall be the candidates who obtained the equality of votes at the previous election and the candidate who obtains the most valid votes shall be declared elected.

Regulation 41—Declaration and Publication of Contested Election Results.

(1) Subject to Regulation 40 of these Regulations, immediately after the results of the poll for all the stations in his constituency have been given to him, the returning officer shall, in the presence of the candidates or their representatives or not more than two counting agents appointed by each candidate—

(a) assemble the results from the polling stations without recounting the ballots in the ballot boxes, except where there is a challenge by a candidate or counting agent in respect of a specific ballot box;

(b) give public notice of the total number of votes cast for each candidate;

(c) publicly declare to be elected in a parliamentary election the candidate to whom the most votes have been given;

(d) endorse on the writ the name of the person elected; and

(e) forward to the Commission the endorsed writ and a note of the total number of votes cast for each candidate.

(2) On receipt of a writ endorsed in accordance with this regulation, the Commission shall—
(a) in a parliamentary election publish in the Gazette a notice stating the name of the person elected and the total number of votes cast for each candidate; and

(b) inform the Clerk to Parliament soon after that of the name of the candidate elected.

Regulation 42—Specific Provisions Relating to Presidential Elections.

(1) In a presidential election the candidate who receives more than 50% of the valid votes cast shall be declared elected as President.

(2) Where at a presidential election there are more than two candidates and no candidate obtains the percentage of votes specified in subregulation (1) of this regulation a second election shall be held within twenty-one days after the previous election.

(3) The candidates for a presidential election held under subregulation (2) shall be the two candidates who obtained the two highest numbers of votes at the previous election.

(4) Where at a presidential election three or more candidates obtain the two highest number of votes they shall, subject to any withdrawals, be the candidates in the subsequent election and the same process shall be continued until a President is elected.

(5) A presidential candidate under subregulation (3) or (4) may, by writing under his hand, withdraw his candidature at any time before the election.

(6) If after a second presidential election held under subregulation (2) the two candidates obtained an equality of votes, notwithstanding any withdrawal, an election shall be held within twenty-one days after the election at which the two candidates shall be the only candidates and the same process shall, subject to any withdrawal, be continued until a President is elected.
(7) An instrument which—

(a) is executed under the hand of the Chairman of the Commission and under the seal of the Commission; and

(b) states that the person named in the instrument was declared elected as the President of Ghana at the election, shall be prima facie evidence that the person named was elected.

PART IV—MISCELLANEOUS PROVISIONS

Regulation 43—Disposal of Deposit.

(1) Subject to this regulation and Regulation 8(3), the deposit made under Regulation 6(1)(b) of these Regulations shall, as soon as practicable after the result of the election is declared, be returned to the person making it or his personal representative or forfeited to the state.

(2) Where a candidate is not shown as standing nominated in the notice mentioned in Regulation 13 of these Regulations or if the poll is made inapplicable by reason of his death, his deposit shall be returned as soon as practicable after the publication of the notice or after his death, to the person making it or his personal representative.

(3) Where a poll is taken and after the completion of the counting of the votes, including any re-count, a candidate is found not to have polled—

(a) in a parliamentary election, more than 12½% of the total valid votes cast within the constituency; or

(b) in a presidential election, more than 25% of the total valid votes cast in the election, his deposit shall be forfeited and paid into the Consolidated Fund.
Regulation 44—Disposal of Documents.

(1) On the completion of the counting at an election, the returning officer shall seal up in separate packets the counted and rejected ballot papers in respect of each candidate and shall then forward to the Commission the following documents:

(a) the sealed packets of counted and rejected ballot papers;

(b) the ballot papers account and the statement of rejected ballot papers;

(c) the tendered voters list and any declarations made under sub-regulation (1) of regulation 33 and of sub-regulation (2) of regulation 37 of these Regulations;

(d) the packets of ballot papers counterfoils; and

(e) the packets containing marked copies of the register; and endorse on each packet a description of its contents, the date of the election to which they relate and the name of the constituency for which the election was held; and prepare a statement in respect of the said documents which may be copied by any candidate or counting agent.

(2) Subject to the provisions of these Regulations, the Commission shall retain for a year all documents forwarded to it under this regulation and shall then, unless otherwise directed by a court, cause them to be destroyed.

(3) Documents relating to an election in respect of which legal proceedings have been started shall not be destroyed until the proceedings have been finally disposed of.

(4) A court trying an offence relating to an election or the High Court hearing an election petition may make an order that any document retained by the Commission under this regulation shall be inspected, copied or produced at a time and place and subject to such conditions as it thinks fit.
(5) No order shall be made under sub-regulation (4) of this regulation unless the court is satisfied that the inspection, copying or production is required for the purpose of instituting, maintaining, defending, or otherwise for the purpose of prosecuting an election petition in respect of the election to which the document relates.

(6) Except as otherwise provided in sub-regulation (4) of this regulation, no person may inspect or copy any document retained by the Commission under this regulation.

**Regulation 45— Absence of Candidate or Agent.**

Where in these Regulations expressions are used requiring, authorising, or implying that any act or thing is to be done in the presence of the candidates or their polling agents or counting agents, those expressions shall be regarded as reference to the presence of such candidates or agents as may be authorised to attend and have in fact attended at the time and place where the act or thing is being done and the non-attendance of any candidate or agent at that time and place shall not, if any act or thing is otherwise done, invalidate that act or thing.

**Regulation 46—Public Notice and the Gazette.**

Where any matter is provided in this instrument to be published in the Gazette, it may, in lieu of or in addition to the publication in the Gazette, be published through radio, television, the national newspapers or any other medium of mass communication.

**Regulation 47— Application of Regulations.**

These Regulations shall apply to presidential and parliamentary elections and with such modifications as may be necessary to such other public elections as the Commission may by constitutional instrument prescribe.
Regulation 48—Interpretation.

(1) In these Regulations unless the context otherwise requires:

“absent voters list” means the absent voters list prepared under Regulation 22 of these Regulations;

“allotted station” means in relation to the voter the polling station of the polling division in which he is registered or, in the case of a polling division for which two or more stations have been established, the station to which he is assigned;

“close of the poll” means the close of the poll in all polling divisions of the constituency including any polling division where the poll has been adjourned;

“Commission” means the Electoral Commission;

“election officer” means a member of the office of the Commission, or any other person authorized by the Commission to be present at a polling station in an official capacity;

“judicial officer” means a person presiding over a Community Tribunal, the Judicial Secretary or the Registrar of a Superior Court;

“polling division” means a constituency or an electoral area; “special voter” means a person registered as a voter who is:

(a) a security officer; or

(b) an election officer; or

(c) certified as such by the Commission
“special voters list” means the special voters list provided for under Regulation 21 of these Regulations;

“spoilt ballot paper” means a ballot paper inadvertently dealt with in such a manner that it cannot be conveniently used as a ballot paper;

“superior officer” means in relation to—

(a) a member of the Police Service a police officer of that Force of or above the rank of superintendent;

(b) a member of the Armed Forces of Ghana, the adjutant of his battalion or an officer holding a comparable appointment;

(c) an election officer, not being a returning officer, the returning officer of the constituency in which the election officer will be on duty;

(d) any other person, as the Commission may determine.

“tendered ballot paper” means a ballot paper marked in accordance with Regulation 33 of these Regulations;

“transferred voters list” means the transferred voters list provided for under Regulation 20 of these Regulations;

“voter” means a person whose name appears at the time of a candidate’s nomination in the divisional register of candidate’s nomination in the divisional register of one of the polling divisions of the constituency for which the candidate seeks election.

(2) Reference in these regulations to a contested election or to an election being contested shall be construed as references to an election in which a poll is taken.
Regulation 49—Revocation.

The following instruments are hereby revoked—

Public Elections (Parliament) Regulations, 1992 (L.I. 1537);


DR. K. AFARI-GYAN
Chairman, Electoral Commission
Date of Gazette Notification: 5th July, 1996.
C.I. 72  
PUBLIC ELECTIONS (REGISTRATION OF VOTERS)  
REGULATIONS 2012  
ARRANGEMENT OF REGULATIONS  

Regulation

Registration of voters

1. Qualification for registration
2. Registration centres and electoral areas
3. Voters registers
4. Registration officials
5. Functions of a registration officer
6. Functions of a registration assistant
7. Registration supervisors
8. Objection to appointment of registration supervisors and registration officers
9. Period of registration
10. Access to registration centre
11. Authorised persons
12. Application for registration
13. Registration and issue of identification card
14. Replacement of voter identification card

15. Use of biometric information

Challenges and complaints

16. Challenging an application for registration

17. District Registration Review Committee

18. Functions of the Committee

19. Chief Registration Review Officer

20. Complaints

Provisional voters register and complaints relating to the register

21. Provisional register of voters

22. Exhibition

23. Exhibition officer

24. Claims and objections after publication of provisional register of voters

25. Settling claims and objections on provisional register

26. Certified register

Offences and miscellaneous provisions

27. Registration offences

28. Voter identification card offences

29. Revision of the register
30. Public notice and the *Gazette*

31. Interpretation

32. Revocation

SCHEDULE
IN exercise of the power conferred on the Electoral Commission by article 51 of the Constitution these Regulations are made this 21st day of February, 2012.

Registration of voters

Qualification for registration

1. (1) A person is entitled to have the name of that person included in the register of voters of an electoral area, if that person is

(a) a citizen of Ghana;

(b) eighteen years of age or above;

(c) of a sound mind;

(d) resident or ordinarily resident in an electoral area; and

(e) not prohibited by any law in force from registering as a voter.

(2) For the purpose of paragraph (d) of subregulation (1), a person who is confined in a penal institution located in an electoral area is resident in that electoral area.

(3) A person who applies for registration as a voter shall provide as evidence of identification one of the following:

(a) a passport;

(b) a driver’s licence;

(c) a national identification card;
(d) a National Health Insurance card;

(e) an existing voter identification card; or

(f) one voter registration identification guarantee form as set out in Form One of the Schedule that has been completed and signed by two registered voters.

(4) Despite paragraph 69 of subregulation (3), a registered voter shall not guarantee the identity of more than five persons.

Registration centres and electoral areas

2. (1) The Commission

(a) shall designate registration centres for the purpose of registering voters; and

(b) may designate any place it considers appropriate as a registration centre.

(2) In designating a place as a registration centre, the Commission shall take into consideration

(a) the suitability of the place for use as a polling station on election day; and

(b) the accessibility of the place to prospective applicants for registration.

(3) The Commission shall at least fourteen days before the first day of the national registration of voters, inform political parties and the general public by publication in the Gazette, the radio, television or any other medium of mass communication of a place it designates as a registration centre.
(4) Unless the Commission otherwise directs, the polling stations in existence immediately before the coming into force of these Regulations shall constitute registration centres for the registration of voters under these Regulations.

**Voters registers**

3. (1) Each electoral area shall have a voters register consisting of the voters registers of the polling stations in the electoral area.

(2) Each constituency shall have a register consisting of the voters registers of the electoral areas within the constituency concerned.

**Registration officials**

4. The Commission shall appoint a registration officer, registration assistant and any other official it considers necessary, for each registration centre.

**Functions of a registration officer**

5. A registration officer shall

(a) control the proceedings at the registration centre;

(b) keep the equipment for registration and be accountable for the registration forms and other materials assigned to the registration centre during the entire period of registration;

(c) keep records of the proceedings at the registration centre in the manner determined by the Commission;

(d) report promptly and ‘in the most convenient manner to the district officer of the Commission or registration supervisors, any difficulties encountered at the registration centre for which that registration officer is responsible;

(e) at the end of each registration day of the national registration period make available to the political parties the names,
ages, dates of birth, sex and residential addresses of the applicants registered at the centre; and

(f) at the end of the registration period return in person all the registration forms, equipment and other material in the custody of that registration officer to the Commission.

Functions of a registration assistant

6. A registration assistant shall

(a) capture the required bio-data of applicants;

(b) print the voter identification card;

(c) laminate the voter identification card; and

(d) carry out any other duties assigned to that registration assistant by the registration officer.

Registration supervisors

7. (1) The Commission shall appoint for each district in the country, registration supervisors for the registration of voters.

(2) Registration supervisors comprise, a registration supervisor and two deputy registration supervisors.

(3) The registration supervisors shall

(a) make frequent visits to the registration centres in the district during the period of registration;

(b) ensure that the prescribed registration procedures are complied with;
(c) ensure that the essential registration materials and equipment are available; and

(d) make prompt written reports to the district officer or the regional director of the Commission on

(i) the availability of registration materials and equipment, and

(ii) any lapses in the performance of duty by officials responsible for the registration of voters.

(4) For the purposes of paragraph (d) of subregulation (3) reports include reports sent by electronic mail, except that where a report is submitted by electronic mail the hard copy of that report shall be submitted to the recipient of the electronic mail within seventy-two hours after the electronic mail has been sent.

(5) The registration supervisor shall not keep registration forms and equipment during the registration period but shall assist the district officer of the Commission in the distribution and collection of registration forms and other essential registration materials and equipment to and from the registration centres.

(6) A person who is not authorised by the Commission shall not have access to data on registration.

Objection to appointment of registration supervisors and registration officers

8. (1) The Commission shall make available to the interested persons or parties at the district office, the names of persons it proposes to appoint as registration supervisors, registration officers and registration assistants for the centres not later than fourteen days before they are appointed.

(2) A registered political party or person qualified to be registered as a voter may in writing object to any person proposed for appointment
as a registration supervisor, a registration officer or a registration assistant, within seven days after the names of the proposed officers have been made available.

(3) The objection shall be based on factual and verifiable evidence and be made to the Commission.

(4) The Commission shall communicate the decision of the Commission to the parties involved within seven days after receipt of the objection.

**Period of registration**

9. (1) The Commission shall register voters on a continuous basis.

(2) Despite subregulation (1), the Commission may by notice in the *Gazette* and in the media specify a period during which a national registration of voters shall take place.

(3) The Commission may by notice published in the *Gazette* and in the media review the original period set aside for registration.

(4) The Commission shall include in the register of voters, the name of a person who qualifies for registration as a voter and is registered.

(5) Despite subregulation (4), the Commission shall not include in the register of voters the name of the person who qualifies to register as a voter for an election but who registers less than sixty days to that election.

**Access to registration centre**

10. (1) A person shall not enter a registration centre unless that person

(a) is applying to be registered as a voter;

(b) is a member or official of the Commission;

(c) is submitting a complaint or other official document to the registration officer; or
(d) is authorised in writing by the Commission to do so.

(2) The Commission may authorise and give an opportunity to an agent of a registered political party and other interested body or person to observe activities at a registration centre during the period set aside for registration.

(3) The names of agents of registered political parties shall be submitted to the Commission not later than seven days before the start of registration.

(4) Despite subregulation (3), a registered political party may change the name of an agent whose particulars have been submitted later than seven days before the start of registration under special circumstances.

(5) An organisation interested in observing the registration shall not later than twenty-one days before the start of registration submit to the Commission the names of persons that the organisation proposes to act as observers.

**Authorised persons**

11. (1) Any of the following persons may give instructions or directives to registration officer or registration assistant and shall have the right to enter a registration centre:

(a) a member of the Commission;

(b) senior personnel of the head office of the Commission charged with monitoring the registration;

(c) a regional director of the Commission and a deputy regional director of the Commission;

(d) a district officer of the Commission; and

(e) a supervising registration officer of a district.
(2) A registration officer may exclude from the registration centre, any person whose conduct proves to be disruptive to the registration process.

(3) For the purpose of paragraph (b) of subregulation (1), a senior personnel charged with monitoring the registration means a person assigned by the Commission to monitor the registration exercise.

Application for registration

12. (1) The Commission shall by notice published in the Gazette and in the media inform a person who is entitled to be registered as a voter to apply, during a period specified in the notice, to the registration officer, for the inclusion of that person’s name in the register of the electoral area in which that person ordinarily resides or is permitted by law to register.

(2) The application for registration shall be made as set out in Form Two of the Schedule.

(3) The applicant shall appear in person before the registration officer at the registration centre at the time specified by the Commission by notice published in the Gazette.

(4) The applicant shall

   (a) supply the information required to complete the application form; and

   (b) with the thumbprint, authenticate the completed application form.

(5) The registration officer shall complete the application form on behalf of the applicant.

(6) The information required for the registration of an applicant as a voter includes particulars of the applicant’s,

   (a) full name, surname, first name and any other names;
(b) date of birth;
(c) age;
(d) sex;
(e) place of birth;
(f) residential address;
(g) names of parents; and
(h) hometown.

(7) A registration assistant shall capture the biometric data, made up of the ten finger prints and the photograph of the head, showing the bare face and two ears without any obstruction, of the applicant.

(8) Where a person with less than ten fingers requests to be registered, the registration assistant shall capture the prints of the available fingers.

(9) The Commission shall make alternative arrangements in relation to biometric data for a person who has no fingers.

(10) A special list may be created for persons who fall under subregulations (8) and (9).

(11) The Commission may vary the application procedure and the period of registration in the case of

(a) Ghanaian citizens resident abroad;

(b) a person in legal custody; and

(c) a person with disability or a person who is incapacitated.
(12) Where it appears from an application that the applicant should be registered as a voter in a constituency other than that to which the application relates, the registration officer shall direct the applicant to the constituency where the applicant should be registered.

**Registration and issue of identification card**

13. Where there is no objection to the application for registration, the registration officer shall enter the name and data of the applicant in the provisional register and shall issue to the applicant a voter identification card in the form determined by the Commission.

**Replacement of voter identification card**

14. (1) A person whose identification card is

   (a) lost;

   (b) stolen;

   (c) damaged;

   (d) tampered with or

   (e) destroyed;

shall report to the district officer of the Commission.

   (2) The Commission shall on the basis of the recommendation of the district officer authorise the issuance of a replacement voter identification card to the applicant at a cost to be determined by the Commission.

   (3) The replacement identification card shall have the word “Duplicate” written on it to indicate that it is a replacement identification card.
Use of biometric information

15. (1) The biometric information of a person registered as a voter shall not be made available to any other person or authority except on the orders of the High Court.

(2) A person who contravenes subregulation (1) commits an offence and is liable on summary conviction to a fine of not more than two thousand penalty units, or to a term of imprisonment of not more than four years or to both.

Challenges and complaints

Challenging an application for registration

16. (1) A person appointed to register voters, a person authorised by the Commission to monitor the registration of voters or a person qualified to be registered as a voter may challenge a person applying to be registered as a voter on the ground that the applicant does not satisfy the requirements provided in regulation 1.

(2) Where a person’s application for registration is challenged and that person claims to be qualified to be registered as a voter,

(a) the person making the challenge shall complete the voter registration challenge form as set out in the Form Three of the Schedule;

(b) the registration officer shall complete the registration form on behalf of the applicant but shall not issue the applicant with a voter identification card;

(c) the registration officer shall send the completed voter registration form together with the completed voter registration challenge form to the district electoral officer; and

(d) the district electoral officer shall send the completed voter registration form together with the completed voter regis-
District Registration Review Committee

17. (1) There is established in each district a District Registration Review Committee referred to in these Regulations as “the Committee”, which shall examine challenges related to the registration of voters in the district.

(2) A District Registration Review Committee consists of

(a) one representative of each registered political party active in the district;

(b) the district officer of the Commission, who is the secretary to the Committee;

(c) the Police Commander in the district or the representative of that Police Commander;

(d) the District Director of Education or the representative of that District Director; and

(e) one representative of the traditional authorities in the district.

(3) The District Registration Review Committee shall appoint its own chairperson from among its members and shall regulate the conduct of its proceedings.

(4) Without limiting subregulation (3), the conduct of proceedings by the Committee, shall be fair to the parties to the dispute.
Functions of the Committee

18. (1) On the receipt of the completed voter registration form of a challenged applicant and the completed voter registration challenge form as provided for in regulation 16 (2), the Committee shall within

(a) seven days examine the grounds of the challenge to the application;

(b) seven days decide whether or not the applicant is qualified to be registered as a voter; and

(c) forty-eight hours after its decision communicate the decision in writing to the Commission and the applicant.

(2) In furtherance of its functions under subregulation (1), the Committee

(a) shall take evidence from the parties concerned;

(b) shall examine relevant documents;

(c) may call witnesses to testify; and

(d) may carry out any investigation relevant to the issue.

(3) The Committee shall for the purpose of taking evidence and calling witnesses have the same powers as a District Court.

(4) The Commission shall give effect to the Committee’s recommendation, fourteen days after the parties to the dispute have been informed of the Committee’s findings unless the Commission has received written notification that either party has appealed against the decision to the Chief Registration Review Officer under regulation 19.
Chief Registration Review Officer

19. (1) In each region, a judge of the High Court shall be the Chief Registration Review Officer and shall determine appeals against the decisions of the District Registration Review Committee.

(2) The practice and procedure for the hearing of appeals under this regulation shall be determined by the Chief Registration Review Officer.

(3) The Chief Registration Review Officer shall, in writing, communicate the decision arrived at on appeal to the Commission, to the parties and the Commission shall comply with the decision.

Complaints

20. (1) Without limiting any of the provisions in these Regulations, a person who is qualified to be registered as a voter may submit a complaint as set out in Form Four of the Schedule concerning the registration process to a registration officer or any of the officials specified in regulation 11(1).

(2) An official to whom a complaint is made or referred shall make a record of the complaint and either

(a) resolve the matter to the satisfaction of the complainant; or

(b) refer the matter to the next higher officer of the Commission for further action.

 Provisional voters register and complaints relating to the register

Provisional register of voters

21. (1) The Commission shall, not later than three months from the end of the registration period compile for each polling station a provisional register of voters stating the name, age, sex, residential
address and showing the photograph of each person whose application for registration at that polling station was accepted.

(2) A copy of the provisional register shall be given to each registered political party in the form determined by the Commission.

Exhibition

22. (1) The Commission shall cause the provisional register of voters of each polling station to be displayed for public inspection at the registration centre for the period that the Commission by notice in the [Gazette](#) and the media specifies.

(2) During the exhibition period

(a) any registered voter may inspect the provisional register of voters to ascertain that the particulars on that voter’s identification card are the same as the particulars contained in the provisional register of voters and in case of any discrepancy, request the exhibition officer to make the necessary correction in the provisional register;

(b) any person whose application for registration during the registration period was accepted but whose name and other particulars do not appear in the provisional voters register of voters may make a claim as set out in Form Five of the Schedule for the name and particulars of that person to be entered in the provisional register; and

(c) a person entitled to be registered as a voter may object as set out in Form six of the Schedule to a person whose name appears in the provisional register of voters on the ground that the person is not qualified to be registered as a voter.

(3) The Commission shall in addition to the publication provided in subregulation (1), post the provisional register on the website of the Commission.
Exhibition officer

23. (1) The Commission shall appoint for each registration centre an exhibition officer to exhibit the provisional register.

(2) The exhibition officer shall

(a) assist registered voters to find their names in the provisional register;

(b) verify whether the details in the provisional voters register are the same as those on the identification card and if there is a discrepancy make the necessary correction in the register;

(c) before making a correction in the provisional register complete the Correction Form as set out in Form Eleven of the Schedule indicating the nature of the discrepancy in the voter’s particulars;

(d) check for clerical errors and fill in the appropriate form; and

(e) receive claims and objections in the prescribed form concerning the inclusion of a person’s name and other particulars in the provisional register.

Claims and objections after publication of provisional register of voters

24. (1) A person who has a right to have the particulars including the name of that person to be included in the provisional register or to object to the inclusion of any name or the omission of any name from the register may on the publication of the provisional register, submit a complaint as set out in Form Five or Form Six of the Schedule as the case may be to the exhibition officer in respect of any matter relating to the particulars of a person included or omitted in the provisional register.

(2) The exhibition officer shall, within three days after the exhibition period has ended,
(a) exhibit in a conspicuous place in the registration centre

(i) a list as set out in Form Seven of the Schedule of persons who have applied to be included in the voters register;

(ii) a list as set out in Form Eight of the Schedule of persons whose inclusion in the register is the subject of an objection; and

(iii) a list as set out in Form Nine of the Schedule of persons whose names occur more than once;

(b) send two copies of each of the lists to the district officer of the Commission; and

(c) send the exhibited provisional register with the corrections of the exhibition officer, to the district officer of the Commission.

(3) The Commission may determine the other relevant particulars that are to be contained in the list.

(4) The district officer of the Commission shall

(a) keep a copy of each of the lists of claims and objections, at the office of the district officer; and

(b) send a copy of the lists of claims and objections to the concerned regional director of the Commission.

Settling claims and objections on provisional register

25. (1) A district officer of the Commission shall, within seven days from the date of receipt of the lists of claims and objections from the exhibition officer, submit the complaints and objections to the District Registration Review Officer for determination, and give notice to each person
(a) against whom an objection has been raised

(i) of the objection, and

(ii) the reasons for the objection, and

(b) who has made a claim

to attend the hearing presided by the District Registration Review Officer for the determination of the objection or claim.

