

JUDICIAL INDEPENDENCE AND ACCOUNTABILITY OF COURTS IN GHANA: THE POTENTIAL TO DO BETTER

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Abstract: *There is hardly any country in the world that does not call for an independent Judiciary. In a civil society there are two closely related needs, first is the determination of rights and liabilities and secondly, an independent organ to adjudicate disputes that arises with regards to the violation of these rights. The concept of judicial independence occupies a central position in a fair and just legal system. Almost all the legal systems are based on the strong belief that judicial bodies will act impartially and in accordance with the law. It is expected that the law of the land must provide not only safeguards to preserve and promote judicial independence but also accountability mechanism in order to make the superior judiciary answerable for their misconducts. This article examines the concept of “judiciary independence” and analyses the extent to which the essentials of the independence of the judiciary are secured under the constitution of Ghana and analyze the relationship between judiciary independence and accountability in Ghana. The article views judicial independence through the lenses of rule of law, corruption and non-interference of government. This article also aims to contribute to the judicial build up in Ghana by highlighting some factors that if well dealt with can lead to some sort of development and sanity in Ghana’s judicial sector*

Keywords: Judicial Independence, Accountability, Corruption, Constitution, Ghana

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1. INTRODUCTION

Judicial independence is a key component of social transformation and democratic consolidation. There are numerous studies that indicate that the independence and accountability of judges are fundamental to an impartial judicial process. As a consequence, judges’ protection from undue influence or interference is a key concern and various principles and standards to protect judicial independence have been introduced by different bodies. At the same time, cases, where judges have used their margin of discretion to make biased decisions, have demonstrated the need for more accountability and oversight. It is fundamental to the rule of law, to the right to a fair trial, to the right to liberty and security of person, and to the right to an effective remedy for violations of human rights, that individual judges and the judiciary as a whole must be independent and impartial. The requirement that courts and other tribunals be effective, independent and impartial “is an absolute right that is not subject to any exception”.

Ghana is a country located in the western part of Africa. Declared independence on the 6th March 1957. The country has been through a developmental cycle for the past 64years. When Ghana gained independence from colonial domination in 1957, it was the first country in sub-Saharan Africa to do so and therefore, it enjoyed economic and political advantages not seen elsewhere in the tropical region of Africa. The country could boast of a

high level of development in all sectors of the country; education, health, infrastructure, utilities and the judiciary.

The judicial system of Ghana may not be as bad as it may actually be. But what is the use of comparing two failing systems when one has the potential to do better? Ghana has over the years enjoyed peace and order due to the non-violent behaviour of its citizens. The major role of the judiciary is to ensure order by the implementation of constitutional rule and punishment for offenders. Hence the failure of the judiciary will not only result in the increase in malpractices, crime and misconduct at all levels of society, governance and management but also in the instability of the country's peace, economy and development altogether.

2. DEFINITION AND SCOPE OF JUDICIAL INDEPENDENCE AND ACCOUNTABILITY

The Judiciary of England and Wales quoted that "It is vitally important in a democracy that individual judges and the judiciary as a whole are impartial and independent of all external pressures and of each other so that those who appear before them and the wider public can have confidence that their cases will be decided fairly and in accordance with the law. When carrying out their judicial function they must be free of any improper influence. Such influence could come from any number of sources. It could arise from improper pressure by the executive or the legislature, by individual litigants, particular pressure groups, the media, self-interest or other judges, in particular, senior judges". A closer look at the statement will highlight certain factors that capulate judicial independence in every retrospect. These factors include impartiality, external infiltration, judicial confidence and pressure sources. These factors highlight the essence of judicial independence in whichever way possible.

