

Transfer of Power to a New Administration in Ghana's Democratic System: The Way Forward

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Introduction

Mankind's quest for good governance has yielded all forms of political organizations in different epochs in the political history of the world. This ranges from different shades of authoritarianism, democracy and socialism. In contemporary times democracy has emerged as the most acceptable form of government which can effectively safeguard the fundamental human rights of citizens, although the evidence for this assertion is mixed (Bohman, 2010; Gilbert, 2010; Ojatorotu, 2009).¹ With the fall of socialism, democracy is considered unparalleled to any form of government and believed to have brought an end to the history of the world as far as political organizations are concerned. There have been three waves of democratization processes in the world according to Huntington's widely accepted accounts. First, there was the long wave of democratization which took place between 1828 and 1926 involving the revolutions in America and France. The second wave was a short one, which took place from 1943-1962. It was due to decolonization and the end of the Second World War, when the powers that lost the war together with the countries and colonies that overrun were democratized. The third wave witnessed 30 countries in Asia, Europe, and Latin America becoming democratized beginning in 1974 (Huntington, 2009). The demonstrations in the Middle East; Tunisia, Egypt, Yemen, Algeria, Bahrain, Libya, which have brought down some long dictators are probably pointing to the possibility of a fourth wave of democratization.

¹ Article 36(2)(e) of the Constitution of Ghana states "The State shall, in particular, take all necessary steps to establish a sound and healthy economy whose underlying principles shall include— the recognition that the most secure democracy is the one that assures the basic necessities of life for its people as a fundamental duty.

Ghana's democratic wave started at independence from the British colonial rule in 1957. Just like some African countries, there was a reverse wave and Ghana drifted into autocracy by becoming a one party state (Constitution (Amendments) Act, 1964; Keller, 2007) with subsequent incessant coup d'états. In 1966 there was a military-police take over from the government of the first republican constitution which led to the establishment of the National Liberation Council (NLC). In 1969 the second republican constitution was adopted and Ghana returned to a democratic rule. The government of the second republic was toppled in 1972 by the military which formed the government of the National Redemption Council. There were palace coups d'état with successive military regimes; the Supreme Military Council (SMC I), established in October, 1975, the Supreme Military Council (SMC II) established in July, 1978 and the Armed Forces Revolutionary Council (AFRC) formed in June 1979. Another attempt at democratization was made and Ghana adopted the third republican constitution in September, 1979 with the presidential system of government which for the first time achieved total separation between the executive and parliamentary arms of government. This was toppled in 1981 by the military which formed the government of the Provisional National Defence Council (PNDC). Since then Ghana remained under military rule until 1992 when a new constitution ushered in the fourth republic with an elected representative government formed in 1993. The PNDC government metamorphosed into a political party, National Democratic Congress (NDC) which contested and won the elections to form the first government of the fourth republican constitution ((Ninsin, 1998; Nkansah, 2008; Oquaye, 2004). Ghana is thus in transition from a military/authoritarian regime to a democratic regime. The governments of the fourth republic have so far served their full terms.

There is the fifth government of the fourth republic and Ghana as a nation experienced democratic succession by changing government through the ballot box for the first time in 2001, forty-three years after independence. This occurred, when the National Patriotic Party (NPP) emerged a winner in the 2000 general elections and took the political baton from the NDC. The wheels of power turned again when the NDC won the 2008 elections and took over the political baton from the NPP in January 2009. Ghana passed Huntington *two-turnover test* for democratic consolidation. Huntington maintained that democracy is consolidated when the government which wins power in the initial election loses power to another party in the second and the winner of the second election also loses power in subsequent elections (Huntington, 1993). Ghana has been ranked the 6th best governed country in Africa on the 2009 Index of African governance results and rankings at the Kennedy School of Government, Harvard University (Rotberg & Gisselquist 2009). Yet, the experiences of these two transitions smacked of military take over, leaving in their wake “acrimony, tension and ill-feeling” and, polarizing the country in the negative sense. Similarly, in Ivory Coast, Uganda, Kenya, Zimbabwe, and Sudan the process of determining the next leader has resulted in political upheavals. The difficulties of democratic successions notwithstanding, the phenomenon is under studied generally probably because it is taken for granted in advanced democracies.

In the African contexts the issue of democratic succession has been dismissed by some writers as not worthy of study because there is “no ideological component to African government and succession” due to “personalism in African politics”. In that, government in Africa is “conducted for the leaders themselves”. Therefore leadership change is nothing more than “a continuing parade of self serving politicians” (Jackson and Rosberg as cited in Govea & Holm, 1998, p.131; Zolberg as cited in Govea & Holm, 1998, p.131). Govea and Holm (1998) took a

contrary view and advocated for the study of leadership change even if it involves personalism, because it provides a yardstick by which democracy may be measured in terms of progress. Again, it is probably the only time debates on ideological pursuits become possible in the African contexts. Again, personified leaders approaches to linkage building for support from civil society may yield or depict an ideology which could be picked up by other or subsequent political systems. Segal(1996) sums up the importance for studying succession in Africa when he observed “Succession events in Africa are billiard balls bouncing on and off neighbouring and even distant states...Treating Africa as a network of political impacts and influences often centered on succession makes sense”(p. 371). The position of this paper is that succession is a significant component of the ongoing democratization processes in Africa and has been a major factor impeding democratization hence worth studying.

It should also be observed that the few studies which have been conducted into specific African situations have also been limited in scope to only elections. Yet the transitional issues involved in succession could be arising from (1) How a leader emerges—elections; (2) The processes by which the outgoing hands over the machinery of government to the incoming; (3) The incoming government taking over power to form government and administering the state; and (4) The consequence of the appearance of a new president—socio-economic, political and legal. The dynamics occasioned in each of these phases may resonate positively or negatively to enhance or threaten democracy. In the case of Ghana, the Institute of Economic Affairs has proposed a Bill (*Presidential Transition Bill, 2009*) based on its engagement with political parties on the problem as a way out. The presentation will focus on the second and third aspects of Ghana’s transitions which basically deal with the transfer of power to a new government in Ghana’s democratic system. It seeks to identify the challenges of the transitions, the sources of

the challenges and their implications for Ghana's democracy and the way forward. Also, the proposed *Presidential Transition Bill, 2009* will be analysed. The outcome should lead to policies and good practices to facilitate smooth transitions in the future. Lessons learned from Ghana's experiences will also inform the way forward in addressing some of the political upheavals and civil unrest associated with political transitions in Africa.

