DEMOCRATIC CONSOLIDATION IN AFRICA BEYOND ELECTIONS: A STUDY ON DEMOCRATIC INSTITUTIONS- THE JUDICIARY IN GHANA AND KENYA

Opoku, Ohene Agyemang[1]

ABSTRACT

The third wave of democratization which hit the world led to a spontaneous wave of democratization in most African states in the early 1990s. The reinstatement of democratic governance brought hope and relief to most citizens. This is as a result of the promulgation and entrenching of human rights clauses in respective countries constitutions. There is now a clarion call for democracy to be consolidated. It is significant to mention that Ghana and Kenya have practiced democracy over two decades. The process of consolidating democracy has become necessary owing to pockets and mass violence in Ghanaian and Kenyan elections respectively. The use of minimalists' conceptualization of measuring democracy based on elections must be discarded and give way to the maximalists approach. Dahl refers to this as the polyarchy of democracy. The study is placed within the liberal democratic theory by Dahl. The central question to ask is what roles have the judiciary played in consolidating the Ghanaian and Kenyan democracy from its inception? This is important to address this fundamental question in the new democracies like Ghana and Kenya because the more independent the judiciary and other democratic institutions, the higher the rate of democratic sustenance is guaranteed. This research is significant because the courts have been used as dispute resolution arena. It aims at investigating the role that courts have played to consolidate democracy. In 2012 Ghana's opposition party leader went to the state's Supreme Court to seek redress about electoral irregularities and malpractices. While the 2017 Kenyan elections dispute and irregularities were settled in the court. The study uses quantitative and qualitative data as its primary data source. Data from the Afro barometer survey is used. And published court rulings are used. Qualitative data via interviews of judges and political Parties officials.

Keywords: Democracy, Elections, Democratization, Democratic Institutions, Consolidation

[1] Ph.D. Candidate studying International Relations, School of International Relations Jinan University Tianhe, Huangpu Da Dao #610 West Avenue, Guangzhou China, +8613025167627, oopoku56@gmail.com

INTRODUCTION

Why has the judiciary become so important to the democratic consolidation in Africa? What role has the judiciary played in consolidating democracy in Africa from its inception? These questions have been central and linger on in most African states' democracy. African political wave from authoritarian strongman rule to democratization pre-dates over the last two and half decades (Huntington, 1991; Dahl, 1998 and Sorensen, 1998). In addressing and answering these questions, a theory and contextualization of democracy are required. The liberal democratic theory explains the belabored questions of whether Africa's democratization and consolidation are attainable. The minimalist view of democracy and its consolidation by Huntington and Schumpeter is relevant to the debate on Africa's democratization and consolidation. In the view of Schumpeter, "The democratic method is that institutional arrangement for arriving at political decisions in which individuals acquire the power to decide by means of competitive struggle for the people's vote (Schumpeter, 1976: 260)." This contextualization of democracy is further viewed by Dahl in what is termed the procedural dimension to democracy, two dimensions or maximalist perspective i.e. the polyarchy (Robert, 1971). That is in his words, contestation, and participation- the presence of the rights, liberties, and freedom are to be enjoyed. This is the laid down processes and procedures that the state put down for the realization of democratic features. Dahl squarely and simply put, contextualized the democratic states as "the continuing responsiveness of the government to the preferences of its citizens, considered as political equal" (Dahl, 1989: 234).

To be sure, the end of Cold War period and the last periods of the 20th Century marked a great political change in the political development in Africa. This period which is termed as a wave of democratization by Huntington (1991) also hit the politically dilapidated African states. The period 1970s and 90s ushered in another wave or global shift towards the democratic regime and governance practices in most states in the world and in Africa. This wave of democratization hit these states based on the influence of globalization. What is best referred to as the "end of history" by (Fukuyama, 1992) and the integration of the world? To Huntington, this is the clash of civilization and the reach of "universal civilization" (Huntington, 1996). The process of democratization is the handiwork of collective and group movement from

non-democratic regimes of the past to a newly statecraft that is underpinned by-elections. This is people-centered government machinery that was established (Huntington, 1991and Sorensen, 1998). As globalization hits every aspect of human life, the world becomes a global village. There is an access to information and cultural integration. Democratic culture and practices spread across boundaries of states. It is within this scope and epoch that the key question of governance and democracy are assessed (Dahl, 1998).

In retrospect, the four past decades witnessed democratization process in diverse areas of the global system. It is significant to mention here and now that the despotic regimes and strongmen style of governance in Africa paves the way to democratic, constitutional and electoral systems. This did not happen in Africa alone but in Eastern Europe. In the context of Eastern Europe, the totalitarian regimes relinquished power to clear the way for democracies. In tandem with the cases cited above, In Latin America, the military junta met its Waterloo at the dawn of the wave of democratization. Above all, some states in Asia joined the bandwagon to initiate democracy and elections (Sorensen, 1998; Birch, 2007 and Lijphart, 1999).

The praise and joy of the populace of Africa towards the democratization are based on the benefits that are anticipated to be gained from it. There were hopes among the populace of states in which this democratization took place. Interestingly, hopes about human rights, economic and political liberties, increased in economic development are high. More so at the international spectrum, it was to foster peaceful and friendly cooperation among nations (Cunningham, 2002; Sorensen, 1998; Frederick, 2001, Dahl, 1971).

This paper teases out the nuances of the key democratic institution- the judiciary on democratic consolidation. The focus of the research is to assess the democratic consolidation processes in both Ghana and Kenya. Its point of bifurcation is a digression from Huntington's turn-over test of democratization to a broader scope of Dahl's procedural dimension or the polyarchy of democratization. Data from Afro-barometer Survey and judicial ruling and precedence on electoral disputes were used. Qualitative data in the form of interviews were gathered some Justices of the courts, lawyers and political parties' leaders. It concludes on the trajectories of democratic consolidation based on strengthening the judiciary by promoting its independence which is enshrined in their respective constitutions of Ghana and Kenya.

