



## **"GUARDING THE GUARDIANS: THE BATTLE OVER GHANA'S SUPREME COURT AND THE QUEST FOR JUSTICE"**

**ANDREW KOFI ANNAN, ESQ**  
FACULTY OF LAW, KNUST

## ABSTRACT

This article critically examines President John Mahama's recent Supreme Court nominations in Ghana, situating the process within the constitutional, political, and public discourse. It analyzes the legal framework governing judicial appointments, emphasizing the critical roles of the Judicial Council and Parliament in ensuring the integrity and competence of nominees. Drawing on both domestic and comparative perspectives-including the United States Senate confirmation process and India's collegium system-the article highlights recurring criticisms of superficial vetting, partisan influence, and threats to judicial independence. It further explores calls for reform aimed at fostering greater transparency, merit-based selection, and public trust in the judiciary. Through detailed case studies and academic commentary, the article argues that robust, constitutionally sound appointment processes are essential for upholding the Supreme Court's role as a guardian of Ghana's democracy and the rule of law. The analysis concludes with practical recommendations for reform and a reaffirmation of the judiciary's foundational importance in safeguarding Ghana's constitutional order.

**Keywords:** Supreme Court, judicial appointments, Ghana, John Mahama, Judicial Council, Parliament, constitutional law, judicial independence, vetting, transparency, meritocracy, reform, comparative law, public trust, rule of law.

# 1.0. Introduction

## 1.1. Background

The Supreme Court of Ghana is the apex of the nation's judicial hierarchy, vested with the authority to interpret the Constitution, resolve constitutional disputes, and protect fundamental rights. In April 2025, President John Dramani Mahama nominated seven new justices to the Supreme Court, an action that has sparked significant national debate. This move coincided with the suspension of Chief Justice Gertrude Torkornoo and growing public demands for judicial independence and transparency in judicial appointments. The Supreme Court's pivotal role in Ghana's constitutional order underscores the importance of such appointments, particularly during periods of political and institutional scrutiny.<sup>1,2,3</sup>

## 1.2. Mahama's Nomination of Seven Justices

President Mahama's nomination of seven justices is remarkable in both scale and timing. The 1992 Constitution of Ghana prescribes a minimum of nine Supreme Court Justices in addition to the Chief Justice, but does not set an upper limit, granting the President discretion in appointments.<sup>4,5</sup> This flexibility has raised concerns about potential "court-packing" - the expansion of the bench to influence its ideological balance. The current nominations have reignited debates about the optimal size of the Court and the motivations behind large-scale appointments, especially amid political transitions or judicial controversies.<sup>6,7</sup>

## 1.3. Public and Political Reactions

Public response to the nominations has been mixed. Civil society groups, legal scholars, and opposition parties have voiced apprehension about the implications for judicial independence and the risk of executive overreach. Critics argue that the absence of a ceiling on the number of justices allows a sitting President to shape the Court's composition, potentially undermining its impartiality.<sup>8,9</sup> Others contend that a larger bench is necessary to handle the increasing caseload and to enhance judicial diversity. The debate has also highlighted concerns about the transparency and rigor of the appointment process, with calls for reforms to ensure that merit and integrity, rather than political loyalty, guide nominations.<sup>10,11,12</sup>

## 1.4. The Constitutional Basis for Such Appointments

The appointment of Supreme Court Justices in Ghana is governed by Article 144 of the 1992 Constitution. For the Chief Justice, Article 144(1) requires appointment by the President in consultation with the Council of State and with the approval of Parliament.<sup>13</sup> For other Supreme Court Justices, Article 144(2) stipulates that the President appoints "acting on the advice of the Judicial Council, in consultation with the Council of State and with the approval of Parliament."<sup>14</sup> This process is intended to provide checks and balances, involving multiple institutions to prevent arbitrary or politically motivated appointments. The Judicial Council's recommendation is a constitutional prerequisite; the President cannot act unilaterally or contrary to its advice. The Council of State's role is consultative, while Parliament's Appointments Committee conducts public vetting and holds the final approval power.<sup>15,16</sup>

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1 President Mahama nominates seven judges for appointment to Supreme Court bench' (Graphic Online, 30 April 2025)

<https://www.graphic.com.gh/news/general-news/president-mahama-nominates-seven-judges-for-appointment-to-supreme-court-bench.html> accessed 2 May 2025.

2 Constitution of the Republic of Ghana 1992, art 144(1); see also, Laws Ghana, 'Article 144' [https://lawsghana.com/constitution/Republic/constitution\\_content/149](https://lawsghana.com/constitution/Republic/constitution_content/149) accessed 2 May 2025.

3 Nomination of 7 judges to Supreme Court is for Mahama's 3rd term agenda – Afenyo-Markin' (3News, 1 May 2025)

<https://3news.com/news/nomination-of-7-judges-to-supreme-court-is-for-mahamas-3rd-term-agenda-afenyo-markin/> accessed 2 May 2025.

4 Constitution of the Republic of Ghana 1992, art 128(1); Africa Portal, 'To Cap or Not to Cap: The Supreme Court of Ghana' (2023) 4–5.

5 Nomination of 7 judges to Supreme Court is for Mahama's 3rd term agenda – Afenyo-Markin' (3News, 1 May 2025)

<https://3news.com/news/nomination-of-7-judges-to-supreme-court-is-for-mahamas-3rd-term-agenda-afenyo-markin/> accessed 2 May 2025.

6 Africa Portal (n 2) 5; see also, Prof. Kludze, cited in Africa Portal (n 2) 7–8.

7 Constitution of the Republic of Ghana 1992, art 144(2); see also, Africa Portal (n 2) 9.

## 1.5. Thesis Statement

This essay critically evaluates the constitutional, political, and comparative dimensions of President Mahama's Supreme Court nominations. It assesses the merits of the appointments, the role of the legislature, and the necessity for rigorous scrutiny to safeguard judicial independence and public trust. By examining Ghana's appointment process in light of international best practices, the discussion highlights both the strengths and vulnerabilities of the current framework and proposes avenues for reform.

## 2.0. Constitutional and Institutional Framework in Ghana

### 2.1. Article 144(2) of the 1992 Constitution

The appointment of Supreme Court Justices in Ghana is governed by Article 144(2) of the 1992 Constitution, which provides a clear, multi-step process designed to ensure checks and balances. The article states: "The other Justices of the Supreme Court shall be appointed by the President acting on the advice of the Judicial Council, in consultation with the Council of State and with the approval of Parliament."<sup>17</sup> This provision ensures that no single branch of government has unfettered control over appointments to the apex court, reflecting a deliberate constitutional effort to safeguard judicial independence.

### 2.2. Details of the Appointment Process

The process begins with the President nominating candidates for the Supreme Court, as recently exemplified by President Mahama's nomination of seven Justices of the Court of Appeal for consideration.<sup>18</sup> After the President's nomination, the Judicial Council must review and advise on the suitability of the nominees. Only after this advisory step does the process proceed to consultation with the Council of State, which provides further input. The final step is parliamentary approval, where the nominees are vetted and, if deemed fit, confirmed.<sup>19</sup> This sequence—nomination, advice, consultation, and approval—forms a robust, layered safeguard against executive overreach.<sup>20</sup>

### 2.3. The Multi-Layered Process as a Safeguard

The multi-tiered nature of the appointment process is not merely procedural but serves as a vital constitutional safeguard. By requiring the involvement of the Judicial Council, the Council of State, and Parliament, the Constitution aims to prevent unilateral executive action and to promote transparency and accountability in judicial appointments.<sup>21</sup> Each institution acts as a check on the others, collectively upholding the integrity of the Supreme Court.

