

SPEECH

Mohamed Ibn Chambas address to Ghana Bar Association on elections

On the occasion of its annual conference, the Special Representative of the UN Secretary General for West Africa and the Sahel (UNOWAS) addressed the Ghana Bar Association on Tuesday, September 13 2016 on the theme: "The role of the legal profession to maintain peace and the rule of law before, during and after the 2016 elections". Please kindly find below the full address of Dr Mohamed Ibn Chambas.

"Distinguished participants,

Ladies and Gentlemen,

Allow me to express my gratitude to the Ghana Bar Association for inviting the United Nations to the 2016 Annual General Conference. I am indeed pleased and honored to be part of this occasion today. I would like to acknowledge Professor Akua Kuenyehia (TBC) for the wisdom she has imparted to us with her keynote address.

Esteemed members of the Bar, I have been asked to present an overview on ways and initiatives aimed at promoting peace, stability and the rule of law before, during and after the upcoming 2016 elections. This is a subject that connects to one of the core goals of the United Nations Office for West Africa and the Sahel, which is to prevent and reduce electoral violence. In effect, as this annual conference assembles key national legal luminaries and practitioners, eminent Judges and distinguished academics to discuss ways of ensuring a peaceful conduct of the 2016 Presidential and Parliamentary elections here in Ghana, it is important to analyze the normative principles guiding electoral disputes resolution and to examine best practices to prevent electoral violence.

In that regard, my presentation will attempt to:

1. Assess the normative framework guiding electoral disputes resolution;
2. Share a few thoughts on some principles to be followed by the legal professions to sustain peace and the rule of law before, during and after the 2016 elections;
3. Analyze some lessons learned from the trends and challenges of elections in West Africa

I. Normative principles guiding electoral disputes resolution

Ladies and gentlemen,

Legal appeals related to electoral issues are submitted to judicial bodies. Such mechanism

aims at ensuring credible and legal processes. Legitimate elections depend on legal corrections of any mistake or unlawful electoral action through the appropriate channels. Since all elections may give grounds for disputes, the development and application of effective electoral dispute mechanisms is critical to the validity and credibility of elections. Social peace and political stability are of paramount importance, not only for emerging democracies, but also for well-established and proven democracies, that are continuously searching for ways to improve their systems and processes.

It is worth mentioning that the international treaties and conventions which establish globally recognized principles for the conduct of elections do not contain specific reference to election disputes. As an example, the (2007) African Charter on Democracy, Elections and Governance reaffirms Africa's commitment to democracy and the rule of law. However, while the Charter further restates the principle of transparency and accountability in government and provides for the independence of the judiciary, it does not include any explicit provisions on resolving electoral disagreements.

It has been asserted that "resolving election disputes involves international standards that are to be found across the wider spectrum of election-related rights and rules and those associated with due process of law requirements and judicial independence" (*Resolving Election Disputes in the OSCE Area: Towards a Standard Election Dispute Monitoring System*", ODIHR, Warsaw, 2000).

Having said that, the right to an effective remedy is sanctioned in the International Covenant on Civil and Political Rights (adopted by the UN General Assembly, 16 December 1966) which states that there should be independent scrutiny of the voting and counting process and access to judicial review or other equivalent process so that the voters have confidence in the security of the ballot and the counting of the votes.

International texts and conventions relevant to electoral disputes comprise those which set human rights standards related to elections and those focused on standards referring to due process of law and judicial independence. In addition, there are a series of non-binding UN documents, such as the Draft General Principles on Freedom and Non-Discrimination in the Matter of Political Rights that first recognizes the power to enforce all suffrage rights by providing that any aggrieved person should be entitled to seek redress before independent and impartial tribunals. It further provides that the decisions of electoral commissions should be reviewable by the courts or other independent and impartial bodies. An additional UN document, the Framework for Future Efforts, adopted by the Commission on Human Rights in 1989, calls upon "national institutions" to ensure universal and equal suffrage and impartial elections, also by securing methods for resolving election disputes.

Other statements on normative principles from other international organizations outline basic guarantees necessary to ensure the protection of political and electoral rights. The "Declaration on Criteria for Free and Fair Elections" of the Inter-Parliamentary Council adopted in 1994 extends the scope of the right to "a remedy for violation of political and electoral rights" by including references to violations of candidature, party and campaign rights. Mention is also made of the need to reach prompt decisions "within the timeframe of the electoral process". At this time, this Declaration is arguably the most accurate and precise document available in the area of election dispute resolution.

