**31st October, 2021**

The Inspector General of Police

Ghana Police Headquarters

Cantoments - Accra

Dear Dr. Dampare,

**UNRAVELING DETERMINANT SOLUTION TO**

**NDC-EC ELECTIONS IMPASSE**

Once again, congratulations on your confirmation as the youngest but most dexterous IGP with the objective of enhancing the police image and sustaining the police service's professionalism within the national security architecture.

As an Independent Presidential Candidate since 2012, my office would like to officially bring to your good offices' attention the growing level of unhealthy counter-accusations between the NDC, a political party, and the Electoral Commission (EC), a state institution that should be strengthened through our collective patriotic efforts. Most recently, on Monday, October 25, 2021, the EC conducted a news conference in reaction to multiple allegations leveled against its 2020 election organization by the NDC party. On the other hand, the NDC held a press conference on October 28, 2021 in reaction to the EC's earlier press conference. Both parties acknowledge the existence of a full-fledged police investigation into alleged corrupt activities and clear security lapses during the 2020 elections.

These are unmistakable indications of a postponed dangerous national security threat into the 2024 elections that should be nipped in the bud as soon as possible before we suffer the implications as a nation. "Three Great Forces Rule the World," Albert Einstein declared. "Stupidity, Fear, and Greed." And I would venture to suggest that these forces, in that temporal order, are the greatest adversaries of human illumination and progress toward transformation in nations, particularly Ghana.

The apparent uncertainty and counter-blame, IGP, originate from the fact that the new election 2020 petition exposed fundamental problems in our elections since 1992, most notably in our laws and enforcement procedures.

Election fraud and confusion are primarily perpetrated by polling station agents, presiding officers, and constituency returning officers. On the other hand, political parties act as vigilantes and perpetrate state-sponsored election security violations.

Together with the EC, political parties have protected polling agents, presiding and returning officers, who have never been held accountable for their sworn duties. This is because these agents are engaged on a temporary basis by the EC but are mainly die-hard NPP-NDC members who attempt to exploit this to influence polling stations and collation centers' votes. A thorough inquiry should place a greater emphasis on the actions of the parties' agents. In instance, during the 2020 elections, the alarmist on a Techiman South radio station who summoned NDC party faithful to the collation center should be investigated.

The assassinations of individuals by security forces in a number of election constituencies should not be overlooked. There are different reports regarding the number of persons killed during the 2020 elections. However, Supt. Ayisi Mensah, who represented then-IGP James Oppong Boanuh, stated during an EC-led electoral reform conference attended by political parties and stakeholders that the known death toll is six (6). However, the number eight (8) is ingrained in people's minds, despite the fact that it is occasionally exaggerated to ten (10).

Since the 2020 elections, the Ghana Police Service has never held a press conference to educate Ghanaians on the myriad security lapses and fatalities reported across the country. Can the EC or the security forces be held liable for election security lapses? The Police Services' silence creates a strong sense of unease or worry in the run-up to the 2024 elections. The sooner your humble, excellent office resolves these issues, the better for us as a nation. As Martin Luther King put it, "there is nothing more dangerous in the world than sincere ignorance and conscientious stupidity."

Dr. Dampare, a rigorous examination of the innovative 2020 election petition reveals that it enforces well-established axioms of civil litigation law but quite disappointing to majority of citizens with little understanding of the conservative nature of the Judiciary. This disappointment has exposed the inadequate CI-99 that guided the Petitioner and the Supreme Court Bench, as well as the Supreme Court Justices' decisions, resulting in a second stratum of judicial distrust alluded to by the NDC.

Citizens are losing trust in the EC, the Security Forces, and the Judiciary, three critical democratic institutions, as a result of the election 2020 petition. It is tantamount to dismantling the democratic dispensation of the Fourth Republic. We believe that following a thorough study conducted by EC and NDC, the police would recognize the flaws in CI-99.