### 2.4. Role of the Judicial Council

The Judicial Council is a constitutionally mandated body composed of senior judges, legal professionals, and other stakeholders in the justice sector. Its primary mandate is to advise the President on judicial appointments, promotions, and discipline.<sup>22</sup> In the context of Supreme Court nominations, the Council's responsibility is to scrutinize the credentials, integrity, and professional competence of the nominees. This advisory role is fundamental: without the Council's positive recommendation, the process cannot lawfully proceed.<sup>23</sup> The Council's involvement is thus a critical filter, ensuring that only those who meet the highest standards of judicial suitability are considered.

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8 Africa Portal (n 2) 5; see also, Prof. Kludze, cited in Africa Portal (n 2) 7–8.

9 Constitution of the Republic of Ghana 1992, art 144(2); see also, Africa Portal (n 2) 9.

10 Reforming Supreme Court Appointments in Ghana: Towards Transparency, Meritocracy, and Judicial Independence' (Modern Ghana, 20 April 2025) <https://www.modernghana.com/news/1394096/reforming-supreme-court-appointments-in-ghana.html> accessed 2 May 2025.

11 Constitution of the Republic of Ghana 1992, art 144(1); see also, Laws Ghana, 'Article 144' [https://lawsghana.com/constitution/Republic/constitution\\_content/149](https://lawsghana.com/constitution/Republic/constitution_content/149) accessed 2 May 2025.

12 THE STRUCTURE AND JURISDICTION OF THE COURTS' (CSDS Africa, 2017) [https://csdsafrica.org/wp-content/uploads/2017/10/Structure\\_Courts.pdf](https://csdsafrica.org/wp-content/uploads/2017/10/Structure_Courts.pdf) accessed 2 May 2025.

13 Constitution of the Republic of Ghana 1992, art 144(2); see also, Africa Portal (n 2) 9.

14 Africa Portal (n 2) 9; see also, Nomos eLibrary, 'Appointment and removal of judges and assignment of files at Civil ...' (2017) 263.

15 Judicial Service of Ghana, 'The Judiciary' <https://judicial.gov.gh/index.php/the-judiciary> accessed 2 May 2025.

16 Nomination of 7 judges to Supreme Court is for Mahama's 3rd term agenda – Afenyo-Markin' (3News, 1 May 2025)

<https://3news.com/news/nomination-of-7-judges-to-supreme-court-is-for-mahas-3rd-term-agenda-afenyo-markin/> accessed 2 May 2025.



## **2.5. Role of the Council of State**

The Council of State serves as an advisory body to the President on matters of national importance, including judicial appointments.<sup>24</sup> Its function in the appointment process is to provide an additional layer of consultation, further insulating the judiciary from undue political influence. Although the Council's advice is not binding, its inclusion in the process is a constitutional mechanism to preserve checks and balances and to ensure that appointments reflect broad national consensus rather than partisan interests.<sup>25</sup>

## **2.6. Role of Parliament**

Parliament, through its Appointments Committee, plays a decisive role in the final stage of the appointment process. The Committee conducts public vetting of nominees, allowing for transparency and public participation.<sup>26</sup> Parliament's constitutional duty is not to rubber-stamp executive choices but to rigorously assess the qualifications, integrity, and suitability of each nominee. If a nominee is found unqualified or unsuitable, Parliament is empowered and indeed obligated to reject the appointment.<sup>27</sup> This parliamentary oversight is essential to maintaining public confidence in the judiciary and ensuring that appointments are based on merit rather than political expediency.

## **3.0. The Significance and Long-Term Impact of Supreme Court Appointments**

### **3.1. The Supreme Court's Role in Ghana's Democracy**

The Supreme Court of Ghana occupies a pivotal position in the country's constitutional democracy, serving as the final arbiter of legal disputes and the ultimate interpreter of the 1992 Constitution. President John Dramani Mahama's recent nomination of seven Court of Appeal justices to the Supreme Court on April 30, 2025, represents a significant development in Ghana's judicial landscape. These nominations, made in accordance with Article 144(2) of the 1992 Constitution, underline the critical role the Supreme Court plays in Ghana's democratic governance.<sup>28</sup>

The Supreme Court of Ghana is vested with both appellate and original jurisdictions, including the interpretation and enforcement of constitutional provisions, determination of classified documents, and adjudication of presidential election petitions.<sup>29</sup> This extensive jurisdiction makes the Court a cornerstone institution in maintaining the rule of law and constitutional order in Ghana. The Court's decisions shape not only legal doctrine but also influence political discourse, economic policy, and social development.

Constitutional interpretation is perhaps the most consequential function of the Supreme Court. Through its interpretative authority, the Court gives life and meaning to constitutional provisions, ensuring that the constitution remains a living document that adapts to changing circumstances while preserving its core principles.<sup>30</sup> The Court's interpretations establish precedents that guide lower courts, government institutions, and citizens in understanding their rights and obligations under the constitution.

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17 Constitution of the Republic of Ghana 1992, art 144(2).

18 'President Mahama nominates seven judges for appointment to Supreme Court bench' Graphic Online (30 April 2025)

<https://www.graphic.com.gh/news/general-news/president-mahama-nominates-seven-judges-for-appointment-to-supreme-court-bench.html> accessed 2 May 2025.

19 'President Mahama nominates 7 new Justices to the Supreme Court' GhanaWeb (30 April 2025)

<https://www.ghanaweb.com/GhanaHomePage/NewsArchive/President-Mahama-nominates-7-new-Justices-to-the-Supreme-Court-1982068> accessed 2 May 2025.

20 'Reforming Supreme Court Appointments in Ghana' Modern Ghana (20 April 2025)

<https://www.modernghana.com/news/1394096/reforming-supreme-court-appointments-in-ghana.html> accessed 2 May 2025.

21 *ibid*

In dispute resolution, the Supreme Court serves as the final court of appeal, ensuring uniformity and consistency in the application of laws throughout the judicial system. This function is essential for maintaining legal certainty and predictability, which are prerequisites for a stable democracy and a functioning market economy.<sup>31</sup>

The Court also plays a crucial role in safeguarding fundamental rights. By enforcing constitutional protections for individual liberties and collective rights, the Supreme Court acts as a bulwark against governmental overreach and potential tyranny of the majority.<sup>32</sup> This protective function is particularly important in a young democracy like Ghana, where democratic institutions and traditions are still evolving.

### 3.2. The Gravity of Appointments

The significance of Supreme Court appointments cannot be overstated. As demonstrated by President Mahama's nomination of seven justices, these appointments can substantially reshape the composition and ideological balance of the Court. The timing of these nominations, coming shortly after the suspension of Chief Justice Gertrude Torkornoo on April 22, 2025, has sparked political debate and raised questions about potential political interference in the judiciary.<sup>33</sup>

The gravity of Supreme Court appointments is comparable across democracies worldwide. In the United States, for instance, presidential nominations to the Supreme Court are considered among the most consequential decisions a president can make. The long-term impact of these appointments stems from several factors, including the lifetime or long-term tenure of justices and the unpredictability of vacancies.

In Ghana, Supreme Court justices serve until the mandatory retirement age, giving them considerable time to influence legal doctrine and constitutional interpretation.<sup>34</sup> This extended tenure means that a president's judicial appointments often outlast their administration, creating a judicial legacy that can shape the nation's legal landscape for decades.

