

**IN THE THIRD SESSION OF THE
SIXTH PARLIAMENT OF THE
FOURTH REPUBLIC OF GHANA**

**SIXTEENTH REPORT OF THE
APPOINTMENTS COMMITTEE**

ON

**HIS EXCELLENCY THE
PRESIDENT'S NOMINATIONS AS
JUSTICES OF THE SUPREME
COURT**

PARLIAMENT OF GHANA (SERIES)
PARLIAMENT HOUSE
OSU ACCRA

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THE SIXTEENTH REPORT OF THE APPOINTMENTS COMMITTEE ON HIS EXCELLENCY THE PRESIDENT'S NOMINATIONS FOR APPOINTMENT AS JUSTICES OF THE SUPREME COURT OF GHANA

1.0 INTRODUCTION

The President of the Republic of Ghana, His Excellency John Dramani Mahama on the advice of the Judicial Council and in consultation with the Council of State nominated two (2) persons for appointment as Justices of the Supreme Court of Ghana in accordance with Article 144 (2) of the 1992 Constitution and communicated same to Parliament on 12th May, 2015 for their prior approval.

The nominations were subsequently referred to the Appointments Committee by the Rt. Hon. Speaker for consideration and report pursuant to Order 172 of the Standing Orders of the House.

The nominations are as follows:

- i) Justice Yaw Appau - Justice-Designate for the Supreme Court**
- ii) Mr. Gabriel Pwamang - Justice-Designate for the Supreme Court**

2.0 REFERENCE DOCUMENTS

The Committee was guided in its deliberations by the following:

- i. The 1992 Constitution of the Republic of Ghana;
- ii. The Standing Orders of the Parliament of Ghana; and
- iii. The Curriculum Vitae of the Nominees.

3.0 PROCEDURE FOR CONSIDERING THE NOMINATIONS

As part of its procedures and in line with Order 172 (3) of the Standing Orders of the House, the Committee caused to be published in the national newspapers the notice of its public hearing for the consideration of the nominations and also invited memoranda from the general public in respect of the nominees.

Confidential reports in respect of the nominees were also obtained from Ghana Revenue Authority, the Ghana Police Service and the Bureau of National Investigations (BNI) for the purpose of conducting background checks on the nominees.

Following these activities, the Committee held a 2-Day Public Hearing from Monday, 2nd to Tuesday, 3rd June, 2015 to consider the nominations in furtherance of Order 172 (3) of the Standing Orders of the House.

Before the commencement of proceedings, the nominees subscribed to the Oath of a Witness. The Committee's line of questioning focused on issues relating to the nominees' citizenship, records of their offices, matters pertaining to the offices to which they have been nominated, issues of national concern and their comprehension of the Laws of Ghana.

The Committee has duly considered the above nominations and reports as follows:

4.0 JUSTICE YAW APPAU – JUSTICE-DESIGNATE FOR THE
SUPREME COURT

Background

Justice Yaw Appau was born on 2nd August, 1951 at Badu in the Tain District of the Brong- Ahafo Region. He attended Wenchi West Primary School for his primary education and Bekwai Methodist Middle School. He enrolled at Prempeh College between 1965 and 1967, but he dropped out due to financial challenges.

From 1967 to 1971, he proceeded to Ajumako Teacher Training College where he obtained Teachers' Certificate "A". He also obtained his "O" and "A" levels Certificate as a private candidate.

Justice Appau attended the University of Ghana, Legon from 1977 and 1980 and was awarded a B. A. (Hons) in Law and Political Science. He later attended the Ghana Law School from 1980 to 1982 and was called to the Ghana Bar as a Barrister and Solicitor of the Supreme Court of Ghana in December, 1982.

Justice Appau started work as a professional teacher from 1971 to 1977 in a number of schools including Droboso L/A Middle School and Frema L/A Middle School. At Subingya L/A Primary School, he was also the headmaster of the school.

After his call to Bar, he was appointed the Regional Coordinator of the then Students and Youth Task Force in the Northern Region in 1982. In 1983, he was appointed as the Deputy Regional Secretary for the Brong- Ahafo Region. He later received nomination for training in Havana, Cuba for a ten-month course in International Relations. On his return, Justice Appau was appointed a member of the National Investigations Committee (NIC) in 1984. In May 1985, he resigned from the NIC and went into private legal practice at Barimah Chambers, Sunyani.

The nominee was appointed a District Magistrate Grade 1 in September, 1991.

Justice Appau worked at the Sekondi District Magistrate Court as a District Magistrate from 1991 to 1995. His court functioned as both a Family Tribunal and a Juvenile Court. As part of his schedule, he supervised the Shama and Cape Coast District Magistrate Courts. In 1996, the nominee was promoted Circuit Court Judge and posted to the Aflao Circuit Court.