From the various provisions contained in United Nations and other international

organizations records on electoral dispute resolutions, two main principles can be singled out: (1) The right of every individual or political party to a remedy for violation of political and electoral rights, including the right to vote and to be registered as a voter, as well as candidature, party and campaign rights; (2) The responsibility of States to ensure that complaints relating to the electoral process are determined promptly within the timeframe of the electoral process and effectively by an independent and impartial authority, such as an electoral commission or the courts.

In practical terms, the manner in which election disputes are resolved and the extent to which they meet minimum standards involves the following key elements: jurisdiction, timeliness, enforcement and prosecution. These principles stand at the crossroads of international rule of law and election standards. Some of them are principles of justice or related to fundamental rules embodied in international instruments, while others are practical. They all have as their foundation the precepts relating to the right to a fair process.

Overall, the objective in achieving a fair electoral dispute resolution is to create a democratic environment in which electoral outcomes are accepted by the electorate and the competing candidates as a reflection of their democratic aspirations and preferences duly expressed by the voters in polls following free, fair and credible operations.

II. The role of the legal professions in sustaining peace and the rule of law before, during and after the 2016 elections

Ladies and gentlemen

It is of critical importance that the Judiciary bodies ensure the fairness, equity and effectiveness of the electoral process, by applying such key principles as:

Independence: The independence of all authorities that are legitimately engaged in the resolution of electoral grievances and disputes must be respected and guaranteed. There must be no interference by any particular interest;

Integrity: It is a vital element that contributes to the legitimacy of, and must be a key element in, every aspect of the electoral process. Honesty and accountability on the part of all involved in any aspect of the electoral disputes resolution bodies are an essential quality and an imperative requirement to upholding Electoral Justice;

Impartiality: The judiciary is expected to fulfil its duties in a strictly autonomous and impartial manner, by vigorously applying the law and relevant procedures, completely free from any external influence or pressures. Parties should be treated equally and fairly, as perceptions of partisan behaviour will undermine the credibility of the system and may lead to rejection of judiciary decisions, at times by violent means. The principle of impartiality and fairness guarantees the equal treatment of voters and contestants. It also guarantees the equal application of the rules of the game. Impartiality and fairness on the part of election management bodies and all administrative and security authorities must be extended to voters, candidates, political parties, the media, civil society and other stakeholders;

Timeliness: A peaceful environment during the coming elections will also depend on the timeliness of the judiciary bodies decisions: the main challenge in this respect is how to

balance efficiency versus issues of fairness and procedural correctness. Timeliness must be demonstrated in a manner consistent with the other principles before, during and after the poll and at all stages in electoral management, including resolution of disputes as this is an integral element of Electoral Justice. The timeous resolution of disputes in the administration of justice cannot be ignored, because, as you know so well, justice is a time-bound concept; as the adage goes “justice delayed is justice denied”.

Transparency: It is a core element that involves openness at all stages of elections management, which must include access to relevant information on a timely basis, a readiness to provide justification for decisions and a frank admission and swift correction of any mistakes or oversights so as to inspire confidence and credibility in the judiciary system in the minds of all stakeholders.

III. Lessons learned from the trends and challenges of recent elections in West Africa

Distinguished participants,

Ladies and gentlemen,

Democracy in West Africa has shown significant improvements in the last years, as many countries organized elections in both 2015 and 2016 that have enhanced the sub-region’ status as a good example for the continent: Nigeria (March 2015), Togo (April 2015), Guinea and Côte d'Ivoire (October 2015), Burkina Faso (November 2015).

Let’s compare the trends and challenges of the elections in Ghana and Nigeria, two countries that have been facing similar experiences over decades, including a shared commitment to freedom from colonization and African unity, as well as a parallel historical journey to democracy. Throughout their ongoing journey, both countries have learned from each other, seeking to replicate positive examples and avoid the negatives.

Nigerian electoral officials and political leaders readily acknowledge that they learned many valuable lessons from the successful elections conducted in Ghana under the Fourth Republic leading to the widely acclaimed 2015 presidential and legislative elections. Now, in the run up to its own presidential and legislative elections in December 2016, it is Ghana's turn to borrow from the good practices that defined Nigeria’s success. I wish to highlight three specific areas:

1. Activating the National Peace Architecture throughout election cycle: The National Architecture for Peace in Ghana was the first official African national programme for peace building and remains one of the most respected frameworks for peace building and conflict transformations globally. Ghana’s peace architecture is one of the inspirations that Nigeria drew upon for the 2015 elections. It led to the creation of the National Peace Committee in Nigeria. The multi-level structure of the Ghana Peace Council offers a robust framework to detect and counter any currents of hate or threats to peace. I would like to strongly advocate that before the December 7 election, two crucial steps must be taken: (a) invest in early warning capacities of the peace councils including the regional and district level peace council and assist them to operate. Trouble starts from the ground, and it must be addressed quickly at that level; and (b) Form an alliance with credible media watchdog institutions, such as the National Media Commission and the Media Foundation for West Africa, whose

monitoring program publicly names and shames the purveyors of intemperate speech.