The absence of fairness brings about partiality and that will not order well for the system in giving fair verdicts. The allowing of external infiltration to contribute to decision making and calls of the courts is also a major factor that is included in judicial independence. Furthermore, the judicial confidence is a major result of the independence of the system from corruption and other factors that will produce a strong belief in the institution by the public and finally pressure from external sources like the government, the media and other groups must not be allowed to influence verdicts of the judiciary otherwise it would hinder its independence. The United States Legal Support defines judicial independence as the idea of keeping the judiciary away from the other branches of government. It further claims that the main objective behind granting judicial independence is to avoid the improper influence on the court from the other branches of government, or from private or partisan interests. They also postulate that it is not for the protection of judges, although it is often thought of in the modern contexts of today's legal society. The principle of judicial independence is designed to protect the system of justice and the rule of law, and thus maintain public trust and confidence in the courts.

In India for instance, the Higher Judiciary has powers of control over every organ under the Constitution but there exists no effective method of disciplining its own members. The country might be known more for the loops in the accountability of the judiciary although the preamble to their Constitution declares India is a 'Democratic' State meaning

that they have a government by the people, of the people and for the people'. From this principle, the Government should be accountable for all its acts or omissions to those for whom it exists. The third branch of the government is the judiciary. The judiciary has power and plays a major role in the peace and sustenance of a country. Under critical analysis, it would not be farfetched to say that of the three branches of the Government, the judiciary is of the greatest importance to the citizens of a country as it brings equality before the law in the settlement of disputes. Defining judicial accountability, one would have to take note of the following factors as the expressions of the judge, the decisions of the judge and noted standard. Judicial independence was not intended to destroy judicial accountability but rather ensure that accountability is achieved irrespective of who is involved in a case.

In many countries, there is no mechanism for accountability for serious judicial misconduct and for disciplining errant judges. The judiciary plays an important role in society and accountability must be ensured to get a good job done. The United States Legal Support defines accountability as the state of being liable, answerable, or accountable. Applying it legally, accountability means that some legal rule(s) exists under which a theory or claim can be made to find one liable in a civil lawsuit or culpable in a criminal matter.

3. BACKGROUND OF GHANA'S JUDICIAL SYSTEM

Ghana is a former British colony and on attaining independence the country opted for the common law legal system practised in Britain. In Ghana, there are two categories of courts, namely: The Superior Courts made up of the Supreme Court, the Court of Appeal, the High Court and the Regional Tribunal; and the Lower Courts consisting of the Circuit Court and the District Court or such other lower courts that Parliament may by law establish. The Constitution of Ghana highlights in chapter eleven article 125(1) that "Justice emanates from the people and shall be administered in the name of the Republic by the Judiciary which shall be independent and subject only to this Constitution". The constitution further highlights in the same chapter article 126 that "the Judiciary shall consist of (a) the Superior Courts of Judicature comprising (i) the Supreme Court; (ii) the Court of Appeal; and (iii) the High Court and Regional Tribunals. (b) Such lower courts or tribunals as Parliament may by law establish".

Ghana's Supreme Court was established by the Supreme Court Ordinance of 1876 as the highest tribunal in Ghana. Appeals from the Supreme Court in the colonial era went to the West African Court of Appeals (WACA) established in 1866. However, Ghana withdrew from WACA following gaining independence. After the military coup d'état of February 24, 1966, the National Liberation Council (NLC), by the Courts Decree, 1966 (NLCD.84) abolished the Supreme Court and vested judicial power in two sets of courts: The Superior Court of Judicature and the inferior Courts. This was reversed by Article 102 of the 1969 constitution establishing the second republic. After the coup on January 13, 1972, the Supreme Court was again abolished by the National Redemption Council with the reason that the 1969 constitution had been suspended and so there was no need for a court to "interpret and enforce it". Its functions were transferred to the Court of Appeal. This was again reverted by the 1979 constitution when the third republic was established on September 24, 1979. The Supreme Court was left intact after the December 31, 1981 coup by the Provisional National Defence Council, though it made changes to the court system by introducing public tribunals.

