



# **European Union Follow-up Mission**

## **GHANA 2023**

### **Final Report**



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**European Union**

**Election Follow-up Mission to Ghana 2023**

**Final Report**

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## 1 Executive Summary

An EU Election Follow-up Mission (EFM) was deployed to Ghana between 5 March 2023 and 1 April 2023. The EFM was led by Mr Javier Nart, Member of the European Parliament and the Chief Observer of the 2020 EU Election Observation Mission (EOM). Mr Nart was in Accra between 19 and 24 March 2023. The main objectives of the Follow-up Mission were to assess the degree to which the recommendations from the 2020 EU EOM have been implemented, as well as to discuss ways to achieve further progress in this regard.

The EFM met with a wide range of interlocutors, including the Electoral Commission (EC), representatives of political parties, Majority and Minority Leaders of Parliament, the National Commission on Civic Education, the Deputy Attorney-General, Commission on Human Rights and Administrative Justice, National Peace Council, National Media Commission, a wide range of civil society, the EU Delegation, EU Member States and relevant international partners. The Mission held a Roundtable for national stakeholders on 23 March 2023 and Mr Nart held a press conference on 24 March 2023, to deliver conclusions from his visit.

The EFM noted very limited progress so far in addressing the recommendations offered by the 2020 EU EOM. Of the total of 18 recommendations offered by the EOM in 2020 none have been fully or even partially implemented as of yet.

Six of the recommendations are being looked at by the EC. Two of these require legislative reform, via a Constitutional Instrument initiated by the EC, and four relate to the EC's management of the process, but there has only been limited action or it is too early in the electoral cycle to determine the extent of implementation. In terms of legislative reforms recommended by the 2020 EOM none of the other nine proposed legal reforms have been addressed and there does not appear to be any political engagement on these. Many of these outstanding legal reforms were raised also by previous EU EOMs. Of the remaining three recommendations, there has either been no change, or it is too early to determine.

There is still time before the next elections<sup>1</sup>, but the lack of political will to address these matters is a concern. The recommendations offered by an EU EOM are an integral part of its work. When recommendations go unnoticed and unaddressed for multiple electoral cycles it undermines an important aspect of the observation effort.

The majority of the positive developments noted relate to technical and regulatory plans on behalf of the EC. As these are plans, though, it is generally too early in the electoral cycle to determine the full extent of implementation. However, it is encouraging that the EC plans to introduce new measures, which, if implemented, go some way to further enhancing transparency in its procedures and results management, including timely publication of polling station results and enhanced sharing of information of public interest, including on voter registration, EC decisions and counting and collation procedures.

Further, the EC is planning to take some steps in relation to providing more time for prospective candidates to make corrections to the collected signatures during nominations, which will

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<sup>1</sup> Article 2 of the ECOWAS Protocol on Democracy and Good Governance states that: "No substantial modification shall be made to the electoral laws in the last six (6) months before the elections, except with the consent of a majority of Political actors."

hopefully help minimise disputes over nominations. The EC also reported that it has taken some steps to enhance management of financial reporting by parties, though it is too early to assess the level of implementation and enforcement of this important aspect.

With regard to the recommendations relating to the role of the Data Protection Commission to ensure an effective system of data protection exists in practice and also the recommendation on voter education to address practices of treating and bribery, it is too early in the electoral cycle to determine.

However, the lack of legal reforms in a number of critical areas remains noticeable. Of particular concern are substantive issues such as introducing political finance regulations to provide transparency and accountability relating to party funding and expenditure; creating a mechanism to prevent the misuse of state resources during a campaign; providing for increased participation of women in political life, including in party structures and the parliament; a more inclusive process for nomination of electoral commissioners, to enhance confidence of political stakeholders; and creating clear and reasonable timelines for the management of petitions for parliamentary elections.

Of the remaining recommendations, there has been no change in the parliamentary constituency boundaries and there has also been a lack of any change in laws to provide for appropriate oversight of media and digital communications during the campaigning period. The media-related recommendations included providing the National Media Commission with enhanced responsibilities and means to oversee the work of the media and clarifying related laws in order to protect freedom of expression.

The EU is providing support related to reforms, notably funding a series of civil society projects to promote implementation of some of the priority recommendations in particular. These efforts started in January 2023 and are on-going.

In other election-related developments, the EC has proposed a new Constitutional Instrument, which would limit the form of acceptable ID for new voter registrants to only the Ghana Card in order to further enhance integrity of the registration process. Opponents claim such a move at this time will disenfranchise people who do not yet have the card or cannot access the application process, and instead urge a 'Ghana Card Plus' approach, with other forms of ID to be permissible. Relations between the EC and the opposition are clearly strained over this issue, on top of the opposition party's continued boycott of the Inter Party Advisory Committee.

For the 2024 polls, it is vital that the proposed transparency measures suggested by the EC are implemented, as they will help enhance confidence in the process. If some of the outstanding legal recommendations can be addressed, they will also help to further enhance transparency, inclusiveness and credibility of elections in Ghana. It is also vital for the EC and political parties to have a conducive relationship, which requires a collaborative and inclusive approach, to facilitate constructive discussions and help mitigate potential tensions which may occur at any stage of the process.

## **2 Mission Information**

The EU EFM Mission was deployed to Ghana between 5 March 2023 and 1 April 2023. The EFM was led by Mr Javier Nart, Member of the European Parliament and the Chief Observer of the 2020 EU EOM. Mr Nart was in Accra between 19 and 24 March 2023. The EFM also

was comprised of a representative of EEAS Democracy and Electoral Observation Division and two independent experts.

The main objectives of the Follow-up Mission were to assess the degree to which the EU recommendations from the 2020 EOM have been implemented, as well as to discuss ways to achieve further progress in this regard.

During his visit, Mr Nart held meetings with a wide range of interlocutors, including the Electoral Commission (EC), senior representatives of political parties, Majority and Minority Leaders of Parliament, the National Commission on Civic Education, the Deputy Attorney-General, Commission on Human Rights and Administrative Justice, National Peace Council, National Media Commission, a wide range of civil society, the EU Delegation, EU Member States and relevant international partners.

The Mission held a Roundtable for national stakeholders on 23 March 2023, which was attended by representatives of 16 national stakeholders as well as some international partners. Mr Nart held a press conference on 24 March 2023, to deliver conclusions from his visit, prior to his departure from Ghana.

### 3 Context

The EU Election Observation Mission of 2020 concluded that: *“The [2020] elections were organised in an efficient and transparent manner, and voters participated freely in large numbers. The polls were competitive, and contestants could campaign without hindrance. A few isolated violent incidents occurred, resulting in five deaths and numerous stakeholders had expressed deep apprehensions about the possible use of vigilante groups by political parties. Ghana’s vibrant and diverse media sector provided voters with sufficient information on competing parties and their candidates. Civil society organisations contributed significantly to the transparency and credibility of the election process.*

*However, shortcomings in the election process identified by previous European Union Election Observation Missions (EU EOMs), such as misuse of state resources, advantage of incumbency and bias of the state media towards the ruling party resulted in an unlevel playing field. Numerous instances of vote- buying in an environment of unregulated political finance was another significant shortcoming. As in previous elections, the main opposition party frequently accused the leadership of the Electoral Commission of incompetence and partisanship, thus undermining the integrity of the elections.”*

The EU EOM issued 18 Recommendations in its Final Report, including a mix of proposals for important legislative and regulatory change as well as a series of technical recommendations targeted at the Electoral Commission’s management of the process.

#### A. Election-Related Developments

The close outcome of the 2020 polls, the NDC’s legal challenge against the outcome and the highly polarised nature of politics in Ghana, exacerbated by having a hung parliament, have shaped the political and electoral environment since 2020.

In 2018, the then-Chair of the Electoral Commission and two Deputy-Chairs (all of whom were appointed under the NDC presidency) were dismissed from office by President Akufo-Addo

due to mismanagement of contracts. They were replaced with the current Chair Jean Mensa and two new Deputies. The NDC has been publicly critical of the EC, including its unsuccessful petition against the EC's management of results for the 2020 presidential polls. Since 2020, the NDC has refused to participate in the Inter Party Advisory Committee (IPAC), which is the main mechanism in the country for EC-political party dialogue (see below). This impasse between the electoral management body and main opposition party remains a major risk point for the 2024 polls.

The EC conducted a review in the wake of the 2020 polls. This was conducted also in consultation with political parties but given the NDC's non-collaboration with IPAC it meant the party was not part of the dialogue. The NDC did issue its own "Position Paper on Electoral Reforms", which included 31 recommendations, however, it appears that this has not been taken into consideration by the EC at all. While there has been a complete lack of substantive legislative/constitutional change (see table below), the EC has committed itself to a wide range of technical and procedural changes, some of which relate to a number of the EU EOM's recommendations (see discussion below relating to Recommendations 1,3,5,6,8 and 10).

