

The Proposed Creation Of New Constituencies

By
B. J. da Rocha

The announcement by the Electoral Commission that thirty (30) additional parliamentary constituencies are to be created has provoked a confrontation between the Commission and the minority parties and generated heated public debate in the media. Debate on such a matter of public importance is a good sign, but such debate is unhealthy if it is merely emotional and based on political expediency and not on the clear provisions of the Constitution. This paper focuses on the relevant provision of the Constitution and draws the necessary and logical inferences from them.

A short preamble is necessary before I deal with the subject of the new constituencies. The independence of the Electoral Commission is guaranteed in the following words of Article 46 of the Constitution. "Except as provided in this Constitution or in any other law not inconsistent with the Constitution, in the performance of its functions, the Electoral Commission shall not be subject to the direction or control of any person or authority". Although the independence of the Commission is thus guaranteed, this does not preclude debate by civil society of matters within the Commission's province or even a challenge if it is thought that the Commission is acting contrary to the Constitution. The independence guaranteed by the Constitution protects the Commission from undue pressure

or influence by the executive or by political parties or other pressure groups.

However, it is important that the commission adheres strictly to the Constitution. This is the only way it can protect itself, earn public respect and credibility and avoid being involved in damaging controversy. In a free and democratic society where freedom of opinion and expression are guaranteed by the Constitution, differences of opinion are unavoidable. In the event that differences of opinion arise from its actions or inactions, the Electoral Commission must always be in a position to justify what it does or does not do by reference to the Constitution.

Now to the burning question of the thirty (30) new constituencies. The debate going on in the media does not in my view focus enough on what the Constitution says. The fixing of constituency boundaries is not dictated by the government of the day; nor is it determined by the discretion of the Electoral Commission or subject to the convenience of political parties. The boundaries of constituencies cannot be skewed for the benefit of any political party unless the Electoral Commission chooses to ignore the clear provisions of the Constitution. I am sure that the people of Ghana will not allow this to happen.

Let us examine what the Constitution actually says about the boundaries of constituencies. This subject is covered by Article 47 copies of which were circulated with the letters of invitation to this function.

Clause (1) confers on the Electoral Commission the power to divide Ghana into as many constituencies as the Commission may prescribe with each constituency being represented by one Member of Parliament. The most relevant clauses for the purpose of today's discussion are clauses (5) and (6) which I take the liberty of quoting in full;

(5) The Electoral Commission shall review the division of Ghana into constituencies at intervals of not less than seven years or within twelve months after the publication of the enumeration figures after the holding of a census of the population of Ghana, whichever is earlier and may, as a result alter the constituencies.

(6) Where the boundaries of a constituency established under this article are altered as a result of a review, the alteration shall come into effect upon the next dissolution of Parliament.

The review required under clause (5) is mandatory. The Electoral Commission has to carry it out in the manner stipulated. Furthermore, the time at which the alteration takes effect is also stipulated in clause (6). The provisions of clauses (5) and (6) do not allow for the exercise of any discretion by the Electoral Commission. It is bound to carry out the review and any alteration takes effect upon the next dissolution of Parliament and not any other time. The Commission does not choose or fix the time the alteration comes into effect.

The review exercise has two clearly discernible stages. The first stage is to ascertain whether any alterations are necessary and to identify such alterations. In doing so, the Commission is guided by clause (3), (4) and (7). Clause (3) provides 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."! Clause (7) defines population quota as

"the number obtained by dividing the number of inhabitants of Ghana by the number of constituencies into which Ghana is divided".

The idea of the population quota is obviously to try to obtain a fair balance in the number of inhabitants in the different constituencies. In reality, it is not possible to have exactly the same number of inhabitants in each constituency. For this reason clause (4) provides that:

"the number of inhabitants of a constituency may be greater or less than the population quota in order to take account of means of communication, geographical features, density of population and area and boundaries of the regions and other administrative and traditional areas".

There will always be significant differences in the geographical areas and the number of inhabitants in the constituencies, particularly since no constituency must fall within more than one region.

The first stage of the review process requires the active involvement of Electoral Commission to ascertain whether alteration in the boundaries of any constituency is necessary. When the first stage is completed, the second stage is when the alteration actually takes effect. It is important to bear in mind that any alteration does not come into effect immediately the Electoral Commission makes an announcement to that effect. Clause (6) says that the alteration shall come into effect not when the Electoral Commission announces it, not on a date chosen by the Electoral Commission but upon the next dissolution of Parliament

It is necessary at this stage, therefore, to be clear about two things. First what does "come into effect" mean and secondly when does the "next

dissolution of Parliament" occur? "*Come into effect*" can only mean that the new constituency created by the alteration can feature in an election and be capable of being represented by a Member of Parliament.