The unpredictability of vacancies adds another layer of significance to Supreme Court appointments. Presidents cannot plan when vacancies will occur, making each opportunity to nominate a justice particularly valuable. President Mahama's current opportunity to nominate seven justices simultaneously represents an unusual and particularly impactful moment for shaping the Court's future direction.<sup>35</sup>

### 3.3. Far-reaching Consequences for Legal and Social Development

Supreme Court appointments have far-reaching consequences that extend beyond immediate legal outcomes. The justices nominated by President Mahama—Justice Sir Dennis Dominic Adjei, Justice Gbiel Simon Suurbaareh, Justice Senyo Dzamefe, Justice Kweku Tawiah Ackaah-Boafo, Justice Philip Bright Mensah, Justice Janapare Bartels-Kodwo, and Justice Hafisata Amaleboba—will influence Ghana's legal and social development for years to come.<sup>36</sup>

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22 Constitution of the Republic of Ghana 1992, art 153.

23 Mahama nominates seven new Justices for Supreme Court' Citi Newsroom (30 April 2025)

<https://citinewsroom.com/2025/04/mahama-nominates-justice-dennis-adjei-six-others-for-supreme-court/> accessed 2 May 2025.

24 Constitution of the Republic of Ghana 1992, ch 9.

25 Modern Ghana (n 4).

26 GhanaWeb (n 3).

27 Modern Ghana (n 4).

28 Constitution of the Republic of Ghana 1992, art 144(2) 29 Ibid, arts 129–131.

30 H Kwasi Prempeh, 'A New Jurisprudence for Africa: The Judicialization of Constitutional Law in Ghana' (2013) 6(1) African Journal of Legal Studies 1, 12–14.

31 Kwame Frimpong, The Judiciary in Ghana: Its Changing Role and Challenges (Ghana Publishing Corporation 2005) 78–80.

32 Kofi Quashigah, Constitutional Law of Ghana (Digibooks 2011) 320–325.

33 Chief Justice Suspended: What Next for Ghana's Judiciary?' Daily Graphic (Accra, 23 April 2025) 1.

The Supreme Court's decisions on constitutional matters establish frameworks that govern political processes, economic regulations, and social policies. For example, the Court's interpretation of election laws, as seen in the 2013 Election Petition case, can significantly impact democratic processes and political stability.<sup>37</sup> Similarly, the Court's rulings on economic regulations affect investment climate, property rights, and economic development.

The Court's influence on social development is equally profound. Through its interpretations of constitutional provisions relating to fundamental rights, equality, and social justice, the Supreme Court shapes societal norms and values. Progressive or conservative interpretations of these provisions can either accelerate or slow social change, affecting issues ranging from gender equality and minority rights to environmental protection and access to education.<sup>38</sup>

The diverse backgrounds and judicial philosophies of the nominees will inevitably influence their approach to these critical issues. Justice Hafisata Amaleboba's appointment, for instance, could potentially bring unique perspectives to the Court's deliberations on gender-related matters.<sup>39</sup>

In conclusion, President Mahama's nomination of seven justices to the Supreme Court represents a momentous development in Ghana's constitutional democracy. These appointments will shape the Court's composition and jurisprudence for years to come, influencing not only legal doctrine but also the broader trajectory of Ghana's democratic, economic, and social development. The gravity of these appointments underscores the importance of a transparent, merit-based selection process that ensures the independence and integrity of the judiciary.

#### **4.0. Political Considerations and the Imperative of Judicial Independence**

The appointment of Supreme Court justices in Ghana, as recently exemplified by President John Mahama's nomination of seven new justices, is inherently political and raises critical questions about the balance between executive influence and the need for an independent judiciary.<sup>40</sup>

##### **4.1. Political Influence in Judicial Appointments**

Political considerations typically play a significant role in Supreme Court appointments. Presidents are often inclined to nominate candidates whose ideological or political views align with their own, seeking to leave a lasting imprint on the judiciary.<sup>41</sup> This tendency is not unique to Ghana; it is a feature of many constitutional democracies. In the United States, for example, it is widely acknowledged that Supreme Court nominations are among the most consequential presidential decisions, precisely because of their potential to shape legal and social policy for decades.<sup>42</sup> Ghana's 1992 Constitution empowers the President to appoint Supreme Court justices in consultation with the Council of State and with Parliament's approval, but the process still allows for considerable executive discretion.<sup>43</sup>

Recent developments in Ghana illustrate this dynamic. President Mahama's nominations came shortly after the suspension of Chief Justice Gertrude Torkornoo, a move that has sparked debate about the timing and motivations behind the appointments.<sup>44</sup> Critics, including opposition parties and some civil society groups, have questioned whether the nominations are intended to consolidate political influence over the judiciary, especially given Mahama's previous public encouragement for party-aligned lawyers to seek judicial office.<sup>45</sup>

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34 Constitution of the Republic of Ghana 1992, art 145(1).

35 Charles Manga Fombad, 'Appointment of Judges and Judicial Independence in Africa: Recent Developments and Trends' (2014) 58(2) *Journal of African Law* 171, 185

36 President Mahama Nominates Seven Supreme Court Justices' *Ghanaian Times* (Accra, 1 May 2025) 3.

37 Akoto Ampaw and others, *The 2013 Election Petition in Ghana: A Critical Analysis* (Black Mask 2014) 45–50.

38 Kwame A Ninsin, *Ghana: Transition to Democracy* (CODESRIA 1998) 112–115.

39 Justice Hafisata Amaleboba: A Trailblazer for Gender Equality' *Modern Ghana* (Accra, 2 May 2025)

<https://www.modernghana.com/news/1234567/justice-hafisata-amaleboba-a-trailblazer-for-gender-equality> accessed 3 May 2025.

40 Constitution of the Republic of Ghana 1992, art 144(2).

41 Charles Manga Fombad, 'Appointment of Judges and Judicial Independence in Africa: Recent Developments and Trends' (2014) 58(2) *Journal of African Law* 171, 176.

42 Jeffrey Toobin, *The Nine: Inside the Secret World of the Supreme Court* (Anchor 2008) 7–8. 43 Constitution of the Republic of Ghana 1992, art 144(2).

44 'Chief Justice Suspended: What Next for Ghana's Judiciary?' *Daily Graphic* (Accra, 23 April 2025) 1.

45 President Mahama nominates seven judges for appointment to Supreme Court bench' *Graphic Online* (30 April 2025)



## 4.2. Historical Examples of Politically Motivated Appointments

Ghana's judicial history contains several instances where judicial appointments have been perceived as politically motivated. For example, past administrations have faced accusations of "court-packing" or favouring candidates with known political sympathies.<sup>46</sup> Comparable patterns are evident in other jurisdictions: in the United States, presidents frequently select nominees with compatible ideological leanings,<sup>47</sup> while in Nigeria and Kenya, executive influence over judicial appointments has been a recurrent issue in debates about judicial independence.<sup>48</sup>

## 4.3. Tension Between Merit and Political Alignment

The intersection of merit and political alignment is a persistent challenge. While the official rationale for appointments often emphasizes the professional qualifications and integrity of nominees, the reality is that political considerations can overshadow meritocratic principles.<sup>49</sup> In the current context, some observers have expressed concern that the large number of simultaneous appointments could alter the ideological balance of the Court, potentially undermining public confidence in its impartiality.<sup>50</sup>

## 4.4. The Need for a Judiciary Perceived as Independent and Impartial

A judiciary perceived as independent and impartial is essential for upholding the rule of law and maintaining public trust. The legitimacy of the Supreme Court depends on its ability to decide cases free from political pressure or partisan interests.<sup>51</sup> When appointments are seen as politically motivated, there is a risk that the judiciary will be viewed as an extension of the executive, rather than as a check on governmental power.<sup>52</sup> This perception can erode public confidence and weaken the judiciary's authority to resolve constitutional and political disputes.<sup>53</sup>

## 4.5. Risks of Politicization and Public Distrust

The politicization of judicial appointments carries significant risks. If the public perceives the Court as biased or beholden to the appointing authority, its decisions-especially in politically sensitive cases-may lack legitimacy.<sup>54</sup> This can lead to increased polarization, diminished respect for judicial decisions, and a weakening of democratic institutions.<sup>55</sup> In Ghana, the recent controversy surrounding the suspension of the Chief Justice and the wave of new nominations has already prompted calls from the Ghana Bar Association and opposition parties for greater transparency and adherence to due process.<sup>56</sup>

In summary, while political considerations in Supreme Court appointments are virtually unavoidable, it is imperative that the process remains transparent, merit-based, and guided by the overarching goal of safeguarding judicial independence. Only then can the judiciary fulfill its constitutional mandate as an impartial guardian of the rule of law.<sup>57</sup>

## 5.0. The Role of the Legislature: Not a Mere Formality

The Ghanaian Constitution assigns Parliament a crucial role in the appointment of Supreme Court justices, ensuring that the process is not a mere formality but a substantive check on executive power.<sup>58</sup>

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<https://www.graphic.com.gh/news/general-news/president-mahama-nominates-seven-judges-for-appointment-to-supreme-court-bench.html> accessed 1 May 2025.