Other prospective changes which the EC informed the EFM it intends to address are, the introduction of continuous voter registration to build on the existing voter register<sup>2</sup>; to close polling stations at 3pm rather than 5pm, to facilitate the counting process during daylight hours; and research on what is behind the number of rejected ballots<sup>3</sup>. The EC is also proposing to introduce a Constitutional Instrument (CI) on Voter Registration (see Section 5) and another CI relating to the conditions for political party registration, as determined by the current Political Parties Act 574 of 2000 (see Section 4D).

## **B. Political Context**

The 2020 elections in Ghana resulted in a very close outcome for both presidential and parliamentary polls. In the presidential race, incumbent President Nana Akufo-Addo (New Patriotic Party – NPP) was declared the winner with 51.30% of the valid votes cast, beating his main challenger former president John Mahama (National Democratic Congress – NDC), who received 47.36% of the vote. The parliamentary elections resulted in a hung parliament, with NPP and NDC each securing 137 seats in the 275-seat parliament. The remaining seat was won by an independent candidate. Voter turnout was 79%, higher than the 70% recorded in the 2016 elections.

On 30 December, a presidential election petition was filed with the Supreme Court by the runner-up John Mahama, claiming irregularities in the results announced by the EC. President Akufo-Addo was sworn-in on 7 January 2021. In March 2021, the Supreme Court announced a unanimous decision against the merits of the petition.

The close outcome of the 2020 polls, the fact that Ghana has a hung parliament, the increased polarisation, NDC's fractious relationship with the EC and its disengagement from IPAC, all contribute to a heightened political atmosphere as the country moves towards the 2024 polls. Despite the fact that the next elections are not scheduled until December 2024, both of the main political parties are increasingly in election campaigning mode, starting the procedures for

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<sup>2</sup> The NDC has a concern about this. They state that at present political party agents are very active in monitoring voter registration, but if it is continuous, they would not be able to do this. Therefore, they suggest it is limited to specific days/times, to facilitate the presence of party agents.

<sup>3</sup> For the presidential polls in 2020 the % of rejected ballots was 2.33%, which is not unusually high.

selection of their parliamentary candidates and presidential flagbearers. For example, the NDC informed the EFM that their selection procedures will be completed by mid-May.<sup>4</sup> As such, the environment is increasingly tense and politicised. For the ruling NPP there is a need to identify a new presidential flagbearer, given that President Akufo-Addo will have completed the maximum of two terms allowed. The NPP's "Break the 8" campaign strives for a third term in power for the party, unprecedented since the introduction of multi-party democracy, although the slogan has lost some traction in the current fragile national economic context.

### **C. Institutional Context**

#### ***i) Electoral Commission***

All seven members of the EC are to be appointed by the President for an indefinite tenure<sup>5</sup>. On 20 March 2023, President Akufo-Addo swore in three new Electoral Commissioners, to replace three retiring members.<sup>6</sup> The new Commissioners are Rev Akua Ofori Boateng, Hajia Salima Armed Tijani, and Dr. Peter Appiahene. They have therefore joined the Chairperson, Jean Mensa, Samuel Tettey, Deputy Chairman for Operations, Dr. Bossman Eric Asare, Deputy Chairman for Corporate, and Ms. Adwoa Asuama Abrefa as Commissioner, to form the seven-person Commission as provided in Article 43(1) of the Constitution.

Given the background to the dismissal of the previous Chair and Deputy Chairs of the EC, the NDC's continuing antagonistic relationship with the EC and the method for appointment by the President without any need for consultation with parliament or political parties (see Recommendation 4) the appointments were inevitably criticised by an NDC MP, who claimed that one of the newly appointed Commissioners had a background as an NPP activist.<sup>7</sup> Regardless of the veracity of such claims, it highlights the highly polarised, zero-sum, nature of politics in the country, which threatens to heighten tensions for the 2024 polls and place the EC under intense scrutiny in all of its operations and decision-making.

The EC has also appointed a Compliance Officer, who will deal with political party compliance with the Political Parties Act. For instance, the Officer will check on party compliance with political party registration criteria as well as working to enhance EC capacity in managing political party financial reporting.

#### ***ii) National Identification Authority (NIA)***

In the context of the EC's plan to limit new voter registration to only those persons holding a new National ID Card (known as the Ghana Card) – which at present is only a plan as the CI proposing this regulatory change to parliament is yet to be formally laid before parliament – there has been a lot of discussion regarding the capacity and role of the NIA, as it is the body

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<sup>4</sup> It is notable, and somewhat ironic, that despite the NDC's critical attitude towards the EC, it has tasked the EC to conduct the party primaries.

<sup>5</sup> Article 43(2) of the Constitution. Further, the President shall act "on the advice of the Council of State" for the appointment of the Chair, Deputy Chairs and other members of the Electoral Commission, Article 70(2) of the Constitution.

<sup>6</sup> The retiring Commissioners are Mrs. Hajia Sa-Adatu Maida, Ebenezer Aggrey-Fynn, and Mrs. Rebecca Kabukie Adjalo.

<sup>7</sup> [www.citinewsroom.com](http://www.citinewsroom.com), "Kofi Adams takes on Akufo-Addo over new appointments to Electoral Commission", 22 March 2023.



tasked with producing and distributing the cards to eligible persons. The NIA has suffered from a number of financial and operational challenges, resulting in a large backlog of cards yet to be produced and distributed (see Section 5). Some stakeholders also claim that the NIA organisational structure, which is based on offices in District capitals, does not provide reasonable accessibility for some communities in outlying areas.

The EC informed the EFM that the NIA's financial problems are being addressed by the government and that it will, given there is still more than 18 months to the next election, be able to catch up on outstanding registrations. The capacity of the NIA is critical for the EC's plan, should it go ahead, as the electoral body will be completely reliant on the ability of the NIA to provide Ghana Card's for all of those persons requiring one.

### *iii) Inter Party Advisory Committee (IPAC)*

IPAC has been an established mechanism in Ghana for EC-political party dialogue since 1994. It is an informal mechanism, enabling the EC to discuss matters informally with political parties and consult on proposals, providing an inclusive approach. For example, the various proposals put forward by the EC for electoral reforms post-2020 were discussed and adopted at an IPAC meeting, following a two-day review workshop on the 2020 elections. One interlocutor characterised IPAC as the 'vehicle for change'.

IPAC is not formally legislated. The notion of institutionalising IPAC in law is a topic raised by a number of interlocutors. At present it is managed, and chaired, by the EC, and attended by all registered parties. The extent to which this informality is one of its strengths, or whether establishing formal structures could be helpful, will need to be carefully considered.

The NDC claims that the inclusion of all registered political parties, including non-parliamentary parties many of which secured only a very small number of votes in the past elections, means that the voice of one of the two main parties in the country (based on parliamentary and presidential votes) is diluted. It has been a long-standing practice that IPAC is for all registered parties and this has worked in the past. However, the NDC claims that many of the smaller parties back the NPP in deliberations, but it is questionable if such a mechanism could legitimately exclude *bona fide* parties, which also participate in the electoral process as legitimate stakeholders. For these reasons, NDC has been boycotting IPAC meetings since 2020. Going in to the 2024 polls it is important for the EC and the parties to find a way to enable IPAC to function as an inclusive body, to re-engage the NDC and mitigate potential tensions should they arise.

### *iv) Judiciary*

In the past, the Supreme Court has to a great extent enjoyed the trust of various electoral stakeholders as it has played an instrumental role in implementing electoral reforms, such as the introduction of a photo ID for verification of voters. Furthermore, during adjudication of petitions in past elections, it called on the EC to respond to questions of the petitioner. However, since the 2020 elections it has been progressively seen by some of the stakeholders as adopting a more protective stance towards the EC and its decisions. During the examination of presidential election petitions in 2021, the Supreme Court upheld the EC position not to testify.