In terms of methodology, the study was anchored in the qualitative framework with data from interviews, focus group discussions and documentary sources. Participants were political party activists, civil society activists, academics and students of law and political science. Findings were validated through member checking.

Democracy, Succession, and Transition

Democracy has been defined by different people at different times within different political epochs with varied forms of democratic institutional designs i.e. presidential, parliamentary, or a fusion of both (Huntington,2009). The current theories on democracy recognise that the utopian view of democracy as self legislation or self rule is no longer tenable in view of the complexity of modernity and political realities on the ground (Bohman, 2010; Warren, 2010). There has been a paradigm shift in the conceptualization or theorization of democracy. The new world view of democracy emphasises self determination and reflective institutions which allow for revision of decisions and procedures by a "deliberative generation". Within the contexts of this paper, Bohman's definition of democracy is being adopted as a "set of institutions by which individuals are empowered as free and equal citizens to form and change the terms of the common life together, including democracy itself. In this sense, democracy is

self reflexive and consists of procedures by which its rules and practices are made subject to the deliberation of citizens themselves” (2010, p.2).

The ideological difference in the conceptualization of democracy notwithstanding, one of the institutional core of democracy which is generally accepted as basic to all forms of democracy is periodic elections often regulated by law. Huntington observed “Of greater importance is that in all democratic regimes the principal officers of government are chosen through competitive elections in which the bulk of the population can participate” (2009, p. 32). Election is the badge of democracy. In the view of Obasanjo the former president of Nigeria, the minimum standard of democracy should contain among others; “Periodic elections of political leadership through the secret ballot; popular participation of all adults in the elections process; choice of programmes and personalities in the elections; an orderly succession” (Cited in Teshome, 2008, p.3). Thus, the principal apparatus that is the Executive and Legislative arms are subjected to periodic change and reconstitution. The term of office of the principal members is fixed and a process is put in place to determine the next leader; individual and or collective.

Implicit in democracy therefore is the element of succession. This happens when a change of the principal leader with personnel decision making power of hiring and firing as well as that of policy making powers occurs within the contemplation of the law. The trigger for succession in democracy is elections or succession without elections by virtue of the death or the removal from office of an incumbent (Abbot, 2005, p. 627). This should be distinguished from a situation where the maximum leader could be replaced by other means not within the contemplation of the law ie coups d'état. Generally, Segal (1996, 373-375) identified and classified events that triggered political succession in Africa as ‘Death in office’, ‘Assassination’, ‘Coups and post coup regimes’, ‘Electoral succession’, ‘Designated successor’, ‘Civil wars’ and

‘Power sharing’. The nature of succession is a pointer to how a political system is being institutionalised. In theory, Govea and Holm (1998) distinguished between two types of leadership succession as institutionalised succession and un-institutionalised succession. Institutionalised succession is achieved by a selection process laid down by law with a peaceful and orderly transition, whereas the reverse is the case for the other type.

Succession involves “a transition from one leader to another” (Govea & Holm, 1998, p.132). By the American President Transition Act of 1963 (as amended) transition is concerned with “the orderly transfer of executive power in connection with the expiration of the term of office of a President and the inauguration of a new president” (Section 2). In the words of P V Obeng transition is “a transfer of authority and responsibility within the Executive Arm of the State” (Institute of Economic Affairs Report on Retreat for Political Party Leaders in Ghana, 2006). In a wider sense, transition refers to a change in regime such as from an authoritarian regime to a democratic regime. In this sense, it refers to an era in the development of a country “when conscious efforts are made to overcome a political order characterised by institutional disarray and normative incongruence, recurring political instability, institutional breakdown as well as extreme disorders by substituting it with one that is institutionally coherent and stable...” (Ninsin, 1998, p.4). In this wider sense Ghana as a nation is in transition from an authoritarian rule to a democratic rule and for that matter Ghana is a transitional democracy. In the narrower sense, transition connotes a change from one government to the other within the same regime in a political system and the processes involved in the change.

In this study, transition connotes a change in the narrower sense. Democratic transition within the contexts of this paper therefore refers to the process by which the new or incoming government emerges, the outgoing hands over government to the incoming leadership and the

incoming president in the case of Ghana takes over power to form a new government. Transition therefore covers a time frame, activities and processes to elect a leader and transfer the governance of a country from one administration to another. Abbot et al (2002) maintained that the processes leading to the installation of the new leader legitimizes the succession. The institutionalisation of succession as shown by the nature of transition is a pointer to the prevailing condition of democratization in a given context; whether the system is progressing towards liberalism or a reverse (Govea and Holm, 1998). In the view of Huntington, succession provides a test for adaptability; one of the criteria for institutionalisation in terms of how a system is able to transfer power from one group to the other in the face of the changing social or political contexts. The institutionalisation should be anchored in a clear and unambiguous policy, laid down processes and procedures, and guided by a culture of tolerance, accommodation, and respect for fundamental human rights. These should be reflective in the applicable laws, ideological goals, attitudes, behaviours and practices as discernable during the transitions.

Democratic Succession under the Constitution of Ghana

In Ghana, the constitution provides for a multi party democracy as a form of government. It also provides for how a government should be formed and the process for the emergence of the maximum leader as well as those who qualify to assume the leadership of the country. The constitution mandates that there should be an election every four years to choose a president likewise Members of Parliament. A Ghanaian who is 40 years and above can put himself/herself up to contest for the highest position of the land—the presidency. One can contest as an independent candidate or through a political party platform. The person who obtains “more than ...fifty per cent of the total number of valid votes cast at the elections” (Article 63 (3) of

Constitution of Ghana, 1992) is elected as president. The term of office of the president is fixed for four years with a maximum of two terms. The Electoral Commission is established to conduct the elections periodically to determine the next leader (Chapter 7 of Constitution of Ghana, 1992).