Though the letter my team addressed to Chief Justice Kwasi Anin-Yeboah on April 4th, 2021, is attached, the lack of civility in response demonstrates an obvious weakness in the judiciary and General Legal Council, which is pernicious to democratic administration. According to their training, lawyers lack foresight regarding situations because their minds are very proficient with post-mortem analysis rife with preconceptions and subjectivities. However, any faults affect state security, and your good offices will dismantle my team's results. Without an operational grasp of the system for which the law is intended to improve its efficacy in society, no competent law can be enacted.

We have confidence in your administration to pursue the NDC-EC counter-accusations that reached a zenith last week, not as mere political rhetoric, but as a determinant solution for the citizens' national sense of security in the run-up to the 2024 elections, and that all perpetrators will be dealt with impartially and in accordance with the law. When civilian democratic authority becomes chronic corruption and appears dictatorial and lawless, citizens are compelled to accept absurd, undemocratic military rule as a substitute for security.

We appreciate your anticipated professionalism in assisting us in sanitizing our election irregularities and assisting in strengthening the Electoral Commission as a state institution.

Yours Sincerely,

Jacob Osei Yeboah

2012-2020 Independent Presidential Candidate.

**Below Is attachment.**

**4th April, 2021**

The Chief Justice

Republic of Ghana

Kwasi Anin-Yeboah

Osu, Accra

Your Lordship,

**BRIDGING 2020 ELECTION PETITION -CI-99 INCOMPETENCE**

Your Lordship, I write to you today with the compliments of Easter.

The Legal Team of JOY 2012 have made certain observations about the 2020 election petition and judgement which are summarised below:

1. That the EC’s crafting and implementation of CI-127 was commendable but will need some refinement
2. That the Supreme Court Rule, CI-99, that guided the Petitioner and Bench of the Supreme Court is problematic
3. That some decisions concluded on by Justices of the Supreme Court could cause lack of faith in judicial system

The team holds that the Rules of Supreme Court, CI-99, was crafted without a complete understanding of the numerous possible outcomes of election petitions and appears incompatible with the operational role of the Electoral Commission (EC). Furthermore, the nature of Form 30 in CI-99 exceedingly limits election petitions and imposes an adversarial system between the Petitioner and the Electoral Commission.

Your Lordship, the team is of the opinion that Election Petition against EC should rather be seen as burden of accountability by EC rather than civil litigation against EC. The burden of accountability will call on EC to provide her Pink Sheets and for investigation into vote padding for possible rerun of election in the specific polling station or constituencies rather than the SC measuring by absolute figures.

Your Lordship, we noted that the SC Bench was equally misled by CI-99. Making direction and ruling on interrogatories inconsistent with the same Civil legal standard and jurisdiction used by SC in ruling most motions filed. Justice which should be seen as served has appeared to have been severed due to this inconsistency. This became more pronounced when EC lawyers smartly used the law to prevail on the EC Chairperson not to mount the witness Box.

We have therefore suggested some stop gap measures for Alternative Dispute Resolution between Petitioner(s) and EC before the filing by the 21st day after election declaration. We have also suggested that for comprehensive electoral justice system, the EC should amend CI-127, to mandatorily submit all elections related malpractices to the Ministry of Interior for prosecution through the Attorney General.

Further details of our opinion are attached to this letter if it pleases your Lordship to gain a deeper understanding of what led us to our conclusions.

We hope the good offices of Your Lordship, shall take keen interest in our elections jigsaw puzzle so we can tie the loose ends of election petitions.



Yours Sincerely,

Jacob Osei Yeboah

Independent Presidential Candidate 2012 & 2016

Cc.

Speaker of Parliament

Electoral Commission

National House of Chiefs

Faith-Based Community

IPAC

Media

**BRIDGING 2020 ELECTION PETITION -CI-99 INCOMPETENCE**

Martin Luther King opined, ***“nothing in all the world is more dangerous than sincere ignorance and conscientious stupidity”.*** The fundamental principle of establishing a functioning law for societies to perform better for development is rooted in the axiom that, “Laws are made for human beings and Not human beings made for laws”. If an unfair or unjust law is established for Ghanaians and it brings about confusion and distrust, nothing stops that law from being retracted.