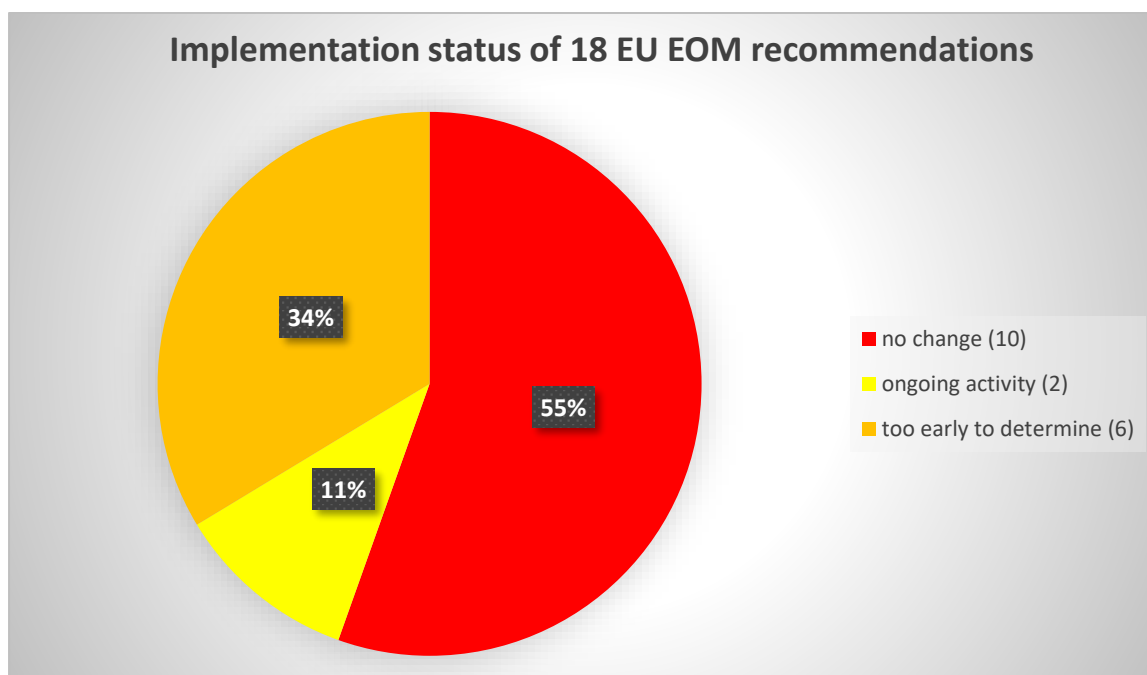
The Chief Justice and the Justices are appointed by the President with approval of parliament. The current composition<sup>8</sup> of the SC has been appointed almost exclusively by NPP in the course of various tenures. The nomination of the latest two Justices in March 2023 was opposed by NDC that claimed that one of the nominees has been a parliamentary candidate on the NPP ticket, therefore unfit for the position. Eventually, the nomination was approved by parliament.

#### D. EU Actions on EOM Follow-up

The EU Delegation, since the publication of the 2020 EOM Final Report, has advocated for implementation of the recommendations offered by the EOM, through political tools such as the EU-UNDP Working Group on elections that has served as the main channel for coordination with development partners and for launching a dialogue among local stakeholders. In addition, the EU has been raising the topic of electoral reforms in discussions with the government, including during the annual EU-Ghana Partnership Dialogue.

Furthermore, the EU has signed two grant contracts under the Human Rights and Democracy thematic programme that focus on advocacy for implementation of some of the EOM priority recommendations. From January 2023, the projects are being implemented by the Institute for Democratic Governance (IDEG) and the Ghana Centre for Democratic Development (CDD-Ghana). The recommendations in focus pertain to: publishing on the EC website detailed polling station results from all levels of collation, procedures and deadline for filing petitions against results (recommendations 6 and 8); limit the role of the National Communications Authority (NCA) to administer broadcasting signals and transfer its licensing and sanctioning powers to the National Media Commission (NMC) in order to create one sole and completely independent media regulatory authority, (recommendation 14); establishing deadlines for the adjudication of parliamentary election petitions (recommendation 17); and the enactment and implementation of an Affirmative Action Bill (recommendation 18).

## 4 Implementation Status of EU EOM Recommendations



<sup>8</sup> The Supreme Court consists of the Chief Justice and at least nine other Justices-article 128.1 of the Constitution of Ghana. Its current composition comprises 14 Justices.

The EFM noted very limited progress in addressing the recommendations offered by the 2020 EU Election Observation Mission. Of the total of 18 recommendations offered by the EU EOM in 2020 none have been fully or even partially implemented as of yet. Six of the recommendations are being looked at by the EC. Two of these require legislative reform, via a Constitutional Instrument initiated by the EC, and four relate to the EC's management of the process, but there has only been limited action or it is too early in the electoral cycle to determine the extent of implementation. In terms of legislative reforms recommended by the 2020 EOM none of the other nine proposed legal reforms have been addressed and there does not appear to be any political engagement on these. Many of these outstanding legal reforms were raised also by previous EU EOMs. Of the remaining three recommendations, there has either been no change, or it is too early to determine.

The detailed overview of the state of implementation of the EOM recommendations is provided in the attached matrix.

### **A. Legal Framework (Recommendations 1,2 and 3)**

Of the 18 recommendations, a total of 12 would require constitutional and legislative reform. The ones pertaining to candidate registration are discussed under this section, while the rest are analysed in different sections below.

In light of the disqualification of two candidates by the EC, without a hearing, and of the subsequent denial of the High Court to examine their application for review in its merits, recommendation 1 suggests that candidate registration starts well ahead of election day, with clear procedures and deadlines for filing candidatures and for their review, including hearings and the opportunity to correct errors. The 2016 EU EOM highlighted the same issue and made a similar recommendation (see Recommendation 9 of the 2016 EU EOM Final Report). This is one of the recommendations the EC has taken on board and is planning to implement for the 2024 elections. The stated intention is to add an additional ten days to the registration period, that is five extra days for filing of nomination papers and five extra days for corrections of potential errors. However, thus far this intention has not materialised in the form of a new Constitutional Instrument.

The implementation of recommendation 2, pertaining to the abolition of ineligibility as candidates of members of the extended public service, requires a constitutional amendment<sup>9</sup>; therefore, not only there has been no change thus far, it is also highly unlikely that it will be implemented before the next elections. Some interlocutors expressed reservations about the content of this recommendation on the grounds that its implementation might further politicize public service and exacerbate the abuse of state resources.

Recommendation 3 proposes the reduction of candidate nomination fees, including a special dispensation for female candidates as well as the lowering of refund thresholds. The 2016 EU EOM highlighted the same issue and made a similar recommendation (see Recommendation 8 of the 2016 EU EOM Final Report). The EC is of the opinion that the nomination fees (100,000 GHS- approximately 7770 EUR- for the presidential candidates and 1000 GHS-approximately 777 EUR- for the parliamentary ones) are not high, given the depreciation of the GHS during

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<sup>9</sup> Article 94.3 of the Constitution of Ghana. As this provision is non-entrenched, it can be amended by the Parliament without being put in a referendum.

the last couple of years and is not intending to reduce them. It does, however, intend to reduce the nomination fees by 30 per cent for female candidates and for persons with disabilities. In addition, the EC is planning to reduce the threshold for refund of the nomination fees to candidates who will have obtained 5 per cent of votes in the parliamentary elections, as opposed to the current 12.5 per cent requirement. The threshold of 25 per cent of votes obtained for refund of nomination fees for the presidential candidates will remain unaltered. Similar to recommendation 1, the Constitutional Instrument that would bring about the above-mentioned changes has not been drafted by the EC at the time of writing.

## **B. Boundary Delimitation (Recommendation 7)**

The EU EOM in 2020 found that there are marked disparities in the number of registered voters per constituency, undermining equal suffrage. As such, the Mission recommended that parliamentary constituency boundaries should be reviewed in order to adequately provide for equal suffrage. The EU EOM of 2016 came to the same conclusion and made a very similar recommendation (see Recommendation 5 of the 2016 EU EOM Final Report). This remains unaddressed.

Article 47.3 of the Constitution states that “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<sup>10</sup>”. Some possible deviation is foreseen, to take account of geographical features and administrative boundaries, among other things (Constitution, Article 47.4), but the extent of deviation present at this time is beyond excessive. For example, the 2020 EU EOM found that “Of the 275 constituencies, 204 (74 per cent) deviate by more than 15 per cent from the national average of 61,256 voters per constituency”.

The Constitution (Article 47.5) requires the EC to undertake a review of constituency boundaries at intervals of not less than seven years or within 12 months after the publication of the population census, whichever is earlier. The last review was undertaken in 2012, 11 years ago. There was a national census in 2021. The EC informed the EFM that no review of boundaries is anticipated prior to the 2024 polls but this is something to be looked into in the future. While all stakeholders agreed that there is not a balance in constituency size, most also pointed out that this is a very sensitive ethno-social and political issue. Indeed, there is a feeling there is a lack of appetite to really address this on the basis of seeking equal suffrage as it would have massive political and social ramifications and create tension.

