

# Electoral Reform

## Monitoring Advocacy Group

Bulletin 2

November 2016



### Introduction

The maiden edition of the *Election Reform Monitoring Advocacy Group (ERMAG)* bulletin, published in September, highlighted 7 out of the 27 proposed electoral reforms that Electoral Commission (EC) has accepted to implement. In that bulletin, the ERMAG noted that 6 reforms had been implemented and one had been rejected by parliament. This second edition of the bulletin provides an update on the state of 14 more of the suggested reforms and the progress the Electoral Commission has made on them as of mid November, 2016.

#### **1. Election Officials & Party Agents to take oaths before a Magistrate or Judicial officer instead of an officer of the Commission.**

Oaths taken before Judicial officers and Magistrates are legally binding and thus have legal repercussions if flouted. Ensuring that Election officials and party agents take oaths before a Magistrate will instill a greater sense of responsibility in them towards their assigned duties.

The Electoral Commission has taken the requisite steps to ensure that Election Officials & Party Agents will take oaths before a Magistrate or Judicial officer instead of an officer of the Commission. Regulation 2(2a) of the Public Elections Regulations, 2016 (CI 94) provides that “A returning officer or a person appointed to assist a returning officer shall swear in the presence of a Judge or a judicial officer to faithfully and impartially fulfill the duties of that person’s office...”

Again, Regulation 3(1h) of CI 94 states that “*a person appointed as a returning officer shall arrange for a counting agent to swear an oath before a Magistrate*”.

Our checks reveal that EC is implementing this recommendation as recruited polling officials and Returning Officers are made to take and sign oath of office before judicial officers during training as required by CI 94.

This reform is commendable as it will further ensure that these officials and agents attach the needed level of dedication and importance to their duties.

**2. EC should make clear provisions regarding processes and procedures to be followed upon adjournment of the poll.**

The need for precise, and comprehensible laws, on the processes and procedures to be followed in the event that the poll is adjourned cannot be over emphasized. This will prevent confusion, opportunistic vote manipulation, and other unfortunate scenarios which could dent the credibility of the elections.

Fortunately, the EC has ensured that Regulation 36, of CI 94 sets out these processes. This Regulation, in simple language, provides that in the event that there is a disruption either natural or manmade, the presiding officer shall consult with the returning officer, and with the approval of the Electoral Commission, adjourn the voting to the next day. If voting on that adjourned day is still impracticable, the returning officer, in consultation with the Electoral Commission, will further adjourn the voting to a date not exceeding 7 days from the adjourned date. After the voting is adjourned an account of the ballot papers will be taken, recorded and

certified by the presiding officer and the party agents, and a copy will then be given to the party agents. The ballot box will be sealed and, with other election materials, stored in the nearest police station till the date the voting has been adjourned to. On the adjourned date of voting the voting hours will be like any original voting day.

Unfortunately, CI 94, does not lay down any procedure to be followed in the event that the ballot box is absconded with, and as a result, an account cannot be taken of the ballot sheets.

The failure of CI 94 to provide for what measures should be taken where a ballot box is seized, and inaccessible for accounts to be taken is most unfortunate, and should be remedied.

**3. EC should serially number the statement of Polls and the Declaration of results sheets.**

It is hoped that numbering the Statement of Polls and the Declaration of results sheets will make referencing easier and improve the general organization of the election.

The Schedules section of CI 94 at pages 48 and 49 has a sample of the exact format that the law says Form Eight, or the 'Pink Sheet', as it is popularly known for both

parliamentary and presidential results, should take, and on it there is a place for serial numbers. The EC has taken a decision not to serialize the replacement declaration of polls sheets, and the main opposition party raised objections. However, at an Inter Party Advisory Committee (IPAC) meeting held recently, the issue was resolved with the understanding that replacement declaration sheets will be colour shaded to differentiate them from the serialized/numbered declaration sheets.

#### **4. EC should set up a National Collation Center to replace the “strong room”.**

To foster enhanced transparency, trust and credibility, it was advised that a National Collation Center should replace the cryptic “Strong Room”, which has historically been the birthplace of the presidential election results. The Electoral Commission has stated that it will replace the “Strong Room” with a more open, accessible and transparent “National Results Collation Center” (NRCC). This is where the results will be tallied and the winner of the presidential race declared.

This Center will be accessible to the media, observers, party agents and other stakeholders. In addition, election results will be projected on a giant screen for the entire nation to observe the national collation

process. By mid November 2016, the proposed temporary site of the NRCC was the Electoral Commission’s conference room. Understandably, the venue for the national collation process should be at the premises of the EC. However, it appears the proposed venue may be too small for the purpose.

#### **5. EC to appoint collation officers for each constituency.**

Collating the election results is a very crucial part of the election process. The officers who collate the results must be sufficient in number and capable of performing their duties. Also, appointing an election official whose sole job is managing the collation ensures that the individual will physically and mentally reserve his energies purposely for this duty, and as a result, will have the requisite stamina to perform his functions after the close of polls, a function which sometimes goes deep into the night.