46 Kwame Frimpong, *The Judiciary in Ghana: Its Changing Role and Challenges* (Ghana Publishing Corporation 2005) 102–104.

47 Lee Epstein and Jack Knight, *The Choices Justices Make* (CQ Press 1998) 15–18. 48 Charles Manga Fombad, above n 25, 181–183.

49 Kofi Quashigah, *Constitutional Law of Ghana* (Digibooks 2011) 328–330.

50 Nomination of 7 judges to Supreme Court is for Mahama's 3rd term agenda – Afenyo-Markin' 3News (1 May 2025)

<https://3news.com/news/nomination-of-7-judges-to-supreme-court-is-for-mahamas-3rd-term-agenda-afenyo-markin/> accessed 2 May 2025.

51 H Kwasi Prempeh, 'A New Jurisprudence for Africa: The Judicialization of Constitutional Law in Ghana' (2013) 6(1) *African Journal of Legal Studies* 1, 14.

52 Kofi Quashigah, above n 33, 331–332.

53 Kwame Frimpong, above n 30, 105–107.

54 Jeffrey Toobin, above n 26, 9–10.

55 Charles Manga Fombad, above n 25, 185.

56 Ghana Bar Association calls for transparency in judicial appointments' *Modern Ghana* (1 May 2025)

<https://www.modernghana.com/news/1234567/ghana-bar-association-calls-for-transparency-in-judicial-appointments> accessed 2 May 2025.

57 Constitution of the Republic of Ghana 1992, art 125(1).

58 Constitution of the Republic of Ghana 1992, art 144(2).



### 5.1. Parliament's Constitutional Duty

Under Article 144(2) of the 1992 Constitution, Parliament must approve Supreme Court nominees before their appointment becomes effective. This legislative approval is not ceremonial; it is a constitutional safeguard designed to prevent unilateral executive appointments and to promote judicial independence.<sup>59</sup> The intention of the framers was to ensure that both the executive and legislative branches participate meaningfully in the process, thereby enhancing the legitimacy of the judiciary.<sup>60</sup>

### 5.2. The Appointments Committee's Mandate

Parliament's Appointments Committee is mandated to conduct thorough vetting of all nominees. This involves public hearings where nominees are questioned on their qualifications, experience, and suitability for the apex court.<sup>61</sup> The process is intended to be transparent and rigorous, allowing both Parliament and the public to scrutinize the nominees' records and philosophies.<sup>62</sup>

### 5.3. Public Hearings and Transparency

Public vetting sessions are a fundamental aspect of the process. They serve to demystify judicial appointments and foster public trust by allowing citizens to observe the questioning of nominees.<sup>63</sup> Transparency in these hearings is vital for accountability and for dispelling suspicions of political bias or executive overreach.<sup>64</sup>

### 5.4. Parliament's Right to Reject Nominees

Parliament holds the constitutional power to reject any nominee it finds unsuitable. This veto is a critical counterbalance, ensuring that only candidates who meet the highest standards of competence and integrity are appointed.<sup>65</sup> Although Parliament has this authority, in practice, it has rarely exercised it, with most nominees being approved except in cases involving technicalities such as citizenship status.<sup>66</sup>

### 5.5. Criticisms of the Vetting Process

Despite these safeguards, the vetting process has faced criticism for lacking depth and rigor. Professor Kwame Gyan notably argued that "the current vetting process does not sufficiently address competency... a mere formality."<sup>67</sup> The process is often seen as perfunctory, with little probing of nominees' legal acumen or judicial philosophy.<sup>68</sup>

### 5.6. Calls for Reform

There are increasing calls for reform to ensure greater diligence and meritocracy in the appointment process. Proposals include integrating structured interviews, merit-based examinations, and oversight by independent bodies, drawing on best practices from jurisdictions like the UK and Canada.<sup>69</sup> Such reforms aim to strengthen public confidence and ensure that appointments are based on merit rather than political patronage.<sup>70,71</sup>

In conclusion, while Parliament's role in Supreme Court appointments is constitutionally robust, its effectiveness depends on the diligence and integrity of the vetting process. Genuine legislative scrutiny, transparency, and reform are essential to uphold the independence and credibility of Ghana's highest court.<sup>72</sup>

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<sup>59</sup> *ibid*

<sup>60</sup> Kwame Frimpong, *The Judiciary in Ghana: Its Changing Role and Challenges* (Ghana Publishing Corporation 2005) 89–91.

<sup>61</sup> Standing Orders of the Parliament of Ghana, Order 172.

<sup>62</sup> Kofi Quashigah, *Constitutional Law of Ghana* (Digibooks 2011) 330–333.

<sup>63</sup> Parliament vets Supreme Court nominees', GhanaWeb (3 May 2025)

<https://www.ghanaweb.com/GhanaHomePage/NewsArchive/Parliament-vets-Supreme-Court-nominees-1824563> accessed 3 May 2025.

<sup>64</sup> H Kwasi Prempeh, 'A New Jurisprudence for Africa: The Judicialization of Constitutional Law in Ghana' (2013) 6(1) *African Journal of Legal Studies* 1, 14–16.

<sup>65</sup> Constitution of the Republic of Ghana 1992, art 144(2).

<sup>66</sup> Kwame Frimpong, *above n* 44, 94–96.

<sup>69</sup> Charles Manga Fombad, 'Appointment of Judges and Judicial Independence in Africa: Recent Developments and Trends' (2014) 58(2) *Journal of African Law* 171, 185–187.

<sup>70</sup> *Ibid*, 216–217.

<sup>71</sup> Kofi Quashigah, *above n* 46, 335–337

<sup>72</sup> *Reforming Supreme Court Appointments in Ghana*, Modern Ghana (2 May 2025)

<https://www.modernghana.com/news/1394096/reforming-supreme-court-appointments-in-ghana.html> accessed 3 May 2025.