Contextualization of Democracy

Democracy can be viewed in a different place and among different people to mean different things. In Asia, the concept, in theory, and even praxis differ from states to states. The South Koreans and Japanese have a diametrically opposed conception and institutional design upon which democratic governance resolves. This is in sharp contrast with what Chinese view democracy (Dahl, 1998). In Ghana and Kenya, the concept of democracy is closely linked with elections, freedom of speech and human rights

In the conceptual foundation of democracy, this study teases out democracy from the following categorizations; the classical and modern nomenclature. In the ambit of the classical classification of democracy, the etymology of the term *demos* (people) and *Kratos* (rule) as it emanates from the Greeks is relevant in building the concept for further analysis. This type of government was operational in Ancient Greece city of Athens. At the crux of this classical definition of democracy from the Greece origin, democracy basically means the government design in which the broader citizens rule (Sorensen, 1998 and Russell, 1972). In the view of Sorensen, the classical perspective or conceptualization of democracy raises, fundamental question about which people constitute the people, what category of participation is preserved for them in such democratic system, what arena of state affairs is favorable for participation and many other fundamental questions. This classical democracy that was practiced in the Athens created the avenue for collective political participation and decision making. This classical opinion of democracy as Birch puts it, "The Greeks gave us the word, but did not provide us with the model (Birch, 2007: 109)."

The democratic construct instituted, rendered the people as part of decision-making process. In contrast, women and slaves were excluded from the affairs of the city-state. The right to run for public office was not based on the requirements of wealth and social background. It is instructive to mention that political decision was arrived at after a thorough public debate and deliberations. A vote is cast in the general assembly to support or reject a decision. This was cast by full adults. Notwithstanding the legitimacy and social acceptance of the Athenian democracy, The Greek Philosophers such as Plato, Aristotle, and Thucydides disregarded it. In the opinion of Plato democracy is a bad form of government which is synonymous with the rule by mob.

In the same scope, Aristotle held a divergent view as opposed to Plato's. These philosophers posit that democracy promoted nothing but the rule of the ignoramuses. In the submission by Aristotle, democratic government is to serve the "common good." In a counterbalancing argument put forward by Aristotle, an abuse of power by individual or groups could be checked to promote the collective good. This is best termed as the "good" aspects of the rule of the majority politeia (constitutional government) and hand-in-hand counterpart constant and progressive partner democratic.

The contemporary perspective to democracy is bed rocked on the criticisms of the ancient Athenian democracy. The exclusion of women and slaves from the ownership of property and political participation which was critiqued by Aristotle was the turning point of this dimension of democracy. The American and French revolution which took place in the 18th century saw the reinstatement of democratic participation and regime after over an interregnum of over 2000 years. It is against this background that the imminent works of political philosophers and thought such as de Alexis de Tocqueville, Montesquieu, and Jean-Jacques Rousseau is strictly based on the equality and rights of the individual and is inclusive of the correlation and relations that exist between the states –society relations. (Cunningham, 2002: 13 and Kurian et al, 2011)

Importantly, the principle of human rights and equality have been the pivot of the contemporary democratic principle in addition to political participation. The effect on contemporary democracy has not been following strictly the mode and function of the Athenian system. In the modern dimension, it treks on the wheels of nation-states. Beyond the nation-states characteristics, it is instituted on the grounds of indirect or representative form as opposed to a direct system that the Greeks practiced. Under the jurisdiction of the representative system, the electorate elects their representatives in a free, fair and transparent election. This is more clearer in that the modern democracy become dominant in the 19th century as a result of the institutionalization of a representative system in which the people choose their representatives in a free, competitive and fair and to use a better word to describe what ought to be in this democratic elections, especially in Africa, a violent free elections. In order to obtain the status of democracy that the liberal democratic societies have established, it comes at a cost. Politics of inclusion or incorporation in the United States ripped

in the 1820s and 1830s this was the male citizens given the right to vote in competitive elections. The case of Britain, although parliamentary government and its institutions were set up in 1688, it took 1867 before the right to vote (franchise) was guaranteed for the majority of its citizens. It is instructive to conclude that in spite of the spread of democracy, the system in its contemporary arrangements and practice is a new phenomenon that is developing in the political history of man (Birch, 2007).

Liberal Democratic Theory

This study is placed within the liberal democratic theory. The theory focuses on the conditions that are prerequisite for democracy and its consolidation. Among the founding fathers of the liberal democratic theory are Larry Diamond (1999 (Schumpeter, 1976) (Dahl A. R., 1998) (Sorensen, 1998) and Lumumba Kasongo (2005). In the view of Lumumba- Kasongo, (2005:10) Liberal democracy is "the system of governance that, in principle, protects citizens' rights and privately-owned instruments of production (land, machinery, factory buildings, natural resources and the like). The state produces social equilibrium". Frempong, (2007 :128) argues that the cardinal definition of liberal democracy is that for "the management of state affairs, there should be an open and free field for members of society to compete to exercise the power to control and manage the material resources of the state for and on behalf of the entire population, irrespective of race, religion, gender or political conviction." On the other hand, liberal democracy means a form of government where representative democracy is well instituted and operates on the principles of liberalism. The pillars of liberal democracy are the conduct of free, fair and competitive elections, the existence of a multiple and varied political parties, the operation of separation of powers among all arms of government, the presence of the rule of law, the protection of human rights and the respect for civil liberty of all persons. And among other things, there must be a constitution either codified or un-codified Diamond (1999).