The 1992 constitution stipulates that the Supreme Court is made up of the Chief Justice and not less than nine other Justices of the Supreme Court. The Chief Justice is appointed by the President of Ghana acting in consultation with the Council of State and with the approval of the country's Parliament. The other Supreme Court Justices are appointed by the President acting on the advice of the Judicial Council and in consultation with the Council of State and with the approval of Parliament. The 1992 Constitution abolished all the public tribunals established under the PNDC and created the Regional Tribunal whose chairman was equated with the High Court judge.

The Supreme Court has exclusive appellate jurisdiction in cases of high treason and is the final court of appeal and has jurisdiction over matters relating to the enforcement or the interpretation of constitutional law. It hears appeals from the National House of Chiefs and consists of not less than nine Justices. The court is duly constituted with a panel of five Judges. It is currently headed by His lordship Justice Anin Yeboah; the Chief Justice. The Court of Appeal, which includes the Chief Justice and not fewer than ten other judges, has jurisdiction to hear and to determine appeals from any judgment, decree, or High Court of Justice order. The High Court of Justice, which consists of the Chief Justice and not fewer than twenty other justices, and such other justice of the Superior Court of Judicature as the Chief Justice may, by a writing signed by him, request to sit as High Court Justice for any period. The high court has jurisdiction in all matters, civil and criminal, other than those involving treason. Regional Tribunals consist of the Chief Justice, one Chairman and such members who may or may not be a lawyer as shall be designated by the Chief Justice to sit as panel members of a Regional Tribunal and for such period as shall be specified in writing by the Chief Justice. Ghana also has quasi-judicial agencies and institutions. Examples of these are the Reconciliation Committee of the Department of Social Welfare and Community Development, provision for private hearings at home, and the use of various spiritual agencies, such as shrines, churches, Muslim mallams, and specialists in the manipulation of supernatural powers to whom many ordinary people resort.

4. JUDICIAL INDEPENDENCE IN GHANA

The judicial independence in Ghana has over the years been a major concern to the citizens of the country. Ghana has non-arguably enjoyed peace and stability in governance longer than any country in Africa. The major contributing factor which has led to this feat may be the calm and anti-violent nature of citizens in Ghana. Ghanaians may not be very literate as compared to other countries but with reference to free speech, even a child if given a platform can express him or herself. Ghanaians do require the judicial to be independent in their actions. On the basis of fairness, judges in Ghana have not been at their uttermost best with stints of bribery and corruption surrounding a lot of cases. A report by international award-winning journalist Anas Aremayaw Anas in 2015 uncovered a dubious action of over thirty judges and officials within the judiciary. This issue sparked a huge roar within the country as many were of the view that it was a dent in the fairness principle of the courts because people could pay their way through the system to sway verdicts.

On the ground of interference, the judiciary stands to face interruption from the government itself and torment from the media. Ghana is a country with a strong media presence. There is no major judicial situation that goes on in the country without heavy media

coverage. On several occasions, the media have had to be restrained to limit the level of tension in the country due to media coverage on issues. Recently the country is in an uproar concerning it just ended the 2020 Election petition where the petitioner: John Dramani Mahama, the former President and leader of the largest opposition party in Ghana under Articles 63 (4) and (5) of the 1992 constitution of Ghana sued the 1st respondent; the Electoral Commission headed by Mrs. Jean Adukwei Mensa and the 2nd respondent the President of Ghana, Nana Addo Danquah Akuffo Addo for Electoral malpractice and also argued that no candidate in the December 7th 2020 Presidential Election had 50% + 1 vote to be declared a winner of the Election as stipulated by Article 63(3) of the 1992 Constitution of Ghana. The petition was however dismissed by a unanimous decision by the seven-member panel of judges citing lack of merit and the 2nd respondent was declared the winner of the 2020 presidential election. With vivid captions and catchy sound bites, the media found a way to get the right words to the public to arouse emotions and tensions.

Though it may not directly affect the judicial system the desire to prevent unrest and violence surely will. Mostly, the fight for the independence of the judicial is the fight against government interference. The government in power has many at times found itself interfering with verdicts of the judiciary because members of the ruling party have been on the punishing side of trials. Though the government or to be precise the ruling party may be in power the courts have the final say to every issue. They that rule and do not live by the laws of the land must be disciplined. Where will judicial independence stand then if such people are not brought before the law and can do away with anything? The laws must be applied to all citizens irrespective of their offices or societal status.