In the past, the tendency has been to increase the number of constituencies in order to respond to the creation of new administrative regions<sup>11</sup> or some population shifts. For instance, the number of constituencies has increased from 200 to 230 and then, following the census of the time, to 275 in 2012. Such an approach, whereby the size of parliament is further increased each time carries with it substantial commensurate costs, which, arguably, is not really sustainable. The EC stated to the EFM that it is not considering an increase in the number of constituencies for 2024. However, the issues of equal suffrage and the potential creation of new constituencies needs to be followed closely.

## **C. Election Administration (Recommendations 4, 5, 6 and 8)**

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<sup>10</sup> ‘Population quota’ is defined in the Constitution (Article 47.7) as the number of inhabitants in Ghana divided by the number of constituencies.

<sup>11</sup> Article 47.2 states that no constituency shall fall within more than one Region.

With regard to the appointment of the EC, the 2020 EU EOM highlighted that “All seven members of the EC, including the chairperson and two deputies, are appointed by the President<sup>12</sup> for an indefinite tenure without consultation with the opposition. The appointment mechanism is not inclusive and does not build confidence.” As a consequence, the Mission recommended to “Establish an inclusive mechanism for cross-party involvement in the selection and approval of EC members and with a reasonable limited tenure of office, in order to build stakeholder confidence and enhance independence of the body.” The 2016 EU EOM highlighted the same issue and made a similar recommendation (see Recommendation 2 of the 2016 EU EOM Final Report). This remains unaddressed.

The presidential power to appoint is an entrenched provision (Article 290.4 of the Constitution), and thus would require a public referendum to be altered, which raises the bar significantly in terms of the possibility for this to be addressed. Under Article 70.2 of the Constitution, the President shall act on the advice of the Council of State (the members of which are also presidential appointees in consultation with the parliament<sup>13</sup>) in the appointment of the Chair, Deputy Chairs and other Members of the Commission. However, there is no transparent or politically inclusive procedure for this. Some interlocutors have raised the possibility for the Council of State to consult more broadly on this as a compromise solution, but it is not clear if there is a legal basis for this, and, in any case, it would be discretionary and not therefore binding and would therefore not necessarily assuage political concerns. It is the case that this procedure – presidential appointment for a commission with indefinite tenure – has provided a number of Commissions which have overseen a change of power through the ballot box. However, at the same time, in a context of political polarisation finding a mechanism for increasing inclusivity, transparency and political confidence is important.

The 2020 EU EOM highlighted a number of areas where the EC needed to enhance transparency in its management of the electoral process, in order to increase confidence and integrity. The Mission recommended that the EC need to make all information of public interest immediately and easily accessible, including decisions, full statistical data on voter and candidate registration and detailed polling, counting and collation procedures. The Mission also recommended that the EC should publish on its website detailed polling station results for all elections, as well as detailed results from all levels of collation well before the deadline for filing petitions against the results. The 2016 EU EOM highlighted the same issues and made a similar recommendation (see Recommendation 3 of the 2016 EU EOM Final Report).

With regard to making all information of public interest immediately and easily accessible, the EC acknowledged problems in this regard in 2020 and the EFM was informed that the EC is intending to address a number of transparency measures, including a commitment to publish regulations, procedures, voter registration data, manuals and procedures for collation on the EC website. The EC also acknowledged problems with regard to not publishing polling station results and the EFM was informed that the EC is intending to publish on its website polling station results within 10 days. There has also been some discussion about a possibility of using a public portal for the more rapid sharing of polling station results, but this was not a definite plan. It is positive that the EC acknowledged the problems in 2020 regarding these transparency measures and that it has indicated an intention to address these matters. Such procedures are critical for public and political confidence.

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<sup>12</sup> Article 43.2 of the Constitution

<sup>13</sup> Article 89.2a of the Constitution

An associated transparency and election management recommendation made in 2020 was for the EC to issue clear procedures for presiding officers, returning officers and regional collation officers on how to proceed in cases of irregularities during the counting and collation process. The 2016 EU EOM highlighted the same issue and made a similar recommendation (see Recommendation 20 of the 2016 EU EOM Final Report). It is critical that mistakes in the counting, collating and reporting of results are minimised as far as possible, given that even technical errors can undermine confidence and increase tensions at such a vital juncture of the process. The EC informed the EFM that existing training manuals addressed some of these issues, but implied that staff on E-Day did not have access to them, which would seem a bit odd. But it was encouraging that the EC acknowledged the issue and stated an intention to provide staff at polling sites and higher levels with relevant extracts to aide them in their work. As with other assertions by the EC, this is an important issue to follow to ensure that it is really acted upon.

#### **D. Political Parties, Political Party Financing and Election Campaign (Recommendations 9, 10, 11 and 12)**

Successive EU EOMs have raised a broad range of concerns regarding how unregulated the election campaign is, notably with regard to a lack of distinct timelines for the campaign, an absence of regulation on political party financing and expenditure, no enforcement of restrictions on use of state resources and unbridled use of handouts by candidates to the public.

The 2020 EU EOM found that unlimited access to state resources during the campaign by the ruling party allowed for a disproportionate advantage. As such the Mission recommended to introduce an effective sanctioning mechanism against the misuse of state resources, including administrative and security apparatus, during the election period. The 2016 EU EOM raised a similar concern and made a similar recommendation (see Recommendation 11 of the 2016 EU EOM Final Report). This remains unaddressed.

There did not appear to be any substantive movement to address this issue, and, it could be said that some political stakeholders seemed to accept the *status quo* that there is an undue advantage to incumbency. To some extent this practice is exacerbated by the lack of adequate regulation of political finance and campaign expenditure (see below), which means there is a lack of real transparency and accountability in political party finances vis-à-vis the election. It was also not clear to some stakeholders which institution would provide oversight for enforcement of this, perhaps also indicating the lack of appetite to really take this on.

In order to regulate political party finance and the use of money in the election, the 2020 EU EOM recommended to adopt a law on campaign expenditure and finance to enhance the overall transparency and accountability of political finance. The Mission highlighted that the law should include establishing disclosure requirements of incomes and expenses for both parties and candidates and limits on expenditure and donations. It should also introduce effective oversight, sanctions and enforcement mechanisms that include a timely publication of all campaign finance reports, including online. The 2016 EU EOM also raised concerns regarding the lack of transparency and accountability regarding political finance and elections. This remains unaddressed.

There appears to be a lack of political interest in increasing regulation around political finance. Stakeholders indicate that both of the main parties, while concerned at the rising costs of elections for the parties, do not want to risk providing any advantage to the other and may have

an interest in lowering the cost of politics. However, at the same time, parties appear to lack an interest in increasing transparency and accountability around political finance.

If such regulations are considered, they could include a clear campaign start date (see Recommendation 10 of the 2016 EU EOM Final Report), which was highlighted in the EC post-2020 election review; requiring a designated bank accounts for party funding and expenditure; and more rigorous public reporting on party financing and expenditure to provide for transparency and accountability.

The lack of such accountability also facilitates other associated problems, identified by the EU EOM in 2020, such as the lack of enforcement of prohibition on corrupt practices, such as bribery/handouts in an election. The Mission recommended intensive civic education campaigns to be undertaken, focusing on what constitutes an electoral offence, specifically electoral bribery, treating and undue influence as well as related sanctions. Stakeholders feel that practices such as gifting and handouts have become endemic to the notion of campaigning in the country, which is a major problem. One consequence of this is the significant cost of running a campaign in Ghana. A study on 'The Cost of Politics in Ghana', undertaken by the Westminster Foundation for Democracy, found that between 2012 and 2016 the cost of running for political office increased 59%. On average, candidates needed to raise GH¢389,803 (c. EUR €33,000) to secure the party primary nomination and compete in the parliamentary election in their constituency.

At present, political parties have a requirement to submit to the EC within 21 days before an election a statement of their assets and liabilities. However, in the past the EC has acknowledged that not all parties have complied with this and the matter has not been pursued by the EC. The EU EOM in 2020 recommended that the EC's political party oversight be strengthened to promote compliance with legal and regulatory requirements regarding political finance. The EU EOM of 2016 made a similar recommendation. The EC informed the EFM that it has developed a new template for such reporting and the EC now has a Compliance Officer, tasked with overseeing this. The key, however, is political will to enforce, for example what would EC do if one of the two major parties failed to properly report? It is positive that the EC has acknowledged the issue and claims to have made plans to address the matter, but this is to be followed. More broadly, the EC has also indicated to the EFM that it is planning a new CI to address the issue of political party compliance with legal requirements regarding party structures and operations, including the need to submit audited accounts and to have established offices at District level. The EC estimated that some 17 of the currently 28 political parties do not meet this requirement, which would drastically cut the political field.

