

*Full Length Research Paper*

# The role of referendum: A case of Ghana

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This article presents a discussion on the role of the referendum in Africa with a case study of Ghana. It reveals the importance of referendum and the types of referendum as experienced in many countries with concentration on Ghana. It has concluded that referendum is important as allows majority stance to be assimilated as a decision as opposed to few who make decisions in most decision making organs. It expresses a true will of the people, and reveal aspirations and ambitious of the communities. On the other side it does away with decisions that are of the few yet termed of the majority. It is however, worthy and of merit when these referenda are used on only important concerns of the nation and for the nation.

**Key words:** Referendum, decision making.

## INTRODUCTION

Referendum refers to nationwide votes on a specific issue which entail to resolving a particular political issue, and today is an accepted way of resolving political issues in many countries around the world. Such votes are usually termed “referendums” though there are two special types of referendum for which a different name is sometimes used. First, is the initiative which refers to a vote brought about by a demand from a prescribed number of ordinary citizens, for example by signing a petition. Second, is the plebiscite, which refers to a referendum seeking to redress a particular political situation such as votes that were not held under genuinely democratic conditions. This part will concentrate on legal perspective of Ghana as one of the country which is practicing the referenda.

Thus the term “Plebiscite” has negative connotations in a number of countries, where it is used for votes. The two terms which are prescribed as referenda can generically be said to explain the level of referendum rather than being types of the same. For example, if a referendum is held as a process to cultivate a sense of good governance before a mere breach of the law, it is known as initiative. However when the breach has already been made, on curbing such situation the referendum conducted is known as plebiscite.

A referendum gives the people the chance to vote directly on a specific issue. Although people can also

make choice at general elections, these elections are usually fought on a number of issues and often no clear verdict on any one issue is delivered. Some cases can be said were resolved through referendum include the Sweden using Euro at the expense of forsaking its currency; Togo – whether part of the Togo border be part of Ghana etcetera.

The Referendum is simply a way of letting members of the public express their opinions on an issue or group of issue through balloting and it is normally provided for in the constitutions of democracies.

## Provisions

In Ghana for instance the 1992 Constitution directly provides for the holding of referendum in only two situations which are Creation and Alternation or Merger of Regions. Article (5) provides that where, as a result of a petition presented to him, or on his own initiative the President decides to create a new region, alter the boundaries of a region or provide for the merger of two or more regions of Ghana, he shall on the advice of the council of state appoint a commission of enquiry which shall upon satisfying itself of the need to effect the proposed changes recommend to the President that a referendum should be held and shall specify the issue to be determined and where the referendum should be held. Article (5) further provides that the President shall refer the recommendations to the electoral commission which shall hold the referendum in a manner it shall prescribe and that an issue on which

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a referendum is held shall be determined if 50% of the persons entitled to vote, cast their votes at the referendum and 80% of valid votes cast are in the favour of the issue.

Clause (8) of Article (5) finally provides that the President shall, under clause (1) of this article, and acting in accordance of the results of the referendum held under clause 4 and 5 of the this article, issue a constitutional instrument giving effect or enabling effect to be given to the results”.

Amendment of entrenched provisions: Article 290 sets our the entrenched provisions of the constitution and provides that before Parliament begins any action a bill intended to amend an entrenched provision of the constitution, the speaker must refer it to the council of state for its advice, which should be given within thirty days.

Article (290) further provides that after the council of state has given its advice on the bill, it shall be published in the gazette and reintroduced into parliament after six months. After the bill has been reintroduced into Parliament, it shall be read once and then submitted to a referendum to be held throughout Ghana and at least forty percent of the persons entitled to vote should vote and at least seventy five percent of the persons who voted should favour the passing of the bill before Parliament can pass the bill for the President to give assent to the amendment.

### **Revocation of mandate of a member of district assembly**

A third situation exists where a referendum can be held in Ghana. Section (9) of the Local Government Act 1993 (Act 462) provides as follows:-

Subject to this section, the mandate of an elected member of a District Assembly may be revoked by the electorate.

For the purpose of revoking the mandate of an elected member of the district assembly, twenty five percent or more the registered voters in the electoral are may petition the electoral commission for the member recall from the assembly.

On receipt of the petition referred to in sub-section (2) of this section, the electoral commission shall organize a referendum to decide the issue whether or not such member must be recalled.

Thereof the referendum shall be decided if at least:-Forty percent of the registered voters in the electoral area vote on the issue.

Sixty percent of the vote's casts are in favour of the recall of the member.