The constitution envisages the appearance of a president by electoral succession. This aside the constitution envisages the appearance of “accidental presidents” or succession by default. This may occur when the position of the president becomes vacant as a result of death, resignation or removal from office by impeachment based on misconduct or ill health and a Vice President assumes control over the state without elections (Article 60 (6) and 69 of Constitution of Ghana, 1992). In the United States there have been such presidents who assumed office either because their predecessors had been assassinated, died or removed from office (Abbot, 2005).² Similarly, in Nigeria the demise of Yar’Adua, a democratically elected president witnessed GoodLuck Jonathan becoming the president without elections. However, the ongoing discourse on succession has not factored in the aspect of succession by default probably because Ghana has so far only experienced electoral succession but not default succession. It is being submitted that succession by default forms an integral part of the succession plan in the constitution and needs to be included in the analysis.

Again, it should be pointed out that by Article 60 (12) & (13) of the Constitution, in a situation where the President and Vice President are unable to perform the functions of their office; the Speaker of Parliament assumes the position of the presidency. But where the Speaker assumes office as a result of the death of the President or Vice President or their removal from office, there shall be a presidential election within three months. The assumption of the Speaker

² Abbot (2005) identified nine such US accidental presidents; Fillmore, Andrew Johnson, Arthur, Theodore Roosevelt, Coolidge, Truman, Lyndon, Johnson and Ford.

of the presidency is for acting purposes not meant to possess and function as president in the technical sense of the word presidency. Succession by the Speaker of Parliament may not be considered in the ongoing discourse on succession.

By the succession plan in the constitution, the categories of succession envisaged may consist of 1) a first time president, 2) a second time president; when a president is re-elected for a second term and 3) accidental presidents— those who assume power without elections due to the death or the removal of the incumbent on grounds of ill health or misconduct. This paper focuses on when a president takes office the first time from an outgoing president. It should also be observed that the transfer may be inter-party; the outgoing and incoming do not belong to the same political party or intra-party whereby the incoming president and the outgoing may be of the same political party. With the transitions under consideration, the outgoing Presidents had served their full constitutionally permitted two terms of office. In each case the Presidents have been returned as flag bearer for a second term. Ghana is yet to experience a transition involving an outgoing President has served for only one term because of losing the general election or because his party did not maintain him/her in the presidential race for a second term.

The change in administration involves; (a) the taking over by a new president the machinery of government, (b) the taking over of the administration of the country and (c) acquiring the status of the president as the commander-in-chief of the Armed Forces as envisaged by article 57 and 58 of the constitution (Presidential Transition Bill, 2008). The outgoing relinquishes all of these. In its ramification, it involves transfer of power and administrative functions and responsibilities and national assets at the national, regional and district levels. It does not involve only structures, processes and procedures for handing over but “dialoguing and confidence-building among the political elites and with the bureaucrats in order

to improve the political conditions for post-election governance and restoration of national cohesion in the country” (Ahwoi, 2009, a p.4).

Dynamics of the Transitions

Transferring Power; NDC to NPP and NPP to NDC

The nature of the experiences of Ghana’s transitions so far has positive and negative aspects as well as challenges. On the positive side, Ghana has experienced colourful presidential inauguration ceremonies to usher Presidents-elects into office to the admiration of the international community. In the same vein, the two transitions witnessed the incumbents’ relinquished power to the presidents’-elects who had been declared winners in the presidential elections by the Electoral Commission. In each of these transitions the political party which lost the elections happened to be the party in government under whose administration the elections took place. This added credibility to the election results. There were visible signs of interaction between the outgoing and the presidents-elect prior to the inauguration in both transitions. The two transitions each had Transitional Committees made up of representatives from both sides to work out the transition. Although they ended up in frustration they constitute efforts made by the actors on both sides of the political divide to engage with each to hand over and to take over as the case may. The seemingly smooth transfer of power did not just occur because the results were announced and the losing party conceded defeat as a matter of natural progression. Although the election results contributed to the transfer of power by Rawlings and Kuffour in 2001 and 2009 respectively, other factors outside the elections results facilitated or influenced the process.

It should be noted that the 2001 transition which ushered in the NPP and saw the NDC out of office was a test case for Ghana's democracy (Gyimah-Boadi, 2001). It is akin to what the United States of America experienced in 1800 in terms of whether the Federalist would transfer power to Jefferson which they did. The NPP had won power from the December, 2000 elections. There were speculations that Rawlings the then president of the NDC government will not hand power to Kuffour the NPP flag bearer, and President-Elect. There were fears, tensions, uncertainties and uneasiness throughout the country and the spotlight was on Ghana. A high level politician disclosed that even though Rawlings had completed his two term of office he was not prepared to hand over power to the NPP. Thus between 28 December 2000 when the results of the run-off for the presidential elections were declared to the inauguration on the January 7, 2000, Ghana was sitting on a time bomb. There were high level backdoor talks and manoeuvres among the actors with a lot of efforts to bring about transfer of power and hence the inauguration—dialoguing.

Another contributing factor was that within the ranks and file of the NDC functionaries were people who were in favour of democracy and were prepared to comply with the dictates of democracy to relinquish power. Rawlings at that time was not the main player and Atta Mills the then flag bearer conceded defeat. Also, the security apparatus of the state especially the army were in support of the transition. Likewise, the people of Ghana wanted a change from the NDC government which had been in power for about nineteen years (eleven years as PNDC military government). Transition was therefore inevitable; it was “an idea whose time has [had] come” and the prevailing atmosphere was in favour of it.

Another reason was that Rawlings had to hand over power and did hand over power as a matter of “honour” and “conscience”. Rawlings and the NDC had a legal and moral obligation to

comply with the dictates of the constitution. In that upon assumption of office, he had sworn to the people of Ghana to enforce the constitution as president and had ruled and governed by the constitution. By the constitution he had to relinquish power. A civil society activist explained that Rawlings and Ghanaians had had a long standing negotiation although informally for his exit and it was time for him to leave. Rawlings took over power in 1979 and handed over to civilian administration the same year. He took power again in 1981 and formed the government of the Provisional National Defence Council (PNDC). Ghanaians clamoured for democracy so the PNDC government facilitated the adoption of a constitution in 1992. With a constitution in place, the PNDC metamorphosed into a political party, the National Democratic Congress (NDC) to contest the 1992 elections with Rawlings as the flag bearer. The NDC won with Rawlings emerging as president to form government. His term of office as president had expired, eight years, the maximum period permitted by the constitution of Ghana. He had had his fair share of the bargaining so he had to respect the deal to relinquish power.