***CI-99 is Incompetent***

The compilation of CI-99 Rules is lazy and incompetently misleads a Petitioner to situate election petition in civil adversarial jurisprudence. The CI-99 Rules which has complex referrals should have been compiled simply. All previous relevant rules of CI-16 of 1996 and CI-74 of 2012 should have been incorporated in CI-99 and the previous ones revoked for easy referrals.

***Adversarial System***

The confusion in the 2020 petition emanates from CI-99, Rules 68(1), 68A (a &b), that situate the presidential election petition in a civil adversarial system. This civil adversarial system has long held procedures, processes, practices, authorities, axioms that cannot be changed hastily and without careful considerations in order not to open Pandora’s Box to create confusion in future civil litigations in the country. The same CI-99 narrows the different possibilities and nature of election petitions to either win or lose scenarios.

***Restricted Petitioning***

The misleading Rules of Petitioner by CI-99, Rule 68(1), “ A Proceeding pursuant to clause (1) of Article 64 of the Constitution shall be commenced by presenting to the Registrar a **petition in the Form 30 set out in Part V of the Schedule”.**

However, reading Form 30 one would notice that it has narrowed Presidential Election Petition to ONLY a Petitioner alleging that he/she won the election but was not declared the winner by the Electoral Commissioner. The rationale is not in conformity with Article 64(1) of the constitution that states that ANY Ghanaian citizen can challenge the validity of presidential elections. Admittedly, that Ghanaian could be at least any of the remaining eleven contested Candidates in the 2020 Presidential election.

The 1992 Constitution mandates the challenge of VALIDITY of an election per article 64(1). And also state the legitimate qualification as president elect per article 63(3). Articles 64(1) is mutually exclusive of article 63(3). In other words, any candidate can challenge the accuracy of his/her votes figure without claiming he/she won the election.

However, article 63(3) challenge can infer 64(1). The challenge of the validity of election petition as per Article 64(1) **IS NOT** in reference to Article 63(3) which stipulates that a winning Presidential Candidate should have more than 50% of valid votes cast. **So a candidate or Petitioner can petition the SC about the accuracy of the vote figures of respective candidates without claiming to have won.** One can state without equivocation that the 1992 Constitution did not state that election can only be petitioned by article 63(3) and so the Validity Challenge in article 64(1) should be thoroughly explored in order to understand the various forms of election petition to be anticipated.

Articles 64 (1) and 63(3) of the 1992 Constitution reads:

64(1) “The validity of the election of the President may be challenged only by a citizen of Ghana who may present a petition for the purpose to the Supreme Court within twenty-one days after the declaration of the result of the election in respect of which the petition is presented.”

63(3) “ A person shall not be elected as President of Ghana unless at the presidential election the number of votes cast in his favour is more than fifty percent of the total number of valid votes cast at the election.”

In our opinion, the VALIDITY Challenge in article 64(1) is in reference to the **accuracy of the results declared** with regards to the valid votes obtained by each Presidential Candidate. **Validity Challenge therefore refers to how accurately the respective collated vote figures reflect what each Presidential Candidate obtained from Polling Stations to the Strong room of EC.**

Any contested Presidential Candidate can engage EC for the clarification of his/her collated figures in a petition to SC. The validity challenge is not only about the Petitioner alleging that he should be declared the winner. **Nor should Presidential Election Petition be about a Petitioner to accuse EC so that he/she is required by the evidence act to give evidence of his collated valid votes.** But it is imperative that any ensuing amendment to any candidate’s votes figure can have repercussions on the figures and percentages of the remaining candidates. **And such corrections are likely to trigger article 63(3).**