For the revocation of the mandate of a so-called errant assembly man the procedure involves the democratic tools of initiative, referendum and recall to ensure that he is given a fair chance.

### **Referendum precincts and districts**

In Ghana the electoral system is fathomed after the British tradition which refers to precinct as Polling Station and Districts as Constituencies.

Currently, the year 2004, the territory of Ghana is divided into ten Regions, 110 District, 200 Constituencies, 5000 Electoral Areas, 15,000 Units and 21,000 Polling Stations. Boundaries are not to overlap and as much as possible, population at the various levels is kept uniform. For purposes of reviewing the Boundaries of Regions, referendum activity is confined to Polling Stations and Constituencies within an affected region. In connection which referendum to amend the entrenched clauses of the constitution, activity will be in all the 200 Constituencies and twenty-one thousand and eight (212,008) Polling Stations throughout the country. As regards the revocation of the mandate of an assembly-man, action will be concentrated on the electoral areas among the 5000 existing in the existing in the country which the affected assembly-man represents and balloting will be at all the polling stations within the said electoral area.

### **Referendum voter links and voter cards**

Article (42) of the 1992 Constitution of Ghana provides that “Every citizen of Ghana of eighteen years of age and above and of sound mind has the right to vote and is entitled to be registered as a voter for the purpose of public elections and referenda”.

Voters are registered on the basis of their residence near designated polling stations and each register is intended to carry between 100 and 1000 names. No voter is expected to travel more than 3 miles or five kilo-meters to vote on Elections Day. No voter is also expected to bypass one Polling Station to another to vote. The structure of Polling Stations is such that any point in time the voter population and the voters list of an electoral area or a constituency can be determined. In Ghana it is one's name on the voters register which qualifies one to vote and getting ones name on a voters register is a completely voluntary Endeavor. One the other hand, the maintenance of an up to date voters register is the sole responsibility of the Electoral Commission.

Voter (Identity) cards only indicate registration but do not guarantee voting rights. Voter card facilitates the locating of a name on the voters register and it is not meant for use in casting votes.

### **Referendum organs**

Article (43) of the 1992 Constitution of the Republic of Ghana provides for the setting up of a seven Member Electoral Commission which shall be appointed by the President of Ghana on the advice of the Council of State.

Article (45) of the Constitution provides that the Electoral Commission shall compile the register of the voters,

demarcate the electoral boundaries for both National and Local Government Elections, conduct and supervise all public elections and referenda and educate the people and its purpose.

Article (46) provides that "Except as provided in this Constitution or in any other law not inconsistent with this Constitution in the performance of its functions, the Electoral Commission, shall not be subject to the direction or control of any person or authority".

The Electoral Commission then, is the sole organ responsible for the conduct of referenda in Ghana. It has branches in the Ten (10) Regions and one hundred and ten (110) Districts of the country. Article (52) of the Constitution provides that there shall be in every Region and District a representative of the Electoral Commission who shall perform such function as shall be assigned to him by the commission".

The offices in the Regions and District are headed by the Regional Directors and Electoral Officers. The Regional Directors have Deputies. During exercises, temporary staffs are recruited to augment the strength of the permanent staff. For a referendum, the Commission shall recruit one returning officer and one deputy returning officer for each constituency and one (1) Presiding Officer and two (2) Polling Assistants for each Polling Station. Article (51) of the Constitution provides that "The Electoral Commission shall, by Constitutional instrument, make regulations for the effective performance of its functions under this Constitution or any other law, and in particular for the registration of voters, the conduct of public elections and referenda including provision for voting by proxy".

The present Electoral commission was set up under the Electoral Commission Act 1993 (Act 451) under Section (7) of the Act provision is made as follows:-

The commission may appoint such committees as it considers necessary for the discharge of its functions. A committee appointed by the commission may include non-members of the Commission but shall be chaired by a member of the Commission.

Article (54) of the Constitution and Section (10) of Electoral Commission Act 1993 (Act 451) provide that the administrative expenses of the Commission, including salaries allowances and pensions payable to or in respect of persons serving with the Commission, shall be charged on the consolidated fund.

So much has been said about the Electoral Commission to show that it has the administrative capacity to organize a referendum as a sole organ. But one may perhaps say here with a little bit of trepidation that the Commission's dependence on the consolidated fund could be a limiting factor on its administrative capacity to perform its functions creditably.