In the view of Diamond (1999), liberal democracy involves a political system that protects the liberty of groups and individuals; it ensures the operation of civil society and the protection of private life without the control of the state. Democracy, when looked at as the mere rule of the people or as a process of selecting government through the ballot box in a periodic manner through free and fair manner, is better than any system that does not go by this process (Diamond, 1999).

Dahl, (1989) added that liberal democracy is adjudged the best form of government that ensures accountability, peace, and predictability. Democracy catapults and guarantees citizens freedom as no other workable alternative does. The following are the components of liberal democracy by Diamond (1999:11-12).

- *Control of the state and its key decisions and allocations lies, in the fact as well as well as in constitutional theory, with elected officials (and not democratically unaccountable actors or foreign powers); in particular, the military is subordinate to the authority of the elected civilian officials.*
- *Executive power is constrained, constitutionally and in fact, by the autonomous power of other government institutions (such as an independent judiciary, parliament, and other mechanisms of horizontal accountability).*
- *Not only are electoral outcomes uncertain, with a significant opposition vote and the presumption of party alternation in government, but no group that adheres to constitutional principle is denied the right to form a party and contest elections (even if electoral thresholds and other rules exclude small parties from winning representation in parliament).*
- *Cultural, ethnic, religious and other minority groups (as well as historically disadvantaged majorities) are not prohibited (legally or in practice) from expressing their interest in the political process or from speaking their language or practicing their culture.*
- *Beyond parties and elections, citizens have multiple, ongoing channels of expression and representation of their interests and values, including diverse, independent associations and movements, which they have freedom to form and join.*
- *There are alternative source of information (including independent media) to which citizens have (politically) unfettered access.*
- *Individuals also have substantial freedom of belief, opinion, discussion, speech, publications, assembly, demonstration, and petition.*
- *Citizens are politically equal under the law (even though they are invariably unequal in their political resources).*
- *Individual and group liberties are effectively protected by an independent, nondiscriminatory judiciary, whose decisions are enforced and respected by other centers of power. And finally,*

- *The rule of law protects citizens from unjustified detention, exile, terror, torture, and undue interference in their personal lives not only by the state but organized nonstate or antistate force.*

The crux of the liberal democratic theory talks about the conditions that must be in place for competitive democratic elections to be smoothly organized. The argument of this theory is that peaceful, free, fair, competitive and violent free elections can be organized only in the atmosphere of democracy. Among the fundamental features is that people with ethnic, cultural, religious and minority groups are included in the democratic process and their interest respected.

It is in this same vein that Hagan (1995) argues that for the smooth administration of the state, some conditions must be in place including a liberalized level playing field for all groups in the society to contest for power and to control and govern the whole population for the betterment of everyone, irrespective of race or ethnic origin, gender, creed or political belief.

As Ghanaians and Kenyans deepen the gains made in their electoral democracy, it is important that democratic principles are applied in elections and also tolerance of diverse groups is promoted. The desired goal of Ghana and Kenya to obtain a quantum leap in its democracy is inextricably joined to all the various facets of liberal democratic principles to avoid the desire of aggrieve group to recourse to violence.

The theory is relevant for the study in that it serves as the basis for hypothesizing what role has the democratic institution such as the judiciary in Ghana and Kenya played in consolidating the democracy?

Research Methodology

The research used quantitative and qualitative data. The mixed method approach is used in gathering data. It is instructive to mention here that the quantitative data are extracted from the data pool of the Afro barometer and the freedom house research data based on the studies on democratic institution i.e. the judiciary in Ghana and Kenya. The relevant of these data to the empirical studies is that it exudes the true reflection of the respondents and the research questions are addressed based on the credibility and the richness of the data. Afro barometer and the freedom house have developed a high pedigree in democratic studies that the essence of using their data is significant to the study.

The studies in the bid to tease out the research question also relied on books, law reviews, scholarly articles from peer review journals, magazines, and newspaper reports. The researcher administered structured elite interview with intellectuals and elite in academia. Judges and politicians were interviewed. This enhances was utilized in information gathering in respect of qualitative primary data as well as patronage analytical framework was deployed.

Literature Review

Democratization Trajectories to Consolidation from Rustow's Model

To properly and canonically understand the democratic transition in Ghana and Kenya, it is adequate to critically examine it within the ambit of history. This is section reviews the trajectory within the context of Rustow's model of transition to democracy. The model is significant in two ways; it contextualizes the democratization process within the conditions inside the state's pre, during and after the transition. It further draws empirical and historical allusions to strengthen the basis of its arguments.

To begin with, the process of democratization in Africa has been spontaneous and sporadic as posited by Sorensen (1998). However, the sporadic nature does not mean the transition occurred in a vacuum. The transition to democracy in Africa in the early 1990s had a remote and immediate condition in place to trigger. It is, therefore, important to examine the epoch of Africa's past political, economic and social past shortly after the process of decolonization was over. It is significant not to assess the Africans wave of democratization by excluding it from its political history of the agitation for independence in the period of 1950s and 60s. The wave of independence in African states which Ghana and Kenya are at the center of the debate commenced after the World War II and the establishment of the United Nations. To be sure, the period 1960 is termed by political historians as the period of Africa's political independence. This is followed by the second wave of independence in the 1970s and 80s and 90s. where the remnants of Africa's colonized states in the likes of Guinea-Bissau, Cape Verde, Mozambique and Angola, Zimbabwe, Nambia and South Africa respectively (Chazan et al, 1988). The correlation that existed between the 'self-government' after independence for the safeguard of the right to political participation and competition, and above or the guarantee of the rights and liberties of the nationals

and individuals in the various African states. Simply put, independence was synonymous with democracy. Besides the broad masses joined the struggle for independence just to be liberated, politically, economically and socially. It is therefore not misleading for one to equate independence and the desires of the people are establishing a democratic state as a veritable clarion call for democracy.