(2) The notice shall be as set out in Form Ten of the Schedule.

(3) For the purpose of sub-regulation (1), the District Court Magistrate shall be the District Registration Review Officer.

(4) A Judge of the High Court, who is appointed the Chief Registration Review Officer of the region in which a district is located, shall appoint a lawyer of not less than three years standing and who is preferably resident in the district to be the District Registration Review Officer, if a District Court does not exist in the district or if the chairperson of the District Court is absent.

(5) The District Registration Review Officer shall determine the procedure for settling claims and objections but

(a) a party to an issue shall be heard in person or may be represented by a lawyer;

(b) the lawful possession by a claimant of an authentic identification card issued by the Commission shall be prima facie evidence of registration; and

(c) a person is not entitled to make a claim or raise an objection in relation to a matter on which the High Court has made a determination before the period of the exhibition of the provisional voters register.

(6) The District Registration Review Officer shall, in writing on the same day of making a decision or as soon as practicable, inform the Commission and the person who is making the claim or the person to
whom the objection relates of the decision of that District Registration Review Officer.

(7) The Commission shall give effect to the decision of the District Registration Review Officer within fourteen days after the person making the claim or the person to whom the objection relates had been informed unless the Commission has received certified notification of an appeal to the High Court under sub-regulation (8).

(8) A person aggrieved by the decision of the District Registration Review Officer may appeal to the High Court.

(9) The High Court shall as soon as practicable inform the Commission and the parties in dispute of its decision and the Commission shall give effect to the decision.

**Certified register**

26. (1) The Commission shall certify the register after the determination of claims or objections.

(2) After the register has been certified it shall be published in the manner determined by the Commission and shall replace any existing voters register.

*Offences and miscellaneous provisions*

**Registration offences**

27. A person who

(a) registers as a voter when that person does not qualify to be registered;

(b) registers as a voter more than once either at the same registration centre or at different registration centres;

(c) registers as a voter in the name of another person whether that other person is dead or alive;
(d) by force or threat of use of physical or spiritual force, prevents a person from exercising the right to register as a voter;

(e) knowingly presents or gives false information in the application or claim of that person for registration, or in connection with the application or claim of another person for registration;

(f) forges, willfully defaces or destroys any official notice, paper or document relating to the registration of voters;

(g) delivers to any official connected with the registration of voters any paper or other document in connection with the registration of voters which that person knows to be false;

(h) challenges or objects to the inclusion of the name of another person in the register of voters on a ground that that person knows to be false;

(i) gives a voters registration form to another person when that person is not a registration officer;

(j) without authority from the Commission gives a form relating to the registration of voters to another person;

(k) without authority from the Commission prints any form relating to the registration of voters;

(l) disrupts proceedings at a registration centre or in any way interferes with the work of an official connected with registration of voters;

(m) offers anything of actual or potential value to a person to induce that person not to register as a voter;

(n) makes an entry or a statement which that person knows to be false or does not believe to be true for the purpose of registering a voter;
(o) carries out registration of voters at a place other than a place designated as a registration centre by the Commission;

(p) tampers with any registration equipment;

(q) alters captured registration data without authority;

(r) transfers data to another device without authorisation; or

(s) intentionally brings an electronic device that interferes with the performance of the equipment to a registration centre or any data centre of the Commission.

commits an offence and is liable on summary conviction to a fine of not more than five hundred penalty units or to a term of imprisonment of not more than two years or to both.

**Voter identification card offences**

28. (1) A person who possesses the identification card of another person without the express consent of that other person commits an offence.

(2) A political party or any other organization shall not be in possession of the identification card of any of its members or of any other person without the express written consent of that member or that other person.

(3) A person who finds a lost identification card shall, within fourteen days after finding that card, surrender the card to the district officer of the Commission or a police officer in charge of the nearest police station, otherwise that person shall be deemed to be in unlawful possession of another person’s identification card.

(4) A police officer to whom a lost identification card has been surrendered shall surrender the card to the district officer of the Commission within fourteen days after the card had been given to that
police officer otherwise that police officer shall be deemed to be in unlawful possession of another person’s identification card.

(5) An individual who commits the offence of unlawful possession of another person’s identification card is liable on summary conviction to a fine of not more than five hundred penalty units or a term of imprisonment of not more than two years for each identification card which is held unlawfully.

(6) A political party, organization or group of persons which commits the offence of unlawful possession of an identification card is liable on summary conviction to a fine of not more than two thousand penalty units and an additional fine of one hundred penalty units for each voter identification card held unlawfully.

Revision of the register

29. (1) The Commission shall revise the register of voters annually and may revise the register of voters for electoral areas that The Commission shall determine.

(2) The process for registration as provided in these Regulations apply with the modifications that the Commission shall direct for the revision of any register.

Public notice and the Gazette

30. Where any matter is required in these Regulations to be published in the Gazette it may in lieu of or in addition to the publication in the Gazette be published through radio, television, the national newspapers or any other medium of mass communication.

Interpretation

31. In these Regulations unless the context otherwise requires,

“active political party in the district” means a political party that has an office and elected officers in at least one constituency in that district;
“bio-data” refers to biographic and biometric information of a person required for the purpose of establishing that person’s identity;

“Commission” means the Electoral Commission;

“Committee” means the District Registration Review Committee established under regulation 17;

“electronic device” includes mobile phones, computers, wireless equipment, infra-red devices, Bluetooth devices and related devices;

“identification card” means a voter identification card issued by the Commission indicating that the bearer whose particulars are specified in the card is a registered voter;

“prescribed” means prescribed by the Commission; and

“provisional register” means the provisional register of voters.

**Revocation**

32. The Public Elections (Registration of Voters) Regulations, 1995 (C.I. 12) is hereby revoked.
SCHEDULE
FORM ONE
(Regulation 1 (3)(f))

ELECTORAL COMMISSION OF GHANA
VOTER REGISTRATION IDENTIFICATION GUARANTEE FORM

In support of Voter Registration for:
Name of Applicant: .................................................................
Voter Registration Form Number: .............................................
Registration Center Code: .....................................................
Registration Centre Name: ......................................................

<table>
<thead>
<tr>
<th>Guarantor's Particulars</th>
<th>First Guarantor</th>
<th>Second Guarantor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name</td>
<td>..................</td>
<td>..................</td>
</tr>
<tr>
<td>Voter ID. Number</td>
<td>..................</td>
<td>..................</td>
</tr>
<tr>
<td>Registration Centre Code</td>
<td>..................</td>
<td>..................</td>
</tr>
<tr>
<td>Registration Centre Name</td>
<td>..................</td>
<td>..................</td>
</tr>
<tr>
<td>Signature</td>
<td>..................</td>
<td>..................</td>
</tr>
<tr>
<td>Thumbprint</td>
<td>..........</td>
<td>............</td>
</tr>
</tbody>
</table>

We solemnly swear or affirm that we know that
Mr./Mrs./Miss................................. is qualified to register
as a voter at the above named registration centre.

Name of Registration Officer Signature Date
.......................................................... .................. ..................
FORM TWO

(Regulation 12 (3))
FORM THREE

(Regulation 16 (2)(a))

ELECTORAL COMMISSION OF GHANA

Voter Registration Challenge Form

Name of Registration Centre: .................................. Date of Challenge:.............

What is the name and address of the person who has been challenged? (Please Print Clearly)

Name of person challenged

Address of person challenged

What is the Reason for the Challenged? (Tick all that apply)

☐ Below 18 years old           ☐ Not of sound mind
☐ Not a Ghanaian citizen      ☐ Previously registered
☐ Not a Resident of locality  ☐ Other
☐ Not the person he/she claims to be (Impersonation)

Print the name and address of the person making the challenge:

Name of person making the challenge

Address of person making the challenge

I swear or affirm that the information I have provided on this Form is true and correct to the best of my knowledge.

Signature of person making challenge

Registration Officer, please write below any facts concerning the challenge you think important.

Signature of Registration Officer

Date
FORM FOUR

(Regulation 20 (1))

ELECTORAL COMMISSION OF GHANA
REPORT OF IRREGULARITY AT A REGISTRATION CENTRE

Registration Centre Number: ..................................................
Date irregularity was reported: ..............................................

What is the Irregularity alleged? (Tick all that apply) Give details on the back of Form where necessary

☐ Forms not used in serially numbered order ☐ Forms sent to another Centre without documentation
☐ Forms not assigned to this centre used ☐ Registration Officials arrived late. Note time .............
☐ Registration Official left Early Note Time .................
☐ Centre ran out of supplies Note time on matter(s): .............................................................

☐ Official unauthorisedly rejected applications ☐ Unnecessary delay in taking registrations
☐ Officials ignored party agent complaints ☐ Officials discourteous to the public
☐ Other(s). Please specify clearly on back of Form ☐ Procedure not properly followed

Print name of person reporting irregularity

Address (including house number) of person reporting irregularity

I swear or affirm that the information I have provided on this form is true and correct to the best of my knowledge.

Signature of person reporting

Print name of official receiving report

Signature of Official Worker ID Number
FORM FIVE

(Regulation 22 (2)(b))

ELECTORAL COMMISSION OF GHANA

INCLUSION FORM

EXHIBITION CENTRE CODE .................................................. (where applicable)
EXHIBITION CENTRE NAME ..................................................

Voter ID No. .................................................................

Having registered as a voter with the above Voter ID No., and realizing that my name and particulars have been omitted from the voters' register, I hereby make a claim for the inclusion of my name and other particulars on the register.

Polling Station Code: ..........................................................

Full Name: ............................................................................
First/Other name: ...............................................................

Date of Birth: ................................................................. Age: ........................................... Sex: ..........................................

Current Residential Address: ..............................................

Town/Village/Area: ............................................................

District: ............................................................................

Region: .............................................................................

NID Number: .................................................................

Father’s Full Name: ...........................................................

Mother’s Full Name: ..........................................................

Applicant’s Home Town Address: ........................................

Town/Village/Area: ............................................................

District: .............................................................................

Region: .............................................................................

I swear or affirm that the information I have provided on this form is true and correct to the best of my knowledge.

[Signature]

[Thumbsprint of Applicant]

Name of Exhibition Officer .............................................. Signature ........................................ Date ........................................
FORM SIX

(Regulation 22 (2)(c) and 24(1))

ELECTORAL COMMISSION OF GHANA

EXHIBITION OF VOTERS REGISTER

FORM OF OBJECTION (To names of unqualified persons or deceased voters on the Voters Register)

NAME OF CENTRE ..............................................................CODE ..............
Details of person against whom the objection is filed
Voter ID Number .................................................................
Name ................................................................. (As captured on the register)

Reason(s) for the objection: (Tick)
☐ Below 18 years old ☐ Deceased
☐ Not a Ghanaian Citizen ☐ Not of sound mind
☐ Not a resident of locality ☐ Multiple registration
☐ Impersonation ☐ Convicted of electoral offence

Details and affirmation of person making the objection (Complainant)
Complainant’s Name .................................................................
Complainant’s Address .................................................................
I swear or affirm that the information I have provided on this form is true and correct to the best of my knowledge.

Any relevant facts concerning the objection

........................................................................................................
........................................................................................................
........................................................................................................

........................................................................................................

Name of Exhibition Officer Signature Date
FORM SEVEN

(Regulation 24 (2) (a) (i))

ELECTORAL COMMISSION OF GHANA
EXHIBITION OF VOTERS REGISTER

NAME OF CENTRE ..........................  CODE: .........

List of Persons who have applied to be included on the Voters Register

Pursuant to the Public Elections (Registration of Voters) Regulations, 2012 (C.I. 72),
below is the list of persons who have applied to have their names included on the Voters
Register during the Exhibition of the Register.

<table>
<thead>
<tr>
<th>NAME</th>
<th>VOTER ID NUMBER</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Name of Exhibition Officer  Signature of Exhibition Officer  Date
FORM EIGHT

(Regulation 24 (2) (a) (ii))

ELECTORAL COMMISSION OF GHANA

EXHIBITION OF VOTERS REGISTER

NAME OF CENTRE ..................................................  CODE: .....................

List of Persons against whom an objection to their inclusion on the Voters Register has been filed

Pursuant to the Public Elections (Registration of Voters) Regulations, 2012 (C.I.72) below is the list of persons against whom an objection to their inclusion on the Voters Register was made during the Exhibition of the Register.

<table>
<thead>
<tr>
<th>NAME</th>
<th>VOTER ID NUMBER</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td></td>
</tr>
<tr>
<td>13</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td></td>
</tr>
<tr>
<td>15</td>
<td></td>
</tr>
<tr>
<td>16</td>
<td></td>
</tr>
<tr>
<td>17</td>
<td></td>
</tr>
<tr>
<td>18</td>
<td></td>
</tr>
<tr>
<td>19</td>
<td></td>
</tr>
<tr>
<td>20</td>
<td></td>
</tr>
</tbody>
</table>

Name of Exhibition Officer  Signature of Exhibition Officer  Date

173
FORM NINE

(Regulation 24 (2) (a) (iii))

ELECTORAL COMMISSION OF GHANA

List of Persons with Multiple Registration records in the Voters Register As at

<table>
<thead>
<tr>
<th>No.</th>
<th>Voter ID Number</th>
<th>Polling Station Code</th>
<th>Name of Voter</th>
<th>Age</th>
<th>Sex</th>
<th>Portrait</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Date Compiled</th>
<th>Registration/Deleting Officer</th>
<th>District Electoral Officer</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
FORM TEN

(Regulation 25 (2))

ELECTORAL COMMISSION OF GHANA

EXHIBITION OF VOTERS REGISTER

Notice to Person against whom an objection has been filed

PART I

Name of Exhibition Centre ........................................ Date of Objection: ..................

TO

Name of persons against whom the objection is filed ............................................. Voter ID Number

You are hereby informed that an objection has been filed against your name being included on the Voters' Register. The reason(s) for the objection is: (Tick)

☐ You are below 18 years old ☐ You are not of sound mind

☐ You are not a Ghanaian citizen ☐ You are registered in another centre

☐ You are not a resident of locality ☐ Deceased

☐ You are not the person you claim to be (Impersonation)

PART II

A hearing at the place and time listed below, before the District Registration Review Officer for the ..........................................................

District will be held to determine whether the objection is valid. At the hearing, the objector will present his or her evidence that you are not qualified to have your name included on the Voters' Register. You will be required to provide evidence that supports your qualification to be a registered voter.

Location of Hearing ........................................ Date of Hearing

Name of District Electoral Officer ........................................ Signature of (District Electoral Officer) ........................................ Date
FORM ELEVEN

(Regulation 25 (2) (c))

ELECTORAL COMMISSION OF GHANA
Form of Amendment

CORRECTION FORM

EXHIBITION CENTRE CODE ........................................... (where applicable)
EXHIBITION CENTRE NAME ................................................

Voter ID No. .................................................................

Having registered as a voter, with the above Voter ID No., I hereby request the following amendment to my details on the voters register:

Corrections: That the following corrections be made to my particulars on the Voters Register and related documents:

Correct P/C Code: .............................................................

Correct Name: .................................................................

Correct Sex: □ Correct Age: □

I swear or affirm that the information I have provided on this form is true and correct to the best of my knowledge.

Thurscript of Applicant

Name of Exhibition Officer Signature Date

DR KWADWO AFARI-GYAN
Chairman of the Electoral Commission
Date of Gazette notification: 21st February 2012
P.N.D.C.L. 284

REPRESENTATION OF THE PEOPLE LAW, 1992

ARRANGEMENT OF SECTIONS

Constituencies for Parliamentary Elections

SECTION
2. Appeal from decision of Commission.
4. Polling divisions.
5. Appointment of election committee.
6. Presiding officers and deputies.

Qualification of Voters and Members of Parliament
7. Qualification of voters.
8. Registration of officials abroad.

Nomination of Candidates and Voting at Elections
11. Nominations and elections of candidates at public elections.
12. By-election.
14. Candidates to conduct campaign freely.
15. Conduct of elections.

Election Petitions and other Legal Proceedings
17. Presentation of election petition.
18. Time for presentation of petition.
19. Relief which may be granted.
20. Grounds for cancelling election results.
22. Certification of decision.
23. Report of court as to corrupt or illegal practices.
24. Prohibition of disclosure of vote.
25. Determination of certain questions as to membership of Parliament.

Election Offences
27. Registration offences.
28. Offences relating to nomination papers and the ballot.
29. Unauthorised voting.
30. Offences by election officers.
SECTION
32. Personation.
33. Bribery.
34. Treating.
35. Undue influence.
36. Interference with electioneering activities of other persons.
37. Certain activities prohibited on polling day.
38. Defacement of notices.
39. False statements.
40. Obstruction of officers.
41. Penalty and incapacity for corrupt and illegal practices.
42. Consent to prosecution.

Miscellaneous Provisions
43. Record of disqualified persons and removal from register.
44. Duty of Registrars of courts to report certain convictions to Commission.
45. Saving where election declared void.
46. Inaccurate description of persons or place.
47. Regulations.
48. Fees and appeals under legislative instrument made under this Act.
49. Exemption.
50. Interpretation.
51. Presidential elections and referenda.
52. Repeals.

P.N.D.C.L. 284

REPRESENTATION OF THE PEOPLE LAW, 1992¹

AN ACT to provide for the division of the Republic into constituencies for the purposes of the election of members of Parliament and to provide for related matters.

Constituencies for Parliamentary Elections

1. Constituencies of Ghana for Parliamentary elections

   (1) In accordance with article 47 of the Constitution, Ghana shall be divided into as many constituencies for the purpose of election of members of Parliament as the Electoral Commission, shall by constitutional instrument prescribe.²

   (2) Each constituency shall be represented by one member in Parliament.

   (3) The boundaries of a constituency shall not fall within more than one region.

¹ This Act was issued as the Representation of the People Law, 1992 (P.N.D.C.L. 284) made on the 24th day of July, 1992 and notified in the Gazette on 7th August, 1992.
² The number of constituencies is now two hundred and thirty by order of ……………………. 
(4) The boundaries of each constituency shall be such that the number of inhabitants in the constituency is, as nearly as possible, equal to the population quota.

(5) For the purposes of subsection (4), the number of inhabitants of a constituency may be greater or less than the population quota in order to take account of means of communication, geographical features, density of population and area and boundaries of the regions and other administrative or traditional areas.

(6) For the purpose of this section “population quota” means the number obtained by dividing the number of inhabitants of Ghana by the number of constituencies into which Ghana is divided under subsection (1).

2. Appeal from decision of Commission

(1) In accordance with article 48 of the Constitution, a person aggrieved by a decision of the Commission in respect of a demarcation of a boundary may appeal to a tribunal consisting of three persons appointed by the Chief Justice and the Commission shall give effect to the decision of the tribunal.

(2) A person aggrieved by a decision of the tribunal referred to in subsection (1) may appeal to the Court of Appeal.¹

3. Review of constituencies

(1) In accordance with clause (5) of article 47 of the Constitution, the Commission shall review the division of Ghana into constituencies at intervals of not less than seven years, or within twelve months after the publication of the enumeration figures after the holding of a census of the population of Ghana, whichever is earlier and may, as a result, alter the boundaries of the constituencies.

(2) Where the boundaries of a constituency established under section 1 are altered as a result of a review, the alteration shall come into effect on the next dissolution of Parliament by virtue of clause (6) of article 47 of the Constitution.

4. Polling divisions

(1) The Commission shall divide each constituency into polling divisions and a polling division may be divided into as many polling stations as the Commission may prescribe.

(2) Where the boundaries of a constituency are varied, and in any other circumstances in which the Commission thinks it appropriate to do so, the Commission may alter the number and area of polling divisions within the constituency.

(3) Whenever the Commission divides a constituency into polling divisions or alters the number or area of polling divisions within a constituency, it shall, by legislative instrument, specify the polling divisions into which the constituency has been divided into or the alteration which has been made.

5. Appointment of election committee

(1) The Commission shall appoint for each constituency an election committee which shall be a committee of the Commission.

---

¹ As provided for in clause (2) of article 48 of the Constitution. See article 131 of the Constitution.
(2) The members of an election committee shall be appointed from the registered voters in the relevant constituency.

(3) An election committee shall consist of not less than three members and not more than five members of whom one shall be appointed as a presiding member by the committee.

(4) The presiding member of an election committee shall be the returning officer.

(5) An election committee shall be charged with the responsibility for the conduct and supervision of public election in the constituency under the supervision and direction of the Commission.

6. Presiding officers and deputies

(1) The Commission shall appoint a presiding officer for each polling division and the number of deputy or assistant officers as it considers necessary.

(2) Subject to the directions given by the Commission, the duties imposed by this Act on a presiding officer may be performed by the deputy or the assistant.

Qualification of Voters and Members of Parliament

7. Qualification of voters

(1) A person qualifies to be registered as a voter if he is

(a) a citizen of eighteen years of age or above, and

(b) of sound mind, and

(c) resident in the polling division, and

(d) not otherwise disqualified to be registered as a voter by law.

(2) A person is not entitled to have that person’s name included at any one time in the register of more than one constituency or in more than one divisional register in a constituency.

(3) Subject to subsection (2) a person is, for the purpose of this section, resident in a polling division on the qualifying date if that person has a place of abode in the division on that date.

(4) A person is not resident in a polling division if that person has been absent from that person’s place of abode for a continuous period of six months ending on the qualifying date.

(5) A person who is a patient in an establishment maintained wholly or mainly for the reception and treatment of persons suffering from mental illness or mental defectiveness or who is detained in legal custody in a place shall not be treated as resident there for the purposes of this section.

(6) A person who is resident in more than one place and who would, but for subsection (2) be entitled to have that person’s name included in the register of more than one constituency or in more than one divisional register in a constituency shall select one constituency and one polling division for the purpose of registration and voting.
8. Registration of officials abroad

(1) A person who is a citizen employed in a post outside Ghana
(a) in the service of the Republic, or
(b) in the service of the United Nations or of any other international organisation,
is entitled to be registered as a voter if that person satisfies the requirements for registration prescribed under this Act other than those relating to residence in a polling division.

(2) Subsection (1) applies to the spouse of a person to whom subsection (1) applies where the spouse is resident outside Ghana with the employed spouse.

(3) Unless otherwise disqualified under this Act, a person employed on Government duty outside Ghana who is a citizen of Ghana, is entitled to be registered as a voter although that person does not satisfy the requirements of this Act relating to residence in a polling division.

(4) The Commission may appoint the Head of a Ghana Mission or Embassy abroad as a registration officer for the purpose of receiving claims from a person entitled under subsections (1), (2) or (3) to be registered as a voter.

(5) The Commission may give directions to a person appointed as a registration officer under subsection (4) and that person shall comply with the direction.

9. Qualifications and eligibility of members of Parliament

(1) In accordance with article 94 of the Constitution, a person is not qualified to be a candidate for the office of member of Parliament unless that person,
(a) is a citizen, has attained the age of twenty-one years and is a registered voter;
(b) is resident in the constituency for which that person stands as a candidate for election to Parliament or has resided there, for a total period of not less than five years out of the ten years immediately preceding the election for which that person stands or that person hails from that constituency, and
(c) has paid all taxes due or made arrangements satisfactory to the appropriate authority for the payment of the taxes.

(2) A person is not qualified to be a member of Parliament if that person
(a) owes allegiance to a country other than Ghana, or
(b) has been adjudged or otherwise declared,
(i) bankrupt under a law in force in Ghana and has not been discharged,
(ii) to be of unsound mind or is detained as a criminal lunatic under any law in force in Ghana, or
(c) has been convicted,
(i) for treason or for an offence involving the security of the State, fraud, dishonesty or moral turpitude, or
(ii) for any other offence punishable by death or by a sentence of not less than ten years imprisonment, or
(iii) for an offence relating to, or connected with public elections under a law in force in the Republic at any time, or

(d) has been found by the report of a commission or a committee of inquiry to be incompetent to hold public office or is a person in respect of whom a commission or committee of inquiry has found that while being a public officer that person acquired assets unlawfully or defrauded the Republic or misused or abused the office; or wilfully acted in a manner prejudicial to the interest of the Republic, and the findings have not been set aside on appeal or judicial review, or

(e) is under sentence of death or sentence of imprisonment imposed on that person by a Court, or

(f) is not qualified to be registered as a voter under a law relating to public elections, or

(g) is otherwise disqualified by a law in force at the time of the coming into force of this Act.

(3) A person is not eligible to be a member of Parliament if that person

(a) is prohibited from standing election by a law in force in Ghana by reason of holding or acting in an office the functions of which involve a responsibility for, or connected with, the conduct of an election or a responsibility for the compilation or revision of an electoral register, or

(b) is a member of the Police Service, the Prisons Service, the Armed Forces, the Judicial Service, the Legal Service, the Civil Service, the Audit Service, the Parliamentary Service, the Statistical Service, the National Fire Service, the Customs, Excise and Preventive Service, the Immigration Service or the Internal Revenue Service, or

(c) is a chief, or

(d) has not declared that person’s assets in accordance with the provisions of the Public Office Holders (Declaration of Assets and Disqualification) Act, 1998 (Act 550).