If a new constituency is created as a result of the alteration it remains a proposal on paper until it comes into effect. It is a potential constituency, which cannot feature in any election before it comes into effect "upon the next dissolution of Parliament". It is now necessary to find out when the dissolution of Parliament occurs. Article 113 (1) gives a straightforward answer. It says;

1. Subject to clause (2) of this article, Parliament shall continue for four years from the date of its first sitting and shall then stand dissolved.

In other words, four years from the date of its first sitting Parliament is automatically dissolved without the need for a step to be taken by any one.

It is within this context that the present controversy about the creation of thirty new constituencies must be considered. The Electoral Commission has announced that following a review; thirty new constituencies have been created. It has taken the position that these new constituencies should feature in the forth-coming election this year. The minority party's position is that the new constituencies cannot properly feature in this year's election. The Commission has challenged the parties to sue and there have been threats from the parties to go to court.

The controversy can be resolved without the need to embark on disruptive litigation. The words of the Constitution are clear, unambiguous and intelligible to any literate person. A careful examination of the relevant provisions will clearly show that the present controversy has arisen from a misconception by the Electoral Commission. The power and authority of the Commission to carry out a review and make alterations is

unchallenged. What is at issue is the time when the alteration shall take effect. The time when the alterations should take effect is not at the discretion of the Electoral Commission. It is clearly fixed by article 47 (6) and 113, as the following questions and answers clearly show;

1. When does the alteration take effect?

Answer: On the next dissolution of Parliament.

2. When is the next dissolution of Parliament?

Answer: Four years from the date of its first sitting.

3. What was the date of the first sitting of Parliament?

Answer: January 7, 2001.

4. When is four years from January 7, 2001?

Answer: January 6, 2005.

From the above questions and answers it follows that the dissolution of Parliament will occur on January 6, 2005. It means therefore that the alterations and consequent creation of new constituencies announced by the Electoral Commission cannot take effect before January 6, 2005. It is only after that date that the new constituencies spring to life and can feature in elections and return members to Parliament. They cannot feature in the elections of 2004 when Parliament has not been dissolved. They can feature only in elections subsequent to January 2005 and that will be 2008. An analogy can be drawn between this situation and the coming into effect of an Act of Parliament under Article 106(11) which says "without prejudice to the power of Parliament to postpone the operation of a law, a bill shall not become law until it has been duly passed and assented to in accordance with the provisions of this Constitution and shall not come into force unless it has been published in the Gazette."

Similarly, a person may make a will, which complies in every respect with the requirement of the law, but the will does not take effect until after the person's death. If the strict provisions of the Constitution are to be respected and followed as they should be the elections of 2004 can properly feature only the existing two hundred constituencies.

Quite apart from article 47(6) and 113(1) the timing by the Electoral Commission is unfortunate and has arisen from its failure to comply with the provisions of Article 47(5) which says that a review must be carried out "at intervals of not less than seven years, or within twelve months after publication of the enumeration figures after the holding of a census of the population or whichever is earlier". I think the emphasis here should be on "whichever is earlier". It means that the review should have been carried out in 1999. Assuming that the Commission was following the alternatives based on the publication of census figures, the timing is still not right. The census was in 2000. When did the Commission actually begin the review and when did it conclude its work so that the Commission could only make an announcement at the end of 2003? Why was the time frame fixed by Article 47(5) not adhered to? If this time frame had been adhered to the present controversy and debate would not have had to take place in an election year.

I would like to conclude by making a few general observations. The election for this year will, I think, be a test of the reliability and credibility of our electoral system and the stability of our democracy. The Electoral Commission, the political parties and, indeed, all responsible citizens of this country are obliged to ensure that the elections proceed

peacefully and fairly. No one stands to gain by the disruption of the elections or the creation of an atmosphere which will cast doubt on the credibility of the results of the elections. It is for this reason that I consider the present controversy a dangerous threat, the more dangerous because it is unnecessary. The initial response of the Electoral Commission to the objections by the minority parties was, I think, inappropriate. It amounted to the Commission saying we have done what we have done, if you do not like it go to court. I expected a less confrontational response, a willingness to discuss the matter and ascertain the true intent of the Constitution. After all one of the Commission functions imposed by Article 45(d) is "to educate the people on the electoral process and its purpose".

I strongly believe that an effort should be made to resolve this matter amicably and soon.

This country cannot at this stage afford to have an election the conduct and result of which can be challenged successfully on constitutional grounds. The plain fact of the matter is that even if all the political parties agree with the Electoral Commission, the alteration, i.e. the new constituencies cannot take effect in 2004 before the dissolution of Parliament.

Their agreement cannot override the provisions of Article 47(6) and 113(1).

B. J. da Rocha, A Senior Fellow of The IEA.

