

RISKS OF STANDALONE AMENDMENT OF ARTICLE 243(1)

1. Ghana's Hybrid Executive System of Governance

In the euphoria of the transition from the military regime to democratic and institutional arrangement in 1992, little attention was paid to the fact that the Fourth Republic was not a fully liberal democratic multiparty system of government but rather a hybrid executive system of government. Whilst political parties are allowed to contest national elections, they are prohibited from doing same at the local level as stipulated in Article 55(3). Consequently, elections to local and district assemblies are contested by individuals but not the political parties. Similarly, the positions of the chief executives or mayors at the local levels are appointed by the President in accordance with Article 243(1).

After 29 years of operating this hybrid regime, its development dividends and impact on the quality of democracy have not been fully realized. It has overwhelmingly empowered the central government to control local government. The introduction of mechanisms which were intended to mitigate the full control of the central government over the local government such as the appointment of one-third of the assemblies (Article 242 (D)) to represent diversity, competence and inclusiveness in the assembly has also not been complied with. The decentralization of the administrative machinery and the financial resources of the central government to the district have also been ineffective.

Problems such as the vigilante violence, monetization of elections, poor local governance and public service delivery as well as corruption, all trace their root from this hybrid arrangement. Consequently, it has become evident that the hybrid system has become dysfunctional and its authoritarian character and lack of accountability is undermining confidence in political parties nationwide, causing fear and disaffection towards the political parties and the multiparty democratic system.

2. Urgent Need for Reforms

The need to solve these problems at source has inspired and intensified advocacy for the amendment of Articles 55(3) and 243(1). Several stakeholders have called for the amendment of the 1992 Constitution in order to address the problems with the current hybrid regime and reform the governance structure. Between 2018 and 2019, the NPP government pursued the amendment of Article 55(3) and 243(1) as part of its local government reforms. During the campaign for the amendment of Articles 55(3) and 243(1), three main arguments dominated the debate surrounding the referendum.

The first argument is that the current system should be left intact and rather the appointment process should be made more transparent. The second argument is to elect Metropolitan, Municipal and District Chief Executives (MMDCEs) without political parties by removing the appointing powers of the President in Article 243(1). The third argument is that the local government space should be opened for the participation of political parties through the amendment of Article 55(3) at the national referendum and Article 243(1). This calls for a total transformation of our local government system, enabling political parties to legally participate in District Level Elections (DLEs).

However, it appears there is a gradual shift from the first position as both the political parties and the Ghanaian public have recognized the need for reforming the current local government through constitutional amendment. Indeed, both the governing NPP and the opposition NDC promised some form of constitutional amendment and reform of the local government system albeit different in their 2020 manifestos. Whilst both parties agree on the need to amend Article 243(1), the impasse has been on the amendment of Article 55(3) as witnessed during the 2019 aborted referendum campaign. Largely, this impasse also reflects the sentiment of Ghanaians.

3. Risks of Stand-Alone Amendment of 243(1)

Unfortunately, whilst there appears to be consensus on the need for the election of MMDCEs, the nation is yet to appreciate the full dangers and ramifications of amending only Article 243(1) without 55(3). Due to the disagreement over the amendment of Article 55(3), there have been calls for the amendment of Article 243(1) alone to reflect the existing consensus. Proponents of this idea have argued that amending only Article 243(1) will ensure the participation of the electorate in the process of choosing their MMDCEs without the divisive, disrupting and corrupting influence of political parties which has now patently manifested in national elections. This will preserve the original intentions of the framers of the 1992 constitution who by a careful and delicate agreement crafted political compromise to allow political parties to operate at the national level while shutting them out of local government.

Notwithstanding this potential benefit of the stand-alone amendment of Article 243(1), this may not be enough to achieve the transformational decentralized local governance that will strengthen Ghana's multiparty democracy and inclusive development. In fact, the amendment of Article 243(1) alone may rather exacerbate the problems under the current hybrid system. Thus, any amendment that is aimed at reforming the current hybrid executive system which excludes the political parties will be ineffective due to the following:

First, amendment of Article 243(1) alone will not cure the fundamental problem of Winner Takes All (WTA) in the Executive arm of government that have characterized the Fourth Republic. Under the current hybrid system, by virtue of a political party's victory in a presidential election, the constitution confers control over all 260 district assemblies. Consequently, all other political parties are excluded from the executive arm of government. This often raises the stakes for presidential elections and its associated consequences such as vigilantism, monetization during elections which has become an existential threat to Ghana's democracy. Ultimately, any reform of the Executive arm must seek to cure this fundamental problem.

Second, the amendment of Article 243(1) without 55(3) will promote secret and clandestine sponsorship of candidates by political parties for MMDCEs elections as witnessed in the current District Level Elections (DLEs). Indeed, it is an open secret that after every DLEs, the two major political parties brag about the number of assembly seats that their candidates have won. Therefore, amending only Article 243(1) will result in a secret and opaque involvement of political parties in the sponsorship of candidates for MMDCEs elections instead of open and transparent multiparty elections.