(4) For the purpose of subsection (2) (d), in the case of a finding made by a commission or committee of inquiry which is not a judicial or quasi-judicial commission or committee of inquiry, without prejudice to appeal against or judicial review of that finding, the finding shall not have the effect of disqualifying a person under that subsection unless it has been confirmed by a Government White Paper.

(5) For the purposes of paragraphs (c) or (d) of subsection (2)

(a) ten years or more have passed since the end of the sentence or the date of the publication of the report of the commission or committee of inquiry, or

(b) that person has been pardoned.

10. Vacation of seat in Parliament postponed in certain circumstances

When a member of Parliament is adjudged or declared bankrupt or of unsound mind or sentenced to death or imprisonment, the decision shall not have the effect of causing
that person to vacate that person’s seat in Parliament until,

(a) where an appeal is not lodged, the time within which an appeal may be lodged has expired, or

(b) where an appeal is lodged, the appeal has been finally disposed of.

Nomination of Candidates and Voting at Elections

11. Nominations and election of candidates at public elections

(1) In accordance with article 50 of the Constitution, where in an election under this Act at the close of nominations and on the day before the elections,

(a) two or more candidates have been nominated, the election shall be held and the candidate who receives the largest number of votes cast shall be declared elected; or

(b) only one candidate is nominated, an election shall not be held and that candidate shall be declared elected.

(2) Where for the purpose of the election two or more candidates are nominated but at the close of the nominations and on the day before the election only one candidate stands nominated, a further period of ten days shall be allowed for nomination of other candidates, and it shall not be lawful for a person nominated within that period of ten days to withdraw the nomination.

(3) Where at the close of nominations and after the expiry of the further period of ten days under subsection (2) only one candidate stands nominated, there shall be no election and that candidate shall be declared elected.

(4) Where at the close of nominations, but before the election, one of the candidates dies, a further period of ten days shall be allowed for nominations; and where the death occurs at any time within twenty-five days before the election, the election in that constituency shall be postponed for twenty-one days.

(5) The Commission shall by Regulations prescribe the procedure for the nomination of candidates and shall in particular provide for

(a) conditions of nomination,

(b) declaration to be made by candidates, and

(c) deposit to be paid and whether it is refundable or not and the conditions for the refund.

12. By-election

(1) Where a vacancy occurs in the membership of Parliament, the Clerk to Parliament shall notify the Commission in writing within seven days after the vacancy occurred, and a by-election shall be held within thirty days after the vacancy occurred.

(2) Despite subsection (1), a by-election shall not be held within three months before the holding of a general election.

18. Time for presentation of petition

(1) An election petition shall be presented within twenty-one days after the date of the publication in the Gazette of the result of the election to which it relates, but a petition questioning an election on an allegation of corrupt practice and specifically alleging a payment of money or any other award to have been made by the person whose election is questioned or to have been made on behalf of and to that person’s knowledge, may be presented within twenty-one days after the date of the alleged payment.

(2) The presentation of an election petition under subsection (1) is not valid unless within the time specified in subsection (1), the petitioner gives as security for costs an amount of money determined by the High Court.

(3) The time limit provided by this section for the presentation of an election petition shall not be extended.

19. Relief which may be granted

After the hearing of an election petition the High Court may make any of the following orders:

(a) declare that the election to which the petition relates is void,

(b) declare that a candidate other than the member whose election is questioned was duly elected, or

(c) dismiss the petition and declare that the member whose election is questioned was duly elected.

20. Grounds for cancelling election results

(1) The election of a candidate shall be declared void on an election petition if the High Court is satisfied

(a) that general bribery, general treating, general intimidation or other misconduct or circumstances, whether similar to those specified in this Act or not, have so extensively prevailed that they may be reasonably supposed to have affected the result of the election;

(b) that there has been non-compliance with a provision of this Act or of the Regulations and that it appears that the election was not conducted in accordance with the principles laid down by law and that the non-compliance affected the result of the election;

(c) that a corrupt or illegal practice was committed in connection with the election by the candidate or with the knowledge or consent of the candidate, or by an agent of the candidate; or

(d) that the candidate was at the time of the election a person not qualified or a person disqualified for election.

(2) Despite subsection (1),

(a) where at the hearing of an election petition the High Court finds that a candidate has been guilty through the agent or representative of the candidate;
of a corrupt or illegal practice, and the High Court further finds, that the
candidate has proved to the High Court,
(i) that a corrupt or illegal practice was not committed by the candidate
or with the knowledge or consent or approval of the candidate, or
(ii) that even though there was corrupt or illegal practice, the candidate
took all reasonable steps to prevent the commission of corrupt or il-
legal practice at the election, and
(iii) that in all other respects the election was free from a corrupt or an
illegal practice on the part of the candidate,
then, if the High Court so recommends, the election of the candidate shall
not because of the corrupt practice be void or illegal and the candidate shall
not be subject to an incapacity under this Act;
(b) where at the hearing of an election petition the High Court finds that there
has been failure to comply with a provision of this Act or of the Regula-
tions, and the High Court further finds
(i) that the election was conducted in accordance with this Act and
Regulations, and
(ii) that the failure did not affect the result of the election,
the election of the successful candidate shall not, because of the failure be
void and the successful candidate shall not be subject to an incapacity un-
der this Act or the Regulations.

21. Scrutiny

(1) Where on an election petition the election is claimed for an unsuccessful can-
didate on the ground that the candidate had a majority of lawful votes, the High Court may
direct an examination of the votes cast at the election by the Commission or any other
person determined by the Court.

(2) On a scrutiny, the following votes shall be struck off:
(a) the vote of a person,
   (i) whose name was not included in the divisional register of the polling
division in which the vote was recorded,
   (ii) whose name was not included in that part of the register which con-
tained the names of the voters assigned to the polling station at
which the vote was recorded,
   (iii) who did not have the right under this Act or Regulations to vote at
the polling station at which the vote was recorded;
(b) the vote of a person whose vote was procured by bribery, treating or undue
influence;
(c) the vote of a person who committed or procured the commission of person-
ating at the election;
(d) the vote of a person proved to have voted more than once at the election or
in more than one constituency; and
(e) the vote of a person who is disqualified from voting at the elections because of a conviction for a corrupt or illegal practice or because of a report made by a Court under this Act.

(3) A tendered ballot paper, proved on scrutiny to be a valid vote shall be added to the poll.

22. Certification of decision

(1) At the conclusion of the hearing of an election petition the High Court shall certify its decision to the Commission which shall request the return by the returning officer in respect of the election to which the petition relates to be confirmed or altered accordingly.

(2) Where the decision certified by the High Court under subsection (1) is to the effect that the election to which the petition relates is void, a writ shall be issued for a fresh election in the constituency concerned.

23. Report of court as to corrupt or illegal practices

At the conclusion of the hearing of an election petition, the High Court shall, if satisfied that a person has been proved to have committed the offence of corrupt or illegal practice in connection with the election to which the petition relates, send a written report to the Attorney-General giving the name and description of that person and the nature of the practice and any other information that the High Court considers relevant and appropriate.

24. Prohibition of disclosure of vote

A person who has voted at an election shall not be required to state for whom that person has voted in proceedings questioning the election.

25. Determination of certain questions as to membership of Parliament

A question as to whether in a public election the seat of a member of the Parliament has become vacant may be referred to and determined by the High Court on a petition presented by the Attorney-General.6

26. Procedure

(1) The Rules of procedure for presentation and hearing of a petition shall be the same as the rules of procedure applicable to a civil cause or matter before the High Court.

(2) Omitted.7

---

6. See also article 99 of the Constitution.
7. Under section 1 of State Proceedings Act, 1961 (Act 51) as amended by the State Proceedings (Amendment) Decree, 1969 (N.L.C.D. 352), actions can be brought against the Republic with the fiat of the Attorney-General. The subsection provided that: "The provisions under section 1 of the State Proceedings Act, 1961 (Act 51) as amended, relating to one month’s notice to the Attorney-General before commencement of an action against the Republic shall not apply to election petitions against any act or omission of the Commission."
27. Registration offences

A person who

(a) knowingly makes a false statement in or in connection with an application to have that person's name included in a register, or

(b) having applied to have that person's name included in a divisional register, without withdrawing the application, applies to have the name included in another divisional register, or

(c) by the use of force or threats prevents or attempts to prevent any other person from exercising the right to register as a voter,

commits an offence and is liable on conviction to a fine not exceeding five hundred penalty units or to a term of imprisonment not exceeding two years or both the fine and the imprisonment, and is disqualified for a period of five years from the date of the expiration of the term of imprisonment, from being registered as a voter or voting at an election.

28. Offences relating to nomination papers and the ballot

A person who

(a) forges, fraudulently defaces, or destroys a nomination paper, or any other document relating to the registration of a voter, or delivers to a returning officer any nomination paper, knowing it to be forged, or

(b) forges or counterfeits or fraudulently destroys a ballot paper or the official mark on a ballot paper, or

(c) without authority supplies a ballot paper to any person, or

(d) sells or offers to sell a ballot paper to a person or purchases or offers to purchase a ballot paper from a person, or

(e) not being a person entitled under this Act or regulations made under it to be in possession of a ballot paper which has been marked with the official mark, has such a ballot paper in his possession, or

(f) knowingly and intentionally puts into a ballot box anything other than the ballot paper which that person is authorised by law to put in, or

(g) without authority, destroys, takes, opens or otherwise interferes with a ballot box, ballot paper or packet of ballot papers in use or intended to be used for the purposes of an election, or

(h) without authority, prints a ballot paper or what purports to be or is capable of being used as a ballot paper at an election, or

(i) not being authorised to do so under this Act or the Regulations, makes a mark on a ballot paper issued to a person, other than that person, with intent that the ballot paper shall be used to record the vote of the person,

commits an offence and is liable on conviction to a fine not exceeding five hundred penalty units or to a term of imprisonment not exceeding two years or both the fine and the imprisonment; and is disqualified, for a period of five years from the date of the expiration of the term of imprisonment, from being registered as a voter or voting at an election.
29. **Unauthorised voting**

A person who knowingly votes

(a) at an election at which that person is not entitled to vote, or

(b) more than once at an election,

commits an offence and is liable on conviction to a fine not exceeding five hundred penalty units or to a term of imprisonment not exceeding two years or both the fine and the imprisonment; and is disqualified, for a period of five years from the date of the expiration of the term of imprisonment, from being registered as a voter or voting at an election.

30. **Offences by election officers**

An election officer, clerk, interpreter or any other person who has a duty to discharge, whether under this Act or otherwise, in relation to an election and who

(a) makes in a record, return or any other document, which is required to be kept or made in pursuance of this Act or of the Regulations, an entry which that person knows or has reasonable cause to believe to be false, or does not believe to be true, or

(b) permits a person whom that person knows or has reasonable cause to believe not to be a person who is blind or incapacitated from voting by any other physical cause to vote in the manner provided for those persons, or

(c) refuses to permit a person whom that person knows or has reasonable cause to believe to be a person who is blind or incapacitated from voting by any other physical cause to vote in the manner provided for those persons, or

(d) wilfully prevents a person from voting at the polling station at which that person knows or has reasonable cause to believe the person is entitled to vote at, or

(e) wilfully counts a ballot paper as being cast for a candidate which that person knows or has reasonable cause to believe was not validly cast for the candidate, or

(f) without reasonable cause acts or fails to act in breach of official duty,

commits an offence and is liable on conviction to a fine not exceeding five hundred penalty units or to a term of imprisonment not exceeding two years or both the fine and the imprisonment.

31. **Requirement of secrecy**

(1) An election officer, clerk, interpreter, candidate, election agent or polling agent on duty at a polling station shall maintain and help in maintaining the secrecy of voting and shall not, except for a purpose authorised by law, communicate to any other person an information as to

(a) the name of a voter who has or has not applied for a ballot paper or voted at a polling station, or

(b) the number on the register of a voter who has or has not applied for a ballot paper or voted at a polling station, or

(c) the official mark.
(2) A person present at the counting of votes shall maintain and help in maintaining the secrecy of voting and shall not communicate an information obtained at the counting of the votes as to the candidate for whom a vote is given on a particular ballot paper.

(3) A person shall not
   
   (a) interfere with or attempt to interfere with a voter when the voter is recording the vote, or
   
   (b) obtain or attempt to obtain in a polling station information about the candidate for whom a voter in that station is about to vote or has voted, or
   
   (c) communicate at any time to any other person an information obtained in a polling station about the candidate for whom a voter in that station has voted or is about to vote, or about the number, on the ballot paper given to a voter at that station, or
   
   (d) directly or indirectly induce a voter to display the ballot paper after the voter has marked or selected it so as to make known to another person the name of the candidate for whom the voter has or has not voted.

(4) A person who has undertaken to assist
   
   (a) a blind voter to vote, or
   
   (b) a voter who is incapacitated from voting by any other physical cause to vote,

shall not communicate at any time to another person information as to the candidate for whom that disabled voter intends to vote or has voted, or as to the number, on the ballot paper given for the use of the disabled voter.

(5) A person who contravenes a provision of this section commits an offence and is liable on conviction to a fine not exceeding five hundred penalty units or to a term of imprisonment not exceeding two years or both the fine and the imprisonment.

32. Personation

A person commits the offence of personation if that person votes

   (a) as another person, whether that other person is living or dead or is a fictitious person, or
   
   (b) for a person whom that person knows or has reasonable grounds to believe to be dead or to be a fictitious person.

33. Bribery

(1) A person commits the offence of bribery

   (a) if that person directly or acting through another person,
       
       (i) gives money or obtains an office for a vote in order to induce the voter to vote or refrain from voting, or
       
       (ii) corruptly does an act on account of a voter having voted or refrained from voting, or

   (b) if that person directly or acting through another person,

   (c) if that person directly or acting through another person,

   (d) if that person directly or acting through another person,
(iii) makes a gift or provides something of value to a voter to induce the voter to vote in a certain way or to obtain the election of a candidate, or

(b) if that person advances or pays money or causes money to be paid to or for the use of a person with the intent that the money or part of it shall be expended in bribery at an election, or knowingly pays money or causes money to be paid to a person in discharge or repayment of money wholly or in part expended in bribery at an election, or

(c) if before or during an election that person directly or indirectly, or through another person acting on that person’s behalf, receives, agrees or contracts for money, gift, a loan or valuable consideration or an office, place or employment for that person or for another person for voting or agreeing to vote or for refraining or agreeing to refrain from voting, or

(d) if after an election that person directly or through another person receives money or valuable consideration on account of a person having voted or refrained from voting or having induced another person to vote or to refrain from voting.

(2) For the purpose of subsection (1),

(a) references to giving money include giving, lending, agreeing to give or lend, offering, promising and promising to procure or to endeavour to procure money or valuable consideration, and

(b) references to procuring office include giving, procuring agreeing to give or procure, offering, promising and promising to procure or to endeavour to procure an office, place or employment.

34. Treating

A person commits the offence of treating if that person

(a) corruptly or through another person, before, during or after an election gives or provides or pays wholly or in part the expenses of giving or providing meat, drink, entertainment or provision to or for any person,

(i) for the purpose of corruptly influencing that other person or another person to vote or refrain from voting, or

(ii) on account of that other person or another person having voted or refrained from voting or being about to vote or refrain from voting, or

(b) corruptly accepts or takes meat, drink, entertainment or provision offered in the circumstances and for the purposes mentioned in paragraph (a).

35. Undue influence

A person commits the offence of undue influence if that person

(a) directly or indirectly or through another person acting on that person’s behalf,

(i) makes use of or threatens to make use of force, violence or restraint, or
(ii) inflicts or threatens to inflict on another person a temporal or spiritual injury, damage, harm or loss,
in order to induce or compel that person to vote or refrain from voting, or on account of that person having voted or refrained from voting, or

(b) by abduction, duress or a fraudulent method that person impedes or prevents the free exercise of the franchise of a voter.

36. **Interference with electioneering activities of other persons**

A person who, before or during an election for the purpose of effecting or preventing the return of a candidate directly or indirectly

(a) by words, whether spoken or written, song, sign or any other representation or in any manner whatsoever seeks to excite or promote disharmony, enmity or hatred against another person, group of persons or political party on grounds of religious, tribal, professional, regional or political affiliation, or

(b) organises a group of persons with the intention of training the group in the use of force, violence, abusive, insulting, corrupt or viluperative songs or language calculated to discredit, malign, disparage, condemn, insult or abuse another person or candidate or with a view to causing disharmony or a breach of the peace or to disturbing public tranquillity so as to gain unfair advantage in the election over that other person or candidate, or

(c) obstructs or interferes or attempts to obstruct or interfere with the free exercise of the franchise of a voter or compels or induces or attempts to compel or induce a voter to vote or to refrain from voting, or

(d) compels, induces or attempts to compel or induce a candidate to withdraw from the election, or

(e) in any manner threatens a candidate or voter with injury or harm of any kind, or

(f) induces or attempts to induce a candidate or voter to fear or believe that the candidate or voter will suffer illness or will become an object of divine, spiritual or fetish displeasure or censure,

commits an offence and is liable on conviction to a fine not exceeding five hundred penalty units or to a term of imprisonment not exceeding two years or both the fine and the imprisonment and is disqualified for a period of five years from the date of the expiration of the term of imprisonment from being registered as a voter at a public election and in the case of a political party that political party shall be declared a prohibited organisation.

37. **Certain activities prohibited on polling day**

(1) During the hours when a poll is open on polling day, a person shall not, within five hundred metres of a polling station, seek to influence, in whatever manner, a person to vote for a candidate or to ascertain for which candidate a voter intends to vote or has voted.

(2) During the hours when a poll is open on polling day a person shall not, within five hundred metres of a polling station, sell intoxicating liquor.
(3) A person who contravenes a provision of this section commits an offence and is liable on conviction to a fine not exceeding two hundred penalty units or to a term of imprisonment not exceeding twelve months or both the fine and the imprisonment.

38. Defacement of notices

A person who without lawful excuse destroys, mutilates, defaces or removes a notice which is exhibited under the authority of this Act or of the Regulations, or a document which is made available for inspection under this Act or of the Regulations, commits an offence and is liable on conviction to a fine not exceeding two hundred penalty units or to a term of imprisonment not exceeding six months or both the fine and the imprisonment.

39. False statements

(1) A person who before or during an election for the purpose of effecting or preventing the election of a candidate makes or publishes or causes to be made or published by words whether written or spoken, or by song a statement which is false or which that person knows or has reason to believe is false in relation to the personal character of another candidate or the conduct of a political party commits an offence.

(2) A person who before or during an election knowingly publishes a false statement of the withdrawal of a candidate for the purpose of promoting or procuring the return of another candidate commits an offence.

(3) A person who commits an offence under this section is liable on conviction to a fine not exceeding five hundred penalty units or to a term of imprisonment not exceeding two years or both the fine and the imprisonment.

(4) This section does not take away the right of a person to sue for defamation of character.

40. Obstruction of officers

A person who wilfully obstructs or interferes with an election officer in the execution of duty commits an offence and is liable on conviction to a fine not exceeding five hundred penalty units or to a term of imprisonment not exceeding two years or both the fine and the imprisonment.

41. Penalty and incapacity for corrupt and illegal practices

(1) A person convicted of the offence of personation, bribery, treating or undue influence, under sections 32, 33, 34 or 35, is liable on conviction to a fine not exceeding five hundred penalty units or a term of imprisonment not exceeding two years or both the fine and the imprisonment; and is disqualified for a period of five years after the date of the expiration of the term of imprisonment, from being registered as a voter or voting at a public election.

(2) Where a Court convicts a person of a corrupt or illegal practice under this Act, it shall report the conviction in writing to the Commission.

42. Consent to prosecution

A person shall not be prosecuted for an offence under this Act without the consent in writing of the Attorney-General, except that this section shall not prevent a person being

(a) charged with that offence, or
(b) arrested with or without warrant in respect of the offence, or
(c) remanded on bail or in custody in respect of the offence,
without the consent of the Attorney-General.

Miscellaneous Provisions

43. Record of disqualified persons and removal from register

(1) The Commission shall keep a record of persons who by the operation of sections 27, 28, 29 or 41, are disqualified from being registered as voters, voting at an election or becoming members of Parliament.

(2) Where a person whose name is included in the register of a constituency is by the operation of sections 27, 28, 29 or 41, disqualified from being registered as a voter, the Commission shall delete that person’s name from the register.

44. Duty of Registrars of courts to report certain convictions to Commission

Where a person is convicted of an offence under sections 27, 28 or 29, the Registrar of the Court by which that person is convicted shall as soon as possible, after the conviction, report the conviction in writing to the Commission.

45. Saving where election declared void

Where on an election petition or on a petition under section 25, the election of a person as a member of Parliament is declared void, the declaration shall not invalidate anything done by that person during the period preceding the declaration in the purported exercise of the functions of that office.

46. Inaccurate description of persons or place

An inaccurate description of a person or place named or described in a register, notice or any other document prepared or issued under or for the purpose of this Act shall not, if the person or place is so designated as to be commonly identifiable or understood, affect the validity of that register, notice or document or the operation of this Act or of the Regulations in respect of that person or place.

47. Regulations

In accordance with article 51 of the Constitution, the Commission may by constitutional instrument, make Regulations providing for

(a) issuing of writ and notice of election,
(b) nomination of candidates,
(c) allocation of symbols and colours to candidates,
(d) notice of polls,
(e) procedure for voting,
(f) forms,
and generally for giving full effect to this Act.
48. Fees and appeals under legislative instrument made under this Act

A constitutional instrument made under this Act may prescribe the fees or any other payments to be made in respect of a matter provided for under that instrument and may also provide for a right of appeal to the High Court from a determination of a cause or matter made under that instrument.

49. Exemption

A declaration of secrecy made for the purpose of a public election, is not liable for stamp duties.

50. Interpretation

(1) In this Act, unless the context otherwise requires,

“by-election” means an election held to fill a vacancy occurring otherwise than on the dissolution of Parliament;

“citizen” means a citizen of Ghana;

“Commission” means the Electoral Commission established under article 43 of the Constitution;

“constituency” means one of the constituencies into which Ghana is for the time being divided;

“corrupt practice” means the offence of personation, bribery, treating or undue influence or of aiding, abetting, counselling or attempting the commission of such an offence;

“counting agent” means a counting agent appointed under the Regulations;

“Court” means a Court of competent jurisdiction;

“divisional register” means the register relating to a polling division;

“election” means an election held to elect the members of Parliament;

“election officer” means a registration officer, a returning officer, a deputy or assistant registration or returning officer, a presiding officer or a polling assistant;

“nomination day” in relation to an election means the day appointed for the nomination of candidates;

“official mark” means the official mark with which a ballot paper is perforated or stamped;

“polling agent” means an agent appointed under the Regulations;

“polling assistant” means a polling assistant appointed under the Regulations;

“polling day” in relation to an election means the day appointed for the taking of a poll;

“polling division” means one of the polling divisions into which a constituency is divided by the Regulations;
“presiding officer” means the presiding officer of a polling station appointed under the Regulations;

“qualifying date” in relation to a constituency, means the date on which there is published by the Commission an instrument indicating that the constituency is affected by a decision of the Commission to cause a revision or replacement of registers to be undertaken;

“register” means a register of voters;

“Regulations” includes Regulations made by the Electoral Commission by powers conferred by the Constitution or made under this Act;

“returning officer” means the presiding member of an election committee appointed under this Act;

“scrutiny” means the examination directed by the High Court of the votes cast at an election;

“vote” means vote at an election;

“voter” includes a person entitled to vote, a person claiming to be so entitled and a person seeking or intending to vote.

(2) References in this Act to the “registration officer” and the “returning officer” shall, unless the context otherwise requires be construed, in relation to a particular constituency, as references to the registration officer or the returning officer, appointed for that constituency under this Act.

(3) A provision of sections 16 to 26 shall not be construed as conferring on the High Court trying an election petition power to convict a person of a corrupt or illegal practice.

51. Presidential elections and referenda

The Commission may by constitutional instrument make modifications to this Act that are necessary for the purpose of presidential elections and the holding of referenda.

52. Repeals

The following enactments are hereby repealed:

(i) Representation of the People Decree, 1968 (N.L.C.D. 255);
(ii) Representation of the People (Amendment) Decree, 1968 (N.L.C.D. 270);
(iii) Representation of the People (Amendment) Decree, 1969 (N.L.C.D. 350);
(iv) Representation of the People (Amendment) (No. 2) Decree, 1969 (N.L.C.D. 363);
(v) Representation of the People (Amendment) Decree, 1978 (S.M.C.D. 191); and
(vi) Representation of the People (Amendment) Decree, 1979 (S.M.C.D. 230).
APPENDIX 2

DIGEST OF SELECTED CASES ON PARLIAMENTARY AND PRESIDENTIAL ELECTIONS

INTRODUCTION

The list of cases digested and set out in the order in which they are arranged in this Manual are as follows:

(i) Ahumah-Ocansey v Electoral Commission; Centre for Human Rights & Civil Liberties (CHURCIL) v Attorney-General & Electoral Commission (Consolidated) (Supreme Court), 23 March 2010 at pages 198-209.