### **E. Media & Digital Communications (Recommendations 13, 14, 15 and 16)**

The National Media Commission (NMC) is a constitutional body with the mandate to promote and ensure free and independent media, to ensure maintenance of the highest journalistic standards, to investigate complaints made by and against the media, to insulate the public broadcaster from state control. The NMC consists of 15 members, appointed by a wide array of stakeholders, including the Ghana Bar Association, the associations of writers and teachers, owners and publishers of private press, the association of private broadcasters, advertisers, Christian groups and Muslim councils, the President, the parliament, the trade unions Congress, the Ghana Journalists Association.

Up to 2017, the NMC had been conducting media monitoring, in part thanks to EU support. Since then and mostly due to lack of equipment, the NMC has been unable to continue its monitoring activities and therefore has been facing difficulties in ensuring that journalistic standards are met and in overseeing electoral coverage. The 2020 EU EOM recommended that the NMC be provided with sufficient resources to conduct media monitoring and oversee the work of the media (Recommendation 13). The 2016 EU EOM highlighted the same issue and made a similar recommendation (see Recommendation 14 of the 2016 EU EOM Final Report). There has been no change regarding this recommendation and no relevant commitment or intention was brought to the EFM's attention.

In contrast with the composition of the NMC, the members of the board and management of the National Communications Authority (NCA), the body in charge for allocating, suspending and revoking broadcasting licences, are appointed by the President and operate under the directive of the Minister of Communication. Several stakeholders have mentioned to the EFM that there is a deficit of independence and transparency in the function of the NCA. The closure of some NDC-affiliated media outlets by NCA in 2019 and 2021 was deemed biased by some interlocutors, although some media applied for reauthorization and it was also mentioned to the EFM that the function of some outlets without authorization was simply tolerated for some time, until the NCA decided to enforce compliance.

It is noted that suspending or revoking a licence is the prerogative of the NCA that by law is constrained in applying solely technical criteria (such as area of coverage), while the NMC is all but powerless to enforce sanctions on potential breaches of the law related to content. A Legislative Instrument initiated by the NMC and passed by the parliament, attempting to regulate content, was struck down as unconstitutional by the Supreme Court in 2016<sup>14</sup>.

In the light of this split of competencies between the NMC and the NCA and taking into account the differences in their mandate, institutional setup and sanctioning powers, the EU EOM proposed to limit the role of the NCA and transfer its licencing and sanctioning powers to the NMC in order to create one sole and completely independent media regulatory authority (recommendation 14). See also EU EOM Report of 2016, Recommendation 14.

While this recommendation has been supported by the majority of stakeholders and most importantly by the NMC itself that reiterated its support, no change has taken place and no discussion on possible changes is currently underway. The NCA declined a meeting with the EFM on the grounds that they do not play a role in the electoral process.

The EFM was informed that a Broadcasting Bill drafted in 2019, but not presented before the parliament yet, contains some provisions that may at least permit some closer cooperation between the NMC and the NCA.

Legal provisions that prohibit dissemination of false information are contained in the Criminal Code (1960) and the Electronic Communications Act (ECA-2008). Section 208 of the Criminal Code establishes the offence of publication or reproduction 'of any false statement, rumour or report which is likely to cause fear and alarm to the public or to disturb the public peace', punishable with a prison term of up to three years. Section 76 of the ECA states that a person

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<sup>14</sup> Article 162 of the Constitution of Ghana states there shall be no impediment to the establishment of private press of media. As the 1992 Constitution sought to reverse the previous regime of tight state media regulation, no provisions to regulate the media environments, such as provisions to prevent concentration of ownership and the creation of monopolies, were ever put in place.



who sends by electronic means ‘a communication that is false or misleading and likely to prejudice the efficiency of a life-saving service or to endanger the safety of any person, ship, aircraft, vessel, vehicle’ commits an offence punishable with a prison term for up to five years. The EU EOM noted that both of these provisions lack precision and results in them being open to wide interpretation that could lead to restrictions on freedom of expression and proposed (recommendation 15) that they be clarified.

Regarding the situation of freedom of speech and freedom of media, in spite of the strong constitutional guarantees<sup>15</sup> and sustained improvement in terms of press freedom since the major overhaul of the media legal framework in 2001<sup>16</sup>, a repressive trend and a surge of attacks against journalists has become apparent in the last few years, resulting in deterioration of the media environment. From January 2021 to September 2022, the Media Foundation for West Africa (MFWA) had recorded 30 press freedom violations, ranging from threats and closing of media outlets to physical attacks and arrests and detentions<sup>17</sup> Ghana has dropped in the ranking of Reporters without Borders (RSF) from the 30<sup>th</sup> position in 2021 to the 60<sup>th</sup> in 2022.<sup>18</sup>

Journalists and media-related civil society organisations are reporting that the criminal provisions on publication of false information mentioned above have been used for intimidation and prosecution of journalists and as a tool to control political speech. In a joint statement in February 2022<sup>19</sup>, four civil society organisations (CDD-Ghana, STAR-Ghana Foundation, IMANI-Africa and Africa Center for International Law and Accountability) urged the office of Attorney-General to refrain from essentially reintroducing *de facto*, by means of these criminal provisions, the long-abolished criminal libel regime. At the same time, they urged media practitioners and users to tone down inflammatory speech and desist from knowingly making or publishing false statements.

The current situation and the regression since the last elections highlight the importance and pertinence of Recommendation 15. Regrettably, not only do they remain in force, but their amendment is not being considered.

The Data Protection Act (2012) provides for the right to privacy and protection of user data. The Data Protection Commission was established by this Act as an independent statutory body with the mandate to protect the privacy and personal data of individuals by regulating the processing of personal information and by laying out a process by which personal information can be obtained, held, used and disclosed. Its mandate includes the raising of public awareness of data protection as a fundamental right. During the campaign period of 2020 elections, citizens in 14 out of 16 regions informed the EU EOM of having received unsolicited campaign text messages. Consequently, recommendation 16 suggests that the mandate of the Data Protection Commission must be fulfilled in accordance with the Data Protection Act to ensure an effective data protection system in practice.

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<sup>15</sup> Article 162 of the Constitution of Ghana.

<sup>16</sup> The legal reforms of 2001 repealed the libel and sedition criminal provisions, including clauses on the defamation of the president. Laws granting the president discretionary power to ban media outlets were also repealed.

<sup>17</sup> Press Freedom under the 4th Republic in Ghana: Repression, redemption, depression, Media Foundation for West Africa

<sup>18</sup> <https://rsf.org/en/country/ghana>

<sup>19</sup> CSO-Statement\_Stop-Re-Introducing-Abolished-Criminal-Libel-Regime-fn2.pdf (cddgh.org)

EFM interlocutors have stated that there seems to be little public awareness about the Act which is one of the challenges for its full implementation. The EFM was informed that there have been some complaints from citizens and even though they pertain to receiving unsolicited commercial messages, their outcome may raise more awareness in terms of data protection. The implementation of this recommendation may only be assessed at a much later stage of the electoral cycle.

## **F. Participation of Women (Recommendation 18)**

Of the 275 members of the parliament the number of female MPs is 40, which amounts to 14.5 per cent. These numbers even if they constitute a slight increase compared with the previous legislature (37 female MP, that is 13.5 per cent) place Ghana in the 145<sup>th</sup> position in the world in terms of women's representation in the parliament<sup>20</sup> and they fall far below regional standards (an average of 26.8 per cent for Sub-Saharan Africa<sup>21</sup>). Traditional social norms on gender roles and gender-based stereotypes together with the ever-increasing cost of contesting an election in Ghana continue to constitute significant barriers to women's participation in political life.

Recommendation 18 proposes the enactment and implementation of an Affirmative Action Law that would install at least a 30 per cent quota of women in governance and decision-making positions, with a progressive increase to 50 per cent. Furthermore, it suggests that political parties be required to adopt party quotas in order to promote women's participation in politics. The 2016 EU EOM highlighted the same issue and made a similar recommendation (see Recommendation 16 of the 2016 EU EOM Final Report)

Even though an Affirmative Action Bill had been drafted already in 2011 and expected to be presented before the parliament in 2019, no progress whatsoever has been made by the previous or incumbent legislature, despite the public commitment of the Speaker of Parliament for the enactment of the bill and despite repeated calls and continuous advocacy from civil society in the course of all these years. The lack of action is attributed to numerous revisions that would have the Bill sent back and forth between the Cabinet of the Ministry of Gender, Children and Social Protection and the Parliament and essentially to lack of political will.