The Electoral Commission has stated that it has made efforts to appoint very knowledgeable collation officers for each constituency as a safeguard against collation errors. Part of these efforts involve collation officers receiving adequate training before going onto the field. Further, each collation officer is required to have a

minimum of a First Degree or HND before they are employed.

Organizations like the Institute of Chartered Accountants and Ghana Bar Association have also offered to support the process by providing members of their Association to the EC to be trained as collation officers. This is welcome. However, it is important for these individuals to be properly screened by the EC to meet all the requirements necessary of becoming poll workers, including the ethical principle of being non-partisan.

#### **6. EC must ensure that election officials who breached electoral laws are sanctioned.**

Election officers who breach electoral laws must feel the brunt of the necessary penalties. This is one of the most important ways of ensuring compliance with the law. This said, enforcements can only be done when the law specifically lays down the processes to be taken when a provision is flouted.

The Public Elections Regulations, 2016 (CI 94) criminalizes election officials actions, outlines the penalties and sanctions an election officer will face if she/he fails to perform his/her duties, and makes reference to all the electoral laws of Ghana as institutionalizing offences which can be committed by election officers. CI 94 also makes specific

mention of the Representation of the People Act, 1992 (PNDCL 284). In Part V of PNDCL 284, and more specifically Regulation 30, offences election officers can be charged with are detailed. The combined effect of the various legal provisions in the above mentioned laws make a valiant attempt at ensuring that election officials who commit offences will be penalized.

Currently, officials who fail to perform their duties, as per CI 94, commit an offence and are liable on summary conviction to a fine of not more than 500 penalty units (each penalty unit equals GH¢12) or to a term of imprisonment of not more than two years or to both and will for a period of five years, from the date of expiration of the term of imprisonment, be disqualified from being engaged as an election official. For instance, where **pink sheets are not signed by presiding officers or their assistants, as was witnessed in 2012**, such offending officials would have committed offences and would be liable to either a maximum 2 year term of imprisonment, 500 penalty units (GH¢6000) or both. They would also be disqualified from being engaged as election officials for 5years.

Earlier in the year, prior to the passage of CI 94, the EC's commitment to ensuring that offences were penalized was seen in

its decision to dismiss two officials who illegally moved a voters' register and verification machine to the residence (or close to the residence) of one prominent opposition personality during the verification process. It is hoped that the EC will continue penalizing officials who fail to perform their duties as required by law. This is necessary to ensuring that, election officials perform their duties well on Election Day.

**7. EC should take steps to reduce rejected ballots.**

The reduction of rejected ballots will ensure that most votes are relevant in the determination of the election results. In 2012, the total rejected ballots was 251,720, that is, 2.3% of the total number of votes. This was more than the total number of votes obtained by all the smaller parties put together. According to the EC, it is working on multiple measures to reduce the incidence of rejected ballots.

Among these measures are nationwide educational programs in collaboration with the Media, Civil Society and Faith based organizations, educating voters on what is required of them during elections. The EC currently has a series running on the state television, GBC, known as "Ask the EC" which

educates the public on dos and don'ts during the election period.

Aside, adequate training for the election officials, the EC is also conducting investigations on the election officials to ensure that they are not partisan. This is to prevent the instances where ballot papers are intentionally or unintentionally not validated.

Further to the above, the spaces between the candidates on the ballots sheets have also been widened so as to prevent overlapping thumbprints when voters are selecting their candidates.

**8. EC should be required by law to give a copy of the Final Certified Register to Registered Political Parties at least 21 days before the elections.**

This is a legal requirement, and the Electoral Commission asserts that it has indeed complied and given a copy of the Final Certified Register to all Registered Political Parties as at November 11, 2016.

**9. EC to reduce the number of voters per polling station.**

The aim of reducing the number of voters per polling station is to ensure that voters are not needlessly fatigued, and put off voting by the tediously long queues experienced in some polling stations.

The Electoral Commission confirms that it has duly reduced the number of voters per polling station. The maximum number each polling station should have is 850 voters. It has also increased the number of polling stations from 26,000 to 28,992 to cut down on queues on Election Day.

**10. EC should publish a list of all polling stations with their codes and locations not later than 42 days to the elections.**

This recommendation has been implemented by the Electoral Commission, and the list of polling stations, their codes and locations was duly published on Tuesday, October 25, 2016. A PDF copy is also available on the EC's website.

**11. Returning Officers should give copies of Proxy, Special and Absent Voters lists to Candidates/Parties.**

It is important for all registered political parties or candidates to be furnished with proxy, special and absent voters lists. This, it is hoped, will increase transparency and make the process more credible. As of November 14, 2016, according to the Electoral Commission, Returning officers had given copies of proxy, special and absent voters

lists to candidates/parties and all parties had received their copies.

**12. Returning Officers to issue copies of collation sheets to Candidates/Agents.**

Unfortunately the CI 94 failed to make provision for this, even though it had been discussed and agreed upon as part of the reforms for implementation. In the CI 94, no political party or presidential candidate is entitled to a copy of the 275 collation sheets, which will show whether the votes counted and declared at the 28,992 polling stations are the same as the collated results which will be transmitted to the National Collation Centre.