(ii) Republic v High Court, Koforidua; Ex parte Asare (Baba Jamal & Others Interested Parties) (Supreme Court), 15 July 2009 at pages 210-218.

(iii) Republic v High Court, Sunyani; Ex parte Collins Dauda (Boakye-Boateng Interested Party) (Supreme Court), 8 April 2009 at pages 219-224.


(v) Republic v High Court (Fast Track Division) Accra; Ex parte Electoral Commission (Mettle-Nunoo & Others Interested Parties) (Supreme Court), 24 May 2006 at pages 233-241.

(vi) In re Parliamentary Election for Wulensi Constituency; Zakaria v Nyimakan (Supreme Court), 15 January 2003 at pages 242-246.

(viii) Apaloo v Electoral Commission of Ghana (Supreme Court), 17 January 2001 at pages 253-259.
(ix) Yeboah v J H Mensah (Supreme Court), 6 June 1998 at pages 260-265.
(x) Tehn-Addy v Electoral Commission & Another (Supreme Court), 26 March 1997 at pages 266-268.
(xiv) Ofei Agyemang v Electoral Commission & IC Quaye (High Court, Accra), 12 March 2005 at pages 291-296.
(xv) Salifu v Electoral Commission & Ambrose Dery (Application For Joinder As Co-Petitioner – Kunbuor Applicant) (High Court, Wa), 26 February 2009 at pages 297-304.
Constitutional law - Right to vote - Registration as voter - Remand and convicted prisoners, by - Fundamental human right to vote conferred under article 42 of the 1992 Constitution on all Ghanaians including all prisoners except those below eighteen years of age and persons of unsound mind - PNDCL 284, s 7(5) refusing to recognise prisons as residence for purposes of voter registration - Effect of section 7(5) to effectively depriving fundamental human right of remand and convicted prisoners’ right to register and vote at public elections - PNDCL 284, s 7(5) and CI 12, s 1(d) declared null and void as contravening articles 42 and 45(a) of 1992 Constitution - Section 7(5) of PNDCL 284 not reasonably required in the public interest - Duty
of Electoral Commission to make regulations under article 51 to enable prisoners to exercise their right to vote - Constitution, 1992, arts 1(2), 11(6), 42, 45(a), 51 and 93(2) - Representation of the People Law, 1992 (PNDCL 284), s 7(5) - Representation of the People Law (Amendment) Law, 2006 (Act 699) - Public Elections (Registration of Voters (Regulations), 1995 (CI 12), s 1(d).

It is provided by the 1992 Constitution, arts 42 and 45(a) respectively that:

“42. Every citizen of Ghana of eighteen years of age or above and of sound mind has the right to vote and is entitled to be registered as a voter for the purposes of public elections and referenda.”

“45. The Electoral Commission shall have the following functions

(a) to compile the register of voters and revise it at such periods as may be determined by law;”

It is also provided by the Representation of the People Law, 1992 (PNDCL 284), s 7(1) and (5) as amended that:

“7. Qualification of voters

(1) A person qualifies to be registered as a voter if he is

(a) a citizen of eighteen years of age or above, and

(b) of sound mind, and
(c) resident in the polling division or hails from the constituency, and

(d) not otherwise disqualified to be registered as a voter by law.”

(5) A person who is a patient in an establishment maintained wholly or mainly for the reception and treatment of persons suffering from mental illness or mental defectiveness or who is detained in legal custody in a place shall not be treated as resident there for purposes of this section.”

It is also provided by the Public Elections (Registration of Voters) Regulations, 1995 (CI 12), reg 1(d) that:

“1. Qualification for registration

A person who

(d) is resident or ordinarily resident in an electoral area;...”

The action, involving two Consolidated Suits Nos J1/4/2008 and J1/5/2008, was brought before the Supreme Court in the exercise of its original jurisdiction under articles 2(1) and 130(1) of the 1992 Constitution. In the first action, Suit No J1/4/2008, the plaintiff, Mr Ahumah-Ocansey, a private legal practitioner and a citizen of Ghana and an advocate of prisoners’ rights, sued on behalf of all categories of prisoners (both remand and convicted prisoners). The action was not restricted to the then up-coming 2008 Elections but all future public
elections. Mr Ahumah-Ocansey sought declarations, inter alia, that non-
registration of prisoners for voting by the Electoral Commission was in
contravention of articles 42 and 45(a) of the Constitution. The said article
42 (quoted above) conferred the right to be registered as a voter; whilst
article 45(a) authorized the Electoral Commissioner to compile the
register of voters and revise it at such periods as might be determined by
law. Mr Ahumah-Ocansey also sought a declaration that the refusal or
failure of the Electoral Commission to register prisoners for voting was a
violation of their rights as citizens of Ghana and amounted to derogation
of their integrity as human beings.

In the second Suit No J1/5/2008, the plaintiff, the Centre for Human
Rights and Civil Liberties (CHURCIL) an advocacy-based organisation,
sued the Electoral Commission and the Attorney-General, on behalf of all
remand prisoners, ie persons who have been arraigned before a court on
criminal charges and are awaiting trial and being kept in prison custody.
The plaintiff organisation alleged that the Electoral Commission had
decided to prevent remand prisoners from exercising their electoral
franchise in the then up-coming December 2008 Parliamentary and
Presidential Elections, in full recognition of their voting rights under
article 42 of the 1992 Constitution. The plaintiff organization therefore
sought in the Supreme Court, a declaration, inter alia, that section 7(5) of
the Representation of People Law, 1992 (PNDCL 284), was inconsistent
with and in contravention of article 42 of the 1992 Constitution, and to the
extent of such inconsistency, the said section 7(5) was null and void.

In response to the action brought by CHURCIL, the first defendant in
the second Suit No J1/5/2008, the Attorney-General, argued in favour of
validity and the retention of the impugned or challenged legislation, ie section 7(5) of PNDCL 284 on the main ground that it was reasonably necessary to meet the constitutional duty imposed on the Electoral Commission by article 47 of the 1992 Constitution. The said article 47 required that the country be divided into as many constituencies for the purpose of election of Members of Parliament. The Attorney-General further argued that to be eligible to register in a polling division or in a constituency, section 7(5) of PNDCL 284, satisfied an essential electoral requirement as provided in section 7(4) of PNDCL 284 namely, that: “…a person must have his place of residence in that polling division or constituency on the date of registration for a continuous period of six months.” The Attorney-General therefore submitted that non-registration of a citizen who had not presented himself or herself for registration, did not and should not constitute a violation of the right of that citizen to vote.

The Attorney-General further contended that having regard to the dictionary, and consequently, ordinary meaning of the word “resident” used in section 7(5) of PNDCL 284, prisoners did not qualify to register for the purposes of voting in public elections and referenda. Additionally, the Attorney-General justified the disfranchisement of prisoners or depriving prisoners of their right to vote on grounds of “public interest” as defined in article 295(1) of the Constitution, namely, as including “any right or advantage which inures or is intended to inure to the benefit generally of the whole of the people of Ghana.” The Attorney-General therefore contended that it was in the interest of public safety and security, that prisoners, who had deliberately violated the laws of the land and the rights of other citizens, be punished and kept away
“under lock and key.” The Attorney-General concluded that the practice in other jurisdictions where the prisoners had the right to vote should not be extended to Ghana. In its defence, the Electoral Commission raised the issue whether that it had committed any act or made any omission in contravention of the Constitution.

Held, unanimously granting the plaintiffs’ claims for declarations as varied by the court for the following reasons: (1) article 42 of the 1992 Constitution had expressly conferred the right to vote, being a fundamental human right, on all Ghanaians save those below eighteen years of age and persons of unsound mind. Consequently, the impugned legislation, ie section 7(5) of the Representation of the People Law, 1992 (PNDCL 284), which had defined what constituted residence and thus refused to recognise prisoners as resident there for purposes of voter registration, effectively took away the fundamental human rights of persons detained in legal custody, ie both remand and convicted prisoners, to register and vote under article 42 of the 1992 Constitution.

(2) The court would therefore grant a declaration in respect of Suit No J1/4/2008 that (i) non-registration of remand and convicted prisoners for voting by the Electoral Commission was in contravention of articles 42 and 45(a) of the 1992 Constitution; (ii) that in respect of the second Suit No J1/5/2008, a further declaration that section 7(5) of the Representation of the People Law, 1992 (PNDCL 284), was inconsistent with and in contravention of article 42; and that consequently, to the extent of such inconsistency, the said section 7(5) of PNDCL 284 was a nullity; (iii) that section 7(5) of PNDCL 284, to the extent that it restricted the right of prisoners to vote, was a nullity, pursuant to article 1(2) of the Constitution.
because the enactment, by virtue of article 11(6) of the Constitution, even though an existing law on the coming into effect of the Constitution, was in excess of the powers conferred on Parliament by article 93(2) of the Constitution; and (iv) a declaration that section 1(d) of the Public Elections (Registration of Voters) Regulations, 1995 (CI 12), to the extent that it restricted the right of prisoners to vote was also null and void, pursuant to article 1(2) of the 1992 Constitution. Attorney-General v Morgan (1985) LRC (Const) 770 at 797; R v Oakes [1986] 2 DLR (4th) 200 at 225-226; Minister of Home Affairs v Fisher [1980] AC 319 at 329, PC; In re Bennet Coleman & Co Ltd v Union of India AIR 1973 SC 106 at 118; Suave v Attorney-General of Canada 2002 SC 68; 2002 3 SCR 519; August v Electoral Commission CCT 8/9 ON, 4 April 1999; Awoonor-Williams v Gbedemah, Supreme Court, 8 December 1969; digested in (1970) CC 18; Kuenyehia v Archer [1993-94] 2 GLR 525 at 562, SC; and Republic v Tommy Thompson Books Ltd (No 2) [1996-97] SCGLR 500 at 501 cited. Tehn-Addy v Electoral Commission [1996-97] SCGLR 589 at 594 and 595 and Roach v Electoral Commissioner [2007] HCA 43 (26 September 2007) distinguished.

Per Georgina Wood CJ. It bears emphasis that the 1992 Constitution did not set down the residency criteria, which is the product of the subordinate legislation, ie PNDCL 284. But the people of Ghana adopted and enacted for themselves a democratic regime of constitutionally-guaranteed adult suffrage for all Ghanaians, save only persons under eighteen years of age and persons of unsound mind. We crafted for ourselves a Constitution that set out its own limitations on the right to vote and perhaps having regard to the value it places on the right in question,
never ceded any of its authority to either the Electoral Commission or some other authority to add further to the list of who shall not have the right to vote... On the crucial issue of who qualifies to vote, there is a vast difference between Ghana’s constitutional arrangement and that of other countries, including Australia, as is clearly borne out from the case of *Roach v Electoral Commissioner* [2007] HCA 43 (26 September 2007). In such countries, the disfranchisement of some category of serious criminal offenders is a deliberate constitutional choice. These offenders are, by express constitutional provisions, forbidden from participating in public elections, in order, as was explained in the *Roach* case: to ‘deliver a message to both the community and offenders themselves that serious criminal activity will not be tolerated by the community.’ Such disfranchisement is therefore a product of the supreme law, not a subordinate law, in contravention of the superior law... I have considered the Attorney-General’s counter arguments that the impugned legislation is reasonably required in the public interest, in that access to prisons must be restricted, and further that violators of the law must be punished, kept away from the public, under lock and key, disfranchised and not allowed to have any say in who governs them. These, counsel contend, do serve as their just deserts for causing pain and suffering to others. In short, counsel contends that the legislation meets the proportionality test. These arguments, examined in the best of lights, I am afraid, would have no place in participatory democracy, with the guaranteed rights that are enshrined in the Constitution... I have based the call on Ghana to join the League of Nations who places a high premium on prisoners’ fundamental right to vote, not on sentimentality or some other non-legal reasoning, but
on the just requirements of the Constitution, the supreme law of the land, which we voluntarily enacted for ourselves.

*Per Dr Date-Bah JSC.* The United States Constitution does not thus contain a general provision on the right to vote; the right to vote expressed in it relates only to particular groups whose franchise cannot be denied or abridged on the basis of certain specified attributes, such as those I have cited above. (Another illustration of these specified attributes is: “by reason of failure to pay any poll tax or other tax” introduced by the Twenty-Fourth Amendment in 1964). The most prominent implication for prisoners is that article 1(2) of the 1992 Constitution renders void any statutory provisions inconsistent with the unqualified right to vote conferred by article 42 on all sane adult Ghanaians... I do not find this public interest argument persuasive and I do not consider that it furnishes any justification for denying prisoners the unqualified right to vote which is conferred on them by article 42. The cumulative effect of the provisions in Chapters 5 and 6 of the 1992 Constitution is to infuse that Constitution with a libertarian spirit. Nothing in the core values and spirit of the 1992 Constitution justifies the restriction on prisoners’ right to vote that is advocated by the learned Attorney-General. There is thus no basis for implying the restriction argued for by the Attorney-General to qualify the clear and unambiguous language of article 42...Conferring a right on prisoners to vote would not be unprecedented in the Commonwealth. Both Canada and the Republic of South Africa, for example, permit voting by prisoners. In the Canadian case of *Sauve v Attorney-General of Canada*, the Chief Electoral Officer of Canada and the Solicitor-General of Canada [2002] SCR 519; 2002 SCC 68, cited by the plaintiff in the
Ahumah-Ocansey case, the Supreme Court of Canada held by a five to four decision, that a section in the Canada Elections Act that prohibited voting by inmates serving a sentence of two years or more was unconstitutional and void. The Attorney-General, while admitting that the section infringed the right of prisoners to vote, nevertheless argued that denying them the right was justifiable under the Canadian Charter of Rights and Freedoms since it served several purposes best determined by Parliament. This argument was roundly rejected by the majority.

Per R C Owusu JSC. Article 42 of the 1992 Constitution confers a constitutional right to vote on all Ghanaian citizens of eighteen years and above and of sound mind… The Preamble of the 1992 Constitution provides that one of the values on which the sovereign and democratic State of the Republic of Ghana is founded, is the universal adult suffrage. In this case, the issue is whether prisoners’ constitutional right to vote is not being infringed upon if no appropriate arrangements are made to enable them to register and vote… The Electoral Commission is empowered to make regulations to prescribe the modalities for the implementation of the Act by constitutional instrument. Why therefore can the commission not take steps to have the law amended further to enable prisoners to vote in conformity with article 42 just as it was done in the case of Ghanaians resident abroad? What is good for the goose is equally good for the gander. The law as it is now vis-à-vis the Representation of the People (Amendment) Law, 2006 (Act 699), is, indeed, discriminatory and must be frowned upon.

Per Dotse JSC. Whilst the 1992 Constitution per article 42 allows all citizens of Ghana of eighteen years and above and of sound mind
including prisoners both remand and convicted the right to be registered to enable them vote in public elections and referenda, there is still the need for a legislative framework within the confines of the Constitution (reference article 51) to regulate, control, manage and arrange the effective exercise of that function to ensure that the Electoral Commission is not stampeded into taking hasty decision which would result into chaos and confusion… Whilst the Tehn-Addy case is authority for the proposition that every sane Ghanaian citizen of eighteen years and above had the automatic right under article 42 of the 1992 Constitution, to be registered as a voter, the instant case is authority that irrespective of the provisions of section 7(5) of PNDCL 284 remand and convicted prisoners confined in a legal detention centre have the right to be registered as voters for the conduct of public elections in Ghana subject to the Electoral Commission making the necessary legislative arrangements to take care of the control, management and regulatory regime of such an exercise.

Per Anin Yeboah JSC. In my opinion, article 42 of the 1992 Constitution appears to be very clear and unambiguous. The time-honoured principle which the courts have kept faith with is that where the provisions of a Constitution are clear and unambiguous, it does not call for any interpretation. This is so on the authority of Awoonor-Williams v Gbedemah, Supreme Court, 8 December 1969; digested in (1970) CC 18. Nowhere in article 42 has the framers of the Constitution mentioned remand prisoners or prisoners in general as a class of people who are not qualified to be registered to vote. The only limitations under article 42 are that the person must be a citizen of eighteen years of age and must be of sound mind. Like other articles under Chapter 5 of the Constitution, which
deals with fundamental Human Rights, limitations were placed on such rights by the framers of the Constitution, obviously for a purpose. If the framers of the Constitution had wanted to place further limitations on the rights of the citizenry to be registered to vote, nothing would have prevented them from doing so... The provisions of PNDCL 284 restricting the registration of people to vote by insisting on the residence of the voter and thereby applying it to deny convicted remand prisoners the right to register and vote on the simple grounds that prison is not a place of residence runs counter to article 42 of the 1992 Constitution.

(3) As a consequence of the declarations granted, the Supreme Court would order the Electoral Commission to exercise its power to make regulations under article 51 of the 1992 Constitution so as to make an appropriate constitutional instrument enabling prisoners to exercise their right to vote. The order was to be carried out as soon as practicable, and, in any case, within not more than twelve months from 23 March 2010.
REPUBLIC v HIGH COURT, KOFORIDUA; EX PARTE ASARE (BABA JAMAL & OTHERS INTERESTED PARTIES)

SUPREME COURT, ACCRA

(CM J5/23/2009)

15 July 2009

ATUGUBA, ANSAH, R C OWUSU, DOTSE AND BAFFOE-BONNIE JJSC

[2009] SCGLR 460

Constitutional law - Parliamentary elections - Validity - Declaration of results - Need for declaration of result in parliamentary election before presentation of petition - Absence of declaration of parliamentary election constituting incomplete or inchoate election - High Court having no jurisdiction to determine validity of parliamentary election where no candidate declared elected by Electoral Commission - Import of article 46 of 1992 Constitution relating to action against Electoral Commission in performance of its electoral functions - Constitution, 1992 arts 46, 93(1) and 99(1)(a) - Representation of the People Law, 1992 (PNDCL 284), ss 16, 18(1), 19, 50(1) and 99(1)(a) - High Court (Civil Procedure) Rules, 2004 (CI 47), Order 2, r 2.
Elections - Parliamentary elections - Electoral disputes - Procedure for commencement of electoral dispute - Proper procedure by petition and not by writ of summons - Relevance of public policy - PNDCL 284 - CI 47.

It is provided by the 1992 Constitution, arts 46, 93(1) and 99(1)(a) respectively that:

“46. Except as provided in this Constitution or in any other law not inconsistent with this Constitution, in the performance of its functions, the Electoral Commission, shall not be subject to the direction or control of any person or authority.”

“93. (1) There shall be a Parliament of Ghana which shall consist of not less than one hundred and forty elected members.

(2) Subject to the provisions of this Constitution, the legislative power of Ghana shall be vested in Parliament and shall be exercised in accordance with this Constitution.”

“99. (1) The High Court shall have jurisdiction to hear and determine any question whether __

(a) a person has been validly elected as a member of Parliament or the seat of a member has become vacant;”
It is also provided by the Representation of the People Law, 1992 (PNDCL 284), ss 16, 18(1), 19 and 50(1) respectively that:

“16. Methods of questioning election
   (1) The validity of an election to Parliament may be questioned only by a petition brought under sections 17 to 26.
   (2) An election petition shall be presented before the High Court for hearing.

“18. Time for presentation of petition
   (1) An election petition shall be presented within twenty-one days after the date of the publication in the Gazette of the result of the election to which it relates, but a petition questioning an election on an allegation of corrupt practice and specifically alleging a payment of money or any other award to have been made by the person whose election is questioned or to have been made on behalf of and to that person’s knowledge, may be presented within twenty-one days after the date of the alleged payment.”

“19. Relief which may be granted
   After the hearing of an election petition the High Court may make any of the following orders:
   (a) declare that the election to which the petition relates is void,
   (b) declare that a candidate other than the member whose election is questioned was duly elected, or
(c) dismiss the petition and declare that the member whose election is questioned was duly elected.”

“50.(1) In this Act, unless the context otherwise requires,

‘election’ means an election held to elect the members of Parliament.”

Parliamentary and Presidential Elections were held in all the Electoral Constituencies in Ghana (including the Akwatia Constituency) on 7 December 2008. On 15 December 2008, the Electoral Commission made a general announcement to the effect that due to the tampering with some ballot boxes in the Akwatia Constituency, the commission would re-run the parliamentary elections for only six polling stations in that constituency. The National Democratic Congress (NDC) and the Independent Parliamentary Candidates for the said Akwatia Constituency, feeling that the electoral irregularities and misconduct which had necessitated the decision to re-run the elections in only six of the polling stations were not limited to only those polling stations but were also widespread throughout the entire constituency, filed a writ of summons at the High Court, Koforidua, on 22 December 2008 against the Electoral Commission. The plaintiffs in that action obtained an injunction against the Electoral Commission, restraining the commission from conducting the said re-run of the elections in the Akwatia Constituency.

Consequently, the New Patriotic Party (NPP) Parliamentary Candidate for the Akwatia Constituency, applied to the High Court, Koforidua and
was joined to the suit as the second defendant. The plaintiffs accordingly amended their writ of summons and statement of claim. The reliefs endorsed on the amended writ of summons included a claim for a declaration that the general conduct of the parliamentary elections in the Akwatia Constituency was characterized by such extensive and pervasive electoral irregularity and misconduct that they might reasonably be supposed to affect any declared result of the election. The plaintiffs also sought an order directed at the first defendant Electoral Commission, compelling it to conduct fresh parliamentary elections for the whole of the Akwatia Constituency and not only for the six polling stations.

Subsequently, the second defendant in the action, ie the applicant, after being served with the amended writ of summons, entered appearance and thereafter filed an application in the High Court to strike out the writ by the plaintiffs, the second interested parties to the application, on the grounds of want of jurisdiction. However, on 23 February 2009, the trial High Court, by its ruling, dismissed the application. The applicant therefore filed the instant application in the Supreme Court, seeking an order of certiorari to quash the decision of the High Court, dismissing the application, on grounds of wrongful assumption of jurisdiction.

Held, unanimously granting the application for the following reasons:
(1) an electoral exercise in which the Electoral Commission had not declared a result in relation to that election as required by article 99(1)(a) of the 1992 Constitution and sections 18(1) and 50(1) of the Representation of the People Law, 1992 (PNDCL 284), would be construed as an incomplete or premature election. Since in the instant case no person had been declared by the Electoral Commission as a
Member of Parliament for the Akwatia Constituency, the electoral exercise that had taken place in that constituency was an incomplete or inchoate election and did not constitute an election. Consequently, the trial High Court had no jurisdiction to hear and determine the action commenced by the writ of summons issued by the interested parties. And the decision of the trial judge, dismissing the motion by the applicant to strike out the writ, was an error of law apparent on the face of the record and would therefore be quashed by an order of certiorari. *New Patriotic Party v National Democratic Congress* [2000] SCGLR 461 at 472 and *Republic v High Court, Accra; Ex parte CHRAJ (Addo Interested Party)* [2003-2004] 1 SCGLR 312 cited. *Republic v High Court, Sunyani; Ex parte Collins Dauda* [2009] SCGLR 445 (per Dr Date-Bah JSC at 553-554 followed).

*Per Atuguba JSC.* Statutory provisions *in pari materia* must be taken and construed together. Therefore if the definition of “election” in section 50(1) of PNDCL 284 is ambiguous, one simply needs to read it together with article 93(1) of the 1992 Constitution which provides that the persons who should be members of Parliament are *elected members.* Clearly then the definition relates to a person or persons who has or have been elected member(s) of Parliament. It is clear from this that the present action is certainly not an election petition.

*Per Ansah JSC.* The 1992 Constitution makes a valid assumption that at the time the High Court assumes jurisdiction, a person has already been elected in the relevant parliamentary election. Thus, by reading together the two provisions, namely, article 99(1)(a) of the Constitution and section 16 of PNDCL 284, the High Court, in the exercise of its
jurisdiction in this matter, is to determine whether the person elected was validly elected or not. Therefore, where no person has been elected in a parliamentary election, assumption of jurisdiction by the High Court in a matter relating to the validity of the election can only be wrongful within the meaning of clause (1)(a) of article 99 of the 1992 Constitution. The question for the High Court to determine here is has someone been validly elected? Thus, where no such person has been elected in the first place, no issue arises as to whether he was validly elected or not and the High Court’s jurisdiction in the matter is not ripe yet... Thus any action brought to challenge the validity of a parliamentary election before a candidate has been declared elected by the Electoral Commission is premature __ be it by a petition, a writ of summons or some other process.