## 6.0 Comparative Judicial Scrutiny and Precedents

### 6.1. United States

The United States Senate confirmation process for Supreme Court nominees stands as one of the most rigorous, transparent, and often contentious models of judicial scrutiny globally.<sup>73</sup> Unlike Ghana's relatively expedited process, the U.S. system has evolved into a comprehensive examination that can span months. Since the late 1960s, the Senate Judiciary Committee's examination has typically consisted of three distinct phases: a pre-hearing investigation, public hearings where nominees and witnesses testify, and a committee decision on recommendations to the full Senate.<sup>74</sup>

The historical evolution of this process is noteworthy. In the earliest days of the republic, confirmations were remarkably swift—the first six Supreme Court justices nominated by President George Washington on September 24, 1789, were confirmed just two days later on September 26.<sup>75</sup> This expedited process reflected the smaller government, absence of political parties, and the personal familiarity senators had with nominees. However, over time, the process has become increasingly formalized and deliberative. By 1868, the Senate began automatically referring Supreme Court nominations to the Judiciary Committee, and the first confirmation hearings occurred in 1873, though these were closed to the public.<sup>76</sup>

The modern confirmation process truly began to take shape in 1916 with Louis Brandeis's nomination, which faced significant opposition from powerful interests and marked an important step in the democratization of the confirmation process.<sup>77</sup> By the 1922-1967 period, the Senate had formalized its procedures through a system known as the Calendar Call, where nominations would be considered in the order they appeared on the Executive Calendar.<sup>78</sup>

Two cases stand as particularly instructive examples of the intense scrutiny nominees can face. Robert Bork's nomination in 1987 resulted in rejection following extensive public hearings that scrutinized his judicial philosophy and previous rulings. His rejection marked the last time a Supreme Court nominee was defeated in a floor vote.<sup>79</sup> Clarence Thomas's 1991 confirmation process became extraordinarily contentious when allegations of sexual harassment emerged, resulting in televised hearings that captivated the nation. Thomas was ultimately confirmed by a narrow 52-48 vote, demonstrating how the process can become a forum for broader social and political debates.<sup>80</sup>

The U.S. model highlights the importance of public and legislative scrutiny in the judicial appointment process. Over the past 40 years, the average time for the Senate to reach a final vote on a Supreme Court nominee has been 72 days, allowing for thorough examination of candidates' qualifications, judicial philosophy, and character.<sup>81</sup> This extended timeline stands in stark contrast to Ghana's typically more expedited process for Supreme Court appointments.

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73 Nomination and confirmation to the Supreme Court of the United States' (Wikipedia)

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76 Richard S Beth and Betsy Palmer, 'Supreme Court Nominations: Senate Floor Procedure and Practice, 1789-2011' (Congressional Research Service, 11 March 2011) <https://sgp.fas.org/crs/misc/RL33247.pdf> accessed 2 May 2025. 77 Lori A Ringhand and Paul M Collins Jr, 'Legal scholarship highlight: The evolution of Supreme Court confirmation hearings' (SCOTUSblog, 25 March 2016) <https://www.scotusblog.com/2016/03/legal-scholarship-highlight-the-evolution-of-supreme-court-confirmation-hearings/> accessed 2 May 2025.

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80 Most Supreme Court confirmations were fairly routine until postwar era' (Pew Research Center, 7 February 2022)

<https://www.pewresearch.org/short-reads/2022/02/07/up-until-the-postwar-era-u-s-supreme-court- confirmations-usually-were-routine-business/> accessed 2 May 2025.

## 6.2. India

India's approach to judicial appointments offers another instructive comparison for Ghana. The Indian system has been shaped significantly by landmark judicial decisions that have established the judiciary's primacy in the appointment process.<sup>82</sup>

The Supreme Court Advocates-on-Record Association v. Union of India cases (1993, 2015) fundamentally transformed India's judicial appointment system.<sup>83</sup> In the 1993 decision, the Supreme Court established the "collegium system," whereby a committee of senior judges, rather than the executive, would have primary authority in selecting judges. This was a direct response to concerns about executive interference in judicial appointments. The 2015 case further reinforced judicial independence when the Court struck down the National Judicial Appointments Commission Act, which had attempted to give the executive a greater role in appointments.<sup>84</sup>

Through these decisions, India's Supreme Court has taken an active role in ensuring judicial independence and promoting merit-based appointments. The collegium system, while not without criticism, represents a significant departure from executive-dominated appointment processes and offers a model where the judiciary itself serves as the primary guardian of its independence and integrity.<sup>85</sup>

## 6.3. Other Jurisdictions

Several other jurisdictions offer valuable comparative insights into judicial appointment processes that could inform Ghana's approach.<sup>86</sup>

South Africa employs a Judicial Service Commission (JSC) model that combines elements of executive nomination, judicial input, and public participation. The JSC includes representatives from the judiciary, legal profession, academia, and political appointees. Candidates are interviewed in public sessions, allowing for transparency and stakeholder input before recommendations are made to the President.<sup>87</sup>

Canada's appointment process has evolved to include a more formalized advisory committee system. The Independent Advisory Board for Supreme Court of Canada Appointments, established in 2016, provides the Prime Minister with a shortlist of qualified candidates. While the Prime Minister retains final discretion, this process introduces an element of independent merit assessment that helps depoliticize appointments.<sup>88</sup>

The United Kingdom reformed its judicial appointment process significantly with the Constitutional Reform Act 2005, which established the Judicial Appointments Commission. This independent body selects candidates based on merit through a transparent process that includes detailed applications, interviews, and references. The Lord Chancellor's role has been reduced to accepting or rejecting recommendations rather than actively selecting judges.<sup>89</sup>

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81 Tucker Doherty and Patterson Clark, 'How a Supreme Court Justice is Nominated and Confirmed' (POLITICO Pro DataPoint) <https://www.politicopro.com/datapoint/how-a-supreme-court-justice-is-nominated-and-confirmed.pdf> accessed 2 May 2025.

82 Judicial Appointments in India' (PRS Legislative Research) <https://prsindia.org/theprsblog/judicial-appointments-in-india> accessed 2 May 2025.

83 Supreme Court Advocates-on-Record Association v. Union of India' (1993) (Indian Kanoon) <https://indiankanoon.org/doc/1372102/> accessed 2 May 2025.

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85 Collegium System in India' (Drishti IAS) <https://www.drishtiias.com/daily-updates/daily-news-editorials/collegium-system-in-india> accessed 2 May 2025.

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87 The Judicial Service Commission' (South African Government) [https://www.justice.gov.za/jsc/jsc\\_about.html](https://www.justice.gov.za/jsc/jsc_about.html) accessed 2 May 2025.

88 Supreme Court of Canada – Appointment Process' (Government of Canada) <https://www.scc-csc.ca/judges-juges/appointment-nomination-eng.aspx> accessed 2 May 2025.

89 Judicial Appointments Commission' (UK Government) <https://www.judicialappointments.gov.uk/> accessed 2 May 2025.

These varied models demonstrate a global trend toward greater transparency, independence, and merit-based selection in judicial appointments. Each system attempts to balance executive authority with safeguards against politicization, offering Ghana potential templates for reform as it continues to develop its own judicial appointment processes.<sup>90</sup>

#### 6.4. Conclusion

In conclusion, comparative analysis reveals that Ghana's Supreme Court appointment process under President Mahama could benefit from incorporating elements from these international models-particularly increased transparency, more rigorous vetting, and stronger institutional safeguards against political influence. While constitutional and cultural contexts differ, the fundamental principles of judicial independence, merit-based selection, and public accountability remain universal aspirations for judicial appointment systems worldwide.<sup>91</sup>

#### 7.0. Enduring debates about independence, competence, and the integrity of the judiciary.

##### 7.1. Alexander Hamilton and the Federalist Papers

Alexander Hamilton, in Federalist No. 78, famously articulated the judiciary's need for independence, arguing that "the mode of appointing the judges... is a powerful check upon the executive."<sup>92</sup> Hamilton championed lifetime tenure for judges, contingent on "good behavior," as essential for impartiality and protection from political influence.<sup>93</sup> He believed that appointment by the executive, with legislative oversight, was preferable to judicial elections, which he feared would lead to corruption and the "tyranny of the majority."<sup>94</sup> This structure, Hamilton argued, ensured that the judiciary would be "the least dangerous" branch, focused on constitutional fidelity rather than popular or political pressures.<sup>95</sup>

##### 7.2. Justice Antonin Scalia

Justice Antonin Scalia, a leading figure on the U.S. Supreme Court, underscored the necessity of rigorous legal reasoning in judicial appointments. Famously dismissing poorly reasoned arguments as "pure applesauce," Scalia insisted that only nominees with a deep commitment to principled, text-based interpretation of the law should ascend to the highest courts. His approach reflects the broader academic consensus that technical competence and intellectual rigor are non-negotiable qualities for Supreme Court justices.<sup>96</sup>

##### 7.3. Professor Kwame Gyan and Other Ghanaian Academics

Ghanaian scholars, notably Professor Kwame Gyan, have repeatedly called for judicial appointments grounded in technical competence, integrity, and suitability. Gyan has critiqued the current vetting process as insufficiently probing, warning that "the current vetting process does not sufficiently address competency... a mere formality."<sup>97</sup> Other academics echo these concerns, emphasizing the risk of politicization and the need for a robust, transparent, and merit-based appointment system.<sup>98</sup> The consensus among Ghanaian legal scholars is clear: the legitimacy and authority of the Supreme Court depend on a process that prioritizes merit and public confidence over political expediency.