A participant was of the opinion that the eight years of constitutional rule had instilled in Rawlings some democratic ethos to make him respect the constitution in spite of his anti democratic utterances. It was therefore a matter of “honour” and “conscience” that he to hand over power. Moreover, the future after presidency for Rawlings was not gloomy, in that the PNDC /NDC had bargained their exit; the constitution provided them indemnity for what they did or purported to have done as a military regime (Section 34 of the Transitional Provisions of the 1992 Constitution). Furthermore, he retired on his salary and after leaving office his conditions would not be changed to his disadvantage throughout his lifetime (Article 68).

The international community also played a role in facilitating Railings exist by way of an encouragement and ‘expressive’ accolades of his ‘democratic achievements’ by eminent

personalities like President Clinton, Nelson Mandela and Queen Elizabeth of England. The United Nations Secretary-General named Rawlings as one of the three eminent persons appointed to promote volunteerism for the year 2001. This gesture may have helped Rawlings to make up “partially for the loss of power” was this and propelled him to exercise statesmanship and civility towards his political opponents (Gyimah-Boadi, 2001).

In a sense there had been a gradual process of democratization from military to civilian rule and Rawlings and the NDC may have consciously or unconsciously been transformed and hence prepared to hand over power. Timing was of essence. There was no fear of the aftermath; they could therefore make the necessary concessions to quit.

In the case of the 2009 transition, Kuffour made it clear that he would hand over power to any of the candidates the Electoral Commission would announce as the winner of the presidential elections. The NPP for the first time won elections in 2001 to form a government in 2001. After being in power for two terms they lost power. Apart from his own commitment to democratic ethos, Kuffour just like Rawlings had completed his two terms of office and whether his party won or lost he would have to take his exit. He therefore seemed prepared and did not appear worried to take his exit nor that of his party for that matter. This notwithstanding, it appears the generality of the NPP leadership and supporters were shocked and did not seem prepared for the loss. They seemed prepared to win the elections. NPP supporters embarked on demonstrations urging the leadership not to accept the results of the presidential run-off.³ Akuffo-Addo the flag bearer on his part had concerns about the outcome of the elections in some constituencies and the NPP registered their protest through a court action seeking to restrain the

³ See The Ghanaian Times, Friday January 2, 2009, p.4 and p.12

Electoral Commission from declaring the final results.⁴ Election outcome is the trigger for democratic transition. The stalemate created tensions in the country. Just like the 2001 transition, there were talks with the Electoral Commissioner being the chief architect to get the NPP to accept the election outcome which made the 2009 transition possible. Accordingly the NPP flag bearer failed to concede defeat in the technical sense of it, although he gave an acceptance speech. There is a popular perception that the NPP and their supporters coiled to allow the transition because of their own political culture and morbid fear of Rawlings and his supporters. There is the general impression among a segment of the Ghanaian populace that Ghana would have been in flames if the NDC had not assumed power this time around. The populace including the NPP supporters yielded to allow for the transition.

The Issue of Personnel: Who Should Leave and Who Should Remain

A major occurrence associated with the two transitions deals with the issue the categories of public officers who should leave office with the outgoing president and those who should remain in office when the presidency expires. The Constitution and the laws of Ghana clearly indicate which public office positions are political and those that are not. It is clear that ministerial positions are political and ministers of states leave office likewise all political appointees. On the other hand public servants are not politicians and their removal from office is not precipitated by a change of government. Therefore by law there is no ambiguity in terms of the categories of public officers who assume office with the president and those who leave office with the president at the expiration of the presidency. Public servants are immune from party politics (Article 94(4)). In practice however the scenario is different during both transitions. First, public

⁴ See The Ghanaian Times, Friday January 2, 2009, pp.1-3 for details of the NPPs court action seeking to restrain the Electoral Commission from declaring the final results of the 2008 presidential election. Note

servants who were not part of the political ambit of governance were dismissed from office contrary to Article 191 of the Constitution. Article 190 of the constitution list the categories of public services of Ghana.⁵ “Subject to the provisions of the Constitution the “power to appoint persons to hold or act in an office in the public services shall vest in the President”. Article 191 indicates when a public servant leaves office and it states:

A member of the public services shall not be—

- (a) victimized or discriminated against for having discharged his duties faithfully in accordance with this Constitution; or
- (b) dismissed or removed from office or reduced in rank or otherwise punished without a just cause.

As seen from article 191 of the constitution public servant should not be victimized in any way such as having served during the tenure of the outgoing government so long as such an officer has “discharged his duties faithfully” by the Constitution. The fact that a public servant is removed from office upon a just cause presupposes that a determination should be made concerning their stewardship in terms of a cause which justifies their removal. In a constitutional democracy like Ghana such a determination is made by a resort to due process; after they have been given a hearing of some sort. A change in government per se does not warrant their removal. Yet in both transitions, some public servants were removed from office arbitrarily contrary to Article 191 of the Constitution⁶. These officers may have been appointed and served under the outgoing presidents or may have been in office before the assumption of office of the

⁵ By Article 190(1) of the Constitution

⁶ GNA/Reuters , General News | Thursday , 08 Feb 2001 reported that the government had asked seven heads of public institutions to proceed on leave with immediate effect in order to audit the institutions they head. This was when Kuffour had taken over the reins of government in 2001.

outgoing president. Those mostly affected included chief directors and heads of other public institutions/corporations.

Second, there was a dilemma as to the status of certain category of public offices i.e. whether political or otherwise. One of such positions is that of the metropolitan, municipal and district chief executives (MMDCEs) who are at the helm of affairs of the decentralised structure of the country. The constitution is emphatic that these structures are non partisan, and forbids political parties from sponsoring candidates for district assembly elections (Articles 248(1) and(2) of the Constitution). MMDCEs are appointed by the President with the approval of District Assemblies (Article 243(1) of the Constitution), and are removed from office by;

- (a) a vote of no confidence, supported by the votes of not less than two-thirds of all the members of the District Assembly is passed against him; or
- (b) he is removed from office by the President; or
- (c) he resigns or dies (Article 243(3) of the Constitution).