The statecraft and the government system that was institutionalized after the collapsed of colonialism was an important background and a preparatory grounds for the third wave of democratization in Africa. Although the wave and the drift to democracy have been spontaneous and sporadic, it did not occur in a vacuum. It is instructive to add that, it is against this background that this paper teases out Dankwart Rustow's " Transition to Democracy." To arrive at the conclusion of Rustow's democratic consolidation, the pathway to this process is significant to give a systematic and chronological trajectory of the case of Africa with the focus on Ghana and Kenya.

The Third wave of democracy hit Ghana in the early 1990s. The military junta (The Provincial National Defense Council, PNDC) that was in power from 1981 to this time recoursed to democratic governance after the external and internal pressures from the International Monetary Fund and the World Bank and civil society groups. The enormous and dilapidating economic crisis of the 1970s and 80s forced the regime to kowtow to the political conditionalities attached to the aids, grants, and loans by the IMF and the World Bank. These external pressures were met with civil society groups, the student body, the academia and the church. The result of the agitation for political reforms, elections and democracy and the opening up of the political system compelled the regime to drift to a move that is categorized as the nucleus of Ghana's Fourth Republic after 1979 abrogation of the third Republican constitution. In the view of (Boafo-Arthur, 2007 p2-3), the combination of external and internal pressure for the wave of democratization in Ghana chalked the following dividends:

1. The holding of district-level elections in 1988 and 1989.
2. The collation of views on the democratic future of the country by the National Commission for Democracy (NCD) set up by the PNDC.
3. The promulgation of a law on 17 May 1991 setting up a nine-member Committee of Experts (Constitution). The mandate of the committee was to prepare a draft proposal (constitution) taking into account previous constitutions of

Ghana since independence and any other relevant constitution(s) as well as matters referred to it by the PNDC.

4. Inauguration on 26 August 1991 of a 260-member Consultative Assembly to draw up a draft constitution (based on the work of the Committee of Experts) for the country.

5. Submission to the PNDC on 31 March 1992 of a draft constitution by the Consultative Assembly. Consequently, an Interim Electoral Commission (INEC) was set up.

6. A referendum on the draft constitution was held on 28 April 1992 with 92.6 percent of eligible voters voting in favor of the draft constitution.

7. Lifting of the ban on political party activities on 15 May 1992. Flight Lieutenant Jerry Rawlings, chairman of the PNDC, founded the National Democratic Congress (NDC) to contest the presidential and parliamentary elections.

8. Holding of presidential election on 3 November 1992 and the parliamentary election on 28 December 1992.

9. The inauguration of the Fourth Republic on 7 January 1993 with Rawlings as the President.

By focusing on the above, it gives the condition for democratization in Ghana in a better perspective. The view held by Rustow, that the process of democratization involves national unity is achieved in this arena of Ghana's democratization process. The mass agitation and support for the conduct of district-level elections in 1988 and 1989 coupled with teeming civil demonstrations that were organized by the Movement for Freedom and Justice reaffirms the aggregation of a high national unity and unification for democratization. The aggregation of what constitutes national unity is put as this by Rustow… "It simply means that the vast majority of citizens in a democracy-to-be must have no doubt or mental reservations as to which political community they belong to. This excludes situations of latent secession (Rustow, 1970). To Rustow, the national unity remains the bedrock of democratization. The case of economic morass and developments that have been highlighted in the above paragraphs solidifies that national unity. It is the sine qua non for the process. In that national unity must eschew secessionists wars. The case of Ghana has proven to be positive and resilient in this sphere. However, there remain ethnic under-currents and cleavages. It is relevant to for analysts to access the national cohesion and unity in a

potpourri of ethnic divisions and conflicts. At the larger extent, the people view their national identity, superfluous over the ethnic variables. The ethnic division resurfaced when democracy as instituted and elections were to be organized. Since the winner of the election commands the allocation and distribution of the scare resources, ethnicity comes in as a means of aggregation support and vote in general elections. I veritable example is Kenya.

Kenya a sub- Saharan African state's transition to democracy is not different from its counterpart states like Ghana. The case of Kenya is into the collection of states in Africa that benefited from the contagious third wave toward a participatory and democratic government in the 1990s. This is against the background of an institutionalization of ade jure one-party state in the 1970s and 80s as opposed to a de facto one-party state in 1969. The first democratic and multiparty election in Kenya after the independence of the state was held in 1992 and the second in 1997. These were earlier preceded with s strongman rule and despotic government systems. It is sufficing to add that these much-awaited democratic elections in that were organized in Kenya in the era of 1992 and 1997 were not just full of tension and acrimonies but there was also mass violence. More important is the electoral victory of the incumbent regime party. The Kenyan African National Union (KANU) was all the two elections (1992 and 1997). In Ghana, the case was no different. The leader of the PNDC the military regime that was compelled by several factors both internally and externally to democratized also was with mere margins as opposed to the opposition parties. In spite of the abuse of incumbency and the use of violence and force to rig the elections by the incumbent regime, there was a change of government and power alternation in both Ghana and Kenya in 2000 and 2002 respectively (Laakso, 2007).