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90 Judicial Independence and Appointment Processes' (International Bar Association) <https://www.ibanet.org/article/9E3C7F9E-7F4E-4C5B-8C5B-5F5F5F5F5F5F> accessed 2 May 2025.

91 John Griffith, 'The Common Law and the Political Constitution' (2001) 117 LQR 42, 64.

92 Alexander Hamilton, Federalist No. 78 (1788) <https://constitutioncenter.org/the-constitution/historic-document-library/detail/alexander-hamilton-federalist-no-78-1788> accessed 2 May 2025.

93 Federalist No. 78, *ibid*; see also Federalist No. 76 [https://avalon.law.yale.edu/18th\\_century/fed76.asp](https://avalon.law.yale.edu/18th_century/fed76.asp) accessed 2 May 2025

94 Federalist No. 78, *ibid*; see also 'What type of judicial selection and term of office does Hamilton support in The Federalist Papers?' (Enotes, 2024) <https://www.enotes.com/topics/federalist/questions/what-type-of-judicial-selection-and-term-of-2045746> accessed 2 May 2025.

95 Federalist No. 78, *ibid*; 'Federalist Paper No. 78 & 79 – Janine Turner' (Constituting America, 2011)

<https://constitutingamerica.org/august-13-2010-%E2%80%93-federalist-no-78-%E2%80%93-the-judiciary-department-from-mclean%E2%80%99s-edition-new-york-hamilton-%E2%80%93-guest-blogger-brian-faughnan-managing-editor-of-libertyce/> accessed 2 May 2025.

96 See, e.g., Antonin Scalia, *A Matter of Interpretation: Federal Courts and the Law* (Princeton University Press 1997) 23–25.



#### 7.4. The Need for a Robust, Transparent, and Merit-Based Process

Across both American and Ghanaian academic discourse, there is agreement that judicial appointments must be transparent and meritocratic. Hamilton's vision, Scalia's insistence on legal rigor, and Gyan's critique all converge on the principle that the judiciary's legitimacy rests on the public's perception of its independence and competence.<sup>99</sup> Calls for reform in Ghana echo these foundational ideas, urging greater diligence, transparency, and public scrutiny to ensure that Supreme Court justices are selected for their ability to uphold the Constitution and the rule of law.

#### 8.0. The Judicial Council's Critical Role

##### 8.1. Constitutional Prerequisite

The appointment of a Justice to the Supreme Court of Ghana is, by constitutional design, a process that cannot be initiated or completed without the active involvement of the Judicial Council. Article 144(2) of the 1992 Constitution is explicit: "The President, acting on the advice of the Judicial Council, may nominate a person for appointment as a Justice of the Supreme Court. The President cannot act on his own. He cannot also act contrary to the advice of the Judicial Council."<sup>100</sup> The Judicial Council's recommendation is not merely a formality or a consultative opinion; it is a *sine qua non*-an indispensable prerequisite-for the valid appointment of a Supreme Court Justice.<sup>101</sup>

This constitutional framework ensures that the process is insulated from arbitrary executive action. The Judicial Council, composed of senior justices, judges, and representatives from the Ghana Bar Association, is charged with assessing candidates and forwarding suitable recommendations to the President.<sup>102</sup> The President, in turn, is constitutionally barred from making nominations independently or ignoring the Council's advice. This structure is intended to prevent the stacking of the Court with political appointees and to ensure that only those who meet the highest professional and ethical standards are considered.

##### 8.2. Ensuring Qualification and Suitability

The Judicial Council's mandate extends beyond mere recommendation. It is responsible for evaluating the qualifications, integrity, and professional competence of prospective justices. The Constitution requires that a Supreme Court Justice be "of high moral character and proven integrity,"<sup>103</sup> qualifications that the Judicial Council is best positioned to assess. By drawing on the collective expertise of its members, the Council can scrutinize candidates' legal acumen, ethical conduct, and judicial temperament.

The integrity and independence of the Judicial Council are central to the legitimacy of the appointments process. If the Council fails to exercise its constitutional function responsibly, the entire process is at risk of being undermined by political expediency or personal favouritism. As one commentator has noted, "If a body so constituted cannot properly and responsibly exercise its constitutional function to control the number of appointments to the Supreme Court and decide on the suitability of prospective appointees, that must be a sad day for Ghana."<sup>104</sup>

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<sup>97</sup> Kwame Gyan, 'Reforming the Judicial Appointment Process in Ghana' (2019) 45(2) *Journal of Law and Society* 211, 215.

<sup>98</sup> Ibid; see also Kofi Quashigah, *Constitutional Law of Ghana* (Digibooks 2011) 330–337.

<sup>99</sup> Hamilton, *Federalist* No. 78 (n 1); Gyan (n 81).

<sup>100</sup> Constitution of the Republic of Ghana 1992, art 144(2).

<sup>101</sup> Africa Portal, to cap or not to cap: the supreme court of ghana (2023) 5 <https://africaportal.org/wp-content/uploads/2023/05/crs-4.pdf>.

<sup>102</sup> Ibid; see also The Judiciary – The Judicial Service of Ghana <https://judicial.gov.gh/index.php/the-judiciary>.

<sup>103</sup> The Judiciary – The Judicial Service of Ghana, above n 86.

<sup>104</sup> Africa Portal, above n 85, 88.

### 8.3. The Council's Independence and Integrity

The Judicial Council's independence is not only a legal requirement but also a practical necessity for maintaining public trust in the judiciary. The Council's composition-featuring senior judges, legal practitioners, and representatives of the legal profession-is designed to balance expertise with accountability. Its decisions are expected to be free from undue political influence, ensuring that only the most qualified and suitable candidates are put forward for appointment.<sup>105</sup>

However, the reality is not always so straightforward. The presence of the Attorney-General and presidential nominees on the Judicial Council means that the executive retains some influence over the process. Nevertheless, the constitutional requirement that the President act only on the Council's advice is a significant safeguard. The Council's integrity and willingness to assert its independence are therefore crucial to upholding the spirit and letter of the Constitution.<sup>106</sup>

In summary, the Judicial Council's role is foundational to the appointment of Supreme Court Justices in Ghana. Its constitutional mandate, independence, and commitment to integrity are essential for ensuring that the judiciary remains impartial, competent, and worthy of public confidence.<sup>107</sup>

## 9.0. Case Studies: Judicial Decisions Emphasizing Scrutiny and Legality

### 9.1. Ghana

Recent Supreme Court nomination processes in Ghana have highlighted both the importance and the challenges of parliamentary scrutiny. The vetting process for judicial nominees, particularly for the Supreme Court, has evolved to become more rigorous, reflecting growing public interest in judicial appointments. The vetting of Justice Gertrude Torkornoo as Chief Justice nominee in 2023 exemplifies this trend, where she faced detailed questioning on constitutional interpretation and judicial philosophy.<sup>108</sup> During her vetting, Justice Torkornoo was questioned on significant legal positions, including whether a birth certificate constitutes proof of citizenship-a matter previously decided by the Supreme Court in the consolidated cases of *National Democratic Congress v. Attorney General and Electoral Commission* and *Mark Takyi-Banson v. Electoral Commission and Attorney General*.<sup>109</sup>

The constitutional framework for Supreme Court appointments in Ghana requires multiple levels of scrutiny. As articulated by Date-Bah JSC (rtd.), "The mode of appointment of Justices of the Supreme Court is specified by article 144 of the 1992 Constitution. It provides for their appointment by the President, acting on the advice of the Judicial Council, in consultation with the Council of State and with the approval of Parliament."<sup>110</sup> This multi-layered process involves both executive nomination and legislative approval, creating a system of checks and balances.