By law the position is not political, although they can be removed by the President at any given time. The expiration of the tenure of the President does not translate to the expiration of the tenure of MMDCEs). Rather the tenure of the MMDCEs was intended to overlap with that of the President. In practice however, the office of the MMDCEs has been used as political offices by all the government of the Fourth Republic (Boateng, 1996; Sandbrook and Oelbaum, 1999). MMDCEs were thus dismissed from office during the two transitions. Writing about this issue Ahwoi (2009, c) a foremost expert on decentralization in Ghana observed:

One of the most unique features of the 1992 Constitution is the phenomenon of a partisan central government superimposed on a non-partisan local government system. Borrowed from Canada, the practice of the system has revealed serious

strains and stresses with the development of certain conventions and practices which appear at odds with the development of certain conventions and practices which appear at odds with the original intentions of the framers of the Constitutions as explained hereunder.

Presidents in the Fourth Republic have made the tenures of office of District Chief Executives (DCEs) and the 30% appointees to the District Assemblies coterminous with their own tenures, contrary to the provisions of the Constitution which require the terms of the Presidents, the District Assemblies and the DCEs to overlap.

The 30% Presidential appointees to the District Assemblies have been converted into avenues “jobs for the boys and girls”, filled almost exclusively by party executives, party apparatchiks and party supporters and sympathisers, thus defeating the original intention of utilising the provision to infuse expertise and skills into the Assemblies and also to give voice to the marginalised, the disadvantaged and the excluded (pp 8-9).

Consequently, during the two transitions the officers involved bore the brunt of the change. They were considered tainted with politics and would not be expected to execute the functions of their office faithfully under the new administration. Consequently the incoming administration could not be expected to work with them. In his attempt to manage the exit of the DCEs, for an

orderly transition in the 2001 President Mills incurred the displeasure of the leadership and foot soldiers of his party.⁷

Another area which became an issue was membership of boards of public institutions. President Mills announced the dissolution of all public boards in the 2001 transitions⁸ which became a subject matter of contention in the court. The issue is whether public boards formed part of the political apparatus or not? This issue still lingers on; probably the court outcome may clarify it.

Further, there were some unpleasant scenarios regarding providers of public services at the basic levels of Ghanaian society. For example those engaged in providing services of some sort to the public under the outgoing regimes such as cleaners of public toilets, drivers of public buses and those providing meals for school children in communities were removed.

Heads of security apparatus became an issue too. As a matter of fact Mills was blasted by Rawlings for letting them hang on, called for the immediate dismissal of the Inspector General of Police the Mills sacked the IGP within 24 hours.⁹

The mode of the removal of public servants took several forms; some were officially asked by the new government to proceed on leave which turned out to be indefinite, some were locked out from their offices and denied entry by armed or macho men, and some were chased out by the supporters of the new government. In fact a public official who had lost his job through the “proceed on leave” mantra during the 2001 transition, rushed to take it back when his party was ushered into power in 2009. In both transitions some of the aggrieved

⁷ Ghanaian Times January 12, 2009, pp.1 and 4 reported of Bolga’s disapproval of Mills directives for the MMDCEs to continue in office until further notice

⁸ See Daily Graphic of Thursday, January 29, 2009 where it is reported that President Mills announced the dissolution of all public Boards.

⁹ The Statesman, Tuesday January 2, 2009, at page 2. reported that the former President Rawlings and leader of NDC called for the immediate dismissal of the Inspector General of Police the Mills sacked the IGP within 24 hours.

persons who lost their jobs sought judicial redress successfully whereas others had their cases lingered on and or were overtaken by events.¹⁰

The personnel problem as identified may have arisen due to the misconception that first, those appointed by an incumbent president should leave at the expiration of the presidency irrespective of the capacity in which one served whether as Ministers or as public servant. This misconception is borne out of the fact that President being the chief administrator of the country is responsible for appointing the key functionaries of the public services of Ghana (Article 195). Hence, once when someone is appointed into public office there is the misconception that the person's tenure is affixed to the presidency and remains and leaves office with the president.

Second, it appears that if one served under the outgoing president such a person was deemed to have been tainted with politics and this real or perceived and the incoming governments did not want to work with them. Some positions though not political had been treated and used by incumbent as political or the occupants of those positions had themselves not conducted their affairs and meshed the office in politics compromising the offices.

Third, there is the fear that those who had worked under the outgoing government will not be loyal to the incoming government. Fourth, in some cases if not all the arbitrary dismissals were borne out of sheer show of power. Fifth, in so many respect it is the way by which the incoming government announced their presence and the new order. In the 2001 transition the PNDC which had metamorphosed as NDC had been in power for over 19 years so when the NPP took power it showed its presence and the new order by getting rid of some public servants. When the NDC took over power in 2009 it was a pay back time. In fact the supporters of the NDC

¹⁰ Okai v. Immigration Service of Ghana (2004/2005) Ghana Law Report, 21; Okudzeto also took the government to court when President Mills dissolved all Public Boards during the 2009 transition and sought to restrain the President from inaugurating the new Board of the Central Bank of Ghana. For Okudzeto was a member of the Bank of Board which had been dissolved by Mills. The matter is still pending in court.

urged Mills to get rid of some key functionaries without delay and show that the NDC was in charge. Finally, there is also the economic dimension of transition. The incoming governments and their supporters considered their emergence as their time and opportunity to benefit from the state resources and the obvious way to achieve that was to get rid of some personnel in order to make room for “The Boys”.

Handing over and Taking Over National Assets

The handing and taking over of national assets became a major issue. In both transitions, some of the outgoing officials attempted or took national assets in their possessions with them. The two transitions also witnessed the seizure of public assets in the possession of the outgoing officials by the incoming governments and their supporters. In some cases personal properties of some outgoing officials were mistakenly taken for public properties and seized. Similarly, vehicles of private individuals were mistakenly taken for official properties and seized. In addition some were thrown out from their official residence. Public buses were forcibly seized from drivers and public toilets were forcibly taken over by the supporters of the incoming governments who chased the workers away.¹¹ The security apparatus i.e. the police had in some cases been involved in this. The incidence of violence and seizures seemed to have been aggravated during the 2009 transitions.