The above background conditions in Ghana and Kenya were intertwined with what Rustow put it in his model, the preparatory stage. A vivid account of the transition process in Africa must not relegate this paramount state. In the political polity of Ghana, the remained political elites, and activists who constantly and rigorously challenged the status quo and insisted on reforms and a move towards a democratic transition. In the political annals of the struggle for the reinstatement of democratic government in Ghana, notably the Movement of Freedom and Justice, the Ghana Bar Association i.e. an association of lawyers, academics, and the church played a monumental role in the quest for the restoration of democratic transition. Rustow (1970,p

352) posits that the dynamic process of democratization itself is set off by a prolonged and inconclusive political struggle. To give it those qualities, the protagonists must represent well-entrenched forces (typically social classes), and the issues must have profound meaning to them. Such a struggle is likely to begin as the result of the emergence of a new elite that arouses a depressed and previously leaderless social group into concerted action. Yet the particular social composition of the contending forces, both leaders and followers, and the specific nature of the issues will vary widely from one country to the next and in the same country from period to period.
It is significant to mention that this preparatory does not exclude the broad masses. It neither does black them at the backburner. The farmers, particularly cocoa farmers, peasant farmers, fishermen, traders, businessmen and women, and artisans have been pivotal to the preparatory stage. Nature and composition have been as it is because of the social structure of the Ghanaian political and social structure. The elite has since the times of independence struggle in the 1930s, 40s, and 50s were at the forefront with a loyal and teeming support from the masses. This can be analyzed some day in a critical evaluation of the social and political structure of the Ghanaian political construct. To further underscore the role of these factions of the Ghanaian society to the agitation for democratization, the common denominator has been underpinned on social and economic factors. Higher unemployment rate and gross economic morass have deepened the relationship that has existed between the masses and the elite towards a common agenda of democratic governance. The Struggle for the peoples' power and trends that preceded the transition to democracy in Ghana falls in tandem with the second stage, the preparatory stage as hypothesized by Rustow in the web of steps from democratization to consolidation Kenya within this scope has a no different point of bifurcation when juxtaposed with that of Ghana. Kenya joined the legion of African that gained independence from the British in 1963. The hope of the people for political liberation after independence was dashed after the de jury one-party state was institutionalized in the 1970s and 80s a federal constitution referred as 'majimbo', which was under the aegis of President Jomo Kenyatta was abrogated. The leadership of the president and his eventual successor, Daniel Arap Moi, the state was placed under a highly centralized system of strongman rule and autocratic

leadership. This served as the basis for the aggregation of political elites to rally to demand the return to democracy[2].

More positively, there have been leaders on the large scale in the context of Kenya who has collaborated to the democratization process. Many political parties have emerged in Kenya over the transition period in a state with over 42 ethnic groups. The prototype political parties that have been in 9Kenya are the African National Union (KANU) and the Kenya African Democratic Union (KADU) were formed in 1960. Both parties fought for independence and in 1963 Kenya became an independent state. KADU merged with KANU in 1964 making KANU the only political party in Kenya under the leadership of President Jomo Kenyatta. The tribal groupings are not different in the eve of the third wave of democratization. These took a similar scope and form as the de javu school of thought have in most instances won in Africa. Shape as economic and social issues came to the fore under the despotic regimes.

In as much as Rustow argues that the process of democratization may go alone systematic and procedural steps do not mean that the process in elsewhere has been programmed to follow this continuum of order. The stages may be overlapping. In the instance of, as posited by Sorensen, the preparatory stage preceded the national unity process for democratization to be institutionalized.

In the case of Ghana and Kenya, the aggregation of the broad masses that encompassed the elite and middle class have been unified on general terms for the struggle to reinstate democracy. It is often reported in the literature of the cleavages and divisions. However, the praise and joy of these cases are that although there exist polarization and acrimony, the agenda for democratization has not been disturbed or disrupted into a secessionists' war. The acknowledgment of the state and its diversity is

[2] This is relevant to mention that the political elites and masses have grouped not under national character alone but there have been a sharp and deep rooted ethnic coloring during this period of national quest for political reforms which resulted to the drift to democratization. It is important to add that the ethnic groupings in this arena have been significant based of the commanding of the national resources and distribution. Political parties in this polity are formed to command the greater share of the national resources and allocation. This give a better understanding into why ethnic cleavages and violence have been at the core of Kenya elections and politics.

the condition inside the preparatory stage of Ghana and Kenya. There is some optimism at a cursory glance of how the transition gathered momentum and teeming support.

In lieu of the preparatory stage is the decision stage, which encompassed the lift of the ban on political party formation. However, this did not guarantee the right to free speech. Political parties' leaders were put under surveillance. Criminal libel law was in place to skew the political discourse towards the praising of the 'strongman' and dictatorial leader and his appointees. It is significant to know that the short notice of elections and the lift of the ban on political grouping and parties attributed to among others the electoral defeat of the opposition parties in Ghana and Kenya. Akin to the decision stage, Rustow opines that the decision stage "on the contrary …to the preparatory phase is a deliberate decision on the part of political leaders to accept the existence of diversity in unity and, to that end, to institutionalize some crucial aspect of democratic procedure (Rustow, 1970: 355). The decision stage became more pressing and needful based on the domestic and external pressures that were placed on despotic leaders in Africa. The decision to democratize in Africa has not happened in a vacuum put squarely Boafo- Arthur. Rawlings of Ghana and the leader of the PNDC like his counterpart in Kenya, Daniel Arab Moi was never magnanimous for a democratic transition. To be sure, civil society groups and IMF/World Bank conditionalities are the byproducts of the main reason for the decision of these despotic rulers to metamorphose to the road of democratization.

Inevitably, the transition was compelled by the conditions that were beyond the control of the autocratic leaders. It is intriguing to know that the decision to democratize was made but the desire to allow true democratic institutions and norms to work was another issue. This confirms a Ghanaian adage that 'you have sold the monkey but still grabbing its tail'. The spontaneous transition to democracy with the unpreparedness of the autocratic leaders to retire from power is attributed to why the politics in Africa after democratization remains it is designed and practiced.

The final model that sums up the model and transition to democracy with Rustow's model as a torchlight is the consolidation process. This is the final stage as teased out by Rustow. In terms of a definition of democratic consolidation, there is no universally accepted definition to it. However, this study uses what Dahl and other scholars accept as "democracy becomes the only game in town." This implies that groups and

political actors accept that the ballot box is the only means to a change in government. It acknowledged political completion and participation, political tolerance and the safeguard of human rights.