Third, the benefit of double accountability can elude the nation if only Article 243(1) is amended. Party-based election of MMDCEs has an inbuilt mechanism for double accountability that will improve the quality of MMDCEs elected. This is because political parties through their internal vetting and selection process act as a sieve in selecting the best candidates to compete for the elections. Besides, retention of power at the local government and election into national government will depend on parties' development track record during their mandate at the local level. Moreover, opposition parties at the local level will keep the local government on its toes by demanding accountability as witnessed at the national level. Therefore, amending only article 243 (1) can produce the most corrupt system as people with fat pockets who owe no allegiance to any political party can capture and control local government.

Fourth, any reform of the current local government must aim at promoting equitable participation of women and other vulnerable groups who have been marginalized over the years. The quickest way to end this marginalization is through the passage of the Affirmative Action (AA) Bill which currently at the level of cabinet. However, without the amendment of 55(3), even if the Bill is passed, it will be difficult to implement the provisions in the AA Bill at the local level. This is because the law lay the responsibilities on political parties to file a stipulated proportion of female candidates. Therefore, if parties are not allowed to participate in DLE, then it will be difficult to enforce the provisions in the law at the local level.

Finally, voter turnout in DLEs since the inception of the Fourth Republic has been very low averaging about 40%. On the contrary, the presidential and parliamentary elections have recorded very high voter turnout almost double the figure recorded in the DLEs. Clearly, the participation of political parties in the general elections account significantly for such high voter turnout for these elections. This is because political parties are able to mobilize voters to the polls and also propose alternative solutions to the social and economic problems facing the people in the communities which makes policy debate attractive to the electorate. Also, Article 55 (7b) enjoins the parties to be organized in not less than two-thirds of the districts in each region of Ghana making them the most formidable and organized institution at the local level. Thus, electing MMDCEs without the legal participation of political parties will entrench the trend of low voter turnout in the DLEs.

4. Complementarity Between Articles 55(3) and 243(1)

It is instructive at this point to clarify the functions and relationship between the two separate but complementary and mutually reinforcing Articles. Whilst Article 55 (3) prohibit political parties from participating in local elections and local government, 243 (1) on the other hand vests the powers of appointment of Chief Executives in the President. Consequently, amending Article 243(1) liberalizes the space in executive arm of government and create more elective positions. On the other hand, the amendment of 55(3) will enable political parties to participate in local level elections.

This will ultimately mean that there will be more than one political party within the executive arm of government and therefore cure the winner-takes-all (WTA) system in the country. The amendment of the two articles means that political parties will compete for an extra 260 positions in addition to the presidency within the executive arm of government. Clearly, this will end the WTA system in the

executive and promote inclusiveness, cooperation and collaboration among political parties. It also has the potential of nurturing smaller parties whose relevance and fortunes continues to diminish under the current system and give them real governing experience at the local level.

Therefore, the successful amendment of the two Articles will trigger a transformational reform of the hybrid executive governance regime in a manner that will remove all the barriers to developing a fully liberal democratic multiparty governance system in Ghana. It has the potential to alter the power relations between the central and local governments and devolve more executive, administrative and financial powers and resources of the central government to the regions, districts and communities. Effectively, the introduction of political parties into local government is likely to spark competition for development between the parties at the local level as witnessed at the national level.

Regrettably, there are concerns that allowing political parties to participate in local government will not foster national cohesion but rather divide the country at the local level. Whereas these fears may be genuine, there is no evidence to support this assertion. If the parties have not divided the country at the national level, why do we assume they will do so at the local level. In fact, to argue this way will be tantamount to calling for the abolishment of multiparty democracy in the country altogether.

Rather, if the experience in parliament is anything to go by, then working together brings collaboration and cooperation which instills trust and confidence among the parties. This will be no different between the multiparty system as witnessed at the national level from the proposed multiparty elections at the local level. Currently, the country has witnessed a split parliament with an opposition Speaker and yet the same parties have not divided the country. Moreover, national cohesion is strengthened by cooperation and collaboration by diverse groups and interest working together.

5. Conclusion

Admittedly, political parties under the Fourth Republic have not lived up to expectation to warrant their inclusion in the local government and hence the understandable aversion and disenchantment manifested towards them. However, this negative and cynical behavior of political parties is as a result of the failure of the state to properly regulate them as parties in Ghana do not have a robust regulatory framework or regime. Evidently, the 1992 Constitution, Political Parties Act, 2000 (Act 574) and other pieces of legislation, which are expected to guide their activities have either not been enforced or in some cases woefully inadequate to regulate them.

To solve the problems with the parties will entail not only the enforcement of the current legislation but also legal and institutional reforms which will transform them from being election machines to development-oriented institutions. It also means reorienting them for multi-party decentralized local governance from which they have been excluded for the past 61 years. This will certainly not be achieved with the amendment of Article 243(1) alone but together with the amendment of Article 55 (3) and consequential amendments and reform of the local government system and political parties.

There cannot be a successful devolution of more power and resources without the political parties being part of the decentralized local governance system, which is seen as the training ground for

future national leaders. It is our duty as leaders and CSOs to educate citizens and stakeholders in order to achieve an amendment that is capable of transforming the current local governance system into a world class meritocratic system.

31st AUGUST 2021