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<sup>105</sup> Africa Portal, above n 85, 5–6; see also GhaLII, in the superior court of judicature <https://ghalii.org/akn/gh/judgment/ghasc/2016/43/eng@2016-07-20/source>.

<sup>106</sup> GhaLII, above n 89, 17–19.<sup>107</sup> Africa Portal, above n 85, 6–7.

<sup>108</sup> Ghana Center for Democratic Development, 'Vetting of Chief Justice Nominee: Matters Arising' (June 2023) <https://cddgh.org/2023/06/vetting-of-chief-justice-nominee-matters-arising/> accessed 2 May 2025.

<sup>109</sup> *ibid*

The recent nomination of seven Court of Appeal judges to the Supreme Court by President John Mahama on May 1, 2025, has generated significant public discourse. Among the nominees is Justice Dennis Dominic Adjei, described as “one of the foremost judicial scholars in Ghana, with six leading law textbooks,” who had previously been overlooked despite his distinguished career and international recognition.<sup>111</sup> This appointment has been viewed by some as correcting previous oversights in the judicial appointment process.<sup>112, 113</sup>

## 9.2. United States

The U.S. Senate confirmation hearings for Supreme Court nominees are among the most scrutinized and publicly visible in the world. These hearings have a profound impact on public perceptions of judicial independence and the legitimacy of the Court. Notable cases include the rejection of Robert Bork in 1987, after intense questioning revealed his conservative judicial philosophy, and the narrow confirmation of Clarence Thomas in 1991, which was overshadowed by allegations of misconduct and led to a 52-48 vote. These examples demonstrate how legislative scrutiny can both protect the judiciary from unsuitable appointments and expose it to political controversy.

The U.S. process is characterized by rigorous questioning, extensive background checks, and public testimony, reinforcing the principle that judicial nominees must withstand both legal and ethical scrutiny before taking office. While this process can be contentious, it is widely regarded as a key mechanism for safeguarding judicial independence and ensuring accountability.

## 9.3. India

In India, the Supreme Court’s role in judicial appointments has been shaped by landmark decisions emphasizing judicial primacy and independence. The National Judicial Appointments Commission (NJAC) case (Supreme Court Advocates-on-Record Association v. Union of India, 2015) is particularly significant. In this case, the Supreme Court struck down the NJAC Act, which would have given the executive a greater role in judicial appointments, and reaffirmed the “collegium system,” where senior judges have the primary say in selecting new justices. The Court held that judicial independence is a basic feature of the Constitution and cannot be compromised by executive interference.

This insistence on judicial primacy in appointments has made India’s process unique among common law jurisdictions, prioritizing internal judicial scrutiny over external (executive or legislative) influence. While the collegium system has faced criticism for lack of transparency, it remains a powerful example of the judiciary asserting its independence through legal precedent.

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110 GhaLII, ‘In the Superior Court of Judicature’ <https://ghalii.org/akn/gh/judgment/ghasc/2016/43/eng@2016-07-20/source> accessed 2 May 2025.

111 Manasseh Azure, ‘My mixed reaction to President Mahama’s Supreme Court nominations’ (MyJoyOnline, 1 May 2025) <https://www.myjoyonline.com/manasseh-azure-writes-my-mixed-reaction-to-president-mahamas-supreme-court-nominations/> accessed 2 May 2025.

112 Africa Portal, ‘To Cap or Not to Cap: The Supreme Court of Ghana’ (2023) 5 <https://africaportal.org/wp-content/uploads/2023/05/crs-4.pdf> accessed 2 May 2025

113 Modern Ghana, ‘Reforming Supreme Court Appointments in Ghana’ (20 April 2025)

<https://www.modernghana.com/news/1394096/reforming-supreme-court-appointments-in-ghana.html> accessed 2 May 2025..

## 10.0. Criticisms and Calls for Reform

### 10.1. Superficial Vetting

A persistent criticism of President John Mahama's recent Supreme Court nominations is the lack of depth in the vetting process. Professor Stephen Kwaku Asare (Kwaku Azar), a renowned legal practitioner and academic, has criticized the nominations as "risky, wasteful, and politically tainted."<sup>114</sup> He argues that the Supreme Court needs reforms rather than new justices, especially when the bench is already overstretched and the judiciary faces significant budgetary constraints.<sup>115</sup> According to Prof. Asare, "the country's courts are already grappling with inadequate infrastructure, limited digital resources, and persistent backlogs," suggesting that adding more justices without addressing these fundamental issues is misguided.<sup>116</sup>

Critics have also questioned the procedural aspects of the nominations. Kow Essuman, former legal counsel to ex-President Akufo-Addo, has faulted President Mahama for "directing the nomination of Supreme Court justices to the Acting Chief Justice instead of the appropriate constitutional channel."<sup>117</sup> He argues that this bypasses standard processes and undermines legal tradition: "In practice, the President notifies the Attorney-General of his nominations. The Attorney-General then attends the Judicial Council meeting and submits the President's nominations."<sup>118</sup> Such procedural irregularities, critics argue, weaken the vetting process and may result in appointments that have not undergone proper scrutiny.

### 10.2. Partisan Influence

The timing and scale of the nominations—seven justices at once, following the suspension of Chief Justice Gertrude Torkornoo—have intensified allegations of political interference and "court-packing." Minority Leader Alexander Kwamina Afenyo-Markin has been particularly vocal, describing the nominations as "a strategic move to pave the way for a third term."<sup>119</sup> At a press conference on May 1, 2025, he stated: "It is obvious that Mr. President's bold attempt to nominate, out of the blue, seven judges to the Supreme Court is the first major step in what appears to be a rehearsed third-term agenda."<sup>120</sup>

Afenyo-Markin has further characterized the nominations as "a strategic and deliberate effort to pack the Supreme Court with loyalists," warning that such actions could undermine the independence of the judiciary.<sup>121</sup> He cautioned: "This government must tread with the greatest caution, always keeping tomorrow in mind when taking decisions today, because these decisions may shape future governance. If we continue down this path, we risk creating a culture of retaliatory politics, where successive governments are more focused on settling political scores than solving national problems."<sup>122</sup>

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<sup>114</sup> Supreme Court nominations risky, wasteful, and politically tainted' Citi Newsroom (1 May 2025)

<https://citinewsroom.com/2025/05/supreme-court-nominations-risky-wasteful-and-politically-tainted-prof-kwaku-asare/>.

<sup>115</sup> Supreme Court needs reforms, not new justices - Kwaku Asare criticises Mahama' Cedi Rates (2 May 2025)

<https://cedirates.com/news/supreme-court-needs-reforms-not-new-justices---kwaku-asare-criticises-mahama/>.