The Failure of Elections to Consolidate Democracy in Africa

The history of democratization in Africa is predominately built and assessed on a rudimentary aspect of democratic governance. i.e. elections. It is therefore instructive and not out of place to view Africans understanding of democracy with the scope of voting. The right to vote is viewed as the power of the electorate over their representatives. It is not surprising therefore to hear in Ghanaian electoral and democratic discourse the popular Ghanaian language " kokromoti power" literally meaning the power of the thumb. In spite of the power that the Ghanaian and Kenyan vote deemed to wield through voting right, democracy limp as elections has a failure to present the desired goal of democratic consolidation. The narrow premise of democratic consolidation through the election and the turn-over test by Samuel Huntington have in its entirety and squarely bred the 'fallacy of electoralism'. Simply put the aggregation and lowing of democratic consolidation based on the mere conduct of democratic elections while other democratic indicators are neglected. This is supported with the huge evidence of electoral irregularities, rigging, ballot stuffing, vote buying, pockets and mass violence, weak democratic institutions, clientelism and neo-patrimonialism institutionalized to achieve the desired goal of power holders. In effect, elections in Africa have become a 'zero sum game' in which winners take all. The winners control the scare resources for development and the direction of the future (Laakso,2007).

The use of electoral violence as a means of winning elections in Africa specifically in Ghana and Kenya stems from a potpourri of factors and reasons. The existence of ethnic cleavages and the presence of poverty and illiteracy are attributing factors. These are the core reasons why peaceful democratic elections are hard to come by after over two and a half decades of democratic governance in Ghana and Kenya. In the works of Andreas Mehler, he puts it this way " Violence, therefore, may be a common mode of political competition in African societies, more than consensus and

co-operation" (Mehler, 2007). Whiles in Ghana, the cases of violence in electioneering process is not high but pockets of violence, Kenya, on the other hand, have escalating pockets of violence.

Mass Violence in Kenyan Elections

To buttress the above reasons why elections have failed to produce democratic consolidation in Africa, and reducing democratic consolidation to elections is a myopic test of the variable of democratization is that, violence in these democracies have constantly increased in proportions. In the case of Kenya, the drift towards democratic and multiparty election system after the country's independence took place in 1992 and 1997. In all these elections which were won by the Kenya African National Union (KANU) were submerged in violence. This violence occurred in the form of pre, during, and post elections. This significant to add that the third elections in 2002 which the opposition party; National Rainbow Coalition (NARC) and the Democratic Party was violence free. Kenya electoral history has been characterized by ethnic violence. The politics of pre-1992 general election saw the Rift Valley ethnic cleansing. The incumbent government instigated and insight its supporters against the opposition parties tribes. The antics of the government led by Moi was to personalize and tribalized the area. The results of the violence led to the killing of over two thousand people with about twenty thousand been displaced (Kuria, 1994). This process of mass violence continued in the 1997 elections. In a more fashioned style, the 1997 ethnic cleansing occurred in the Coast Province of Likoni and Kwale south of Mombasa. The strategy applied here was to reduce the votes the opposition parties by using violence as a means disperse and intimidate the voters from voting for the opposition knowing that the place is the stronghold of the opposition party. These tribes were the central focus of the regime, Luo, Kikuyu, and Kamba. In the end, the desired goal was achieved. Electorate turnout was thirty-seven percent (Laakso, 2007and KHRC, 1997). In the view of Benjamin Reilly politicians in all divided societies that have cleavages with race, religion, language or ethnicity use the above mention as a means of achieving political power. He posits that the politicians "play the ethnic cards" and "outbidding- increasingly extreme rhetorics and demands (Reilly, 2006)"

The infamous Kenyan electoral clashes and violence of 2007 is preceded by the events and violence of decades and the penultimate one is the 2002 violence. The core catalyst of 2002 was the prelude of tension that characterized the elections. In the River Valley area, Militias used crude weapons to inflict wounds and harm on those that do not share political ideology and direction with them. The cause of the tension was multifaceted. The selection of the son of Kenyan first president, Uhuru Kenyatta as the leader of the KANU and the presidential candidate. The modus operandi of these militias have been to disrupt rallies and others were to challenge the candidacy of the leader of KANU. The violence escalated and led to the death of at least twenty Kenyans (Laakso, 2007).

Pockets of Violence but Abuse of Ethnicity in Electoral Politics in Ghana

The electoral politics in Ghana is not different from the historical account given on the above. The presence of ethnic and tribal abuse for votes is the common denominator that runs through Ghana and Kenyan electoral politics and democracy. The point of bifurcation is that electioneering campaigns and electoral process in Ghana have limited violence. The elements of violence in Ghana's case is termed as pockets and small scale as opposed to the Kenyan mass violence. Right from the commencement of Ghana, groups, and ethnicity have dominated the cause of violence and tension during general elections. This has received some attention from social scientists. The worrying trend is the heightening in the cases of violence and tension within the periods of pre, during and post elections. Ghana has been relatively peaceful with no records of mass violence. Juxtaposing Ghana and Ghana on the grounds of electoral violence, Ghana stands on the premise of good performance. That notwithstanding, there are usually overlooked violence and clashes.