Due to several revisions that the Bill has undergone, it is not possible to ascertain the content of the current draft of the Bill at the time of writing. For instance, the EFM has received conflicting information on whether the Bill includes quotas for political parties and whether it is ready to be submitted to the Parliament. It remains to be seen whether the sustained efforts of civil society will bear fruits ahead of the district elections of 2023 or the Presidential and parliamentary elections of 2024.

The part of recommendation 18 regarding party quotas seems highly unlikely to be implemented in the foreseeable future. Besides the challenges inherent to a majoritarian system, the main political parties have stated that the idea of fielding only women candidates to the constituencies of 'safe seats' was met by strong reactions from the male candidates; they added that such a measure would be seen as an imposition and would undermine the competitive nature of primaries.

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<sup>20</sup> <https://data.ipu.org/women-ranking?month=2&year=2023>

<sup>21</sup> [https://data.ipu.org/women-averages?month=2&year=2023&op=Show+averages&form\\_build\\_id=form-i8mGfylNq3TK5-Nw\\_96F\\_TCYOhPw0jzMxvyQ6NyqvIw&form\\_id=ipu\\_\\_women\\_averages\\_filter\\_form](https://data.ipu.org/women-averages?month=2&year=2023&op=Show+averages&form_build_id=form-i8mGfylNq3TK5-Nw_96F_TCYOhPw0jzMxvyQ6NyqvIw&form_id=ipu__women_averages_filter_form)

## **G. Electoral Justice (Recommendation 17)**

Petitions for parliamentary elections must be filed with the High Court, whose decisions can be further challenged at the Court of Appeal as the final instance. While the Representation of the People Law (PNDCL 284) states that these petitions must be lodged within 21 days from the date the publication of election results in the Gazette, there is no legal provision that establishes a deadline for the adjudication of parliamentary election petitions. This lack of timeframe has resulted in petitions being decided upon sometimes toward the end of the mandate of the legislature<sup>22</sup>, a situation that creates uncertainty among the petitioners, political parties, the parliament, the general public and undermines the effectiveness of legal redress. In addition, there usually is a time lapse, of almost two weeks, between the publication of results in the Gazette and its availability which can further delay the process.

The EU EOM recommended to establish a reasonable deadline for the ruling on parliamentary election petitions in order to increase access to an effective remedy and enhance public confidence (recommendation 17). It further suggests that parliamentary election petitions could be filed, similarly to the presidential election ones, within 21 days of the declaration of results instead of their publication. The 2016 EU EOM highlighted the same issue and made a similar recommendation (see Recommendation 18 of the 2016 EU EOM Final Report).

The implementation of this recommendation requires the amendment of PNDCL 284. Although all EFM interlocutors have reiterated the necessity for establishing deadlines for parliamentary elections petitions, there appears to be little initiative at this stage to bring about the necessary changes.

## **5 Analysis of Other Election-Related Reforms**

### **A. Voter Registration**

Concerns regarding the integrity of the voter register were raised during the 2008, 2012 and 2016 polls. For instance, the 2016 EU EOM concluded that “concerns were raised regarding the integrity measures for registration and the total number of names on the register remains unrealistically high”<sup>23</sup>. The new biometric voter registration of 2020, while controversial in some regards, was viewed as providing an improved basis for voter registration.

The EC now wants to build on the 2020 effort, enhancing integrity by limiting new registration to only those able to produce a new Ghana Card<sup>24</sup>. This is a departure from 2020, when registrants could, in addition to the Ghana Card, also use a passport or an identification guarantee form signed by two registered voters. Opponents of the introduction of sole reliance on the Ghana Card for 2024, including notably the NDC<sup>25</sup> which is arguing very strongly

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<sup>22</sup> For instance, a parliamentary election petition following the 1996 elections was only finally resolved in 2000. The EFM was also informed that at least one petition filed after the 2020 elections is still pending before the courts at the time of writing.

<sup>23</sup> 2016 EU EOM Final Report, p4

<sup>24</sup> Article 30.2 of the draft CI also provides for the EC to consult with Department for Births and Deaths in order to receive information and to keep the list relatively clean. This is a fairly major change and was recommended by the EU EOM in 2016.

<sup>25</sup> The NDC claims this will disproportionately affect the party, given their instruction at the time when the process for applying for the Ghana Card commenced, for their supporters not to come forward to register, as the party was embroiled in a court case against the process at the time. They also argue that their support base is in more rural areas and so affected by the NIA’s lack of outreach capacity.

against it, propose instead for what might be characterised as ‘Ghana Card Plus’, i.e. a new registrant should be able to use a Ghana Card, or passport or possibly the vouching system as in 2020. Many stakeholders, however, identify the “vouching” or “guarantor” system as particularly prone to abuse.

On a technical level, concerns focus on a series of problems which the National Identification Agency (NIA) has faced resulting in delays and problems for people seeking cards.<sup>26</sup> For instance, the Agency ran out of funds resulting in cards being seized by the bank and an inability to produce any new cards for some time. In a meeting with the EFM the EC stated that the NIA’s financial problems have been resolved and that the backlog can be addressed. Concerns were also raised about the NIA only having offices at the District level. In some areas this means people would have to travel some distance in order to access the application procedure, assuming they feel the need to do so in the first place.

There appears to be a general consensus that Ghana should move towards sole use of the Ghana Card, but the disagreement comes over a) the speed at which this should be implemented and b) the manner in which this has been introduced, without broad consultation. Parliament went recess on 31 March, so the matter will not be dealt with until May at the earliest.

The adoption of sole reliance on the Ghana Card would further enhance the quality of the registration, particularly if Ghana can cease with the vouching system. The question, though, is to what extent it may unduly impact on participation rights? Ultimately the EC has to provide for both the right and opportunity to vote. If access to the Ghana Card can be assured for all eligible persons seeking a Card, then there is no problem. If such assurances cannot be given, then it would be a problem. The extent to which this may disenfranchise parts of the population if the change is introduced for 2024 remains a sensitive point and one which the EC and NIA will have to address very clearly, with suitable assurances that people will not be disenfranchised through no fault of their own.

## **B. Local Elections**

A second referendum on the introduction of partisan politics at local level was scheduled alongside the district level elections on 17 December 2019, which proposed amending the Constitution to establish the direct election of metropolitan, municipal and district chief executives. The NDC along with several NGOs and prominent personalities opposed the “yes” campaign, calling for a boycott. Close to the local elections, the President decided to cancel the referendum. This issue continues to be discussed and considered, but at present there has been no change and the 2023 local elections will again be on a non-partisan basis.

## **6 The Stakeholder Roundtable**

The EC welcomed the work of the EU on elections and highlighted it is considering a number of new measures, including enhancing conditions for collation and reducing nomination fees for women and persons with disabilities (PWD). The EC indicated its proposed Constitutional Instrument for the 2024 elections would incorporate these elements. The EC acknowledged the imbalances in electoral constituencies and indicated that this requires a comprehensive review.

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<sup>26</sup> For instance, The EC informed the EFM that the NIA had some 542,000 cards not printed and a further 650,000 printed but not collected. There are also new registrants still to be dealt with, meaning the total number of potential election-related cases for the NIA to resolve could be in excess of two million. Based on data from the 2021 census the voting population for 2024 will be c.19million.

The EC also stressed it will enhance its scrutiny of compliance by political parties in relation to the Political Parties Act, notably on financial reporting and audits.

The NPP said it is assessing how to support candidates regarding the payment of fees and indicated it is considering a 50% reduction for women and PWD candidates in party primaries, in addition to reviewing more broadly how to promote the participation of women.

The NDC highlighted it was not satisfied with the EC's review of the 2020 polls, as the party was not engaged in this process through IPAC. The NDC stressed that it is keen to discuss electoral reform matters and has itself conducted a review of the 2020 polls and drafted ensuing recommendations. NDC insists that IPAC should be constituted in a different, more inclusive, manner, as inter-party dialogue is needed in some format. NDC supported changing the mechanism for appointing EC members, including by incorporating a cross-party mechanism. It stressed that a multi-party system needs a multi-party approach to such matters. The NDC concluded by suggesting a national conference to discuss all prospective reforms.

The NMC highlighted the need for leadership from a designated authority to take electoral recommendations forward, as otherwise there is no real mechanism for enforcement or follow-up. Likewise, in parliament, legislative interventions need a champion to take them forward.

The NMC highlighted that despite the EU EOM recommendation to that effect, the NMC has not received any additional support. The NMC also expressed concern that the environment for the 2024 polls is likely to be more fraught, notably due to the use of social media, increasing the need for media monitoring.

The Convention People's Party (CPP) indicated it is changing how the party accounts for political finance, including a special app for donations. The party will attempt to field more women in 2024, up to 30% of the total. Likewise, for fees, the party will only apply minimal fees for women, youth and PWD.