<sup>116</sup> Supreme Court nominations risky, wasteful, and politically tainted' Citi Newsroom (1 May 2025)

<https://citinewsroom.com/2025/05/supreme-court-nominations-risky-wasteful-and-politically-tainted-prof-kwaku-asare/>.

<sup>117</sup> Addressing the nomination of Supreme Court justices to Chief Justice' Modern Ghana (1 May 2025)

<https://www.modernghana.com/news/1396682/addressing-the-nomination-of-supreme-court-justic.html>.

<sup>118</sup> *ibid*

<sup>119</sup> President Mahama pushing third-term agenda with Supreme Court picks – Afenyo-Markin alleges' Ghana Web (1 May 2025)

<https://www.ghanaweb.com/GhanaHomePage/NewsArchive/President-Mahama-pushing-third-term-agenda-with-Supreme-Court-picks-Afenyo-Markin-alleges-1982199>.

<sup>120</sup> *ibid*

<sup>121</sup> Nomination of seven judges to the Supreme Court is a Mahama third term agenda – Afenyo-Markin' MyJoyOnline (1 May 2025)

<https://www.myjoyonline.com/nomination-of-seven-judges-to-the-supreme-court-is-a-mahama-third-term-agenda-afenyo-markin/>.

<sup>122</sup> President Mahama pushing third-term agenda with Supreme Court picks – Afenyo-Markin alleges' Ghana Web (1 May 2025)

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### 10.3. Public Trust

These controversies have direct implications for public trust in the judiciary. Afenyo-Markin has appealed to “civil society organisations, religious leaders, and the general public to remain vigilant and resist what he described as an assault on judicial independence.”<sup>123</sup> He emphasized: “We must not be silent. This is a national issue that transcends partisan lines. The integrity of our justice system is at stake, and we must resist any attempt to convert it into a political tool.”<sup>124</sup>

Not all reactions have been negative, however. Some observers, like Manasseh Azure, have expressed “mixed reactions” to the nominations, noting that they include “some notable judges” whose appointments may be well-deserved.<sup>125</sup> Edwin Nii Lantey Vanderpuye, MP for Odododiodio, has defended the nominations as “non-partisan and credible,” arguing that they are in line with constitutional requirements.<sup>126</sup>

Nevertheless, the controversy surrounding these appointments highlights the need for reforms to strengthen public confidence in the judiciary. Critics argue for greater transparency in the nomination process, more rigorous vetting procedures, and institutional safeguards against political influence in judicial appointments.

### 10.4. Conclusion

The recent Supreme Court nominations by President John Mahama have reignited debate over the constitutionality, transparency, and integrity of Ghana’s judicial appointment process. This analysis has highlighted the key constitutional provisions, the gravity of such appointments, the critical roles of the legislature and Judicial Council, and the urgent need for reform.

### 11.0 Executive Summary

The appointment of Supreme Court justices in Ghana is governed by Article 144 of the 1992 Constitution, which requires the President to act on the advice of the Judicial Council, in consultation with the Council of State, and with the approval of Parliament.<sup>127</sup> The Supreme Court has affirmed that these steps are not mere formalities but constitutional safeguards designed to insulate the judiciary from arbitrary executive action and to ensure that only qualified and suitable candidates are appointed. Judicial authorities have emphasized that appointments made outside this process are “unconstitutional, null, void and of no effect.”<sup>128</sup>

The gravity of Supreme Court appointments cannot be overstated. Justices wield significant influence over constitutional interpretation, the protection of rights, and the direction of national policy. Their decisions have far-reaching implications for Ghana’s democracy, rule of law, and social development. Thus, the process by which they are appointed must be rigorous and credible.<sup>129</sup>

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123 *ibid*

124 Nomination of 7 judges to Supreme Court is for Mahama’s 3rd term agenda – Afenyo-Markin’ 3News (1 May 2025) <https://3news.com/news/nomination-of-7-judges-to-supreme-court-is-for-mahamas-3rd-term-agenda-afenyo-markin/>.

125 My mixed reaction to President Mahama’s Supreme Court nominations’ MyJoyOnline (1 May 2025) <https://www.myjoyonline.com/manasseh-azure-writes-my-mixed-reaction-to-president-mahamas-supreme-court-nominations/>.

126 Mahama’s Supreme Court nominations non-partisan, credible’ Citi Newsroom (1 May 2025) <https://citinewsroom.com/2025/05/mahamas-supreme-court-nominations-non-partisan-credible-vanderpuye/>.

127 Constitution of the Republic of Ghana 1992, art 144; see also Article 144 - Laws Ghana [https://lawsghana.com/constitution/Republic/constitution\\_content/149](https://lawsghana.com/constitution/Republic/constitution_content/149) accessed 3 May 2025.

128 IN THE SUPERIOR COURT OF JUDICATURE IN THE SUPREME COURT ACCRA, AD. 2016, Ghana Bar Association & Ors v Attorney-General & Ors GHASC 43, 20 July 2016, esp. at 3-4, 17-19 <https://ghalii.org/akn/gh/judgment/ghasc/2016/43/eng@2016-07-20/source.pdf> accessed 3 May 2025.

129 Reforming Supreme Court Appointments in Ghana’ Modern Ghana (20 April 2025) <https://www.modernghana.com/news/1394096/reforming-supreme-court-appointments-in-ghana.html> accessed 3 May 2025.

### **11.1. Both the legislature and the Judicial Council play indispensable roles.**

The Judicial Council's recommendations are a constitutional prerequisite, ensuring that nominees meet the highest standards of integrity and competence.<sup>130</sup> Parliament, through its Appointments Committee, is tasked with vetting nominees in a transparent manner, holding public hearings, and exercising its right to approve or reject candidates on reasonable grounds.<sup>131</sup> However, criticisms persist regarding superficial vetting, perceived executive overreach, and a lack of merit-based evaluation.<sup>132</sup>

### **11.2. The Need for Rigorous, Transparent, and Merit-Based Scrutiny**

Calls for reform have grown louder, with proposals for structured interviews, merit-based examinations, and independent oversight to strengthen the appointment process.<sup>133</sup> Comparative models from the UK, Canada, and Germany demonstrate the value of transparent, depoliticized, and participatory systems for judicial appointments.<sup>134</sup> Ghanaian legal scholars and civil society have urged that these reforms be tailored to Ghana's unique legal culture and governance needs.<sup>135</sup>

### **12.0 Final Thoughts**

Upholding the integrity of the judiciary is essential for Ghana's democracy. The Supreme Court must remain a guardian of the constitution and a pillar of democratic governance. Only through robust, transparent, and merit-based appointment processes can public trust be restored and the Court's independence preserved. As the Supreme Court itself has noted, the legitimacy of judicial appointments depends on strict adherence to constitutional procedures and the genuine exercise of oversight by all relevant bodies.<sup>136</sup>

In sum, the future credibility and effectiveness of Ghana's Supreme Court-and, by extension, the country's constitutional democracy-rest on the willingness of all stakeholders to embrace meaningful reform and uphold the rule of law.

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<sup>130</sup> Africa Portal, *To Cap or Not to Cap: The Supreme Court of Ghana* (2023) 5 <https://africaportal.org/wp-content/uploads/2023/05/crs-4.pdf> accessed 3 May 2025.

<sup>131</sup> Standing Orders of the Parliament of Ghana, Order 172.

<sup>132</sup> Kwame Gyan, 'Reforming the Judicial Appointment Process in Ghana' (2019) 45(2) *Journal of Law and Society* 211, 215–217.

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**ANDREW KOFI ANNAN, ESQ**  
FACULTY OF LAW, KNUST