### **Holding the referendum**

The holding of a referendum is a huge assignment which

involves planning and plan implementation. It involves the identification of needs, the costing of those needs, the preparation and presentation of budget and the procurement of funds and logistics. It also requires the identification of tasks and the preparation of a task list and an implementation schedule with dates, to guide the carrying out of the exercise.

Some of the major tasks involved in the preparation towards a referendum include:-

- Determination of issue and identification of symbols;
- Procurement of materials including the printing of forms, posters and ballot papers;
- Recruitment training and empowerment of polling staff –
- Returning Officers have to be issued with WRITS which empower them to conduct the Referendum (Polling) in specified Constituencies (or Electoral Areas).
- Public education.
- Mobilization of transport – including special transport for difficult areas.
- Deployment of materials and voting staff.
- Accreditation of observer's and monitors.

### **Preparation of voting**

Polling Station staff and non-sensitive materials are assigned and conveyed the day before voting. Security – personnel are also assigned the day before voting.

Sensitive materials are conveyed and distributed at dawn on voting day. These include ballot papers and the various forms for declaration of results and collating results.

### **Referendum campaigning**

This may be carried out by the Commission in the form of publicity and may involve church announcement, street announcements by the use of vehicles, vans, radio and T.V. announcements as well as the use of banners and posters.

Political parties and interest groups may organize rallies and use other methods of campaigning such as posters and door-to-door canvassing.

### **Voting**

In Ghana voting at public elections is in accordance with the Public Elections 1996, CI 15. Voting is done at designated polling stations only and is managed by trained Polling Staff.

Polling stations open at 7.00 a.m. and close at 5.00 p.m., and all voters assigned to the Polling Station are expected to vote within the 10 hour period. Voting may extend beyond 5.00 p.m. in order to take care of person in queue. The commencement of balloting is signaled by the polling officer lifting the ballot box up and turning it

upside down to show that it is empty.

Voters queue up before the Presiding Officer for their names to be checked off the register. To facilitate this, the voter ID card (Photo bearing card) which bears the voters ID number is used. After the checking of the voters name, He/she moves to the next table where he/she is given a ballot paper, and the thumb or fore-finger marked with indelible ink and sent to the screened compartment where he/she selects a preferred symbol, marks it and proceeds to the ballot box to slot in his neatly folder ballot paper.

At the close balloting, the ballot box is collected, the lid is opened, and counting of the ballots done in the open and the results announced at the polling station. The presiding officer completes the declaration of results sheets after obtaining the signature of agents and carried this together with other materials under police guard, to the constituency collation center.

### **An international survey of referendum**

The referendum is practiced extensively in many countries worldwide. In the United States of America, 16 states practice referendums ([www.democracy-international.org](http://www.democracy-international.org) as noted on 24<sup>th</sup> April 2009). On studying the types it can be realized that the referendum mentioned as reflected in Ghana is also revealed in America- that the types are essentially stages of the referendum rather than types of it (Norman and Lucy, 2009). The mayor for Texas had this to say regarding referendum as opposed to passing the bill via the representatives: "referendums give a real value of decisions made by the people for them as opposed to making the same for the people- there is no point of making decisions on behalf of the people if the matter contested is for the populous interest" ([www.ercz.org](http://www.ercz.org) as quoted on 24<sup>th</sup> April 2009). It reveals the popular argument revealed in Norman (2009) that the question of referendum is critical and need to be echoed by sane persons, as it provides masses to decide on their matters. Representatives do not present the views of the entire people since rarely to see the elected leaders attain hundred percent of the votes, unless they win an opposed. The segment that did not support or vote for the winning candidate is implied not represented. This is supported by findings on 'who uses who' after elections. The study intended to find out whether people who loose seats by voting a failing candidate do them present their views to those elected. The study revealed that 95% of the people do not present their views to the candidate they did not vote, instead they keep on pushing for campaign to ensure that their candidates wins in the next elections (IITRC, 2008).

The European Union countries have passed through the test for referendum. Germany and French for example were to subject the people into referendum to consider accommodating the EU currency at the expense of forfeiting the local currency. Referendum proved to be

potential in enabling the people expresses the majority decisions. In most European countries the decisions of the head of states were contrary to the will of the majority people. Even when the Lisbon resolution was passed some countries have not ratified because of the negative response that was realized in the referendum. Germany for instance had to date not ratified the Lisbon convention despite being one the countries seen observing the rules of the EU ([www.laxberg.org](http://www.laxberg.org) as noted on 27 April 2009). Sweden also called for the referendum on the freedom of movement ([www.referendumineurope.org](http://www.referendumineurope.org) Swiss freedom of movement Referendum results as observed on Mark Resnicoff report of 2009). The generosity of referendum in most practicing countries is benefits realized through majority decision (Mark, 2009).