The National Peace Council (NPC) stressed the need for a time limit for parliamentary petitions. The Council also highlighted the number of election-related deaths in 2020 and stressed the need for police action and follow-up as well as accountability for violent acts. Looking ahead, the Council is concerned about possible hate speech surrounding the elections.

The National Commission for Civic Education (NCCE) said that a major problem is that many of the recommendations require legislative or constitutional change, which is an obstacle. The Commission also wondered who can take such initiatives forward and show the necessary leadership to push these reforms.

The Ghana Anti-Corruption Institute said there is a need for coordination of electoral follow-up and also claimed a lack of communication from the EC to CSOs on such matters.

The Ghana Integrity Initiative (GIA) stressed the need for equity in the electoral system, highlighting that the Affirmative Action Bill is still at a review stage in parliament. With regard to public officials, the GIA disagreed with the EU EOM recommendation and said Ghana should beware of allowing civil servants to get involved in politics.

WILDAF also emphasised the need for the Affirmative Action Bill to be taken forward.

CDD / CODEO highlighted that many of the EU recommendations are in line with their own following the 2020 polls. CDD/CODEO drew particular attention to petition timelines, EC collation procedures, EC transparency measures for results, the Affirmative Action Bill and political finance. IDEG and CDD claim that the responsibility for financial oversight of political parties is too significant for the EC and should rather be managed by a different body.

The Ghana Federation of Disability Organisations (GFDO) was pleased that the EU EOM addressed disability issues relating to elections. However, it noted there was a lack of tactile ballots in some polling stations in 2020 and the EOM had not taken note of this. The organisation stressed that such ballots are cheap and could be easily provided everywhere. GFDO said the recent census had provided a better picture of the number of PWDs in society, which should facilitate their registration as voters. At present the EC only recognises four categories of PWD, so many forms of PWD are not captured. Finally, the GFDO is concerned that the CI on polling stations does not adequately address accessibility.

The Ghana Broadcasting Corporation (GBC) stressed that contrary to the EU report, GBC is not a government broadcaster, neither in law nor in practice. The GBC stressed the need for it to sell airtime for commercial viability, with the ruling party often as the main customer due to its greater financial capacity. This somewhat unequal exposure of parties by the GBC is not a show of bias, but rather a commercial necessity.

His Lordship Justice Kulendi mentioned a review committee for courts planned this year, which will notably consider the issue of parliamentary petition timelines. The Justice also highlighted the need to increase awareness on the rules for dispute resolution among the public and electoral stakeholders.

## **7 Conclusions**

The EFM welcomes the EC's stated intentions to address a number of the recommendations providing for enhanced transparency relating to the publication of results and sharing of relevant election-related data, information and decisions by the EC, as well as the proposals to provide more time for candidate nominations. These changes, assuming they are implemented, will help enhance transparency and confidence in the process.

However, these positive intentions contrast with the significant lack of movement and political will, in particular from the political parties, to take forward the necessary legal reforms. The failure to address these issues, which also featured in the EOM report of 2016, is a missed opportunity for Ghana. Therefore, in light of the limited impact of the recommendations of these election observation missions, it is questionable, at this stage, whether the deployment of an EU EOM in 2024 would be useful.

Of particular concern are the lack of reforms on issues such as political finance, including the misuse of state resources; the increased participation of women in political life; a more inclusive process for nomination of electoral commissioners; the management of petitions for parliamentary elections; and the need to provide for appropriate oversight of media and digital communications during the campaign period.

A number of interlocutors raised with the EFM the need to identify pathways for reforms; in a sense, there is a question about how to carry out reform. The EU is currently supporting a number of civil society actions in support of reforms, but, going forward, further consideration

could be given to this practical question, regarding how proposals can be taken forward, be it through Government, the EC, IPAC, Civil Society Forums, Parliamentary Committees and Parliament itself. At present, it is clear that there is a challenge in finding consensus on election-related reforms and this needs to be addressed so these reforms can at least be discussed between political stakeholders. It is also imperative for the EC and political parties to have a collaborative and inclusive approach, to facilitate constructive discussions and help mitigate potential tensions prior to and during the 2024 polls.

There is still some time before the 2024 elections, and the EU EFM believes that the implementation of recommendations can contribute to further enhance transparency, inclusiveness and credibility of elections in Ghana.

## 8 Annexes

### A. Annex A Press Release

#### **EU Election Follow-Up Mission welcomes Electoral Commission plans to enhance transparency, encourages inclusivity but notes the lack of legislative progress by all relevant stakeholders in addressing remaining legal reforms**

**24 March 2023, Accra, Ghana**

The European Union deployed an Election Follow-Up Mission (EFM) on 20-24 March 2023, led by Chief of Mission Mr Javier Nart, Member of the European Parliament (MEP) and Chief Observer of the EU Election Observation Mission (EOM) to Ghana in 2020.

The Follow-up Mission is an independent technical mission which aims at promoting discussion – and action – by key national stakeholders working towards strengthening democracy in Ghana, to raise awareness of areas where electoral reform remains unaddressed and to assess the status of implementation of EU recommendations offered by the 2020 EU EOM.

During the visit, the Mission met numerous electoral stakeholders, including the Electoral Commission, Parliament, relevant state institutions, the judiciary, political parties, media institutions, civil society and development partners. Mr Nart noted that, *“At this stage, there appears to be some intent to, at least from the Electoral Commission, partially address six of the EU EOM’s 18 recommendations, but necessary legal reforms remain unaddressed”*.

The EFM was encouraged by the EC’s plans to introduce new measures, which, if implemented, go some way to further enhancing transparency in its procedures and results management, including timely publication of polling station results, as recommended by the EU EOM. Plans to provide more time for candidate nominations and enhance management of financial reporting by parties were also welcomed by the EFM.

In a press conference held today, Mr Nart MEP said: *“We continue to stress the importance of transparency and inclusivity in the management of the electoral process, which are critical to enhance public confidence. But a number of issues requiring legal change remain outstanding, which highlights a lack of political will in particular from the political parties to take forward the necessary legal reforms. The failure to address some of these issues, which also featured in the EOM report of 2016 and the Election Expert mission of 2012, is a missed opportunity for Ghana”*.

The Chief of Mission drew particular attention to the need for legal reforms on issues such as political finance, including the misuse of state resources; the increased participation of women in political life; a more inclusive process for nomination of electoral commissioners; and the management of petitions for parliamentary elections. He also highlighted the need to provide for appropriate oversight of media and digital communications during the campaigning period. These findings are part of the report based on the 2020 elections.

In terms of ensuring a conducive environment for future elections, Mr Nart emphasized that it is also imperative for the EC and political parties to have a collaborative and inclusive approach, to facilitate constructive discussions and help mitigate potential tensions already during the run-up to the polls. Mr Nart stressed, *“The recommendations offered by an EU Election Observation Mission are an integral part of its work. When recommendations go unnoticed and unaddressed for multiple electoral cycles it puts into question the value of the observation effort and the valuable work of citizen observers”*.

Mr Nart concluded by saying: *“The Follow-Up Mission could not help but notice that EU recommendations have received no attention from the main political parties, including within Parliament, although the report was shared extensively with their leaderships. The EU continues to support and work together with Ghanaian stakeholders striving to strengthen democracy and, as there is still time before the elections, believes that the implementation of recommendations can contribute to further enhance transparency, inclusiveness and credibility of elections in Ghana.”*

The Follow-Up Mission’s final report will be published within a couple of months. The full archive of EU election mission reports can be found at <http://database.eueom.eu>.