Time Constraint

In both transitions the issue of time constraint between the declaration of the result and the inauguration of the new president did not permit for a smooth transition. For the 2001 transition transfer of power had to be effected within six days and for the 2009 within three days

¹¹ See Ghanaian Times, January 10, 2009 p 24.

after the declaration of the winner. This is so by virtue of the run-off for the presidential elections and the practical implications of Article 63(2) (a) and Article 112 of the Constitution, and the referendum of April 28, 1992 which decided on the effective date the Constitution should come into force.

The said Article 63(2) (a) of the Constitution provides that the election of the President shall be conducted “where a president is in office, not earlier than four months nor later than one month before his term of office expires; (b) in any case, within three months after the office of the President becomes vacant. Article 112(4) provides “Subject to clause of article 133 of this Constitution, a general election of Members of Parliament shall be held within thirty days before the expiration of the period specified in clause (1) of that Article; and a session of Parliament shall be appointed to commence within fourteen days after the expiration of that period”. The said article 113(1) state “Parliament shall continue for four years from the date of its first sitting and shall then stand dissolved. The effect of these provisions is that the only day which is possible to hold presidential and parliamentary elections together is December 7 of each election year and swear in the President-Elect on January 7 elections. Consequently, there was time constraint in both transitions between the declaration of the presidential elections and the inauguration of the president-elect. The situation was worsened because the elections which produced the presidents in both cases were decided upon by a run off. In the case of the 2001 transition, the result of the run-off for the presidential election was declared on December 31, 2000 and the inauguration on January 7, 2001, whereas that of 2009 transition, was declared on January 3, 2009 with inauguration January 7 2009.

The shortness of time had some undesirable effects. First, there were governance problems at the initial periods of their assumption of office of the new presidents’ because they

did not have adequate time to put together their governing team. Yet the new Presidents had to govern or function. Each of the Presidents under the Fourth Republic resorted to Article 58 of the Constitution as a safety net to appoint caretakers pending the appointment of substantive Ministers of State.¹² The said Article 58(2) provides: “Subject to the provisions of this Constitution, the functions conferred on the President...may be exercised by him either directly or through officers subordinate to him”. The activities and decisions of some of the caretakers smacked of impunity and generated controversies in the transition. A noble example was the dismissals of DVLA and NADMO Boses by Alhaji Mohammed Mumuni, the “President’s representative for the Ministry of interior” during the 2009 transition. In addition, President Mills gave directive for the Chief Directors to take charge of the ministries, departments and agencies pending the appointment of ministers.¹³ For the decentralised structures (though not political, the governments of the forth republic treated them as such and sacked the MMDCEs in both transitions). Due to time constraint these positions could not be filled immediately. Mills attempted to manage the situation by directing that the MMDCEs should remain at post until further notice.¹⁴ This generated a lot of tensions in the country. He was criticised and condemned by the rank and file of his party. The NDC factionaries harassed the MMDCEs who urged the government to hasten with his appointments in order and relieve them of their post.¹⁵ Again, some of the MMDCEs had contested and won parliamentary seat hence could not be effective doubling up as members of parliament (MPs).¹⁶ The shortness of time did not make it possible for the Joint Transitional Teams to work effectively given the complex nature of the processes

¹² Daily Graphic, Friday, January 9, 2009 , p.3, reported that President Mills announced temporary appointments pending the appointment of substantive ministers.

¹³ The Ghanaian Times, Saturday, January 10, 2009, p. 1

¹⁴ Daily Graphic, Friday, January 9, 2009 p. 1

¹⁵ Daily Graphic, Monday, February 2, 2009, p. 13.

¹⁶ Ibid.

involved in both transitions leaving the process midstream. Third, the time constraint did not allow the losing party time to orient itself with the loss and to hand over thus creating tensions throughout the process.

Sources of the Challenges

Absence or Inadequate Legal and Administrative Framework

The discourse on transition in Ghana has identified the absence or inadequate legal framework to guide the complex process of the transitions. First the constitution made a comprehensive transitional arrangement for the initial transition from militarism to democracy. Its transitional arrangement for the transfer of power to a new administration in Ghana's democratic system is clumsy. The constitution laid down succession plan for the presidency without regulating or being specific on how it should be carried out. The area is therefore grey without. In consequence the realm was governed by discretion hence, the arbitrariness and irregularities (Ahwoi, 2009 a).

Even though the absence of legislation was identified as a major reason, there were mixed views on the desirability of enacting a presidential transitional framework to guide the transfer of power based on a two time experience. Those who thought it unnecessary argued that first, the law per se would not solve the situation. That, there has not been enough practice (custom) developed on Ghana's political transition to inform appropriate legislation on the matter on a two-time experience. Second, legislating on political transition will freeze the development of the practice and that custom should evolve to enlightened political transition to its apogee. Rather there is the need for customs and conventions to evolve gradually around out transfer of power. Moreover, legislation could stall the transitional process in situations of a

challenge in Court so legislation could not be the way out. This group recommended education as the way out of our country.

Others also felt that a two-time experience is enough practice to inform legislation on political transition. The complexity of the phenomenon as shown on the two occasions indicates that nothing short of legislation will bring about an orderly transfer of power in Ghana's democratic system. Legislation is necessary around which conventions would develop. Thus experiences have shown that people might not always do the right thing, so for the avoidance of doubt let there be legislation to guide the nation to mature into conventions. Even then legislation should not be rushed through. The draft proposal should serve as a tool for nationwide discussions. There should be a wide consultation around it as this has emanated from the political parties who are themselves causing the problems.