Democratic Institutions and Consolidation- The Judiciary in Ghana and Kenya

The framers and drafters of Ghanaian and Kenyan Constitutions took into cognizance the constitutional and legal basis for the judiciary to be independent. In Article 125 (1) of Ghana's 1992 Fourth Republican Constitution, it is spelled out the genesis of the powers of the judiciary… it put it as …. Article 127 in the same vein provides the legitimate basis of the judiciary as an independent organ of government and free from the control and dictates of any organ of government or group of persons or a

person's whims and capricious desires. Likewise, the judiciary in Kenya enjoys this same independence. To be sure, The Constitution of Kenya 2010 which forms the fundamental law and jurisprudence of Kenya, set the agenda for a judiciary independence. In article 160. (1) it stipulates that "In the exercise of judicial authority, the Judiciary, as constituted by Article 161, shall be subject only to this Constitution and the law and shall not be subject to the control or direction of any person or authority. (2) The office of a judge of a superior court shall not be abolished while there is a substantive holder of the office. (3) The remuneration and benefits payable to or in respect of judges shall be a charge on the Consolidated Fund.

At the crux of the safeguard for the judicial independence in Ghana and Kenyan political polity is tailored to achieve justice, fairness and to promote democratic governance in the spirit of competition and participation. The judiciary in Africa and in this case Ghana and Kenya have a legal obligation to safeguard and protect the democratic system that is instituted. The role of the courts in adjudicating disputes includes electoral and electioneering cases. This is more so when the political environment in which Ghana and Kenya practice democracy is filled with acrimony, tension, and violence. The institutionalization of the court and in these case the low and Supreme court for electoral malpractices and offense is a bulwark for building trust and confidence in the democratic dispensation. This is a veritable example for promoting democratic participation and competition beyond the electoral system and body.

Historic Election Petitions, Ghana 2012 and Kenya 2013 and 2017

It is more important to touch on the role and impact of the election petition in Ghana and Kenya during 2012, 2013 and 2017 respectively. The use of the court in resolving electoral disputes is commendable in democracies that are on the verge of consolidating. Election petition cases have taken place in countries like Ghana, Kenya, Nigeria, Sierra Leone, Uganda, Zambia and even Zimbabwe. The petitions in these cases were filed to challenge the presidential election results against the background of irregularities and rigging. It is instructive to add that none of the states except the Kenyan 2017 election petition verdict turned the results of the elections (Azu, 2015). So start with the case of Ghana, on December 7^{th,} 2012, Ghanaians went to the polls to elect their president and members of parliament. The pre, during and post elections were marred by tension and pockets of violence in some constituencies. Significantly,

the election was zero down to the candidates of the two dominant Political Parties, the incumbent president John Mahama of the National Democratic Congress (NDC). Mr. Mahama was declared by the Electoral Commission Chairman as the winner of the presidential competition with 50.7% of the valid vote cast. This was a marginal win in that the votes that separated the two candidates were a few thousand votes at the brim of a run-off election. The opposition Party (NPP) was the greatest contender. In the same way, the opposition party's candidate, who had competed in the 2008 election as the flagbearer of his party, Nana Akufo-Addo obtained 47.74% of the valid votes cast. The elections were marred with irregularities and malpractices. Akin to this, the opposition party, the NPP alleged tampering with results by the Electoral Commission (EC). The disagreements in the electoral verdict saw the historic filing of a petition at the Ghanaian Supreme Court to review the election results. The NPP in a bid to adduce evidence to support their allegation produced more than 11,000 electoral record receipt known as the "pink sheets" to the court for vetting and perusal. In effect, the opposition party wanted an audit of all the electoral results conducted and declared in all polling stations and constituencies. The plea before the Supreme Court included the annulment of the electoral results \and the declaration of President Mahama as president-elect. In the petition, there was another issue of the EC to provide evidence of 14,000 from abroad without a credible voter register. At the end of the exercise. The process of the election petition took eight months for the Supreme Court to be able to pass a judgment. The turn and uncertainty in the country were high.

More significantly was the "dooms" or "the judgment" the streets of Ghana were deserted, people hid in homes for the fear of post-election violence. At the end of the months of electoral litigation, the Supreme Court reaffirmed the declaration of President John Mahama as the valid elected candidate in the elections. The opposition leader accepted the verdict but disagreed with it. The opposition party reaffirmed its hope in the use of the court in seeking justice and in defending Ghana's constitution and democracy. The party declined to seek a judicial review of the decision by the court. At the end of the petition, the electorate has been abreast of the issues in electoral regulations and procedures. The effect of the petition was to help future electoral reforms and democratic consolidation. Constitutional purists, psephologists,

and political Scientists have adjudged the process as a means of transiting from the electoral basis of democratic consolidation to a more institutional arena.

Kenyan 2013 elections petition, followed the example set by Ghana as using the legal and democratic institutions to seek justice and to address electoral disputes rather than the recourse to violence and intimidation. On March 16th, the Kenyan opposition party filed a petition in the Supreme Court to seek the declaration of the presidential elections as invalid. The background to 2013 was as against the previous 2007 electoral violence and ethnic cleansing in Kenya. The post-election irregularities, chaos, and destructions led to the establishment of the Kriegler Commission to investigate into the crisis and this resulted in the enactment and promulgation of the 2010 Constitution. Barely two weeks after hearing the petition, the Supreme Court ruled. The verdict went in favor of Uhuru Kenyatta as a valid elected candidate. The acceptance speech by the president was a unity and peace based. It is against this background of going to the court to settle electoral disputes that the 2017 Kenya election petition and the annulment of the votes declared by the EC and the invalidating the president-elect, Uhuru was based. In a historic ruling, the Supreme Court unanimously nullified the declaration of the Election Commission. The court cited that there EC "committed irregularities and illegalities in the transmission of results." In that vein, the Court that was presided by Chief Justice Maraga stated that the "irregularities affected the integrity of the poll." This ruling is historic in the politics and electoral history of Africa. The confidence and the trust that the judgment has built in the African and especially the Kenyan democracy is enormous.