**B. Annex B      Roundtable Agenda**

## **Roundtable Agenda**

*La Villa Boutique Hotel*

*Thursday 23 March 2023*

09.00 – 09.30	Arrival and Registration of Participants
09.30 – 09.40	Welcome Remarks * Chief of Mission, Mr. Javier Nart MEP * EU Ambassador to Ghana, H.E. Amb. Irchad Razaaly
09.40 – 11.00	<b>PART 1: Comments by Stakeholders on EU EOM Recommendations and Electoral Reforms</b>
11.00 – 12.00	<b>PART 2: Discussion of Outstanding Issues related to EU EOM Recommendations</b>  Block A: Legal Framework, Election Disputes and Women's Participation  Block B: Campaign Environment and Political Finance  Block C: Election Administration and Results Management  Block D: Freedom of Expression and Media Environment
12.00	Closing Remarks and Thanks
12.00 – 13.00	Buffet Lunch

## **C. Annex C      Roundtable Participants**

### **National Institutions**

- Supreme Court (Her Ladyship Justice Professor Mensa-Bonsu, His Lordship Justice Kulendi)
- Electoral Commission
- National Media Commission
- National Commission on Civil Education
- National Peace Council
- Ghana Broadcasting Corporation

### **Civil Society Organisations**

- Center for Democratic Development Ghana
- Institute for Democratic Governance
- Ghana Integrity Initiative
- Ghana Anti-Corruption Coalition
- Women in Law and Development in Africa
- Ghana Federation of Disability Organisations

### **Political Parties**

- Convention People's Party
- National Democratic Congress
- New Patriotic Party
- Progressive People's Party

### **International Organisations**

- EU Delegation to Ghana
- United Nations

## D. Annex D Matrix on the Implementation Status of EOM Recommendations

Category	Description	Guidance	No. / 18
1	No change	No action has been taken to implement this recommendation	10
2	Action or activity is ongoing, but implementation of the recommendation has not yet been confirmed	Examples may include the formation of a working group to review legislation, or the preparation of a legislative bill of reform, but the change has not yet been confirmed by legislative change.	2
3	Partial implementation of recommendation	The recommendation has been addressed/implemented in part, but other elements of the recommendation have not been addressed.	
4	Full implementation of recommendation	The recommendation has been implemented in full e.g. electoral legislation has been amended and all aspects of the recommendation have been addressed.	
5	Too early in electoral cycle to determine	Some recommendations may relate to administrative action/practice which can only be assessed at a later stage i.e. strengthening of civic/voter information.	6
6	Recommendation is no longer relevant	For example, a change in the electoral system may make redundant a recommendation on candidate registration under the old electoral system.	

No.	2020 EU EOM Recommendations (Recommendations in bold are priority ones)	Electoral Theme	Status (1-6)	Comments and Additional Information
1	EC to start the candidate registration process 90 days before e-day and publish clear procedures subject to timely judicial review. Set clear time periods for filing of candidate nominations, for their review by the EC, for hearings granted to candidates regarding flaws in their nomination documents, and for candidates after their respective hearings to make amendments.	Legal Framework / Registration of Candidates	2  Action or activity ongoing	The EC has stated its intention to give an extra ten days for candidate nomination, five for filing and five for correction of potential errors. The Constitutional Instrument that would establish these changes has not been yet drafted.

2	Allow all public servants to stand for office without having to resign. If tenure of specific positions is considered incompatible with elected office, public servants could be required to leave the service or take a leave of absence once elected.	Legal Framework / Registration of Candidates	1 No change	This requires a constitutional amendment, albeit without a referendum since it is a non- entrenched provision. It is highly unlikely that changes to the constitution will take place before the next elections.
3	Candidate nomination deposits be reduced, including a possible special dispensation for female candidates to also help promote women's participation in political life. Also, refund thresholds could be considerably lowered.	Legal Framework / Registration of Candidates	2 Action or activity ongoing	The EC has stated its intention to reduce the candidate nomination fees by 30 per cent only for female candidates and candidates with disability. It also intends to lower the refund threshold for parliamentary elections. The Constitutional Instrument that would establish these changes has not been yet drafted.
4	Establish an inclusive mechanism for cross-party involvement in the selection and approval of EC members and with a reasonable limited tenure of office, in order to build stakeholder confidence and enhance independence of the body.	Electoral Administration	1 No change	There has been no change to this provision and is no indication that it is being considered. Appointment of the EC by the President is an entrenched provision of the Constitution, so would require a referendum to change it, which is a very high bar.
5	The EC to work with full transparency, making all information of public interest immediately and easily accessible, including decisions, full statistical data on voter and candidate registration and detailed polling, counting and collation procedures.	Electoral Administration	5 Too early in electoral cycle to determine	The EC acknowledged the issue and indicated it is intending to publish regulations, procedures, voter registration data, manuals and procedures for collation on its website. At this stage it is too early to determine any change per se, and it is important to follow this.
6	<b>The EC to publish on its website detailed polling station results for all elections, as well as detailed results from all levels of collation well before the deadline for filing petitions against the results.</b>	Electoral Administration	5 Too early in electoral cycle to determine	The EC acknowledged the issue and said it is intending to publish on polling station results on its website within 10 days of E-day. At this stage it is too early to determine any change per se, and it is important to follow development's in the EC's planning and technical capacity.

7	Review parliamentary constituency boundaries to adequately provide for equal suffrage.	Electoral Administration	1 No change	This remains unaddressed. There was a national census in 2021, so such a review is constitutionally due by 2028 at the latest. The EC stated that there would not be an increase in the number of constituencies for 2024, which has been a past practice.
8	<b>Clear procedures for presiding officers, returning officers and regional collation officers to be stipulated on how to proceed in cases of irregularities during the counting and collation process, including over-voting, mismatched reconciliation, incomplete and wrongly filled in results forms.</b>	Polling, Counting and Tabulation	5 Too early in electoral cycle to determine	The EC claims its training manuals addressed some of these aspects but acknowledged staff may not have access to them on E-day. The EC indicated it would provide staff at polling sites etc with relevant extracts. At this stage it is too early to determine any change per se, and it is important to follow this.
9	<b>Introduce an effective sanctioning mechanism against the misuse of state resources, including administrative and security apparatus during the election period.</b>	Campaign Environment	1 No change	There has been no change. Stakeholders identified a lack of clarity as to which institution would be responsible for this.
10	The Electoral Commission's political party oversight be strengthened to promote compliance with legal and regulatory requirements regarding political finance. This includes the EC being appropriately resourced, with strong administrative sanctioning powers and implementing strict transparency and accountability procedures.	Campaign Finance	5 Too early in electoral cycle to determine	The EC has recruited a Compliance Officer, who will have responsibility for oversight of political party compliance with the Political Parties Law, which includes financial reporting. The EC also claimed to have a new template for such financial reporting. The key, however, will be the capacity and will to enforce related regulations at the time of the polls. As such while there has been some positive indicators to address this provision it is too early in the electoral cycle to determine if there is a concrete improvement.

11	<b>Adopt a law on campaign expenditure and finance to enhance the overall transparency and accountability of political finance. The law to include establishing disclosure requirements of incomes and expenses for both parties and candidates and limits on expenditure and donations including for in-kind donations. Introduce effective oversight, sanctions and enforcement mechanisms that include a timely publication of all campaign finance reports, including online.</b>	Campaign Finance	1 No change	There has been no change on this. Civil society is undertaking some initiatives to discuss some proposals on this.
12	Intensive civic education campaigns be undertaken, focusing on what constitutes an electoral offence, specifically electoral bribery, treating and undue influence as well as related sanctions.	Voter Education	5 Too early in electoral cycle to determine	It is too early in the electoral cycle to determine. Stakeholders feel that practices such as gifting and handouts have become endemic to campaigning in the country, which is a major problem. A consequence of this is the significant cost of running a campaign in Ghana. While such civic education campaigns may occur closer to the time of the elections, it is uncertain if they can address such practices.
13	<b>Provide the NMC with sufficient resources to conduct media monitoring and properly oversee the work of the media.</b>	Media	1 No change	No initiative to provide the NMC with more resources is currently underway.
14	<b>Limit the role of the NCA to administer broadcasting signals and transfer its licensing powers and sanctioning powers to the NMC in order to create one sole and completely independent media regulatory authority, in charge of allocating broadcasting licenses, analysing broadcasting contents and dealing with media-related complaints.</b>	Media	1 No change	No legislative changes planned or discussed.

15	Clarify vague legislative provisions in the Criminal Code (section 208) and Electronic Communications Act (section 76) that could be interpreted widely and used to restrict freedom of expression in the media and online.	Digital Communications	1 No change	No legislative changes planned or discussed.
16	<b>The mandate of the Data Protection Commission to be fulfilled in accordance with the Data Protection Act to ensure an effective system of data protection exists not only in law but also in practice.</b>	Digital Communications	5 Too early in electoral cycle to determine	Remains to be seen at a later stage.
17	Establish a reasonable deadline for the ruling of parliamentary election petitions in the High Court and the Court of Appeal, which will increase stakeholder access to an effective remedy and increase public confidence. Parliamentary election petitions be commenced within 21 days after declaration of results just like presidential election petitions.	Electoral Disputes	1 No change	While the issue is acknowledged by the majority of stakeholders, no initiative for change currently underway.
18	<b>Enact and implement an Affirmative Action Law installing at least a 30 per cent quota of women in governance and decision-making positions, with a progressive increase to a parity of 50 per cent. Require political parties to adopt party quotas to promote women's participation in politics.</b>	Participation of Women	1 No change	An Affirmative Action Bill was expected to be presented in parliament already in 2019. No change whatsoever has taken place.