Impunity

In as much as there were some lacunae in the law and some applicable laws did not make for practical effectiveness, there were instances where the law was breached with impunity. The absence of the law could not solely explain the impunity as the existing laws were breached with impunity being. A clear example is Article 191 which was breached with impunity with public servants being sacked from office arbitrarily. How come that those who have sworn to uphold the constitution could breach it with impunity? It appears impunity looped in a continuum at every stage of the transitional process. The presidency, the security apparatus especially the police and the populace particularly the supporters of the winning party were all engaged in acts of impunity. The impunity may be due to the fact that perpetrators were not brought into accountability of any sort. But why should this be the case? Is this probably due to the fact that

the security apparatus is compromised and biased in favour of the winning party, hence failed to enforce the law against perpetrators who usually happened to be the supporters of the winning party? Could it also be that victims are ignorant of their rights to take action for redress? Or are vanquished and demoralised and hence suffer in silence or unable to pursue their rights? Or does it have to do with the complexities involved in seeking judicial redress. This is curious because some victims complain publicly and yet fail to seek redress. Further research would be required in this regard.

Absence of Democratic Norms, Values and Culture to Anchor the Change

This can be traced to the legacy of the struggle for independence. The freedom fighters struggled for independence from the British colonial rule. When independence became apparent the enemy was out and the foundational leaders directed the struggle against themselves in their quest for political power. The foundational leaders did not settle down after independence as nation builders with allegiance to the people of Ghana, including the opposition for that matter. Thus instead of concentrating their attention on the welfare of Ghanaians, the political party in power continued to behave like a party competing with the other parties particularly the predominant party in the opposition. In the same manner the opposition also opposed the then incumbent. The incumbent, the Convention Peoples Party(CPP) government which had the upper hand crashed out the opposition, the United Gold Coast Convention (UGCC) with Ghana becoming a one party state under the first Republican Constitution. This left in its trail the legacy of intolerance and non accommodation in Ghana's politics. Therefore the known practice was carried into the democratic dispensation and permeated into the transitions. When the opposition came to power in 1969 they also crashed the CPP. The situation now is no different. Both the

NPP and NDC during their tenure have behaved more like political parties competing for power than a government wielding power. This is attested to by the huge amount of time and resources spent by the information machinery of the sitting government in lambasting the opposition on trivial matters.

Secondly, the incessant coups d'état which followed after independence did not allow any democratic government to serve their full term. Therefore until 2001 there had not been a change of government through the ballot box. The known culture was to overthrow government. Therefore the attitudes and behaviours of the actors in the transitions were akin to that of an overthrow of government as opposed to changing government.

Thirdly the political structure in place is breeding a form of intolerance. Under the fourth Republic, Ghana like some African countries; Nigeria and Burkina Faso which transitioned from military regimes did so with constitutions, which reproduced the concentration of power and the command structure of military regimes (Ake, 2000). The 1992 constitution creates a hybrid government which is neither parliamentary nor presidential, but has elements of either fused together to form a system. The hybrid structure of the government of the 1992 constitution creates fusion of power between the Executive and the Legislature. In terms of composition, the Executive is composed of 'Executive President, Vice-President, Ministers and Deputy Ministers of state. The President is not a Member of Parliament. But the President is mandated to appoint majority of his ministers from among Members of Parliament (Article 78 (1), 1992 constitution), and also to form cabinet from among his ministers. Ministers including cabinet ministers who are Members of Parliament do not resign their seats but still keep their seats in parliament. At the same time, the term of the President is fixed and the President can be removed only through a stringent impeachment procedure involving the Legislature and the Judiciary (Article 69 of the

constitution). The Vice President and ministers who are not Members of Parliament can participate in parliamentary deliberations except that they do not have a casting vote (Article 111 of the constitution). This creates an executive dominance and weakens Parliament particularly regarding its oversight functions over the Executive. In practical terms a Member of Parliament may be a Minister and at the same time a member of cabinet having sworn an oath of secrecy (Article 78 of the constitution). Such Members of Parliament may not be expected to make any objective assessment on any executive action called into accountability by Parliament. Likewise Members of Parliament who are ministers are desirous of keeping their positions hence do not provide constructive contribution in parliament knowing very well that the big brother is watching.

This arrangement can be distinguished from the purely parliamentary and presidential systems of government. With the parliamentary system, the Executive and Legislature are composed by the same persons or group of persons. The Executive and the Legislature are fused. In Britain where this system is practised, the Prime Minister who is the head of Government and the cabinet—the government, sit together in parliament and depend on its confidence. In comparison with the Ghanaian situation a vote of censure/no confidence in a Minister does not result in automatic removal from office, the president may remove him from office unless he resigns (Article 82 of the Constitution).

With the presidential system as practised in the United States, there is separation of powers and different persons occupy the two sets of offices. Thus, in the United States, a member of congress may be appointed to a cabinet position, but he or she must resign his or her congressional position. The president and his cabinet do not form part of Parliament. The

president can be removed from office by impeachment. This is contrary to the Ghanaian situation of fusion where the Executive sits in Parliament to defend its policies.

The hybrid system takes on the strengths of both systems of governments and denies the accountability inherent in them. The political culture which is evolving around the system of political dominance as shown is undemocratic. The dictates of the politics thus developed is mirrored by the dynamics occasioned during a change of government. There is an inherent imbalance in the structure of power between the winner and the loser. Thus, the winners were not prepared to accommodate the losers in anyway for they had no incentives to do so. Hence in both transitions the Transitional Teams comprising membership from the incoming and outgoing government could not work successfully and in each occasion abandoned the proceedings midstream.

The Lack of Appreciation of Democracy

This refers to the human side of the enterprise. It appears that the political actors, as well as their supporters involved in the game of democracy fail to appreciate the rules of the game, namely, that a party can be voted in and out of power at any given election period and does not have a perpetual mandate but a limited mandate for four years and a maximum period of 8 years in the case of a president. Therefore, a government in power should or ought to be prepared for such an eventuality without throwing any tantrums when it happens. However, due to the failure to adjust to this reality, a Party which found itself out of power became embittered towards the Party that took power from it without realising that such decision sprang from the sovereign will of the people of Ghana. Hence, positioned itself to deal with the enemy (Nkansah, 2008).

The kind of message preached by both political parties to the party foot soldiers (especially illiterates) particularly during elections has also contributed to this culture of impunity. Opposition members have been described with words such as enemy, etc. This has created the impression that such persons need to be wiped out from the system. Again vicious and acrimonious campaign perpetuated itself after the election and euphoria of victory and disappointment created conflict and irritation from both sides (Ahwoi, 2009). A party in power deemed its incumbency as an opportunity to deal with the enemy.