**Again, the inability of parties to submit a Joinder to an election petition per CI-99, 69(BA) is equally mind-boggling,** except the party is in reference to political party**.** The possibility is that more than one candidate may seek clarification in SC about their valid votes obtained in order to accept the validity of Presidential Election. **The JOY2012 team is of the opinion that any Presidential Candidate after reading the petition filed to the SC, may join the petition in support or against but in respect to his/her valid votes.**

***Forced Respondents***

In addition to the anomalies in CI-99, Rule 68A, *Parties to the Petition*, states “**Despite rule 45(4), the parties in a petition SHALL be a) the Petitioner as specified in article 64(1) of the constitution, and b) the person declared elected as President and the Electoral Commission who together shall be the respondents.”**

Rule 68A (a & b) makes the Electoral Commission the default Respondent together with the President-Elect for all possible petitions. These rules make it weird for the President Elect to be seen in petition as accused by default and will have no option but to defend the work of EC. Thus, sadly feeding into the conspiracy theory of the President elect being in bed with EC. These rules also simplistically assume that complex election petition is always between the President-elect and the second highest Presidential Candidate as the losing candidate and Petitioner.

An election petition could also be allegations against other contested Presidential Candidates (especially, incumbent candidate or party) or the involvement in electoral malpractices by their Agents. In such an instance, the EC can serve as a witness to the Petitioner.

Another angle this matter of forced Respondents could be looked at is this: Assuming without admitting that Petition is about accusing the Electoral Commissioner by the Petitioner, why should the president-elect be mandatorily assumed a 2nd Respondent but not the other candidates? Why Not the President-elect to serve as a witness if any to EC or respond to any accusations directed at him/her?

***The 2020 Election Petition Exploratory and Insincere***

One cardinal pointer to a competent petition is for the Petitioner(s) to make a **clear, distinct statement of claim for determination** to the SC or any official. The novelty as noted by the legal Team of JOY2012 of the 2020 Petition is that, it challenged **the spirit and letter of validity of article 64(1)** but did not necessarily challenge article 63(3) and yet prayed SC for a rerun between President elect and Petitioner.

The 2020 election petition by John Dramani Mahama lacked legal clarity. The petition was rather more of an exploratory petition in a hopeful search of a Supreme Court verdict from His Lordships when the Petitioner lacked a legal map to locate the treasure verdict. As opined by Henry A. Kissinger, **“If you don’t know where you are going, any road will get you nowhere”**.

The insincerity of the Petition vis-a-vis available information as at the time of filing of Techiman South polling results , the corrected innocuous slip of tongue transpositional error of total votes for total valid votes declared by the Chairperson of EC, petitioner alleging without proof of evidence in civil adversarial system, not challenging the election results in Supreme Court but yet wanted Supreme Court to order rerun of election, hoping to cross examine Respondents to make a case etc. All these added to the clueless nature of the petition led by Lawyer Tsatsu Tsikata.

***The 2020 Election Petition Dishonest Wrong Target***

The Petitioner targeting the EC Chairperson as an individual to be involved in a rigging scheme or has the capacity to manipulate collated figures in the strong room smacks of mischievousness or incompetent knowledge of how votes are compiled and collated as legal evidence for declaration by the EC chairperson.

The Petitioner and his party NDC truly understand the electoral system and know the loopholes. The **Petitioner is highly conscious of the fact that actual possibilities of rigging could be at the polling stations and collation centres but Not in the EC Strong Room**. The Petitioner could therefore have specifically mentioned these areas so that the respective Presiding and Returning Officers could be dealt with according to the law.

However, **the Petitioner intentionally did not show any specific evidence of vote padding at polling stations or collation centres, why?** Because these Presiding and Returning Officers are temporarily hired staff of EC but they belong to NPP and NDC mostly. These same temporary hired Officers with mostly NPP and NDC dominated polling agents connive do the bidding of their paymasters who are not EC Chairperson to rig for either NPP or NDC. **It therefore suits the dishonest scheme of Petitioner to conveniently misdirect target of the main problem to EC chairperson to the annoyance of most Ghanaians.**

A clear petition should specifically state also **the Polling Stations or Constituencies or Regions or the Strong room** where clarity is being sought.Such clarity will target election officers at respective positions instead of targeting the EC Chairperson.