*Per Dotse JSC.* There is a clear intention on the part of the framers of the Constitution and PNDCL 284 to raise the procedure for commencement of electoral disputes to a higher pedestal or level. This level is that of petition, which is a separate and distinct procedure from the generally accepted mode of initiating action in the High Court, which is stated in CI 47 to be by writs of summons. In this regard, the Supreme Court, must consider these provisions as a manifestation of public policy. One might then legitimately ask why the procedure for initiation of electoral disputes is separate and distinct from those generally stated in the initiation of all other actions in the High Court? The answer might be that, since there must be an element of early resolutions of election disputes and finality in the determination of early election results, to enable whoever has emerged victorious to be known as well as the
defeated candidates, a process which is fast, swift but fair and just must be adopted for the above objectives to be achieved.

(2) Per Ansah JSC - R C Owusu JSC concurring. The plaintiffs’ writ attacked the very validity of the Akwatia Parliamentary Election, seeking declaratory and injunctive reliefs. Because Order 2, r 2 of the High Court (Civil Procedure) Rules, 2004 (CI 47), was made “subject to any existing enactment to the contrary”, the plaintiffs were required by law to have waited for the Electoral Commission to, at least, declare someone as elected in accordance with article 46 of the 1992 Constitution and section 16 of PNDCL 284. Thus the issuance of a writ in a parliamentary election was not the issue: it was what the writ was capable of doing. If for instance, the plaintiffs’ writ had been issued for a defamatory action, seeking declaratory and other appropriate reliefs against the Electoral Commission in the course of the conduct of its electoral functions, that would have been in order in accordance with Order 2, r 2 of CI 47, notwithstanding the Electoral Commission had not declared someone as elected or otherwise completed its constitutional electoral functions.

(3) Per Ansah JSC - R C Owusu concurring. The import of the provision in article 46 of the 1992 Constitution was that in the case of a parliamentary election, no legal action seeking declaratory injunction and/or other reliefs, such as in the instant case, could be validly maintained against the Electoral Commission in a matter relating to the validity of the election before the Electoral Commission had declared a candidate as elected or had otherwise declared a result in relation to the election. Therefore the Electoral Commission, in the performance of its constitutional electoral functions, must be allowed to conduct the voting
in the affected polling stations and carry on the electoral processes, at least, up to the point when it had declared a candidate as elected, before any action could be brought against it, challenging the validity of the election and/or seeking injunctive reliefs.
Constitutional law - Parliamentary elections - Validity - Declaration of results - Need for declaration of result in parliamentary election before presentation of petition - Expression “the person whose election is questioned” in section 18(1) of PNDCL 284 to be construed in its context and not literally as implying holding of elections and results thereof declared - Implied construction of section 18(1) in its context applicable to time limit of twenty-one days within which to bring election where petition based on allegation of corrupt practice - Election petition brought before declaration of parliamentary election premature - Representation of the People Law, 1992 (PNDCL 284), ss 18(1), 19 and 20(1).
which petition must be brought as required by PNDCL 284, s 18(1) running out before declaration of result - Payment of money corruptly may have taken place more than twenty-one days before declaration of results by Electoral Commission - Defect in drafting of section 18(1) rendering right to petition accorded to aggrieved party illusory - Need for reform of provision in section 18(1) PNDCL 284, s 18(1).

It is provided by the Representation of the People Law, 1992 (PNDCL 284), ss 18(1), 19 and 20(1) respectively that:

“18. Time for presentation of petition

(1) An election petition shall be presented within twenty-one days after the date of the publication in the Gazette of the result of the election to which it relates, but a petition questioning an election on an allegation of corrupt practice and specifically alleging a payment of money or any other award to have been made by the person whose election is questioned or to have been made on behalf of and to that person’s knowledge, may be presented within twenty-one days after the date of the alleged payment.”

“19. Relief which may be granted

After the hearing of an election petition the High Court may make any of the following orders:

(a) declare that the election to which the petition relates is void,
(b) declare that a candidate other than the member whose election is questioned was duly elected, or
(c) dismiss the petition and declare that the member whose election is questioned as duly elected.”

“20. Grounds for cancelling election results

(1) The election of a candidate shall be declared void on an election petition if the High Court is satisfied
   (a) that general bribery, general treating, general intimidation or other misconduct or circumstances, whether similar to those specified in this Act or not, have so extensively prevailed that they may be reasonably supposed to have affected the result of the election;
   (b) that there has been non-compliance with a provision of this Act or of the Regulations and that it appears that the election was not conducted in accordance with the principles laid down by law and that the non-compliance affected the result of the election;
   (c) that a corrupt or illegal practice was committed in connection with the election by the candidate or with the knowledge or consent of the candidate, or by an agent of the candidate; or
   (d) that the candidate was at the time of the election a person not qualified or a person disqualified for election.”
Parliamentary and Presidential Elections were held on 7 December 2008 in all the Electoral Constituencies in Ghana (including the Asutifi South Constituency). Subsequently, on 16 December 2008, the New Patriotic Party (NPP) Parliamentary Candidate for the Asutifi South Constituency, filed an election petition in the High Court, Sunyani. He claimed that election results in the constituency involving two parliamentary ballot boxes, had been tampered with. He therefore, claimed, inter alia, an order of perpetual injunction restraining the Electoral Commission from releasing the two ballot boxes with a view to declaring the winner of the parliamentary election; and also for an interim injunction restraining the commission from declaring the result of the parliamentary election held in that constituency.

Subsequently, the respondents to the election petition, including the second respondent, the National Democratic Congress (NDC) Parliamentary Candidate for the Asutifi South Constituency, filed application in the High Court to set aside the petition as incompetent under section 18(1) of the Representation People Law, 1992 (PNDC Law 284). However, the trial judge, in his ruling, dismissed the objections raised by the respondents, holding that the petition had been properly brought before him. In so holding, the judge made a distinction between the two limbs of section 18(1): the first limb was that an election must be commenced within twenty-one days after the declaration of the results in the Gazette; and the second limb related to the situation where the basis of an election petition was that a corrupt practice in which money or other awards had been alleged to have been paid, in which case the petition should be prosecuted within twenty-one days after the date of the alleged
payment. Aggrieved by that decision, the second respondent to the petition, i.e., the applicant, brought the instant application before the Supreme Court for an order of certiorari to quash the decision of the High Court.

_Held, unanimously granting the application for an order of certiorari:_ it was clear from the language of section 18 of the Representation of the People Law, 1992 (PNDCL 284), that an election petition might not be presented before the results of the election concerned have been declared by the Electoral Commission and, in some cases, gazetted. Thus the expression in section 18(1), namely, “the person whose election is questioned” must be construed, in its context, as logically implying that an election must have taken place and its results declared by the Electoral Commission. Otherwise, there would be no person whose election was being questioned. And the provision in section 18(1) relating to the time limit of twenty-one days within which an election petition must be brought, where the petition was based on an allegation of corrupt practice and specifically alleging a payment of money or other award, if not read in its context, could be interpreted literally to mean that the petitioner could bring his petition within twenty-one days of the alleged corrupt practice, whether or not the election result had been declared. The court would therefore construe section 18(1) of PNDCL 284 as impliedly requiring the declaration of an election petition by the Electoral Commission, even in the case of an allegation of corrupt practice. The implied construction of section 18(1) was buttressed by not only by the provisions in section 19 (reproduced above) but also those in section 20(1) of PNDCL 284, which carried an assumption that a candidate had been
declared elected and has therefore given the High Court power to declare the election void on the grounds set out in section 20(1). Consequently, the petition brought before the High Court by the interested party was premature and the High Court had no jurisdiction to determine its merits. *New Patriotic Party v National Democratic Congress* [1999-2000] 2 GLR 506 at 517, 547 and 567-568 applied. *Republic v High Court, Bolgatanga; Ex parte Hawa Yakubu* [2001-2002] 1 GLR 311 at 316 not followed.

*Per curiam.* The drafting of section 18(1) of PNDCL 284 is however, not felicitous and poses a problem in that a situation may arise under it whereby the time limit within which the petition must be brought could run out before the declaration of the results. In other words, the payment of the money corruptly may have taken place more than twenty-one days before the declaration of the results by the Electoral Commission. This defect in the drafting of the subsection can render the right to petition accorded to an aggrieved party under this limb of section 18(1) illusory. The lawmaker therefore needs to revisit this provision.
Constitutional law - Presidential election - Validity - Challenging election of President - Declaration of President-Elect Instrument, 2004 (CI 49) - Effect of declaring CI 49 as invalid - Whether or not declaration of CI 49 as invalid affecting validity of election of President itself - Whether or not Electoral Commission discharging constitutional duty upon publication of CI 49 - Underlying purpose of article 63(9) - Effect of declaration made under article 63(9) - Whether or not necessary for evidence for and against declaration to be contained in declaration itself - Object and effect of article 49(3) of 1992 Constitution relating to signed declaration - Whether observance of article 49 having effect of putting results of election in public domain - Constitution, 1992, arts 49(3) and 63(9) - Declaration of President-Elect Instrument, 2004 (CI 49).
Constitutional law - Presidential election - Validity - Challenging election of President - Estoppel - Whether or not party estopped or debarred under article 64(1) from challenging validity of Presidential Election more than twenty-one days after declaration of winner by Electoral Commission - Whether or not action challenging validity of Declaration of President-Elect Instrument constituting election petition - Whether or not twenty-one day time limit specified in article 64(1) applicable to such action - Constitution, 1992, art 64(1).

It is provided by articles 49(1)-(3), 63(9) and 64(1) of the 1992 Constitution that:

“49(1) At any public election or referendum, voting shall be by secret ballot.

(2) Immediately after the close of the poll, the presiding officer shall, in the presence of such of the candidates or their representatives and their polling agents as are present, proceed to count, at that polling station, the ballot papers of that station and record the votes cast in favour of each candidate or question.

(3) The presiding officer, the candidates or their representatives and, in the case of a referendum, the parties contesting or their agents and the polling agents if any, shall then sign a declaration stating –

(a) the polling station; and

(b) the number of votes cast in favour of each candidate or question; and the presiding officer shall, there and then,
announce the results of the voting at that polling station before communicating them to the returning officer.”

“63(9) An instrument which –
(a) is executed under the hand of the Chairman of the Electoral Commission and under the seal of the Commission; and
(b) states that the person named in the instrument was declared elected as the President of Ghana at the election of the President, shall be prima facie evidence that the person named was so elected.”

“64(1) 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 result of the election in respect of which the petition is presented.”

It was also provided by the Declaration of President-Elect Instrument, 2004 (CI 49), that:

“In exercise of the powers conferred on the Electoral Commission by article 63(9) of the Constitution, this Instrument is hereby made.

MR JOHN AGYEKUM KUFUOR the New Patriotic Party (NPP) presidential candidate having, in the Presidential election
held on the 7th day of December 2004, pursuant to article 63(3)
of the Constitution, obtained more than fifty percent of the valid
votes cast, and is hereby declared the winner of the election.

Given under my hand and seal in Accra, this Friday, the 10th day

DR KWADWO AFARI-GYAN
Chairman, Electoral Commission.”

In October 2005, the plaintiffs wrote to the Chairman of the Electoral
Commission, the defendant, requesting the commission to publish in the
Ghana Gazette, the full results of the December 2004 Presidential
Elections. The defendant replied that by the publication in the Ghana
Gazette of the Declaration of President-Elect Instrument, 2004 (CI 49), it
had discharged its constitutional duties with regard to the declaration of
the results of the 2004 Presidential Elections. Not satisfied with this
response, the plaintiffs issued a writ in the High Court, Accra against the
defendant claiming, inter alia, the following reliefs: “(i) a declaration that
the defendant is bound by law to publish in the Ghana Gazette ..., the full,
final and complete results of the Presidential Elections of 7 December
2004, including but not limited to, the details of the total votes cast in
each constituency, the total valid votes cast, the total votes cast for each
presidential candidate, the respective percentage votes, all gauged against
the number of registered voters in the said constituency; and (ii) a further
declaration that the failure, refusal or neglect of the defendant to so

228
publish the Presidential Elections of December 2004 is contrary to article 45 of the Constitution 1992; section 2 of the Electoral Commission Act, 1993 (Act 451); the provisions of the Public Elections Regulations, 1996 (CI 15), and the Presidential Elections (Amendment) Act, 1996 and therefore unlawful...”

At the hearing of the action, the trial High Court, pursuant to article 130(1) of the 1992 Constitution, referred the following issues to the Supreme Court for interpretation, namely: “(i) whether or not upon a true and proper interpretation of article 63(9) of the 1992 Constitution, the defendant fully discharged the constitutional duty with the publication of the Declaration of President-Elect Instrument, 2004; (ii) whether or not upon a true and proper interpretation of article 64(1) of the 1992 Constitution, any citizen who was aggrieved by or dissatisfied with the declaration contained in the Declaration of the President-Elect Instrument, 2004, had 21 days within which to present a petition to the Supreme Court in challenge of the declaration; and (iii) whether or not upon a true and proper interpretation of article 64(1) of the 1992 Constitution, the plaintiffs are estopped from attempting now to challenge the validity of the election of the Presidential Election.”

Held, unanimously giving interpretative opinion to the constitutional issues referred to the Supreme Court by the High Court pursuant to article 130 of the 1992 Constitution: (1) if the plaintiffs were to succeed in their contention that the defendant’s declaration of the President-Elect Instrument, 204 was invalid, such a declaration, would result, in effect, that no President had been declared elected; it would not mean that the election itself of the President was invalid. The underlying election
results could still be perfectly valid and the defendant’s responsibility would be to declare them in the proper form. The declaration would mean merely that a President had not yet been properly declared elected, without prejudice to the validity of the substantive election results themselves.

Per curiam. If the plaintiffs succeed in demonstrating that the defendant’s declaration was invalid and therefore null and void, it would mean that there never was a declaration in respect of which time could begin to run. The twenty-one day time limit would therefore never have commenced. Accordingly, logically, the twenty-one day limitation period cannot apply to an action that seeks to establish the nullity of the declaration, as distinct from the invalidity of the election itself.

(2) Upon a true and proper interpretation of article 63(9) of the 1992 Constitution, the defendant had fully discharged its constitutional duty with the publication of the Declaration of President Elect Instrument, 2004 (CI 49). The publication was a perfectly valid exercise of the powers conferred on the defendant commission. The purpose of article 63(9) in its context, and when liberally and flexibly construed to give effect to its underlying purpose, was to enable the Electoral Commission to declare definitively who was the winner of the presidential election. That declaration was prima facie evidence of the due election of the candidate concerned even though it could be rebutted by evidence to the contrary. And it was not necessary that the evidence for or against the declaration by the commission be contained in the declaration itself. So long as the evidence had been duly generated by the Electoral Commission in accordance with the procedures prescribed by the Constitution and
relevant statutes, the declaration by the Electoral Commission in the form made by its chairman on 10 December 2004 (as reproduced above) would be valid. The evidence on which the declaration was based need not be part of the declaration. Both the literal language of article 63(9) and the purpose of the provision did not so require. It was enough that the evidence supporting the declaration was available in the public domain as ensured by the provisions in article 49 of the Constitution. It should also be noted, in particular, that article 49(3) required the announcement of the results of the voting at the polling stations before they were communicated to the returning officer. Such announcement had the effect of putting the results in the public domain. Observance of article 49 meant, in effect, that the defendant commission has published at each polling station the results from that station. Tuffuor v Attorney-General [1980] GLR 637; Asare v Attorney-General [2003-2004] 2 SCGLR 823; and Agyei Twum v Attorney-General [2005-2006] SCGLR 732 cited.

Per curiam... We do not therefore see the need to imply, as a condition of the validity of the declaration of the election of the President-Elect, the added publication obligation that the plaintiffs have argued for in this case. If the election system operated by the defendant could not function without such a publication, we could have been persuaded to imply such a publication in order to make the system workable... We are not persuaded that the underlying purpose of article 63(9) requires the implication sought by the plaintiffs. While the information sought, if it can be practically and timeously published, nationally and contemporaneously with the declaration of the President-Elect Instrument, 2004 may be
desirable, its publication is, to our mind, not essential to the validity of the declaration.

(3) Although the plaintiffs were estopped or debarred under article 64(1) of the 1992 Constitution from challenging the validity of the 2004 Presidential Election more than twenty-one days after the declaration of a winner by the defendant, their action did not constitute a challenge to the validity of the Presidential Election because their action was not an election petition. Therefore the time limit specified in article 64(1) of the Constitution was inapplicable to the plaintiffs’ action. The plaintiffs are therefore not estopped or debarred from challenging the validity of the Declaration of the President-Elect Instrument, 2004. Republic v High Court (Fast Track Division); Ex parte Electoral Commission [2005-2006] SCGLR 514 (per Georgina Wood JSC at 542) cited.
Courts - Supreme Court - Supervisory jurisdiction - Scope of remedy - Jurisdiction not limited to traditional or conventional writs of certiorari, mandamus or prohibition but includes issue of orders and directions - Purpose of such orders and directions - Constitution, 1992, arts 132 and 161.

Practice and procedure - Supreme Court - Jurisdiction - Withdrawal or discontinuance - Application for - Withdrawal or discontinuance by interested parties of references to constitutional provisions in original action on which application founded - Interested parties may be permitted to so withdraw or discontinue - Procedure, factors and objects for granting such permission.
Courts - Supreme Court - Original jurisdiction - Enforcement and interpretation - Reference to Supreme Court by lower court - Discretion - Exercise of - Trial court vested with jurisdiction to refer constitutional issue to Supreme Court for determination - Nature and mode of exercising discretion - Whether or not trial court to take evidence before exercising discretion - Trial court bound to exercise discretion to make referral on controversy about proper interpretation of constitutional provisions in absence of disputed facts - Objects and proper time for making referral - Constitution, 1992, arts 63(9), 64(1) and 130(2).

Constitutional law - Constitutional issue - Interpretation - Reference to Supreme Court by lower courts - When issue referable - Constitution, 1992, arts 45, 63(9), 64(1) and 130(2) - Electoral Commission Act, 1993 (Act 451), s 2 - Public Elections Regulations, 1996 (CI 15).

It is respectively provided by the 1992 Constitution, arts 63(9) and 64(1) that:

“63(9) An instrument which __

(a) is executed under the hand of the Chairman of the Electoral Commission and under the seal of the Commission; and

(b) states that the person named in the instrument was declared elected as the President of Ghana at the election of the President, shall be prima facie evidence that the person named was so elected.”

234
“64(1) 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 result of the election in respect of which the petition is presented.”

On 7 November 2005, the plaintiffs, hereinafter called the interested parties, sued the Electoral Commission in the High Court (Fast Track Division) Accra, seeking three declarations. First, that the Electoral Commission was bound to publish in the Ghana Gazette, the full and complete results of the Presidential Elections held in Ghana on 7 December 2004, including certain details specified on the writ, namely, the total votes cast in each constituency; the total valid votes cast for each Presidential Candidate; and the respective percentage of votes, all gauged against the number of registered voters in the said constituency. Second, that the failure or refusal of the Electoral Commission, hereinafter called the defendant, to publish the results of the Presidential Elections embodying the required details amounted to a violation of article 45 of the 1992 Constitution, section 2 of the Electoral Commission Act, 1993 (Act 451), certain provisions of the Public Elections Regulations, 1996 (CI 15), and the Presidential Elections (Amendment) Act, 1996 (Act 520). Third, that the Declaration of President Elect Instrument, 2004 to the extent that it did not include the full and complete results of the 7 December 2004 Presidential Elections, could not form the basis of the exercise of any right envisaged under the 1992 Constitution in respect of or pursuant to the said Declaration.
The defendant in its statement of defence denied the plaintiffs’ claims. On the pleadings and submissions made before the trial court, both parties prayed for referral to the Supreme Court for its interpretative opinion under article 130(2) of the Constitution, the following three issues: (a) whether the publication by the defendant of the Declaration of President Elect Instrument, 2004 satisfied the defendant’s constitutional duty under article 63(9) of the Constitution without the details specified in the plaintiffs’ writ; (b) whether under article 64(1) any citizen who was aggrieved with the Declaration of President Elect Instrument, 2004 had twenty-one days as from the date of that publication within which to present a petition to the Supreme Court in challenge to the Declaration; and (c) whether under article 64(1) the plaintiffs were thereby estopped from challenging the validity of a Presidential Election after the twenty-one days’ limitation period.

At the hearing of the application for directions in the trial court, the defendant specifically prayed the court to refer to the Supreme Court for its interpretative opinion under article 130(2), the issues which had been set down by the court for trial. But the trial judge, Ofoe J, declined the application for referral until he was certain in his mind “what facts there are to the case” to enable him “formulate the referral accordingly.” He also explained that “where there would be a need for referral, it would be determined in the course of the trial.”

Consequently, the Electoral Commission, the defendant, brought the instant application in the Supreme Court, in exercise of its supervisory jurisdiction under article 132 of the Constitution for: (i) an order staying further proceedings of the suit involving the parties pending before Ofoe
J; and (ii) a referral to the Supreme Court for the determination of the issues set down in the said pending action.

At the hearing before the Supreme Court, counsel for the defendant-applicant contended, inter alia, that given the endorsement on the writ and the pleadings, the action by the plaintiffs (the interested parties), was in reality, an election petition cognisable by the Supreme Court under article 64(1) of the Constitution and not the High Court. Towards the end of the hearing of the application, namely, after counsel for the applicant had moved the motion and closed his arguments and after counsel for the interested parties had almost concluded his submissions, the same counsel for the interested parties made an oral application to the Supreme Court to “de-couple”, i.e. to abandon reliance on all the constitutional provisions referred to in the original action pending before the trial High Court. The effect of abandoning reliance on the constitutional provisions was to withdraw the relevant pleadings founded on the constitutional provisions which had raised the constitutional issues being the subject-matter of the application for supervisory orders under article 132 of the Constitution. In effect, counsel for the interested parties sought to have the application before the Supreme Court decided solely on the statutory provisions referred to in the original action pending at the High Court, namely, section 2 of the Electoral Commission Act, 1993 (Act 451), the Public Elections Regulations, 1996 (CI 15), and the Presidential Elections (Amendment) Act, 1996 (Act 520).

Held, granting by a four to one majority decision (Atuguba JSC dissenting), the application invoking the supervisory jurisdiction of the Supreme Court under article 132 of the 1992 Constitution for the
following reasons: (1) the Supreme Court’s supervisory jurisdiction under article 132 had been properly invoked. The jurisdiction was not limited to the issuing of the traditional or conventional writs of certiorari, mandamus, prohibition, etc. Those orders and directions might be issued in the supreme interest of justice to prevent illegalities and a failure of justice and also ensure fairness and facilitate the expeditious disposal of cases. *British Airways v Attorney-General* [1996-97] SCGLR 547 at 552-553 and 554 and *In re Appenteng (Decd); Republic v High Court, Accra; Ex parte Appenteng* [2005-2006] SCGLR 18 at 23-24 cited.

(2) In an application for judicial review, a plaintiff or an interested party, ie the person who was most likely to be directly affected by the final order of the court, might be permitted to withdraw his or her original action or claim(s) on which the application for judicial review was founded or to which it was related. But leave must first be obtained unless, having regard to the stage of the original action, and more particularly, the review application, the court was not yet *dominus litis*. Ordinarily, since the grant of leave was not automatic, and might in appropriate cases be refused, the application must be by motion or summons and supported by an affidavit setting out the reasons for the withdrawal. Formal applications would have a clear advantage over oral applications. They would enable the parties to put forward all relevant facts so that the court could exercise its jurisdiction properly. An oral application might, however, be permitted, depending particularly on the stage of the review proceedings. And the trial court had an unfettered judicial discretion in considering the application for leave to amend; hence the application must not be based on ulterior or oblique motives or meant
to defeat the ends of justice. It must therefore be brought in good faith. As a general rule, where the court was so firmly *dominus litis*, ie was possessed of sufficient material on which to judge the merits of the review application, and the opposing party had clearly obtained some advantage of which it would be unjust to deprive him, leave should not be granted, except in exceptional circumstances.

On the peculiar facts of the instant case, the court would refuse the application to withdraw the claims founded on the Constitution, not because it was oral, but because in spite of the rather late stage at which it had been brought, no reason had been assigned for the withdrawal. Again, the application had been made at a most inauspicious stage of the proceedings, ie at a time when the hearing had nearly been concluded. *Fox v Star Newspaper & Co* [1898] 1 QB 36 cited. *Obeng-Manu Jnr v Attorney-General*, Supreme Court, Writ No 6/93, 23 May 1995, unreported and *Amissah v Attorney-General* [2003-2004] 1 SCGLR 156 distinguished.