The Socio-Economic Factors

A change in government dislodges the sources of wealth in society; people lose sources of wealth and others acquire new sources of wealth. In the case of Ghana, the winner takes all politics cuts a segment off from their sources of income. Thus the person who wins 50 % plus one becomes the President to form the government. This creates animosity by the losing party and their sympathisers. The Ghanaian situation became worse where the losing party and their supporter in some cases were pursued and chased out of office even where they did not hold political positions. Ahwoi (2009 a) identified the socio economic factors thus:

The winner-takes all system is a major hindrance to a smooth political and administrative transition. The system marginalizes a whole chunk of high quality human resources from the public policy structures; closes access to economic opportunities, threatens to undermine acquired social status, among others simply because of their defeat in an electoral contest. There is also the fear of vendetta. This endangers bitterness (p.5).

Tying it All Together

From the foregoing, it is clear that Ghana made a giant growth in its democratization process by changing government through the ballot box for a two time period; a sign of democratic consolidation. That was possible due to the prevailing conditions and the gradual transformation of the political actors especially the NDC from militarism to democracy. In the case of the NPP they agreed to hand over power although grudgingly. In both cases dialoguing played a major role in bring about transition. This notwithstanding, the nation convulsed during both transitions; there was public show of viciousness with the outgoing officials being treated with contempt by the incoming governments and supporters. The supporters of the outgoing and incoming governments also engaged in acts of brutalities. In the words of the IEA “the two transitions under the fourth republic have been characterized by uncertainty, cynicisms, bad blood, apprehension, mutual mistrust, antagonism and open hostility”(Ahwoi, 2009a, p.2). It became clear that the absence of inadequate framework to guide the transition resulted in the use of discretion leading to arbitrariness. And existing rules were also breached with impunity. There was time constraint between declaration of election results and the swearing in of new President, which did not make for any meaningful handing over and did not give the loosing party the time to orient itself with the loss. Again, vicious and acrimonious campaign perpetuated itself after the elections into the transition. There was an absence of democratic culture; discerning policies, attitudes and behaviours of the actors, their supporters and the populace “smack of military take over” as opposed to a “change of government”. ; In consequence, the country was deprived of experienced human resources with individuals. Ghana is polarised in the “negative sense”. This has implications for the future of Ghana’s democracy in that efforts should be made to institutionalised transitions for orderly transfer of power.

The Way Forward

1. Legislation

Parliament needs to enact the Presidential Transitional Bill into law. The proposed Bill is relevant as it provides for: The composition of Transitional Committee consisting of both the outgoing and incoming governments; Procedures and processes of the Committee; An advisory Council to mediate in cases of conflicts; statutory welfare and protocol for outgoing officials- who should maintain diplomatic passport etc; Inventory and stock taking; Archival storage of handling over notes; Those to leave office upon change of government, which is provided as schedule to the draft Bill.

However, the Bill in its current state should be reviewed. First, the Bill is concerned with transitions which will usher in the first time presidents without considering the dynamics which may occur where a president is elected for a second term that is where the President-Elect is the incumbent. There is the need to make provisions where the president-elect happens to be the incumbent because the dynamics may be different. Technically speaking he is a new president with a new mandate so he has to account for his first term.

Second, the constitution envisages 'accidental presidents'. A situation where the Vice President takes over from a President, who dies, resigns or removed from office without having to go through elections. It would not be possible for the incoming to take over from the predecessor where the predecessor dies. On the other hand where a Vice President takes over from a President who is removed from office or who resigns from office, it should be possible for a handing over of some sort to be done. In this regard it is being proposed that the Bill should be reviewed to expand the focus of application to cover accidental presidents. Again, it should be possible to get the Speaker to account where he or she acts as President for three months.

Currently as the Bill stands it applies to the “transfer of one democratically elected President, to another democratically elected President”. It does not include those who may assume the office of the Presidency by way of default succession.

Third, the proposed Bill should be progressive as to address some social inequities and shape future directions. To this end the wording of the Bill should be gender neutral. In this regard it is being proposed that the term “Chairmen” of the Transitional Committee should be replaced with “Chairperson (s)”.

Fourth, even though the Bill emanated from the initiatives of the political parties in consultations with organised civil society organisations, there is the need to subject it to nation wide consultations. This is because there are other critical actors at the grassroots such as the foot soldiers who should be consulted for their inputs.

2. Judicial Redress

Those aggrieved should seek redress in the court and establish impunity. The judiciary should be sensitive to handling transitional issues in an expeditious manner. To this end the Chief Justice should designate Special Court during and transitional year to over adjudicate issues emanating from the transition. This will bring about accountability of executive impunity.

3. The Police

The security apparatus especially the police should not be non partisan and work for the security of all with regard to protecting life and property during transitions and curtail acts of hooliganism by bringing culprits to legal accountability.

4. Law Reform

First, there is the need for law review to make it possible to hold presidential and parliamentary elections in either October 7 or November 7 in an election year to allow for reasonable time between the announcement of the winner and the inauguration on January 7.

Second, the constitution should be reviewed in terms of the structure of power between the Executive and Legislature for balance structuring of power. In this regard it is being proposed that relevant constitutional amendments should be effected to ensure separation of powers between the Executive and the Legislature for the necessary balance.

Third, the politics of ‘winner takes’ all should be reconsidered and instead a system of proportional representation be considered given the pluralistic nature of Ghanaian society. Even under the current arrangement it should be possible to pursue the politics of inclusiveness and bring others on board. This has implications for the incumbent at any given period in time.

5. Building a culture of respect for human rights and political tolerance

Incoming and outgoing regimes should respect the existing governance framework and structures. There is the need to build good conventions and practices of political transitions. Education and sensitization will be helpful. Changing their language and being more decorous in their speech is a positive step in that direction. Adhering to their voluntary code will go a long way to augur well for peaceful transitions. This has implications for political parties and the political elites of the country, incumbent government at any given time, the opposition at any given time and the Ghanaian public as a whole.

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