

## **DRAFT REPORT**

# **MEETING WITH THE CHIEF JUSTICE: HER LADYSHIP GERTRUDE TORKONOO**

**AUGUST 7TH 2023**

**JUDICIAL SERVICE, ACCRA**

**[www.ideg.org](http://www.ideg.org)**

## **1.0 Introduction**

As part of the implementation of the SIIE-IR 2023-2025 project designed by the European Union (EU) from the gaps identified by the EU Election Observer Mission (EUOMs) during the 2020 general elections period in Ghana, the Institute of Democratic Governance (IDEG), one of the implementing institutions paid a visit to the Chief Justice's premises. Priority three (3) of the five (5) recommendations advocates the setting of timeframes within which rulings on parliamentary election petitions by the High Court and Court of Appeal will be delivered and published.

This visit was primarily to follow-up on the consultation done with the former Chief Justice, His Lordship Anin-Yeboah and the Rules of Court Committee on April 14<sup>th</sup> 2023. Also, the consultation was to; (1) discuss strategies to implement the recommendation; (2) and ascertain alternative approaches, if any, for implementing of the EU recommendation. The entourage that visited the premises of the Chief Justice (CJ) comprised the project teams of IDEG and CDD and were accompanied by the Civic Forum Initiative (CFI) and CODEO.

Also present were members of the Elections Management Committee (EMC) which included H/L Justice Paul Baffoe-Bonnie (JSC) – Chairman, H/L Justice Issifu Omor Tanko (JSC), H/L Justice Emmanuel Yonny Kulendi (JSC), H/L Justice Samuel Kwame Asiedu Adibu (JSC), H/L Justice Sophia Rosetta Bernasko Essah (JA), H/L Justice Cynthia Pamela Addo (JA), H/L Justice Kwasi Boakyi (J), and Mrs. Gifty Preko Nyarko – Deputy Director for Judicial Reforms and secretary for the committee.

This report provides a summary of the key issues which emerged from the discussion.

## **2. Discussions**

### **2.1 Opening Remarks**

Mr. Kwesi Jonah of IDEG, expressed his gratitude to the CJ for the valuable opportunity to engage in a discussion regarding the project. The EUOM made 18 electoral reform recommendations but prioritized 5 for implementation before the forthcoming 2024 general elections. He indicated that the project team from IDEG had already consulted the former CJ on the premise of truncating the period of adjudication for parliamentary petition cases.

Dr. Kojo Asante, CDD, revealed that sixteen (16) petitions resulted from the 2020 elections. Out of the 16, only 5 have been resolved so far and none took less than a year which reaffirms the EU's recommendation to fast-track the adjudication of parliamentary petition cases. The delays have inadvertent impacts on governance and development and as such must be in the public to be resolved deploying all resources necessary.

## **2.2 Submission of the Elections Management Commission (EMC) of the Judicial Service**

The CJ invited the EMC chaired by H/L Justice Paul Baffoe-Bonnie (JSC) to present their thoughts on the recommendation and proposal from IDEG and CDD. The main issues raised by the EMC are addressed below.

### *2.2.1 Overall Improvement in the Adjudication of Electoral Petitions*

H/L Justice Paul Baffoe-Bonnie (JSC) started by highlighting that there has been a significant improvement in the overall period of adjudication of election petitions. According to him, the novelty of the situation in 2013 contributed to the long timeframe for the process. There has also been an improvement in the timeframe for adjudicating parliamentary petitions considering how long it took to close the landmark case of Amoo vs Rebecca Adotey. Although the period for closing parliamentary petition cases have currently been reduced to a minimum of one year, the EMC hopes to truncate it even more. However, achieving greater results would involve taking critical look at the rules and regulations governing elections.

### *2.2.2 Procedural Impediments*

There are some procedural impediments such as the substantive supervisory jurisdiction and appellate jurisdiction given the Supreme Court and the Court of Appeal respectively over the high courts who have jurisdiction over parliamentary petitions. These procedures contribute to delaying the processes for parliamentary petition cases. There is also the 21-day window for filing electoral petitions which contributes to delaying the adjudication of parliamentary petitions.