Apart from the fact that the candidates and/or their agents are not entitled to a copy of this vital document, there is also no provision for either the Returning Officer or agents to sign and endorse the form.

In light of the above, a lawyer and former Director of Research, in the Parliament of Ghana, Kwesi Nyame-Tease Eshun, filed a writ, at the Supreme Court on September 27, seeking to remedy this oversight.

The Supreme Court, as a result, has ordered the Electoral Commission to make signed collation sheets containing the results available to

parties and their agents after close of polls. Additionally, the Commission must give a signed and completed copy of Form One EL 23A, and One EL 23 B, for parliamentary and presidential elections, to agents of political parties.

The absence of these provisions in CI 94, was of grave concern, especially because the EC agreed to ensure its implementation as a means of increasing transparency. Nonetheless, the swift initiation and resolution of the Suit is lauded, as it has in effect remedied a potentially, troublesome problem for the 2016 elections.

**13. EC to expand the list of special voters to include accredited media personnel and election observers. GJA to provide the list of accredited media to the EC.**

This will ensure that key persons who will play a role during the election day will be afforded special voting privileges before the general election to enable them perform their duties effectively on the Election Day.

Regulation 49 of CI 94, has redefined a “special voter” and the list of special voters has been expanded to include: accredited media personnel, security personnel and staff of the Electoral Commission. Unfortunately, it did not include citizen observers and

this will make it difficult for them to perform their functions and vote on the Election Day. However, the EC has indicated that it will instruct its officers to give preference to accredited observers on Election Day so they can vote quickly and proceed to perform their duties.

**14. EC to publish Presidential Election Results per polling station on its website.**

The implementation of this reform, as with some of the above mentioned ones, can only be confirmed after the election. Nonetheless, the Electoral Commission, has stated that it will publish the Presidential Election Results for each polling station on its website.

**Conclusion**

Some of the proposed reforms cannot be implemented until the onset of the elections. As such we rely on verbal undertakings from the Electoral Commission and the provisions as stated in CI94 that they will be effected. The Suits initiated in court by some individuals and parties also paved the way for the resolution of some of these reforms, where legislation had failed. Aside this, the EC has been efficient in ensuring that most of the reforms outlined are duly implemented either through legislation or internal reorganization.

## Appendix

List of electoral reforms accepted by the EC to be implemented:

1. Hold Presidential and Parliamentary elections in November instead of December
2. EC to do continuous registration as well as periodic registration
3. Election Officials & Party Agents to take oaths before a Magistrate or Judicial officer instead of an officer of the Commission
4. Institutionalize IPAC
5. Use of the Biometric Verification Device for exhibition of the Provisional Voters Register
6. EC to raise the minimum educational qualification requirements for various levels of election officials
7. EC should improve quality of training of election officials and EC staff
8. PWDs and vulnerable persons should be given priority at polling stations
9. EC should make clear provisions regarding processes and procedures to be followed upon an adjournment of the poll
10. EC should improve the Compensation package for Election officials
11. EC should serially number the statement of Polls and the Declaration of result sheets
12. EC should set up a National Collation Center to replace the “strong room”
13. EC to appoint collation officers for each constituency
14. EC to defer adoption of electronic voting
15. EC must ensure that election officials who breached electoral laws are sanctioned
16. EC should take steps to reduce rejected ballots
17. EC should extend the period of notice for Voter Registration exercise from 14 to 21 days
18. EC should be given the mandate to apply to the courts to delete names of unqualified persons from the Provisional Voter Register
19. EC should be required by law to give a copy of the Final Certified Register to Registered Political Parties at least 21 days before the elections
20. EC to reduce the number of voters per polling station
21. EC should publish an annual calendar of its activities at the beginning of an Election year
22. EC should publish a list of all polling stations with their codes and locations not later than 42 days to the elections. EC accepted 21days
23. Returning Officers should give copies of Proxy, Special and Absent Voters lists to Candidates/Parties
24. Returning Officers to issue copies of collation sheets to Candidates/Agents
25. EC to expand the list of special voters to include accredited media personnel and election observers. GJA to provide the list of accredited media to the EC

26. EC to publish Presidential Election Results per polling station on its website

27. EC to define the term “ordinarily Resident”

### **List of Members of Election Reform Monitoring Advocacy Group**

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## **About the ERMAG**

The *Electoral Reform Monitoring Advocacy Group (ERMAG)* is under the auspices of CODEO and it seeks to monitor and report on the implementation of the Electoral Commission (EC)'s accepted 27 reforms. As an independent and non-partisan civil society body, it aims at promoting an inclusive and credible implementation of the reform process.

*The publication of this bulletin forms part of CODEO comprehensive pre-election observation exercise, and it has been possible by the generous support of the American People through the United States Agency for International Development (USAID). The contents are the responsibility of CODEO and do not necessarily reflect the views of USAID or the United States Government.*



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