(3) The trial judge, in the exercise of his discretion, was not bound to comply with the request to refer a constitutional issue to the Supreme Court for determination under article 130(2) of the Constitution. However, the discretion was not limitless, boundless, or was it to be exercised in a petulant fashion. The discretion must be exercised within reasonable bounds, ie it must be exercised judicially, not capriciously or arbitrarily and also in a timely manner, having regard to the nature of the case and the reliefs sought, the issues arising for referral, even more crucially, its expected outcome on the pending action, bearing in mind that all courts had a duty to ensure the efficacious and expeditious
disposal of all cases. If at the stage of the referral application, it was plain that, the taking of evidence was not at all necessary, and that the determination of the issues might dispose of the case one way or the other, i.e. bring the entire hearing or proceedings to an end, then, the taking of evidence for whatever purposes would amount to an improper exercise of discretion. Consequently, whenever there were no disputed facts to be resolved, for either a determination of whether or not a genuine question for interpretation had arisen, or for a formulation of the issues for referral, the referral ought to be made promptly and without any delay. In the instant case, the action pending in the High Court, did not raise any genuine or serious disputed facts. In the circumstances, the trial judge had erred in refusing the request for a referral to the Supreme Court. The reasons given by the trial judge, namely, that he was not ready to make a referral until he had taken more evidence and made more findings of facts, were improper.

(4) The question as to whether on the facts of any given case a real or genuine interpretative issue for referral had arisen for the Supreme Court’s opinion, would depend on, inter alia, the nature of the pending action, the reliefs sought and the pleadings. A further criterion was whether or not the action was one which had been neatly clothed as a case involving the exercise of the original jurisdiction of the Supreme Court. In the instant case, at the centre of the whole controversy, lay the disputed interpretation of important constitutional provisions, namely, articles 45, 63(9) and 64(1) of the 1992 Constitution; section 2 of the Electoral Commission Act, 1993 (Act 451); and the Public Elections Regulations, 1996 (CI 15). The case was not in substance, an election petition as contended by

Per Georgina Wood JSC. Another critical factor is whether or not a disputed interpretation lies at the heart of the action. If it does, it qualifies for our intervention. Indeed, it was precisely because of the parties’ divergent and irreconcilable views on the true meaning of the relevant provisions that in the Akosah case [1980] GLR 592, CA, the court thought that a genuine issue of interpretation had arisen.

Per Atuguba JSC dissenting... Though constitutional articles, namely, articles 63(9) and 64(1), are involved, they are clear and unambiguous and, on established authority, can be applied by the High Court. The application in this case in respect of each article, namely, articles 63(9) and 64(1) of the Constitution relates (as stated in Republic v Special Tribunal; Ex parte Akosah [1980] GLR 592 at 605, CA) “to no more than a proper application of the provisions of the Constitution to the facts in issue, this is a matter for the trial court to deal with; and no case for interpretation arises.” Therefore, the trial High Court has jurisdiction to determine this case.
IN RE PARLIAMENTARY ELECTION FOR WULENSI
CONSTITUENCY;
ZAKARIA v NYIMAKAN

SUPREME COURT, ACCRA
(CM 73/2003)

15 January 2003

EDWARD WIREDU CJ, ACQUAH, SOPHIA AKUFFO, AFREH AND
TWUM JJSC

[2003-2004] 1 SCGLR 1

Constitutional law - Parliamentary election - Election petition - Appeal from - Determination of election petition by High Court under article 99(1) of Constitution - Appeal from decision of High Court determined by Court of Appeal - Whether further right of appeal lying to Supreme Court from appeal determined by Court of Appeal - Whether proper to apply maxim generalia specialibus non derogant - Constitution, 1992, arts 48(1) and (2), 91(1) and (2) and 131(1)(a) and (2).

It is respectively provided by articles 99(1)(a) and (2), 131(1)(a) and 137(1) that:
“99.(1) The High Court shall have jurisdiction to hear and determine any question whether __
    (a) a person has been validly elected as a member of Parliament or the seat of a member has become vacant;
    (2) A person aggrieved by the determination of the High Court under this article may appeal to the Court of Appeal.”

“131(1) An appeal shall lie from a judgment of the Court of Appeal to the Supreme Court __
    (a) as of right in a civil or criminal cause or matter in respect of which an appeal has been brought to the Court of Appeal from a judgment of the High Court or a Regional Tribunal in the exercise of its original jurisdiction.”

“137.(1) The Court of Appeal shall have jurisdiction throughout Ghana to hear and determine, subject to the provisions of this Constitution, appeals from a judgment, decree or order of the High Court and Regional Tribunals and such other appellate jurisdiction as may be conferred on it by this Constitution or any other law.”

One Mr Nyimakan was declared the elected Member of Parliament (MP) for the Wulensi Constituency after the 2000 Parliamentary Elections held on 7 December 2000 throughout Ghana. The election was challenged by one Mr Zakaria, a registered voter in the constituency. He filed an election petition in the High Court, Tamale under article 99(1) of the
Constitution, 1992 seeking a declaration that the election of Mr Nyimakan was void because he was not qualified to be so elected. The petition was granted by the High Court on 6 July 2001. The elected MP (hereinafter called the appellant), appealed to the Court of Appeal against the grant of the petition. The appeal was, however, dismissed on 12 April 2002. The appellant further appealed on 16 April 2002 to the Supreme Court from the decision of the Court of Appeal. On 7 October 2002, Mr Zakaria, the registered voter, filed the instant application in the Supreme Court for an order to dismiss the appeal on the ground that the Supreme Court had no jurisdiction to hear and determine the appeal.

Held, granting the application for dismissal of the appeal from the Court of Appeal to the Supreme Court - Sophia Akuffo JSC dissenting: there was no right of further appeal from the Court of Appeal to the Supreme Court in respect of an appeal from an election petition determined by the High Court under article 99(1) of the Constitution, 1992 because: (i) notwithstanding the general appellate jurisdiction of the Court of Appeal stated in article 137(1) of the Constitution, article 99(2) had expressly provided that a person aggrieved by the determination of an election petition by the High Court under article 99(1), might appeal to the Court of Appeal. That provision had the effect of taking it, ie such an appeal out of article 131(1) jurisdiction of the Court of Appeal in respect of appeals to the Supreme Court; (ii) when a remedy had been given by the Constitution and a forum had also been given by either the Constitution itself or statute for ventilating a grievance, it was to that forum that a plaintiff might present his petition. In the instant case, the Constitution had, by article 99 provided only two courts for dealing with
election petitions, namely, the High Court and the Court of Appeal. It was the framers of the Constitution, 1992 who, knowing that they were creating a new right chose an appeal procedure which ended at the Court of Appeal; and (iii) on application of the maxim, *generalia specialibus non derogant* (general words do not derogate from special), the special provision set out in article 99(2), granting the right of appeal to the Court of Appeal from the determination of the High Court for an election petition under article 99(1), should supersede the general appellate jurisdiction of the Supreme Court under article 131(1)(a). *Yeboah v J H Mensah* [1998-99] SCGLR 492 followed.

*Per Twum JSC.* Admittedly, in a wider sense, it may be said that article 131(1)(a) should give a further right of appeal to the appellant. But ... article 99(1) creates a special remedy and in that remedy, the appeal process ends at the Court of Appeal under article 99(2).

It is quite clear that the framers of the Constitution, 1992 intentionally did that. It cannot be said that when they wrote article 99 in the form we find it in the Constitution, they were oblivious of the general appellate jurisdiction of the Supreme Court. We are fortified in our view by a consideration of article 33, dealing with fundamental human rights remedies. By article 33(3) a further right of appeal is expressly enacted giving the Supreme Court jurisdiction. This gives the clearest indication of the intention of the framers of the Constitution that they deliberately discriminated between appeals against election petitions and fundamental human rights’ appeals. In order that the clear intention of the framers of the Constitution may not be aborted, we are convinced that this is a proper case to apply the maxim *generalia specialibus non derogant.* We hold
that the appeal provision in article 99(2) supersedes the general appellate jurisdiction of the Supreme Court under article 131(1)(a).

*Per Sophia Akuffo JSC dissenting.* Admittedly, this provision, ie article 99(2) makes no mention of a further appeal to the Supreme Court. However, ... given the language of article 131(1) and (2) and the structure of the Constitution, 1992 there was no need to do so; and the mere fact that no such mention is specifically made in article 99, cannot justify a conclusion that an appeal cannot lie from a decision of the Court of Appeal in such matters.

I am fortified in this view by the fact that, when the Constitution intends to limit the right of appeal to the Court of Appeal alone, it does so specifically, as in article 48(1) and (2).
AMIDU v ELECTORAL COMMISSION & ASSEMBLY PRESS

SUPREME COURT, ACCRA
(Writ No 3/2001)

30 January 2002

EDWARD WIREDU CJ, BAMFORD-ADDO, AMPIAH, ADJABENG, ATUGUBA, SOPHIA AKUFFO AND LAMPTYE JJSC

[2001-2002] SCGLR 595


Constitutional law - Parliamentary election - Results - Publication in Gazette - Act of publication of Gazette under CI 15, reg 41(2)(a) operational and functional - Sole purpose of published Gazette to give formal notice of parliamentary elections - Functions of any published Gazette merely to notify public of facts contained therein and intended to be notified - Mode of challenging veracity of any fact in published Gazette - Improper to invoke Supreme Court's original jurisdiction under Constitution, art 2 - Evidence Decree, 1975 (NRCD 323), s 154
It is provided by the Constitution, 1992, art 51 that:

“51. The Electoral Commission shall, by constitutional instrument, make regulations for the effective performance of its functions under this Constitution or any other law, and in particular, for the registration of voters, the conduct of public elections and referenda, including provision for voting by proxy.”

It is also provided by the Representation of the People Law, 1992 (PNDCL 284), s 18(1) that:

“18(1) An election petition shall be presented within 21 days after the date of the publication in the Gazette of the result of the election to which it relates, except that a petition questioning an election on an allegation of corrupt practice and specifically alleging a payment of money or other reward to have been made by the person whose election is questioned or to have been made on his behalf to his knowledge, may be presented within twenty-one days after the date of the alleged payment.
(2) The presentation of an election petition under subsection (1) shall not be valid unless within the specified time in subsection (1), the petitioner gives $20,000.00 as security for costs.

(3) The time limit provided by this section for the presentation of an election petition shall not be extended.”

It is also provided by the Public Elections Regulations, 1996 (CI 15), reg 41(2)(a) that:

“41. (2)(a) On receipt of a writ endorsed in accordance with this regulation, the Commission shall __

(a) in a parliamentary election publish in the Gazette a notice stating the name of the person elected and the total number of votes cast for each candidate.”

On 7 December 2000, the Electoral Commission conducted parliamentary elections throughout Ghana. The results were published by the Commission in Ghana Gazette No 1 dated 5 January 2001. The plaintiff, claiming that the Gazette No 1 had been published retrospectively in that it had actually been published on or about 16 January 2001 and not on 5 January 2001 as stated in the Gazette, sued in the Supreme Court, the Electoral Commission and the Assembly Press, the Government Printer, as the first and second defendants respectively. He sought for the declarations that: (a) on a true and proper interpretation of articles 2(1)(a) and (b), 51, 99 and 107 of the 1992 Constitution; sections 16, 17 and 18 of

249
the Representation of the People Law, 1992 (PNDCL 284), and regulations 41(1) and (2) of the Public Elections Regulations, 1996 (CI 15), no person may procure, facilitate or cause any Gazette on parliamentary elections results to be published retrospectively; (b) the conduct of the defendants in causing to be published and publishing Gazette No 1 with a retrospective date, was in contravention of and inconsistent with the Constitution; and (c) the Gazette No 1 was in contravention of and inconsistent with the Constitution and therefore was a nullity. In his written submission, the plaintiff referred to article 107 of the Constitution, which proscribes retrospective legislation; and section 18(1) of PNDCL 284, which provides that an election petition should be presented within twenty-one days after the publication of the result in the Gazette. He contended that “the twenty-one days mandatory period prescribed by section 18(1) of PNDCL 284 made the publication in the Gazette of legislative effect upon publication”; that the section imposed a legislative function on the Electoral Commission “to be carried out by means of the publication in the Gazette.” On the other hand, the Electoral Commission, the first defendant, in its written submissions, contended, inter alia, that the plaintiff’s action should be dismissed in limine because he had failed to demonstrate the manner in which the articles of the Constitution relied upon had been contravened.

Held, unanimously striking out the plaintiff’s writ for want of jurisdiction: (i) the purport of article 51 of the 1992 Constitution was to enjoin the Electoral Commission to enact constitutional instruments that would assure the effective performance of its functions. It was pursuant
to that power that the Electoral Commission made the Public Elections Regulations, 1996 (CI 15).

*Per Sophia Akuffo JSC.* It is not part of the plaintiff’s case that any portion of CI 15 contravenes the Constitution; or that in publishing the *Gazette,* either defendant in some way or the other acted contrary to this Instrument or omitted to do something which amounts to a contravention of the letter or spirit of this Instrument.

(2) It was clear from the provisions in regulation 41(2)(a) of CI 15 that the act of publishing the *Gazette* was operational and functional; its sole purpose was to give formal notice of the existence of a certain outcome from the parliamentary elections. And the function of any published *Gazette* was, in terms of section 154 of the Evidence Decree, 1975 (NRCD 323), merely to notify the public of the facts contained therein and intended to be notified thereby. If any person desired to challenge the veracity or existence of any fact thus notified in a published *Gazette,* that person could legally do so but not in a form of an action by way of an invocation of the court’s original jurisdiction under article 2 of the Constitution.

*Per Sophia Akuffo JSC.* It is clear from the plaintiff’s submission that what he really seeks to do or enforce is the full availability of the twenty-one days stipulated in section 18(1) of PNDCL 284, which he claims has been shortened by the alleged back-dating of the *Gazette.* He seeks to do so by challenging the veracity of the publication date stated in the *Gazette.* Assuming ... that there has been any breach on the part of the defendants in assigning 5 January 2001 as the date of publication of the *Gazette,* rather than 16 January 2001 as alleged by the plaintiff to be the correct
date, then, at worst, it is a statutory (or an operational) breach under CI 15, rather than a constitutional one under any of the articles upon which he relies.

_Contra Per Atuguba JSC._ The plaintiff contends ... that by publishing the results in the _Gazette_ with retrospective date, the right of access to the court under article 99 has been impeded or truncated... I believe that the truncation of the period within which a plaintiff can invoke the jurisdiction of the High Court under article 99 of the 1992 Constitution, if proved, would at least be inconsistent with that article since it unduly impedes its invocation. That act would provoke the wrath of the spirit, if not the letter, of that article. _Mekkaoui v Minister of Internal Affairs_ [1981] GLR 664, SC; and _In re Yendi Skin Affairs; Adani v Abudulai_ [1981] GLR 281, CA cited.

(3) The publication of the results of Parliamentary Election in the _Gazette_ was not and could not be a legislative act of Parliament, nor was it a constitutional act grounded in a provision of the 1992 Constitution.
Constitutional law - Elections and referenda - Regulations - Mode of - Electoral Commission to make and amend regulations for performance of functions by constitutional instruments and not by Gazette Notice - Directives of commission limiting ID Card to Photo ID Card constituting indirect amendment of CI 12 and CI 15 and ultra vires articles 51 and 297(d) of Constitution - Constitution, 1992, art 51 and 297(d) - Public Elections (Registration of Votes) Regulations, 1995 (CI 12), reg 11 - Public Elections Regulations, 1996 (CI 15) regs 30(1) and 31.

Constitutional law - Elections and referenda - Voter identification - Regulations on - CI 15, regs 30 and 31 vesting power to check and verify identity of voters in officers of Electoral Commission - Directions in Gazette Notice delegating power of identification of voters to candidate’s agents - Delegation of functions ultra vires - CI
It is provided by the Constitution 1992 arts 51 and 297(d) that:

“51. The Electoral Commission shall, by constitutional instrument, make regulations for the effective performance of its functions under this Constitution or any other law, and in particular, for the registration of voters, the conduct of public elections and referenda, including provisions for voting by proxy.”

“297. In this Constitution and in any other law (d) where a power is conferred to make any constitutional or statutory instrument, regulation or rule or pass any resolution or give any direction, the power shall be construed as including the power exercisable in the same manner, to amend or to revoke the constitutional or statutory instrument, regulation, rules or resolution or direction as the case may be.”

It is further respectfully provided by r 11 of the Public Elections (Registration of Voters) Regulations, 1995 (CI 12), and rr 30(1)(a) and 31(1) of the Public Elections Regulations, 1996 (CI 15) that:

“11 Where upon an application there is no objection to the application the registration officer shall enter the name of the
applicant in the register which shall be provisional only and shall issue to the applicant a voter identification and in such form as the Commission shall determine.”

“30(1) A presiding officer may, before delivering a ballot paper to a person applying to vote at the election, require the person

(a) to produce his or her voter identification card or to furnish such other evidence as may be determined by the Commission to establish that he or she is the registered voter whose name and voter identification number and particulars appear in the register; ...”

“31(1) Every voter desiring to record his vote shall present himself at his allotted station and the presiding officer or a polling assistant, after satisfying himself that the voter is registered and has not already voted, and that any other means of identification determined by the Commission in the possession of the voter is valid, shall deliver the ballot paper to the voter.”

The Electoral Commission, pursuant to its powers under article 51 of the 1992 Constitution, enacted the Public Elections (Registration of Voters) Regulations, 1995 (CI 12), in July 1995 and the Public Elections Regulations, 1996 (CI 15), in July 1996. Regulation 11 of CI 12 gave the Electoral Commission power to issue to an applicant for registration as a voter and whose name has been entered in the register without an objection, a voter identification card (ID Card) in such form as the
commission shall determine. Regulations 30 and 31 of CI 15 also provided merely for a voter identification card. Again regulations 30 and 31 of CI 15 gave the sole power of voter identification to the presiding officer, an agent of the commission. Under CI 12 and for the 1996 Presidential and Parliamentary Elections, Thumbprint ID Cards were used for voter identification. Subsequently the commission sought to gradually replace the Thumbprint ID Cards with Photo ID Cards.

On 27 November 2000, prior to the 2000 Presidential and Parliamentary Elections, scheduled for 7 December 2000, the Electoral Commission caused to be published in the Gazette a notice to the effect that for the 2000 Presidential and Parliamentary Elections, Thumbprint ID Cards would not be used and that only Photo ID Cards would be used. The said notice further stated that where a voter had no identity card, he should go through the following steps for identification: (i) the presiding officer should check for the name in the Name Reference List; (ii) if the name was not on the list, the person should be politely told to go away from the polling station; (iii) if the name was on the list, and all the candidates’ agents affirmed that they knew the person, he or she should be allowed to go through the voting steps right away; (iv) the verification of the identity of such a voter should take place in the presence of the party agents.

The plaintiff, aggrieved by the above directives published by the Electoral Commission, brought the instant action for a declaration that the Gazette Notice, in so far as it purported to ban the use of Thumbprint ID Cards and replace them solely with Photo ID Cards and also to give the “candidate’s agents” a say in identifying a voter at the polling station, was
given in contravention of articles 42 and 51 of the 1992 Constitution and therefore null and void. The Electoral Commission in its defence argued that though a voter identification card (ID Card) simpliciter was mentioned in both regulation 11 of CI 12 and regulations 30 and 31 of CI 15, without particularising whether it was Photo ID Card or Thumbprint ID Card, when it decided to limit ID Card to Photo ID Card, it did not have to pass a constitutional instrument because it was unnecessary to do so.

Held, unanimously granting the declaration sought for the following reasons: (1) the Electoral Commission was enjoined by article 51 of the 1992 Constitution to make regulations for the effective performance of its functions by constitutional instrument; whilst article 297(d) gave the commission power to amend or revoke by constitutional instrument, any constitutional instrument made under the authority of the Constitution. Since regulation 11 of the Public Elections (Registration of Voters) Regulations, 1995 (CI 12), and regulations 30(1) and 31 of Public Elections Regulations, 1996 (CI 15), which dealt with identity cards to be used in an election and under which the 1996 Presidential and Parliamentary Elections were held, did not make a distinction between Photo ID Card and Thumbprint ID Card, the publication by the Electoral Commission in Gazette Notice of directives limiting the ID Card to be used for the 2000 Presidential and Parliamentary Elections and subsequent ones to Photo ID Cards, constituted an indirect amendment of regulations 11 of CI 12 and 30 and 31 of CI 15; and was thus ultra vires articles 51 and 297(d) of the 1992 Constitution.
(2) Since regulations 30 and 31 of the Public Elections Regulations, 1996 (CI 15), gave power to check and verify the identity of prospective voters to officers of the Electoral Commission, ie presiding officers or polling assistants and not to the candidate’s agents, the directives in the *Gazette* Notice of 27 November 2000, which had given that power to all the candidates’ agents, was ultra vires the said regulations and so null and void.

*Per Bamford-Addo JSC...* [W]hereas the 1992 Constitution has been designed to make the defendant commission completely independent in the performance of its duties and functions, the directives of the commission amounted to a delegation of its duties; it would, if permitted to be effective, be contrary to the mischief sought to be prevented by the Constitution, namely, to empower the commission to act in a non-partisan and fair manner in the discharge of its functions. The directives are contrary to both the letter and spirit of the Constitution and contravene articles 42, 51, 46, 21(3) and 55(2) thereof and are therefore null and void.

*Per Ampiah JSC.* [W]here power is given to a person to perform a particular duty, such power shall not be delegated without due process of law. The maxim is, *delegatus non potest delegare* (A delegated power cannot be delegated.) The manner by which a voter may be identified and allowed to vote, is set down clearly in regulation 30 of CI 15. It is not the business of all the candidates’ agents... to “affirm that they know the person” before he or she is allowed to go through with the voting steps.

*Per Kpegah JSC.* The “direction or control” which the Electoral Commission is insulated from under article 46, may not necessarily come from the government or its officials, but political parties as well.
**Per Atuguba JSC.** The ascertainment of the identity of a prospective voter is part of the conduct of public elections and as the Constitution places that duty on the Electoral Commission, it can only do so by itself and its proper agents... To surrender the judgment of the presiding officer as to the identity of a voter to the candidate’s polling agents, is in effect, to delegate that function to those agents, contrary to articles 45(c) and 46 of the Constitution.

**Per Lamptey JSC.** The requirement that “all the candidates’ agents must affirm that they know the prospective voter” who was then present with them cannot be justified... The law maker did not intend and did not clothe the candidate’s polling agent with this power...

(3) Furthermore (*per Bamford-Addo, Ampiah and Kpegah JJSC*) a constitutional instrument requires the approval of Parliament for its validity under the procedure laid down by article 11(7) of the Constitution. Since that procedure was not complied with by the Electoral Commission, the amendment sought to be made by the commission to restrict a voter’s ID Card to only Photo ID Card as the only legal form of proving identity, contravened not only articles 51 and 297(d) but 11(7) as well.
Constitutional law - Parliamentary election - Validity - Election petition - Jurisdiction for - High Court and not Supreme Court vested with jurisdiction to determine election petition - Petitioner not entitled to ignore article 99(1)(a) providing specific remedy at High Court for determining validity of an election and resort to Supreme Court’s enforcement jurisdiction under articles 2(1) and 130(1) - Constitution, arts 2(1), 99(1)(a) and 130(1) - Representation of the People Law, 1992 (PNDCL 284), Par IV.

Constitutional law - Member of Parliament - Qualifications and eligibility - Enforcement - Section 18(1) of PNDCL 284, providing for limitation period of 21 days for enforcing article 94 - Whether section 18(1) unconstitutional - Constitution, art 94 - PNDCL 284, s 18(1).

Constitutional law - Parliamentary election - Validity - Election petition - Grounds for - Section 20(1)(d) of PNDCL 284 providing as a ground for election that candidate for election disqualified for election -
Whether section 20(1)(d) to be retained as legitimate ground for an election petition - PNDCL 284, s 20(1)(d).

It is provided by the Constitution, 1992, arts 94(1)(b) and 99(1) that:

“94.(1) Subject to the provisions of this article, a person shall not be qualified to be a member of Parliament unless -
(b) he is resident in the constituency for which he stands as a candidate for election to Parliament or has resided there for a total period of not less than five years out of the ten years immediately preceding the election for which he stands, or he hails from that constituency;”

“99.(1) The High Court shall have jurisdiction to hear and determine any question whether -
(a) a person has been validly elected as a member of Parliament or the seat of a member has become vacant;”

It is also provided by the Representation of the People Law, 1992 (PNDCL 284), ss 16(1) and (2) and 20(1)(d) that:

“16(1) The validity of an election to Parliament may be questioned only by a petition brought under this Part.
(2) Every election petition shall be presented before the High Court for hearing.”

“20(1) The election of a candidate shall be declared void on an election petition if the High Court is satisfied -
(d) that the candidate was at the time of his election a person not qualified or a person disqualified for election."