5. ACCOUNTABILITY OF COURTS IN GHANA

To be open and accountable is among many things that the Ghanaian judicial system is not. The issue of transparency has been an issue for many years and seems not to get better as time goes by. The judicial service in its bid to ensure transparency has initiated the provision of reports for the public to know what has been going on in the system. However, the availability of these reports has also been another issue as little can be seen in terms of reportage from the judiciary. Simply put, the citizens of Ghana feel as though there are some things that cannot be delved into concerning the judiciary because they are to remain hidden. How then can accountability be achieved if such a mentality is been harboured by the Ghanaian citizen? There are some organizations that have taken it upon themselves to be pressure groups to ensure the judiciary and the government as a whole deliver on what is expected of them. These pressure groups have turned out to be the mouthpiece of the average Ghanaian who may not know exactly what to do. The Judiciary is accountable for every decision it takes and must render a due report to the people of Ghana. The presence of knowledge concerning what is going on and why things turn out the way they do concerning important cases will not only put the citizens at bay but will also ensure that the stability and peaceful nature of the country stay in place. Although more can be done by way of judicial accountability this article by no means undermines the effort of the government to ensure judicial accountability.

6. HIGHLIGHTED PROBLEMS AND SUGGESTED SOLUTIONS WITH REGARDS TO JUDICIAL INDEPENDENCE AND ACCOUNTABILITY OF COURTS IN GHANA.

The situation in Ghana can be compared to many countries in Africa where it looks as though the judicial service is doing far below what it is potentially permitted to do. The judicial service in Ghana is a very critical aspect of governance and must stand tall to ensure that the country is developing and moving in the right direction. The light of modernity has evidently shown the cracks within the judicial system of Ghana and with countries like the United States of America, PR. China and Germany showing how it must be done there are much to learn. Among the many cracks of the judicial system with reference to independence and accountability. Some of the major points that can be highlighted are; the presence of corrupt actions, corrupt officials, negative government interventions through misuse of political power, wrongful media hype and unwarranted pressure and finally lack of transparency in activities of the judiciary. Though these problems may have been sighted over a long period of time it has taken more time than usual to curb them.

In addressing some of these highlighted problems and situations, a well-enforced collective approach must be used. On the issue of bribery and corruption, the laws of the land must be well enforced to punish culprits and also deter officials. The installation of cameras in courts and offices of the judges should be promoted to curb corruption. The law must have its way when it comes to those who go against it for the sake of personal interest. The government on the other hand must also ensure that they allow the judiciary to express full control as the law demands. The ability of the government to interfere in the affairs of the judiciary does not only show weakness but also how corrupt the government is in its desire to cover its tracks. Finally, the judicial services must take legitimate and conscious steps to ensure transparency in the judicial system; from the selection of judges to the passing of verdicts.

7. CONCLUSION

The UN Special Rapporteur on the independence of judges and lawyers has emphasized that:

“Judicial corruption erodes the principles of independence, impartiality and integrity of the judiciary; infringes on the right to a fair trial; creates obstacles to the effective and efficient administration of justice, and undermines the credibility of the entire justice system”.

Judicial independence and accountability of courts is a crucial aspect of development and must not be overlooked. The ability of the government and the country in total to have a strong judicial setting will not only ensure a great legal framework but also the onset of great administration and utilization of resources. The possibility of a country rising to the levels of other developed countries in respect to the judicial service rests on the contribution of all citizens and other major stakeholders that can influence decisions through the engine of democracy and international organization affiliations. In order for States to operate optimally within a free and democratic framework, all three arms of government must also function freely and without fear. This includes the judiciary. While there have been many sightings and instances of judicial independence in Ghana, there is still a long way to go. There is

always hope in the mist of darkness, though the road may seem long it always begins with a step.

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