**Justice will be served and seen to be served if such officers as mentioned in clause 45(2) of CI-127 are specifically dealt with by the law to make such respective officers more meticulous and prudent in their work for future elections.**

CI-127 clause 45(2) states a *“ (2) An election officer who is required to perform a function under these Regulations but fails to perform that function commits an offence and is liable on summary conviction to a fine of not more than five hundred penalty units or to a term of imprisonment of not more than two years or to both and shall for a period of five years from the date of expiration of the term of imprisonment be disqualified from being engaged as an election officer”.*

***EC CI-127 – A well-crafted CI in need of little tweaks***

CI-127 48(2) reinforces the constitutional mandate of EC, which ideally is to organise elections in Ghana independent of any influence from any authority in Ghana. The mode of operation of EC cannot be impeded by any individual or group action. Nor can such actions invalidate its work, except the courts or SC is called upon to help clarify the organised election by EC.

*CI-127 clause 48(2) competently states “****(2) the non-attendance of the candidate or the polling agent or counting agent of the candidate at the time and place shall not invalidate the act or thing done.”***

Clause 48(2) depicts clearly that EC can amend the election figures with or without the presence of candidates or their Agents. All that the EC needs is to substantiate to the Candidates and their Agents; **that is the burden of accurate accountability from EC** as the referee of Elections in Ghana defines the validity of an election challenge.

The clause also suggests EC alone as a referee can clarify the declared results without the Petitioner having to submit counter figures. The clause also suggests EC as a referee and nature of petition should not be adversarial. The Clause made the witness statements of Dr, Kpessa Whyte and Rojo Mettle Nunoo as though without merit in law in 2020 election petition.

**As a stop gap measure of future electoral petition reform,** the JOY 2012 Legal Team suggests a **period of 10 days after declaration should be used as Alternative Dispute Resolution (ADR)** or for out of SC settlement for petitioners to clarify with EC before the 21 days constitutional mandate to file the case at SC is due.

Again, each **Presidential Candidate should be given the duplicate pink sheets of all polling stations within 7 days.** The pink sheets should be made available at EC’s Headquarters after declaration of Presidential results. It does not matter whether polling agents of each candidate were present or absent. Such an amendment in CI-127 will greatly improve transparency to the results declared for each candidate. And more importantly, the Presidential election shall be made to be **gazetted on 22nd day after declaration.**

***The 2020 Election Petition Judgement Conservatively Competent by Incompetent CI-99***

The incompetent CI-99 used by the Justices of the SC to pronounce judgement in the 2020 election petition was conservatively competent. Because, the jurisprudence, axioms and authorities cited in the judgement conservatively protected the philosophy in handling civil cases worldwide without little room of innovation and burning desire by most Ghanaians to hear the voice of EC chairperson in SC.

Justice Anin Yeboah conservatively stated, *“our jurisdiction invoked in this election petition is a limited jurisdiction clearly circumscribed by law. We do not intend to extend our mandate beyond what the law requires of us in such petitions brought under article 64(1) challenging the validity of the election of a President.”*

In as much as JOY2012 legal team agrees with the conservative position by the Supreme Court, the team is of the opinion that Article 129(2) could have allowed the Supreme Court to have the Chairperson of EC to make a remark on lessons learnt without necessarily being cross examined.

The impression created by the judgement is that the Electoral Commission cannot be held accountable or questioned for their work in a petition to the Supreme Court. This is unfortunate and dangerous because of sincere ignorance and conscientious stupidity by the masses and political actors respectively. Also the failure to allow EC to respond to Petitioner’s interrogatories which is within the standard of jurisdiction is problematic. If the Petition was without merit, the JSC should have allowed the interrogatories which is within SC jurisdiction.