Sweden had to also subject the people in the referendum to decide on the currency. Referendum can be said is practiced heavily in Europe than in any other continent. Africa and Asia do have few countries that practice referendum. The key value of the debate is that referendum is vital in enabling to make decisions on matters that seem to reflect the fate of the country. When referendum is done none should avail complaints since all people available had actually participated in voting. In this vein the institute for democracy international of Europe has provided five major grounds as advantages for referendum in particular on adopting the EU constitution. Most European countries found difficulties in ratifying the European constitution. Hence a need for research which was conducted by the Democracy International and the following grounds were revealed ([www.democracy-international.org](http://www.democracy-international.org) as noted on 26 April 2009).

### **Basic requirements not done**

One of the main ideas of the EU Constitution was: to simplify the Treaties, to democratise the EU institutions and to bring the EU closer to the citizens. This has not been achieved by the EU Constitution nor the EU Reform Treaty. As these basic requirements were not achieved by either document the people should have a closer look at it and make their own decision.

### **Democratic legitimacy**

This opportunity to increase the democratic legitimacy of the EU would be lost if this new treaty were adopted without the consent of the people. You cannot build Europe without the people. The best way to involve the people is by holding a referendum in each member state on this extremely significant document. If referendums are not to take place so then the democratic legitimacy of the EU will decrease even further.

### **No consent from the people**

To adopt this treaty without referendums would be a step

backwards towards less rather than greater acceptance of the European project. Agreement on the way in which the EU is developing is continuously decreasing, as is participation in European elections. How could the EU wish to enforce such major changes as those proposed in the Treaty without the consent of the people?

### **Debate on the future of Europe**

In a democracy citizens must understand how the system works. If you say: "This is too complicated for the people!" then either you make it less complex or you take the time to explain it to them. We urgently need a broad and open debate on the future of Europe involving the people. There cannot be a new treaty without the people debating whether or not it creates a Europe they want to live in. The only way to achieve this debate is by fair referendums in all member states.

### **Undemocratic procedure**

The whole process of creating the EU Constitution was undemocratic and was done completely aside from the people: The self-designated Convention to create an EU Constitution, the lack of honest debate on its outcome, the ignored rejection of the text by the French and Dutch people, the "period of reflection" with a ridiculous "Plan D" campaign... It is utterly disgraceful how leading politicians want to bring into effect the same declined Constitution.

### **Announcing referendum results in Ghana**

The procedures for referendum world wide are the similar. In this discussion Ghana has been taken as a case for the purpose of exemplifying with sections in the constitution that grand for referendum. In Ghana just as in most countries such as Northern Ireland and America ([www.iitcr.org](http://www.iitcr.org) as quoted in April 18 2009) Presiding officers from various centers within the constituency present their declaration of results sheets to the Returning Officer who picks the figures and after collating the figures declares the constituency results. Subsequently the Returning Officer records the results on the back of the Writ issued to him and returns this to the Chairman of the Commission through the Regional Director. The Regional Director is required to fax the results of the various constituencies to the Head Office before eventually submitting the writs. The results sent in by the various Directors in respect of the constituencies in their Regions are collated and national results declared. The results are required to be gazetted and finally conveyed to the President.

### **Organizational measures**

Polling staff are trained well and their work in the field on voting day is monitored by Regional Directors, District

Electoral Officers, Head Office Directors, and Monitoring staff domestic as well as international observers. This is to ensure that the Polling Staff work efficiently and the results obtained are of the highest quality.

The Commission is in constant liaison with other organizations which can contribute to the success of the exercise. The political parties have a code of conduct they are required to abide to in order to ensure that the atmosphere is conducive for the conduct of the exercise.

Intensive public education is to ensure that the public is well informed on voting procedure in order to vote correctly and is sufficiently sensitized to enable them come out in their numbers to vote. Openness is introduced into the organization of the balloting to guarantee credibility and acceptability.

### **Conclusion**

It can be generally said that democracy is expensive, thus an attempt of using measures that help to reducing or total managing of conflict should be applauded. In this regard, a referendum is one of the means to assess the stand of the majority in the community rather than the representatives. It expresses a true will of the people, and reveal aspirations and ambitious of the communities. On the other side it does away with decisions that are of the few yet termed of the majority. It is however, worthy and of merit when these referenda are used on only important concerns of the nation and for the nation.

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