Mr J H Mensah, the defendant, was elected as the Member of Parliament for Sunyani East Constituency at the conclusion of the nationwide parliamentary elections held on 7 December 1996. Subsequently, two persons from the electoral area filed an election petition against him in the High Court, Sunyani - challenging the validity of the election. The petition was dismissed by the High Court as having been filed outside the statutory period of 21 days as prescribed by the Representation of the People Law, 1992 (PNDCL 284). However, on 25 February 1997, the plaintiff, a registered voter in the electoral area, filed the instant action in the Supreme Court, invoking the court’s enforcement jurisdiction under articles 2 and 130 of the 1992 Constitution for a declaration, inter alia, that under article 94(1)(b) of the Constitution, the defendant was not qualified to be a Member of Parliament. The defendant denied the claim. He also raised a preliminary objection - challenging the propriety of the action on the ground that: the plaintiff’s action was, in substance and in reality, an election petition determinable only by the High Court under article 99(1)(b) of the Constitution and sections 16(1) and (2) and 20(1)(d) of PNDCL 284. He therefore invited the court to decline jurisdiction and strike out the action as incompetent.

Held, upholding the preliminary objection (per Charles Hayfron-Benjamin, Ampiah, Acquah and Atuguba JJSC - Kpegah JSC dissenting): the High Court, and not the Supreme Court, was the proper forum under article 99(1)(a) of the Constitution and Part IV of PNDCL 284 for
determining the plaintiff’s action, which was, in substance, an election petition to challenge the validity of the defendant’s election to Parliament. The plaintiff could therefore not ignore the provisions of article 99(1) (a) of the 1992 Constitution, which had provided for a specific remedy at the High Court for determining challenges to the validity of a person’s election to Parliament, and resort to the enforcement jurisdiction of the Supreme Court under articles 2(1) and 130(1) of the Constitution. *Edusei v Attorney-General* [1996-97] SCGLR 1 and on *review* [1998-99] SCGLR 753 followed. *Gbedemah v Awonoor-Williams* (1970) 2 G & G 438, SC criticised.

*Per Charles Hayfron-Benjamin JSC.* When a remedy is given by the Constitution and a forum is given by either the Constitution itself or statute for ventilating that grievance, then it is to that forum that the plaintiff may present his petition.

*Per Acquah JSC.* (i) I am ... fully satisfied that in so far as the court in *Gbedemah v Awonoor-Williams* (supra) relied on its enforcement jurisdiction when article 76(1)(a) of the 1969 Constitution [the same as article 99(1)(a) of the 1992 Constitution] and the Representation of the People Decree, 1969 (NLCD 255), [the same as PNDCL 284] provided a specific remedy for resolving that dispute, the court with respect, erred. Its assumption of jurisdiction violated well-settled principles and further negatived the clear intention of the framers of the 1969 Constitution - an intention manifested in article 76(1) thereof. But in fairness to the court in *Gbedemah v Awonoor-Williams*, I must point out that there were certain factors which might have indirectly influenced it in assuming such jurisdiction.

263
(ii) For, once the Constitution itself specifically provides a remedy under article 99(1) for resolving challenges to the validity of a person’s election to Parliament, it is that remedy which must be pursued. Because if it was the intention of the framers of the Constitution to let the general enforcement jurisdiction of the Supreme Court to be resorted on the violation of every provision of the Constitution, they would not have provided specific remedy for specific matters like article 99(1). This conclusion is in accord with two previous decisions of this court in the same case reported as *Edusei v Attorney-General* [1996-97] SCGLR 1; and on review in [1998-99] SCGLR 753. In both decisions, this court, by a majority, held, in effect, that because article 33(1) of the 1992 Constitution provided a specific remedy for redressing violations of human rights provisions, the Supreme Court’s enforcement jurisdiction could not be resorted to in the enforcement of human rights provisions.

*Per Atuguba JSC.* The plaintiff’s action invoking the original jurisdiction of this court is misdirected as the same is primarily an election petition which is cognisable by the High Court only as an original action.

*Per Kpegah JSC dissenting.* My understanding of the plaintiff’s claim is that the defendant ... did not satisfy the residential requirement imposed by article 94(1)(b) of the 1992 Constitution before he got himself elected as Member of Parliament... The plaintiff is therefore invoking our enforcement jurisdiction, as distinct from our interpretative jurisdiction, to make a declaration to this effect... The fact that the action of the plaintiff may have the possible consequence of the removal of the defendant from Parliament does not turn his claim into an election petition. That is the wrong test to apply in determining what the real claim
of the plaintiff is... If the enforcement of article 94(1)(b) of the Constitution against the defendant leads to his removal from Parliament, I will be doing what my oath enjoins me to do - to defend and uphold the supremacy of the Constitution. The end result of the plaintiff’s claim should not scare and stampede us into declining what I see as a legitimate invitation to us to exercise our enforcement jurisdiction... The implication of the majority decision is that this court is prevented from defending the Constitution from a conduct which is clearly subversive of the fundamental law...

Obiter per Kpegah JSC. (i) In so far as section 18(1) of the Representation of the People Law, 1992 (PNDC 284), limits the enforcement of the conditions in article 94 of the 1992 Constitution to a period of 21 days, it should be declared unconstitutional. Because the legislature has no authority to enact a law which will permit the continued violation of the Constitution after 21 days...

(ii) If section 20(1)(d) of PNDC 284, ie the violation of article 94 of the Constitution is retained as a legitimate ground for an election petition, it would render unconstitutional certain provisions of PNDCL 284 which would otherwise have been constitutional. Thus section 20(1) (d)...has to be removed... This we can achieve through the application of the principle of severability on the ground that the legislature failed to observe the constitutional prohibition imposed on its legislative powers by enacting in section 20(1)(d) of PNDCL 284 that the breach of the constitutional requirement in article 94 can be a ground of an election petition, thereby expanding the High Court’s jurisdiction to cover a matter within the exclusive preserve of the Supreme Court.
Constitutional law - Right to vote - Registration as voter - Constitutional right to register as a voter under article 42 - Right not to be denied in absence of constitutional provision to that effect - Attributes of constitutional right to vote - Consequences of failure to register as a voter - Court action by two political parties against Electoral Commission challenging opening of voters register - Whether qualified unregistered citizens stand risk of being deprived of voting rights by court action - Constitution, 1992, arts 42, 45, 78(1) and 94(1)(a).

The plaintiff, a 57-year old Ghanaian citizen, was unavoidably outside the country between May and November 1995. He was thus unable to register as a voter in October 1995 when the Electoral Commission embarked on a compilation of a register of voters for the 1996 Presidential and Parliamentary Elections. After his return to Ghana, the plaintiff applied on
15 April 1996 to the commission for re-registration as a voter but he received no response from the commission. However, the plaintiff subsequently presented himself for registration (during a registration exercise which was to be conducted by the commission between 1-9 June 1996) but the commission failed or refused to register him. The plaintiff therefore brought the instant action in the Supreme Court - invoking its original jurisdiction - for, inter alia, a declaration that the conduct of the commission in failing or refusing to register him as a voter was inconsistent with and in contravention of articles 42, 45 and 46 of the 1992 Constitution. In his statement of defence, the Electoral Commission admitted that the plaintiff was entitled to be registered as a voter. The commission, however, contended that it had to suspend the registration exercise for a supplementary register of voters scheduled for 1-9 June 1996, in the exercise of its discretion, because of the pendency in the High Court of another action brought against the commission by two registered political parties which had challenged as unconstitutional, its purported compilation of a supplementary register of voters.

_Held, unanimously granting an order for the Electoral Commission to register the plaintiff as a voter:_ (1) every sane Ghanaian citizen of eighteen years and above, had the right under article 42 of the 1992 Constitution to be registered as a voter. The exercise of that constitutional right of voting was indispensable in the enhancement of the democratic process and it could not be denied in the absence of a constitutional provision to that effect.

_Per curiam_ (i) A heavy responsibility is ... entrusted to the Electoral Commission under article 45 of the Constitution, in ensuring the exercise
of the constitutional right to vote. For in the exercise of this right, the citizen is able not only to influence the outcome of the elections and therefore the choice of a government but also he is in a position to help influence the course of social, economic and political affairs thereafter. He indeed becomes involved in the decision-making process at all levels of governance.

(ii) Looking at the timetable for the 1996 Presidential and Parliamentary Elections, and further on the balance of hardship, the plaintiff and other qualified unregistered citizens as opposed to the political parties in the High Court suit, stand to be deprived of their voting rights on the election day... It would be unfair to deny the plaintiff and the unregistered citizens such a constitutional right. Especially so, since under the 1992 Constitution ... failure to register does not only forbid one from voting at national and district elections, but also under article 94(1)(a) disqualifies one from being a member of Parliament ... And if one is not qualified to be member of Parliament that person is thereby disqualified from holding a number of public positions like a minister of State [article 78(1)].
Practice and procedure – Stay of proceedings – Pending appeal – Application to Court of Appeal for stay of proceedings pending appeal against refusal to uphold objection to introduce evidence in respect of electoral areas not pleaded – Application properly brought under rule 27A of CI ‘19 – Court of Appeal having inherent jurisdiction to entertain application – Grounds for exercising discretion – Court of Appeal Rules, 1997 (CI 19), r 27A.

It is provided by the Court of Appeal Rules, 1997 (CI 19), r 27A that:

“27A Interlocutory appeal

The Court may, in an interlocutory appeal, civil or criminal before it, grant a stay of proceedings pending the determination of
On 7 December 2008, the Electoral Commission (hereinafter called the first respondent) conducted Parliamentary Elections throughout Ghana including the Asuogyaman Constituency. Mr Joses Asare Akoto (hereinafter referred to as the second respondent) was declared the winner, thus becoming a sitting Member of Parliament. Subsequently, a petition was filed by Mr Kofi Osei Ameyaw against the election in the High Court, Koforidua. During the hearing of the petition, the petitioner sought to introduce evidence of alleged electoral irregularities at polling stations that he had not specifically pleaded or particularised in the petition.

Consequently, counsel for the second respondent, to the petition, Mr Asare Akoto, raised an objection to the introduction of such evidence. The objection was overruled by the trial judge. Dissatisfied with the ruling given on 6 August 2009, the second respondent filed an interlocutory appeal in the Court of Appeal against the said ruling. Thereafter, the second respondent also filed an application before the same trial judge for the grant of an order staying proceedings of the election petition pending the determination of the interlocutory appeal on the grounds, inter alia, that if the proceedings were not stayed, all manner of prejudicial testimonies not specifically pleaded or particularised would be permitted into the record of proceedings that would pave the way for the trial court to deliver judgment based on the alleged prejudicial testimonies before the hearing of the interlocutory appeal.
Held, unanimously refusing the application for stay of proceedings of election petition: the application by the second respondent, Mr Asare Akoto, for the grant of an order staying proceedings of the election petition filed in the High Court, Koforidua, by the petitioner, Mr Osei Ameyaw, pending the determination of the interlocutory appeal, filed by the second respondent in the Court of Appeal against the ruling of the trial judge given on 6 August 2009, has been properly brought before the Court of Appeal under rule 27A of the Court of Appeal Rules, 1997 (CI 19).

Quite apart from rule 27A of CI 19, the Court of Appeal had an inherent jurisdiction to stay proceedings in any lower court from which an appeal had been brought to the court pending the determination of the interlocutory appeal. The discretion was not to be exercised anyhow. The law was that the Court of Appeal would not stay proceedings in the hope that the appeal might succeed. The court’s discretion to grant stay of proceedings pending the hearing of the appeal, would only be exercised if there were special or exceptional circumstances warranting it. The paramount consideration was: would the appeal, if successful, be rendered nugatory if the action were not stayed? The mere allegation by the applicant that the ruling of the trial judge would permit the respondent to lead prejudicial evidence against the applicant, ie the petitioner, to lead prejudicial evidence against the applicant, would not be deemed special or exceptional circumstance. *Republic v Committee Of Inquiry (R T Briscoe (Ghana) Ltd); Ex parte R T Briscoe (Ghana) Ltd* [1976] 1 GLR 166, CA; and *Brutuw v Aferiba* [1979] GLR 566 applied.

*Per curiam.* As counsel for the respondent, ie the petitioner, rightly canvassed in his submissions, the applicant has nothing to lose if
the application before us is refused. If this court decides in the interlocutory appeal that any such evidence should not have been led by the respondent and that it was wrong for the trial court to have refused to uphold the objection raised, the applicant would have the opportunity to apply for such testimony to be expunged from the record of proceedings. And even if by that time the trial court had concluded the trial and, say, had entered judgment against the applicant on the basis of the alleged prejudicial evidence, the applicant would still be clothed with authority to either apply to have the said decision quashed on *certiorari* or to appeal to have same set aside by this court. There is no way the refusal by this court to grant the instant application before us could operate to render any success chalked by the applicant in the substantive interlocutory appeal nugatory.
SALIFU v ELECTORAL COMMISSION & AMBROSE DERY
(APPLICATION TO SET ASIDE PETITION - AMBROSE DERY – APPLICANT)

HIGH COURT, WA
(Suit No E12/12/09

30 March 2009

KOOMSON J

Practice and procedure – Application – Rules of court applicable – Order or rule of court applicable not stated – Whether applicant bound to state same – Whether absence of Order under which application brought making application incompetent – Whether applicant bound to state as coming under inherent jurisdiction of court – Court’s inherent jurisdiction not to be invoked where special procedures cater for special situation – High Court (Civil Procedure) Rules, 2004 (CI 47), Order 19.

Practice and procedure – Appearance – Conditional appearance – Application to set aside writ or petition – Entry of unconditional appearance not precluding party from applying to set aside writ or petition – Party entitled under Order 9, r 8 of CI 47 to apply to set aside writ even before filing an appearance – Defendant might file conditional appearance and written fourteen days move to set aside writ or petition on grounds of trial court having no
jurisdiction to entertain action – Party entitled to elect to enter appearance either unconditionally or conditionally or not at all before raising objection as to service of writ – CI 47, Order 9, r 8.

Statutes – Revision – Alteration or amendment – Functions of Statute Law Review Commissioner – Provision in section 2(1) (b) of Act 562 clear and unambiguous – Statute Law Revision Commissioner empowered under section 2(1) (b) to effect amendment to existing laws – Commission having no mandate to move alteration or amendment in matter of substance of an Act – Amendment to section 18 (2) of PNDCL 284 by Commissioner not affecting matter or substance of the Law – Duty of Commissioner under section 3 of Act 562 – Representation of the People Law, 1992 (PNDCL 284), s 18(2) – Ghana (Revised Edition) Act, 1998 (Act 562), ss 2(1)(b)and 3(1) and (2).

Elections – Parliamentary election – Validity – Grounds for – Security for costs – Payment for – Duty for determining security for costs on High Court for determination either suo motu or on oral or written application by party – Onus on petitioner to prove payment of security for costs as determined by High Court – Burden of persuasion in terms of sections 10 and 14 of Evidence Act, 1975 – Failure to pay security for cost rendering petition invalid under PNDCL 284, s 18(2) – High Court having no jurisdiction to determine petition in absence of payment of security for costs – Evidence Act, 1975 (NRCD 323), ss 10 and 14 - Representation of the People Law, 1992 (PNDCL 284), s 18(2).
It is provided by sections 2(1)(b) and 3(1) and (2) of the Ghana (Revised Edition) Act, 1998 (Act 562), respectively that:

“2.(1) In the preparation of the Revised Edition the Commissioner
   (b) shall make adaptations of and amendments to Acts in order to bring those Acts into conformity with the Constitution of Ghana 1992.”

“3. (1) The functions of the Commissioner contained in section 2 does not include any power to make alteration or amendment in the matter or substance of an Act.”

   (2) Where the Commissioner considers
      (a) that an alteration or amendment in the matter or substance of an Act is desirable; or
      (b) that an Act requires considerable alteration or amendment involving the entire recasting of the Act, the Commissioner shall prepare a Bill setting out the alteration or amendment or the recasting of the Act for introduction into Parliament.”

It is also provided by section 18(2) of the Representation of the People Law, 1992 (PNDCL 284) that:
“18(2) The presentation of an Election Petition under sub-section (1). Shall not be valid unless within the time specified in sub-section (1), the petitioner gives £20,000 as security for costs.”

The previous provision which existed before the amendment was effected read thus:

“18(2) The presentation of an Election Petition under sub-section (1). Shall not be valid unless within the time specified in sub-section (1), the petitioner gives £20,000 as security for costs.”

It is also provided by Order 9, rr 7 and 8 of the High Court (Civil Procedure) Rules, 2004 (CI 47), respectively that:

“7(1) A defendant may file a conditional appearance.

(2) A conditional appearance, except by a person sued as a partner of a firm in the name of that firm and served as a partner, is to be treated for all purposes as unconditional appearance unless the defendant applies to the Court within the time limited for the purpose, for an order under rule 8 and the court makes an order under that rule”
“8. Application to set aside writ

A defendant may at any time before filing an appearance, or, if the defendant has filed a conditional appearance, within fourteen days after filing appearance, apply to the court for an order to

(a) set aside the writ or service of the writ;
(b) declare that the writ or notice of it has not been served on the defendant; or
(c) discharge any order that gives leave to serve the notice on the defendant outside the country.”

On 7 December 2008, the Electoral Commission conducted Parliamentary Elections in the Lawra-Nandom Constituency. After the election, the Electoral Commission on 5 January 2009 gazetted the name of Mr Ambrose Dery as the duly elected Member of Parliament for the Lawra-Nandom Constituency. Subsequently, Mr Robert Yaw Salifu filed a petition in High Court, Wa, seeking, inter alia, a declaration that the results of the Parliamentary Elections held on 7 December 2008 in the Lawra-Nandom Constituency by the Electoral Commission were null and void. On 13 February 2009, Mr Ambrose Dery filed an application seeking an order of the court to set aside the petition filed by Mr Robert Yaw Salifu on the grounds, inter alia, that the court had no jurisdiction to entertain the petition.
Before counsel for the applicant could be heard on the application, counsel for Mr Robert Yaw Salifu, the petitioner (hereafter referred to as the respondent), raised a preliminary objection to the application being entertained by the court on the grounds, inter alia, that the motion was silent on the particular Order of the High Court (Civil Procedure) Rules, 2004 (CI 47), under which the application had been brought; and that there was no indication whatsoever that the motion had been brought under the inherent jurisdiction of the court. It was also argued that the applicant, having filed an unconditional appearance under Order 9 of the High Court (Civil Procedure) Rules, 2004 (CI 47), was not entitled to question the validity of the petition by way of an application by virtue of rules 7 and 8 of Order 9 of the Rules of Court.

_Held, dismissing the preliminary objection by the respondent but allowing the application to set aside the petition for the following reasons:_

(1) on examination of Order 19 of the High Court (Civil Procedure) Rules, 2004 (CI 47), which dealt with application generally, the court would hold that, in asking for an order from the court by way of an application, a party was not bound to state the rule of court under which the application had been brought. Contrary to the contention of counsel for the respondent, ie the petitioner, the absence of the Order under which the instant application had been brought, did not render it incompetent. Similarly in making an application, the applicant did not need to indicate that he was coming under the inherent jurisdiction of the court. Indeed, where there were special procedures to cater for a special situation, a court’s inherent jurisdiction should not be invoked. In the instant case, the application was governed by Order 19 of CI 47. Consequently, the
fact that the applicant did not state that he was coming under the inherent jurisdiction of the court, meant that the application was not intended to invoke the inherent jurisdiction of the court. *Atta v Mohamadu* [1980] GLR 862 at 864; and *Kumah v Bart-Plange* [1989-90] 1 GLR 119 cited. *Azorblie v Ankrah* [1984-86] 1 GLR at 564 applied.

(2) The entry of an unconditional appearance by a party did not preclude him from applying for an order to set aside the writ or petition. The effect of the wording in Order 9, r 8 of CI 47, was that a party, ie a defendant, might apply to the court to set aside the writ before even filing an appearance. Again, the defendant might file a conditional appearance and within fourteen days move the court to set aside the writ or the service of the writ. Thus the provision in Order 9, r 8 was not exhaustive of the situations that might require a defendant to apply to the court to have a writ or a petition set aside. Where, for example, as in the instant case, a defendant sought an order of the court to set aside a writ or a petition on the grounds that the court lacked jurisdiction to entertain the action, the defendant might at any time file an application to that effect irrespective of the fact that he had entered an unconditional appearance. Accordingly, a defendant could elect to enter appearance either unconditionally or conditionally or not at all before raising the objection as to the service of the writ. Consequently, the court would dismiss the preliminary objection by the respondent on the ground that the applicant had filed an unconditional appearance and had also taken fresh steps in the matter in terms of Order 81, r 2(1) and (2). *Doryumu v Nanor-Agbozo* [1981 GLR 31; *Kumnipah II v Ayirebi* [1987-88] 1 GLR 265; *Amoasi III v Twintosh*

(3) On construction, the provisions in section 2(1)(b) of the Laws of Ghana (Revised Edition) Act, 1998 (Act 562), were clear and ambiguous. Contrary to the contention of counsel for the respondent, ie the petitioner, the power to effect amendment to existing laws had been unequivocally given to the Statute Law Revision Commissioner under section 2(1)(b) of Act 562. However, under section 3(1) and (2) of Act 562, the Commissioner had not been mandated to make alteration or amendments to the matter of substance of an Act. The effect of the words “matter or substance of an Act” in section 3(2) (a) of Act 562 was the reason for the passing of the Act or the purpose for which the Act had been made. In the instant case, contrary to the contention of counsel for the respondent, ie the petitioner, it could not be said that the amendment made to section 18(2) of the Representation of the People Law, 1992 (PNDCL 284), had affected the matter or substance of the Law.

Per curiam. My understanding of section 3 is that where the Commissioner is of the view that there is the need for an amendment or alteration to be done in an enactment which may affect the substance of the enactment, then the Commissioner is mandated to prepare a Bill and submit same to Parliament for consideration. The power to effect alterations and amendment provided by section 2 of the Act only mandates the Commissioner to effect amendments or alterations that will not affect the substance of the enactment... A careful consideration of the two provisions (ie the amended section 18(2) of PNDCL 284 and the previous provision in section 18(2) before the amendment) would reveal
that the amendment did not affect or alter the substance of the Law. In my view, the substance of the Law is to provide for the division of the country into constituencies for election purposes and other matters related thereto. This can be seen in the long title of the Law itself. The amendment effected by the Commissioner affected the amount to be paid and the person to determine the amount. Hitherto, the law itself imposed the amount. The amendment took that away and gave the power of determination of the amount to the High Court. In my opinion, the Statute Law Revision Commissioner did not act outside his mandate in effecting the amendment so as to make the amendment illegal or void.

(4) The duty to determine the security for costs had been cast on the High Court. In a situation where the statute was silent on the procedure for determining the security for costs, the court, *suo motu* or on an application (oral or written) by a party, ie a petitioner, might make a determination of the security for costs. In the instant case, the court on its own, on 26 December 2008, upon an inquiry made by a prospective petitioner, had decided that for all electoral petitions that might be filed at the registry of the court, the petitioners should be made to pay an amount of GH¢50 as security for costs. The registrar of the court was made to put up a notice to that effect. That decision did not violate section 18(2) of PNDCL 284. It was for that reason that the respondent did not file any application in that regard. And the onus or burden of providing payment of the sum of GH¢50 as determined by the court lay on the respondent who bore the burden of persuasion under sections 10 and 14 of the Evidence Act, 1975 (NRCD 323). On the evidence, the court would make a finding that the respondent had failed to pay the sum of GH¢50 as
security for costs as determined by the court in violation of section 18(2) of the Representation of the People Law, 1992 (PNDCL 284). The effect of the failure to pay the security for costs as required by section 18(2) of PNDCL 284 was that the petition filed by the respondent on 21 January 2009 was invalid. Consequently, the court had no jurisdiction to determine the petition as the condition precedent to vesting the court with jurisdiction had not been complied with. The application to set aside the petition would therefore be granted. Majolagbe v Larbi [1959] GLR 190; Odoi v Hammond [1971] 1 GLR 375 at 395, CA; Republic v District Magistrate, Accra; Ex parte Adio [1972] 2 GLR 125, CA; and Heward-Mills v Heward-Mills [1992-93] 1 GBR 234, CA cited.
DANI BAAH v HALUTIE, ELECTORAL COMMISSION & ATTORNEY-GENERAL (APPLICATION TO SET ASIDE PETITION - ELECTORAL COMMISSION APPLICANT)

HIGH COURT, WA
(E12/10/08)

30 March 2009

KOOMSON J

Practice and procedure – Appearance – Unconditional and conditional appearance – Entry of – Unconditional appearance to election petition entered for Electoral Commission by Principal State Attorney – Subsequent conditional appearance entered for same Electoral Commission by private solicitor – No explanation for double entry of appearance - Unconditional appearance being first in time to prevail - Unconditional appearance struck out in the circumstances.