Furthermore, the rules surrounding ‘serving’ makes it difficult for the court to serve notices to interested parties. There are instances where notices are served to interested parties, often MPs, to appear to court through the clerk of parliament. However, that usually becomes a futile attempt as the MPs would claim not to have received them, thereby, implying not to have been served by the court. Therefore, the EMC suggests that setting clear rules on serving would contribute positively to the fast adjudication of parliamentary petitions.

### *2.2.3 Behavioral Impediments*

The EMC identified some behavioral impediments, from the Political Parties especially, which contribute to delaying the adjudication of parliamentary petitions. Representative of Political Parties have the habit of filing petitions against high court judges to stall the process. The legal process has been infiltrated with political tricks and blatant disrespect towards the judicial system.

#### *2.2.4 Burden of Proof – Violability of Elections*

The CJ expressed her concern on the issue of ‘burden of proof’ – i.e., what can void elections and what can make elections voidable. She believes that the issue of burden of proof is what usually delays parliamentary petitions and even results in parties appealing the courts’ decisions. Also, there are electoral violations that may not make elections voidable by the court, but they repeatedly incite electoral violence due to the absence of punitive measures towards perpetrators. Therefore, the legal system requires a legislative reform to set down certain electoral and constitutional infractions like impersonation, double voting etc. which make elections voidable.

#### *2.2.5 Abandoned cases*

H/L Justice Kulendi (JSC) revealed that, there is also a trend of parties abandoning their cases especially at the sight of a prospective loss. According to him, when petitioning parties realized that they may lose they case they sent to court, they end up abandoning them by not showing up to court for hearings. Also, there are some times where petitions are filed to make political statements and nothing more. He reports that at the moment, there are several parliamentary petition cases that have been abandoned with the parties nowhere to be found.

### **2.3. Alternative approaches to fast-track the adjudication of parliamentary election petitions**

In order to have parliamentary petitions cases expedited, certain legislations would need to be amended. For instance, H/L Justice Baffoe-Bonnie (JSC) implored CSOs to advocate for the general elections to be held earlier than December 7<sup>th</sup>. Justice Bonnie (JSC) suggested that, a proposal should be shared with parliament to amend election day to October or November. This he believes would afford petitioners and judges more time to present their cases and have them adjudicated. Also, the 21-day period given to candidates to file their petitions should be addressed and reduced to a maximum of 10 days to facilitate an early commencement of the adjudication processes. Additionally, the regulations regarding serving legal notices and other legal procedures should be addressed to facilitate a smooth and quick resolution of parliamentary petition cases. In the interim, the Supreme Court and Elections Management Committee have implemented numerous training programs across the country to enhance the capabilities of judges for a swift resolution of election petition cases.

### **4. Closing Remarks and Way Forward**

The CJ conveyed gratitude to the project teams from IDEG, CFI, CDD and CODEO for taking on the initiative to establish specific timelines for the resolution of Parliamentary election petition cases. Efforts are being made to address these issues and find effective solutions to streamline the process of handling Parliamentary election petition cases, ensuring efficiency and timeliness in the judicial system. The Supreme Court is committed to

supporting the implementation of this recommendation however, real legislative reforms have to take place and neither the Supreme Court, the Rules of Court Committee nor the EMC has the capacity to make those changes. Therefore, the CJ advised that CSOs engage parliament to reform some of the rules and regulations governing elections and electoral petitions. The court also entreated CSOs to support the 'Chief Justice's Community Sensitization' initiative that has been institutionalized by the CJ to increase public education and engagement. There is a high possibility of catastrophe unfolding in the next election considering the high stakes therefore, all stakeholders should endeavor to safeguard the country as much as possible from the shocks of the election period.

## Appendix 1: Plates of Pictures