I fully support the initiative of the National Peace Council to sponsor and coordinate the signing of a Peace Accord among Ghanaian presidential candidates, in the same vein as the Code of conduct signed by candidates Goodluck Jonathan and Muhammadu Buhari in Nigeria in January 2015. Allow me to mention that a very active shuttle diplomacy by the UN, including phone calls placed by the UN Secretary General to the presidential contenders have largely contributed to alleviate the tensions in the period leading up to the elections. In that context, allow me to seize the opportunity to reiterate my call to politicians to avoid inflammatory rhetoric which may incite violence, and focus instead on issues-based campaigning. My own good offices had involved regular interaction with the Nigerian Bar Association to encourage their campaigns for peaceful elections through voters education, which was supported by the UN system in Nigeria. I'm pleased to note that, symmetrically, the UN system in Ghana currently provides adequate support to relevant counterparts for civic education, with particular emphasis on the increased participation of women and youth in the electoral process.

2. The need for transparency to be apparent to all: The manner in which the final results of the 2015 Presidential and legislative elections in Nigeria were announced conveyed a sense of transparency. The presentation of results in the open by a parade of vice-chancellors and eminent professors, who served as presiding officers, added reassurance to transparency. Ghana, in the honoured tradition of Ghana-Nigeria one-upmanship, must try to outdo Nigeria in the transparency sweepstakes come December 2016.

3. Innovative legal and judicial regimes around contentious elections: In 2008 and 2012, violence at a few polling stations led to the cancellation and postponement of declaration of results in the affected constituencies. In 2008, the incident (in Tain constituency) led to an unprecedented "third round", which had the nation sitting on tenterhooks and messed up everybody's Christmas and New Year. (A similar situation occurred in Comoros in May 2016, when the electoral authorities postponed the declaration of results of the presidential elections due to thugs ransacking 13 polling stations.) The decision of the electoral authorities in both instances is commendable. It sends a message that thuggery will not be rewarded and allowed to vitiate the franchise of the electorate. However, postponing and redoing the elections does not go far enough; perpetrators, irrespective of their political affiliation must be identified and punished to send an even stronger message.

In 2012, an electoral dispute dragged on at the Supreme Court for eight months, after the initially declared winner had already been sworn in and continued to exercise the functions of Head of State. This situation is clearly awkward and its recurrence must be avoided at all cost. The UN has observed with keen interest the impressive training program executed by the judiciary, with the support of international partners involving the Magistrates and Judges at all levels from the Circuit to the Supreme Court. This has, no doubt adequately prepared the Judiciary to play the role expected of it in the forth-coming election. The legal/judicial regime around elections should allow for election-related litigation to be resolved expeditiously, before the swearing in of newly elected officials. This calls for instituting special election courts to address in a timely manner election-related litigation. Elected officials, once judicially cleared, can then have the peace of mind to focus on governance and service delivery.

The quick resolution of electoral disputes has implications for post-election transitions;

especially if it involves a change in administration. Following the 2008 elections, which went into a “third round”, Ghana witness an indecently hasty transition of just a few days. Such a situation must also be avoided.

Recently, the parliament rejected a proposal to bring forward the date of the 2016 election to November, presumably to avoid any possible third round blues. It is hoped that, despite this setback, another bill can be introduced to address the date for transitioning to a new administration. A decent period of six to eight weeks would kill two birds with one stone. It would allow time for judicial resolution of electoral disputes and enable a decent transition to ensure a smooth transfer of power and continuity of services.

IV. Conclusion

Distinguished participants

Ladies and gentlemen,

Allow me to conclude by confiding that I am very much aware that, most often than not on our continent, lawyers and legal bodies operate in a specific normative territory which requires that they balance their action between responding to traditional demands for legal services on the one hand, and the public calls for social justice, political stability, and democratic consolidation, on the other hand.

More importantly, you have the added responsibility of helping to create the conditions that will secure and consolidate democracy. I hope some of the ideas presented could help you in identifying ways of contributing efficiently to peaceful Presidential and Parliamentary elections in Ghana that aim at preventing election-related violence in 2016 and beyond.


I wish you fruitful deliberations and a successful Ghana Bar Association Conference 2016.

Thank you very much for your attention.”

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