Practice and procedure – Appearance – Conditional appearance – Application to set aside writ or petition – Defendant entitled to apply to court to set aside writ before entry of appearance or after entry of conditional appearance within fourteen days under Order 9, r 8 – Entry of conditional appearance not precluding defendant to set aside writ for want of jurisdiction – High Court (Civil Procedure) Rules, 2004 (CI 47), Order 9, r 8.
Elections - Parliamentary election - Publication - When proper - Power to publish results of parliamentary election vested in Electoral Commission under CI 15, regs 41 and 46 - Mode of publication in Gazette or in radio, newspapers, television or in any other most communication as authorised Electoral Commission only - Petition filed before publication of Parliamentary results premarital and improper - Constitution, 1992, art 51.

Elections - Parliamentary election - Validity - Grounds for - Security for costs - Duty of petitioner to satisfy court on payment of security for costs - Need for tendering of evidence of payment of costs in form of affidavit or receipt - Failure to pay security for costs violating section 18(2) of PNDCL 284 – Evidence Act, 1975 (NRCD 323), s 14 – Representation of the People Law, 1992 (PNDCL 284), s 18(2).

It is provided by section 18 of the Representation of the People Law, 1992 (PNDCL 284), that:

“18. Time for presentation of petition

(1) An election petition shall be presented within twenty-one days after the date of the publication in the Gazette of the result of the election to which it relates, but a petition questioning an election on an allegation of corrupt practice and specifically alleging a payment of money or any other award to have been made by the person whose election is questioned or to have been made on behalf of and to that person’s knowledge, may
be presented within twenty-one days after the date of the alleged payment.

(2) The presentation of an election petition under subsection (1) is not valid unless within the time specified in subsection (1), the petitioner gives as security for costs an amount of money determined by the High Court.

(3) The time limit provided by this section for the presentation of an election petition shall not be extended.”

It is also provided by the High Court (Civil Procedure) Rules, 2004 (CI 47), Order 9, r 8 that:

“8. Application to set aside

A defendant may at any time before filing an appearance, or, if the defendant has filed a conditional appearance, within fourteen days after filing appearance apply to the court for an order to:

(a) set aside the writ or service of the writ;
(b) declare that the writ or notice of it has not been served on the defendant; or
(c) discharge any order that gives leave to serve the notice on the defendant outside the country.”
Following the December 7, 2008 Parliamentary Elections conducted by the Electoral Commission of Ghana in the Sisala East Constituency, Mr Moses Dani Baah, the Peoples’ National Convention (PNC) Candidate, filed an electoral petition in the High Court, Wa on 26 December 2008 asking for, inter alia, the following reliefs: (i) a declaration that the Parliamentary Election held on 7 December 2008 for the Sisala East Constituency was void; and (ii) an order of perpetual injunction restraining the first respondent herein, Alhassan D Halutie, from taking a seat as a Member of Parliament pursuant to the said December 7 Election.

On 29 December 2008, the third respondent to the petition, the Attorney-General, was served with the petition. Then on 30 December 2008, the first respondent, Alhassan D Halutie, was also served. On 31 December 2008 the second respondent, ie the Electoral Commission was served. On 8 January 2009, the Attorney-General entered an appearance for the second and third respondents. However, on 14 January 2009, Lynes, Quashie-Idun & Co, a firm of solicitors in Accra, filed a conditional appearance for and on behalf of the second respondent Electoral Commission. This was followed with a motion praying for an order to set aside the service of the petition on the grounds, inter alia, that: (a) under the provisions of section 18 of the Representation of the People Law, 1992, (PNDCL 284), an election petition might be brought within twenty-one days after the publication in the Gazette of the result of the election to which it related; (b) the Gazette notice containing the results of the December 2008 Elections relative to the petition was yet to be published; and (c) the petitioner had not indicated payment of security for
costs as required by the provisions of the Representation of the People Law, 1992 (PNDCL 284), s 18(2).

The petitioner, Mr Dani Baah, raised a preliminary objection to the application to set aside the petition on the grounds that: (a) the requirement for publication in the *Gazette* was met when the said publication was publicly announced in various TV and Radio Stations and National Newspapers; (b) since the Attorney-General had entered an unconditional appearance for the applicant, Electoral Commission, it was precluded from entering a conditional appearance to enable it file the motion, pursuant to the conditional appearance; and that having entered an unconditional appearance, the applicant could not apply to the court to set aside the petition; and (c) he, the applicant, had paid Gh¢50 as security for costs, and that if the applicant Commission had conducted a search at the registry of the court, it would have been disclosed to the applicant that the security for costs had been paid.

*Held, dismissing the preliminary objection raised by the petitioner but allowing the application by the Electoral Commission to set aside the petition for the following reasons*: (1) there was no doubt that two separate appearances had been made on behalf of the applicant, Electoral Commission. The first one was an unconditional appearance entered by the Principal State Attorney for the Upper West Region. The second was a conditional appearance entered on behalf of the applicant by Lynes, Quashie-Idun & Co, a firm of solicitors. The applicant had not offered any explanation to the double entry of unconditional and conditional appearance filed on its behalf by the Attorney-General’s Department and Lynes, Quashie-Idun & Co respectively. In the absence of any explanation
or evidence to the contrary, it would be presumed that the applicant had entered two separate appearances through different solicitors. In a situation like that, the first in time, ie the unconditional appearance should prevail; and the second appearance, ie the conditional appearance would be struck out.

(2) The effect of the provision in Order 9, r 8 of the High Court (Civil Procedure) Rules, 2004 (CI 47), was that a defendant might apply to the court to set aside a writ even before entry of an appearance or he might enter a conditional appearance and then move the court to set aside the writ. However, that should be done within fourteen days after entering the conditional appearance. It was to be noted further that Order 9, r 8 of CI 47 was not exhaustive of the situations giving rise to a court setting aside a writ. Where a court had no jurisdiction to determine a cause or matter, the fact that a defendant had entered an unconditional appearance would not preclude the defendant from applying to the court to set aside the writ. The issue of jurisdiction could be taken at any level or stage of the litigation. Kwafroamoah III v Sakrakyie II [1996-97] SCGLR 199 at 208; Amoasi III v Twintoh [1987-88] I GLR 554, SC; Tema Development Corporation v Djabatey [1992] 1 GLR 228; and Avadali v Avadali [1992-93] 2 GBR 733 at 737 cited.

(3) From the provisions in regulations 41 and 46 of the Public Elections Regulations, 1996 (CI 15), the power to publish the result of any parliamentary election has been vested in the Electoral Commission. Regulation 41(2) has provided that the publication should be done in the Gazette. However, regulation 46 has empowered the Commission to choose to cause the publication in the Gazette or in the national dailies,
television and radio stations or other forms of mass communication. From the language of regulation 46, it was clear that it was only the Electoral Commission that had the power to do that publication in the Gazette, radio, newspapers, television and any other mass communication. Where, therefore, any other person whether a reporter, journalist, politician, social commentator, sat on radio, television or put in the print media any results emanating from a parliamentary election conducted by the Electoral Commission, that publication could not qualify as a publication as envisaged by the Electoral laws, especially the Representation of People Law, 1992 (PNDCL 284), as amended and CI 15 made by the Electoral Commission pursuant to its powers under article 51 of the 1992 Constitution.

In the instant case, the petition of the respondent had been filed on 26 December 2008. The official gazetting of the results was also done on 5 January 2009. It was therefore clear that at the time the petition was filed, the publication in the Gazette had not been done by the Electoral Commission. Consequently, the petitioner could not file a petition before the official publication of the results in the Gazette. The petition filed by the respondent on 26 December 2008 at the registry of the court was therefore premature.

Per curiam. Counsel for the respondent to the application to set aside the petition contended that after the December 7, 2008 Elections, most newspapers, radio and FM stations and television stations carried the results of the Parliamentary Elections including that of the Sisala East Constituency. Counsel, however, could not say that these news items in the various media houses that he is referring to were official publications
made by the Electoral Commission. In my view, the only official publication made by the Electoral Commission was that made in the *Gazette* of 5 January 2009. To suggest that newspapers publication, television news, radio and FM Stations collation of the parliamentary results of the December 7, 2008 General Elections amounts to publication in lieu of *gazetting* by the Electoral Commission, with the greatest respect to counsel for the respondent, shall be a recipe for confusion and chaos in our electoral system and infantile democracy.

(4) The court would reject the contention of the respondent that he had paid Gh50 as security for costs and that if the applicant, Electoral Commission, had conducted a search, it would have been disclosed to the applicant that the security for costs had been paid. The duty to satisfy the court that the security for costs had been paid did not lie on the applicant. The onus was on the respondent, ie the petitioner, who was making the assertion that he had paid the security for costs. The burden of persuasion was on the respondent in terms of section 14 of the Evidence Act, 1975 (NRCD 323). In the instant case, all that the respondent had succeeded in doing was to state in the submissions of his counsel that he had paid the security for costs. No evidence either in the form of an affidavit or a receipt had been filed or tendered to demonstrate evidence of payment. The mere assertion by counsel for the respondent in his written submissions that the security for costs had been paid could not constitute proof of payment. The failure to pay was in violation of section 18(2) of the Representation of the People Law, 1992 (PNDCL 284). *Bisi v Tibiri alias Asare* [1987-88] 1 GLR 360, SC; and *Magolagbe v Larbi* [1959] GLR 190 at 192 cited.
OFEI AGYEMANG v ELECTORIAL COMMISSION & IC QUAYE

HIGH COURT (FAST TRACK DIVISION) ACCRA

(Suit No AE 10/2009)

12 March 2009

NOVESI-ARYENE J

Practice and procedure – Appearance – Late appearance – Time limits for appearance – Provision in Order 9, r 6(2) of CI 47 governing application brought by party after entry of late appearance – Effect of non-compliance with mandatory provision in Order 9, r6(2) – High Court (Civil Procedure) Rules, 2004 (CI 47), Orders 1, r1(2), 8, 9, rr 5(a) and 6(2), 81, rr 1 and 2(b).

Elections – Parliamentary election – Validity – Grounds for – Security for costs – Payment for - Petition invalid unless petitioner pays security for costs within twenty-one days from date of publication of results – Need for ex parte application for court to determine security for costs under section 18(2) of PNDCL 284 – Representation of the People Law, 1992 (PNDCL 284), s 18(2) – CI 47, Order 9, r 6(2).

It is provided by section 18 of the Representation of the People Law, 1992 (PNDCL 284) that:

291
“18. Time for presentation of petition

(1) An election petition shall be presented within twenty-one days after the date of the publication in the Gazette of the result of the election to which it relates, but a petition questioning an election on an allegation of corrupt practice and specifically alleging a payment of money or any other award to have been made by the person whose election is questioned or to have been made on behalf of and to that person’s knowledge, may be presented within twenty-one days after the date of the alleged payment.

(2) The presentation of an election petition under subsection (1) is not valid unless within the time specified in subsection (1), the petitioner gives as security for costs an amount of money determined by the High Court.

(3) The time limit provided by this section for the presentation of an election petition shall not be extended.”

It is also provided by Order 9, r 6(2) of the High Court (Civil Procedure) Rules, 2004 (CI 47) that:

“6(2) Except as provided by subrule (1), nothing in these rules shall be construed as precluding a defendant from filing appearance after the time limited for appearance, but if the defendant does so the defendant shall not, unless the Court otherwise orders, be entitled to serve a defence or do
any other thing later than if the defendant has appeared within that time.”

The plaintiff, Mr Ofei Agyemang, lost the 7 December 2008 Parliamentary Elections for the Ayawaso Central Constituency in the Greater Accra Region. On 23 January 2009, the plaintiff filed in the High Court (Fast Track Division) Accra, challenging the results of the election. The Electoral Commission and the winning candidate, Sheikh IC Quaye, the first and second respondents to the petition respectively, subsequently filed an application in the trial High Court for an order to strike out the petition on the grounds of non-compliance with section 18(2) of the Representation of the People Law, 1992 (PNDCL 284). Both respondents to the petition entered appearance to the petition out of time, contrary to Order 9, r 5(a) of the Rule of Court under which the time limited for appearance was eight days after the service of the writ unless otherwise extended by the court. The petitioner opposed the application for striking out on the grounds that, having entered appearance out of time, the application was incompetent for non-compliance with rule 6(2) of Order 9 of the High Court (Civil Procedure) Rules, 2004 (CI 47) (reproduced above).

Held dismissing the application: (1) the court would uphold the submission by counsel for the petitioner that under Order 9, r 5(a) of the High Court (Civil Procedure) Rules, 2004 (CI 47), the time limited for entering appearance whether conditional or otherwise was eight days after the service of the writ. A defendant, who has entered conditional appearance, had fourteen days after entering appearance, to challenge the
writ or the court’s jurisdiction under Order 9, r 8. And where a defendant has entered late appearance (as in the instant case), the provision governing bringing an application before the court was Order 9, r 6(2) which was mandatory. However, non-compliance with Order 9, r 6(2) of CI 47 was not so fundamental as to go to jurisdiction; neither was it a breach of a statute nor a breach of the rules of natural justice. It would defeat the rationale for inserting Orders 1, r 1(2) and 81, r 1 into CI 47, if the court should declare the instant application a nullity. The court would, in the exercise of its discretion under Order 81, r 1(1) and (2)(b) waive non-compliance with Order 9, r 6(2) and determine the respondents’ application to strike out the petition subject to costs. Republic v High Court, Accra; Ex parte Allgate Co Ltd (Amalgamated Bank Ltd Interested Party) [2007-2008] SCGLR 1041; and dictum of Lord Collins MR in In re Coles and Ravenshear [1907] 1 KB 1 at 4 cited.

(2) The provisions in section 18 of the Representation of the People Law, 1992 (PNDCL 284) were clear. An aggrieved person had twenty-one days from the date of publication of the results of the elections in the Gazette, to bring an action. However, under section 18(2) of the PNDCL 284, the petition would be invalid unless the petitioner paid security for costs within the period; such security for costs was to be determined by the High Court. A petitioner did not have to serve the respondent, wait for him to enter appearance before making the application. That was because security for costs was a pre-condition to the validity of the petition and it was a condition that he did not need the presence of the respondent to satisfy. An aggrieved person must lodge his petition within the twenty-one days. He must soon thereafter (within the twenty-one days) make an
ex parte application to the court under section 18 (2) of PNDCL 284, for
the court to determine security for costs. In the instant case, what the
petitioner did was to disregard the clear and mandatory provisions in
section 18 of PNDC 284. The mere lodgment of the petition at the registry
of the court within twenty-one days was not sufficient compliance with
the requirements of the Law; neither was the payment by the petitioner of
20,000 cedis or Gh2 so long as it was not the court that determined the
amount of money paid.

Per curiam. It has been urged on this court that the provisions of
section 18(2) are not mandatory because the word “is” has been used
instead of “shall” therefore non-compliance is not fatal. To construe the
meaning of subsection (2) of section 18, it is imperative to look at the
section as a whole and the intent of the legislature. The object of
interpretation is to discover the intention of Parliament and the intention
of Parliament can be deduced from the language used. See the
authoritative Book Maxwell on Interpretation of Statutes (12th ed) by J
Langon at page 1. Our courts have also held that where the language used
in an enactment is clear and unambiguous, its application cannot lead to
absurdity therefore interpretation does not arise. It is my view that the
words “is not valid” in the subsection (2) of section 18 of PNDCL 284
under inquiry are clear and capable of only one meaning and that is that it
is mandatory that the amount of money is determined by the High Court
and paid within twenty-one days. The language is peremptory and the
maturity of time for lodging the petition cannot be divorced from the time
for giving of security for costs. Reading the law as a whole, it is clear that
the legislature intends that election petitions are expeditiously dealt
with... In the matter before this court, though both parties had not complied with one rule or the other, non-compliance by the respondents of the provision in Order 9, r 6(2) of the High Court (Civil Procedure) Rules, 2004 (CI 47) is not fatal because their application is saved by Order 81 of the Rules of Court. On the other hand non-compliance on the part of the petitioner is fatal, as the defect is incurable under sections 18(2) and (3) of the Representation of the People Law, 1992 (PNDCL 284). The language of the law is peremptory and cannot be dispensed with by the court...
SALIFU v ELECTORAL COMMISSION & AMBROSE DERY  
(APPLICATION FOR JOINDER AS CO-PETITIONER –  
KUNBUOR APPLICANT)

HIGH COURT, WA  
(Suit No E12/12/2009)

26 February 2009

KOOMSON J

Elections – Parliamentary election – Petition – Joinder – Affidavit in support of application – Objection to joinder founded on defective affidavit – Objection not raised timeously – Trial court allowing applicant for joinder to rely on defective affidavit before raising objection – Effect of – Need for trial court to allow use of defective affidavit to achieve speedy and effective justice – High court (Civil Procedure) Rules, 2004 (CI 47), Orders 1, r 1(2), 20, r 7 and 81, r 1(1).

Elections – Parliamentary election – Joinder – Grounds and purpose of joinder – Joinder of applicant not the only means of bringing vital information and evidence on pending petition to attention of court – Joinder of applicant unnecessary for effectual and complete determination of issues in the circumstances of the case – Joinder to be refused where grant would assist applicant to pursue cause of action which is statute-barned.
Elections – Parliamentary election – Petition – Time for presentation of petition – Presentation within twenty-one days subject to exception specified in section 18 (1) of PNDC 284 – Representation of the People Law, 1992 (PNDC 284), ss 1 and (3).

It is provided by section 18 of the Representation of the People Law, 1992 (PNDC 284), that:

“18. Time for presentation of petition

(1) An election petition shall be presented within twenty-one days after the date of the publication in the Gazette of the result of the election to which it relates, but a petition questioning an election on an allegation of corrupt practice and specifically alleging a payment of money or any other award to have been made by the person whose election is questioned or to have been made on behalf of and to that person’s knowledge, may be presented within twenty-one days after the date of the alleged payment.”

(2) The presentation of an election petition under subsection (1) is not valid unless within the time specified in subsection (1), the petitioner gives as security for costs an amount of money determined by the High Court.

“(3) The time limit provided by this section for the presentation of an election petition shall not be extended.”
It is also provided by the High Court (Civil Procedure) Rules, 2004 (CI 47), Orders 1(2), 20, rr 4(2) and 7 and 81, r 1(1) respectively that:

“1 (2) These Rules shall be interpreted and applied so as to achieve speedy and effective justice, avoid delays and unnecessary expense, and ensure that as far as possible, all matters in dispute between parties may be completely, effectively and finally determined and multiplicity of proceedings concerning any of such matters avoided.”

“20, r 4(2) Every Affidavit shall be expressed in the first person and shall state the place of residence of the deponent and the occupation of the deponent or, if the deponent has none, the description of the deponent and whether the deponent is, or is not employed by a party to the cause or matter in which the affidavit is sworn.”

“7. Use of defective affidavit

An affidavit may with leave of the Court be filed or used in evidence notwithstanding any irregularity in its forms.”

“81, r 1(1) Where, in beginning or purporting to begin any proceedings or at any stage in the course of or in connection with any proceedings, there has, by reason of
On 7 December 2008, the Electoral Commission (hereinafter referred to as the first respondent), held Parliamentary Elections in the Lawra/Nandom Constituency. After the said elections, the Electoral Commission published on 5 January 2009 in the Gazette, declaring Mr Ambrose Dery (hereinafter referred to the second respondent), duly elected. On 21 January 2009, the petitioner herein, Mr Yaw Robert Salifu, who described himself as a registered voter with Voters Registration No 11331228 (9D) and the Organising Secretary of the National Democratic Congress (NDC) for the Lawra/Nandom Constituency, filed a petition in the High Court, Wa, seeking, inter alia, the following reliefs:

(i) a declaration that the results of the Parliamentary Elections held on 7 December 2008 at the Lawra-Nandom Constituency by the Electoral Commission was null and void;

(ii) an order directed at the first Electoral Commission to organise, conduct and supervise fresh elections between the contestants to the Lawra-Nandom Parliamentary Seat; and

(iii) an order be made restraining the second respondent, Ambrose P Dery, whether by himself, his party, agents or others from
holding the second respondent out as the Member of Parliament for the Lawra-Nandom Constituency.

Subsequently, after the filling of the petition by Mr Salifu, ie on 11 February 2009, Dr Benjamin Kunbuor (hereafter referred to as the applicant), filed an application in the same High Court, seeking an order joining him as a co-petitioner to the suit. In his affidavit in support of the application, the applicant deposed, inter alia, to the following facts, namely: that he was the Parliamentary Candidate for the National Democratic Congress (NDC) in the Elections held on 7 December 2008; that he, the applicant, Dr Kunbuor, had sufficient interest in the outcome of the said petition as one of the Parliamentary Candidates who had contested the said election; and that his joinder to the petition would immensely assist the court to effectively and completely determine the issues raised by the petition without any delay whatsoever.

The second respondent, Mr Ambrose P Dery, opposed the application on grounds of law, namely, that: (a) the affidavit in support of the application filed by the applicant was incompetent, having been filed in violation of Order 20, r 4(2) of the High Court (Civil Procedure) Rules, 2004 (CI 47) (reproduced above); (b) that the applicant was barred from mounting an action in respect of the Parliamentary Election held on 7 December 2008, having gone to sleep until the twenty-one days period stipulated by the law, ie section 18(1) of the Representation of the People Law, 1992 (PNDCL 284), within which he could issue a petition had expired; and (c) that the depositions contained in the supporting affidavit did not justify the grant of the application.
Held, dismissing the application for joinder to petition the pending
before the court: (1) the objection raised by the second respondent to the
petition relating to the defectiveness of the applicant’s affidavit in support
of the application for joinder, had not been not raised timeously. Counsel
for the second respondent had waited for counsel for the applicant to
argue his motion by relying on the said defective affidavit before raising
the objection. In any case, the trial court, having allowed the applicant to
rely on the affidavit which was defective in terms of Order 20, r 4(2),
must be deemed to have granted him the leave to use same in the case in
conformity with Order 20, r 7 of the High Court (Civil Procedure) Rules,
2004 (CI 47). Even if the objection to the use of the defective affidavit
had been raised earlier on, the court would have would have granted the
applicant the leave to use the affidavit so as to achieve a speedy and
effective justice as envisaged by Orders 1, r 1(2), 20, rr 4(2) and 7 and 81,
r 1(1) of CI 47.

(2) The power of a court to grant an application for joinder was in
respect of parties who ought to have been joined or whose presence before
the court might be necessary in order to enable the court effectually and
completely adjudicate upon and settle all questions involved in the cause
or matter. In other words, the court might add all persons whose presence
before the court was necessary in order to enable it effectually and
completely to adjudicate upon and settle all the questions involved in the
cause or matter before it would be refused. The purpose of the joinder,
therefore, was to enable all matters in controversy to be completely and
effectually determined once and for all. But that would depend upon the
issue before the court, ie the nature of the claim. In re Application for
(3) In the instant application, the applicant had contended that he was seised with vital information and evidence which would assist the court to effectually and completely determine the issues involved in the case. Even if the applicant’s contention were true, the joinder of the applicant to the instant petition was not the only means for him to bring to the attention of the court the said vital information and evidence. Since from his affidavit in support, the applicant had deposed to the fact that he was the Parliamentary Candidate for the National Democratic Congress (NDC) during the 7 December 2008 Parliamentary Election held in the Lawra-Nandom Constituency; and since the petitioner, Mr Yaw Robert Salifu, in his petition had pleaded in paragraph (2) thereof that he was also, inter alia, the Constituency Organising Secretary and a Member of the Collation Team for the National Democratic Congress (NDC) in the Lawra-Nandom Constituency for the 7 December 2008 Elections, it could be said that the petitioner was no stranger to the applicant. In fact they could be described as bedfellows fighting for a common cause. In that regard, it should not be difficult for the applicant to testify as a witness for the petitioner if he was not joined to the suit as a co-petitioner. It was clear, therefore, that the applicant’s joinder was not necessary for the effectual and complete determination of the issues.
(4) The combined effect of section 18 (1) and (3) of the Representation of the People Law, 1992 (PNDCL 284), was that after the expiration of the twenty-one days, any person who had a cause of action arising out of the parliamentary election held for a particular given constituency could not, except where the person was alleging corrupt practice and specifically alleging a payment of money or other award, bring an action to seek judicial reliefs; and no court had the power to even extend the time.

*Per curiam.* In my view, the applicant having been caught by time has awaken from his slumber and now wants to pursue his cause of action by seeking an order of the court to join him to the suit. It must be noted that a court of law cannot be simply over-reached by such planks. To grant the application would amount to assisting the applicant to surreptitiously pursue a cause of action, which is now statute-barred. In my opinion, a court of law should not be an avenue for persons who are tardy to pursue rights, which they have failed to prosecute when the cause of action arose but went to sleep. I am in total agreement with counsel for the second respondent on his submission that the effect of granting the application is to permit the applicant to pursue his cause of action through the “back door.” I concede that the applicant has an interest in the outcome of the case. However, having an interest in the outcome of a case alone cannot justify the grant of joinder. The circumstances of the case must be examined... I cannot therefore exercise my discretion in the particular circumstances of this case to grant the application for equity aids the vigilant and not the indolent. Where a party sleeps on his rights he cannot run to equity for relief.