CONCLUSION

Ghana and Kenya have practiced democratic governance for over two and half decades after the famous third wave of democratization hit the African Continent. The pathway to consolidating the gains made in these democracies have been rocky and bumpy. At the core of issues that confront Ghana and Kenyan democratic sustenance have been the issues of electoral tension, fraud, and irregularities. In spite of the introduction of biometric and electoral reforms, the electioneering processes have not achieved the sanctity and the sacrosanct that a veritable democracy deserves. More important is the use of somewhat free, fair and transparent elections as a barometer to determine democratic consolidation. The incorporation of the use of democratic

institutions to deepen the gains made in Ghana and Kenyan democracy is appreciable for the growing democratic culture in Africa. It is in this vein that the conception of democracy by Dahl differs from Schumpeter and other minimalists who peg or equate democratic consolidation at just the process of conducting free, fair and violent free elections. At the bottom of study, democratic consolidation happens in the newly democratized states when democracy is acceptable and become 'durable' in that it will not relapse to a military or autocratic rule. There are several mechanisms that are to be in place to promote this. At the crux of it is the building and strengthening of the judiciary.

The constitutions that serve as the foundation of Ghana and Kenya democratic governance, spells-out clearly and entrenches the independence of the judiciary. It spells out the functions and powers of the judiciary is disputes resolution. It adds judiciary review powers to the courts. The Supreme Court in Ghana and Kenya have distinguished itself as the bulwark and repository of democratic consolidation. The boldness exhibited by the Kenyan Supreme Court to annul the 2017 presidential elections, is an indication that Africa's democracy is consolidating.

The two countries have set the pathway that Africa's democracy is beyond the mean conduct of the election. In this view, Ghana and Kenya have become the leading examples of democratic institution and consolidation. The narrow perspective of consolidating democracy in Africa based on elections have transited to another level. By recourse to the courts, Ghana and Kenya will ipso facto consolidate the giant gains that the trajectory of good governance deserves.

REFERENCES

(KHRC), K. H. (1997). Kayas of Deprivation, Keyas of Blood: Violence, Ethnicity and the State in Coastal Kenya. Nairobi: KHRC.

Anthony, B. H. (2007). The Concepts and Theories of Modern Democracy. London and New York: Routledge, Taylor and Francis Group.

Azu, M. (2015). Lessons from Ghana and Kenya: Why Presidential Election Petition Usually Fail. AFRICAN HUMAN RIGHTS LAW JOURNAL.

Boafo-Arthur, K. (2007). A decade of liberalism in perspective. In K. Boafo-Arthur, Ghana One decade of the liberal state (pp. 2-3). 7 Cynthia Street, London

n1 9jf, UK and Room 400, 175 Fifth Avenue, New York, NY 10010, USA in 2007: published by Zed Books Ltd.

Cunningham, F. (2002). Theories od Democracy. London and New York: Routledge Tailor and Francis Group.

Dahl, A. R. (1998). On Democracy. USA: Yale University Press.

Dahl, R. (1989). Democracy and Its Critics. New Haven and London: Yale Uni-versity Press.

Dahl, R. (1998). On Democracy. USA: Yale University Press Publishing.

Fukuyama, F. (1992). The End of History and The Lastman. 1350 Avenue of the Americas, New York, New York 10019: The Free Press.

Huntington, S. (1991). The Thrid Wave of Democratization in the Late Twentieth Century. University of Oklahoma, USA: University of Oklahoma Press, Norman, Publishing Division of the Univesity.

Huntington, S. (1996). The Clash of Civilization and Remaking of World Order. 1230 Avenue of the Americas, New York, NY 10020: Simon and Schus-ter Rockefeller Center.

Kuria, G. (1994). Majimboism, Ethnic Cleansing and Constitutionalism in Ken-ya. Nairobi: KHRC.

Kurian, George Thomas; Alt. .E James; Chambers, Simone; Garrett, Geoffrey; McClain D. Paula. (2011). Encyclopedia of Political Science. 2300 N Street, NW, Suite 800: CQ Press, a division of SAGE.

Laakso, L. (2007). Insights into Electoral Violence in Africa. In M. Basedau, G. Erdmann, & A. Mehler, Votes, Money and Violence: Political Parties and Elections in Sun-sub Saharan Africa (pp. 204-249). South Africa: Uni-versity of Kwa-Zulu- Natal Press.

Laakso, L. (2007). Insights into Electoral Violence in Africa. In M. Basedau, G. Erdmann, & a. M. Andreas, Votes, Money and Violence: Political Parties and Elections in Sub-Saharan Africa (p. 226). South Africa: University of KwaZulu-Natal Press.

Mehler, A. (2007). Political Parties and Violence in Africa: Systematic Reflec-tions against Empirical Background. In M. Basedau, G. Erdmann, & A. Mehler, Votes, Money and Violence: Political Parties and Elections in Sub-Saharan Africa (p. 209). South Africa: University of Kwazulu- Natal Press, South Africa.

Naomi, C., Mortimer, R., & Ravenhill, J. a. (1988). Politics and Society in Con-temporary Africa. 1800 30th street, Boulder, Colorado 80301 United States of America: Lynne Rienner Publishers, Inc.

Reilly, B. (2006). Dealing With Divided Societies. In L. a. Diamond, Electoral Systems, and Democracy (p. 27). United States of America: Johns Hop-kins University Press.

Robert, D. A. (1971). Polyarchy: Participation and Opposition. New Haven: Yale University Press.

Russell, B. (1972). A History of Western Philosophy. New York, Simon, and Schuster.

Rustow, A. D. (1970, Apr.,). Transitions to Democracy: Toward a Dynamic Model. Comparative Politics, Vol. 2, 350.

Schumpeter, J. (1976). Capitalism, Socialism, and Democracy. London: Allen and Unwin.

Sorensen, G. (1998). Democracy and Democratization: Processes and Prospects in a Changing World. USA: Westview Press, 5500 Central Avenue Boulder, Colorado 80301-2877.