The standard Civil jurisprudence should have been used competently by the SC Bench to prove petitioner’s unmerited usefulness of interrogatories in the same manner that the SC used existing legal axioms to dismiss various motions by the Petitioner.

***Absolute Figures Vote Padding Judgement Superficial***

Moreover, the stance of the SC on the absolute figures of vote padding and its implications on article 63(3) would have equally been problematic, should the Petitioner had proven with supporting evidence.

Instead, our opinion is that, SC in such a scenario should set up investigation into the process used in padding votes for the duopoly NPP-NDC presidential candidates. The seriousness of vote padding as stated by the judgement should rather call for recounting and collation to understudy the methods and nature of how votes are padded either in error or deliberate. This action can help to hold EC officials accountable.

A case in point for the 2020 election analysis. If the petitioner had proven vote padding on the face of the pink sheets as 32 out of 275 constituencies gives a percentage padding of 11.64%. The standard error of percentages gives 1.934%. For a confidence interval of 99%, gives 8.46%-14.82%. For a total valid votes of 13,320,547, the 99% confidence interval error is 1,126,918 – 1,974,105 valid votes. Should Ghanaians have confidence in such an election? Such analysis would have reinforced the burden of accountability on EC for her declared figures as a referee.

I write as a Presidential Candidate who in 2012 had a hundred and nine (109) votes in only one polling station in Sunyani East, but the final constituency collated figures I garnered for over a hundred polling stations was Eighty (80). Whether the 29 votes were added to rejected ballot or to a candidate even in the assumption that I had zero in the remaining polling stations is an enigma of reality of elections collation in Ghana.

***2012 And 2020 Petitions Are Not Similar***

Situating the Petition in a civil suit scenario crowded the thinking of SC to have misunderstood the real substance of the 7th December, 2020 election petition’s validity challenge. As stated in the judgement page 4, by His Lordships, ***“ Though the Petitioner is not, in substance, attacking the validity of the 7th December, 2020 Presidential elections but only the declaration made on the 9th of December, 2020, the petition is seen by many as a re-hash of the Presidential Election Petition of 2012/2013.”***

Respectfully, this assumption is simplistic of the complex scenarios of election petitions. In our opinion, the meaning of validity may be misconstrued by His Lordships. This assumption explains why the judgement is incompetent in terms of validity challenge but conservatively competent in terms of using incompetent CI-99 and other civil legal axioms in judging the 2020 Presidential election Petition.

Key stakeholders and the legal Committee need to rework on CI-99 vis-à-vis the role of EC and Civil adversarial Petitions on Election before the 2024 elections in the country.

***Conclusion and Way-forward***

* As a nation, we need to reconsider the nature of Election Petition vis-à-vis the constitutional mandated role of EC as a Respondent or a Referee by amending CI-99 competently. EC as a referee to demonstrate the burden of accountability in petition is a better option.
* Should Election Petition be civil adversarial against EC or rather EC is called to clarify in order to account for the validity of her work to SC. JOY2012 legal team believes the latter is the competent position of election petition to balance EC’s constitutional independence.
* CI-127 (48), ensures that EC’s work is unimpeded by Presidential Candidates and their Agents nor by their presence or absence can invalidate EC’s results. EC is therefore to clarify through SC by a Petitioner if ADR option fails before 21 days after declaration.
* It is very important that CI-127 is amended to include within 21st day ADR option for clarification by Petitioner and EC, before the 21 days mandatory petition to the SC is due. The EC should be made to make all original copies of polling stations pink sheets to all Presidential candidates at EC’s Headquarters 7 days after declaration.
* Petition should be clear to specific Polling Stations and Collation Centres for clarification and respective Presiding and Returning Officers should be made responsible through the Chairperson of EC.
* CI-127 should be amended for EC to mandatorily catalogue all elections related malpractices to the Ministry of Interior for investigation and prosecution through the office of Attorney General. This is to ensure Justice and compensations to victims who were genuinely exercising their constitutional rights to vote are pursued.