In 2000, he was appointed a Justice of the High Court. He was later posted to the Ashanti Region as the Supervising High Court Judge until his appointment as Justice of the Court of Appeal in 2006.

On 8th October, 2012, Justice Appau was appointed the Sole Commissioner of the Commission of Inquiry to delve into Judgment Debts and other matters as per C.I. 79.

The nominee holds membership in both local and international associations including the Association of Magistrates and Judges of Ghana (AMJG). He has participated in a number of national and international conferences and also delivered a number of papers on key topics.

Contributions to the Development of the Law

Regarding his contributions to the development of the law, the nominee indicated that, he has been on the bench for 24 years during which he delivered very important judgments which have had far reaching impact on the development of the law. He stated that most of the decisions are reported in the Ghana Law Reports. He cited his ruling on the Sodom and Gomorrah case (2003) which was an action brought against the Accra Metropolitan Authority (AMA) by residents of Sodom and Gomorrah. He indicated that the judgment directed that the residents could be ejected on condition that they were given reasonable time to prepare themselves. He also mentioned his decisions on the Stadium Disaster and the Yaa Naa cases. He further informed the Committee of an interesting case he decided on which involved Richard Butt and the Ghana Immigration Service relating to deportation. Apart from his contributions made to the development of the law, the nominee also informed the Committee that he had served severally as a resource person at the Judicial Training Institute where he delivered a number of papers in nurturing and training newly appointed judges and magistrates.

Role Models

The nominee identified Oliver Wendell Holmes Jr. and Alfred Thompson Denning as his role models, and was nicknamed Oliver Wendell Holmes.

The nominee said he liked them because they were great Jurists. Lord Denning was English whilst Oliver Holmes Jr was American. They were also described as great dissenters and courageous Judges. Lord Denning fought in the First World War, 1914 to

1918 and Oliver Wendell Holmes also fought in the American Civil War in 1861 and 1865. They were very great judges and he admired their data.

Nominee's Experience at the National Investigations Committee

The nominee, in responding to the nature of work he did while serving as a Member of the National Investigations Committee, informed the Committee that, the seven Member Committee made up of himself, Mr. Emmanuel Ohene who is now a lawyer, Lawyer Larry Adjete, Lawyer Emmanuel Ayebi (now an Appeal Court Judge) and three others, was the highest investigative body of the Government at the time and they were tasked to investigate very serious cases involving economic crimes and other matters. The nominee recollected a major case investigated involving combat goods. The soldiers had petitioned the Committee that they had returned from Lebanon for over two years and the goods they purchased had not arrived as yet. The Committee conducted investigations which revealed that the ship that was meant to convey footwear for the soldiers was rather used to convey sugar and rice. At the time, sugar was a scarce commodity in the country and the goods were tagged as combat goods to evade payment of duties to the Government.

On whether he considered his membership of the National Investigation Committee (NIC) a betrayal of what the Bar and Professional bodies stood for at the time, the nominee informed the Committee that, he could not recall any opposition at the NIC but a general opposition against the PNDC process as a whole by the Bar. The lawyers did not understand why after 10 months in Cuba and six months at NIC he could come back to Sunyani as a practising lawyer; they suspected him to be a spy planted among them. With much difficulty, Lawyer, Kofi Gyambura accepted him into his chambers. It was later on that the Judges really believed that he had actually resigned from the NIC.

Establishment of an Independent Emoluments Committee

The nominee informed the Committee that the framers of the 1992 Constitution had good reasons why Article 71 was drafted in its current form instead of establishing an Independent Emoluments Committee.

He said he held the view that Article 71 office holders such as the President, the Vice President, Honourable Ministers, Honourable Members of Parliament, the Electoral Commission, the Commissioner of CHRAJ, and Superior Court Judges, among others are special persons. These institutions are very sensitive. He said due to the poverty in our system, emoluments paid to Judges, Honourable Members of Parliament, Ministers, among others are seen as very big sums of money. He held the view that beneficiaries of Article 71 deserve such emoluments due to the important task they perform in society.

He agreed to the suggestion for the setting up of an independent institution to consider the remuneration of such office holders.

Issues relating to the Nominee's Training in Cuba

The nominee informed the Committee that he left the country to pursue a 10 month programme in International Relations, which he sees as a form of compensation. He explained that he felt his dismissal as the Brong Ahafo Regional Minister was not fair and that the training programme was a way of pacifying him for the unfair treatment.

He explained further that he was only dismissed six months into his appointment without any reason. He tried to find out why the removal from office but all he was told was that the Chairman of the Peoples National Defence Committee (PNDC) gave orders for his removal. He said he was of the view that the citizenry in the region found him too tough to handle and therefore pressed for his removal.

He informed the Committee that he did not receive any certificate upon completion because all documentations relating to the programme were forwarded to Government at the Castle.

View on the Recent Developments in FIFA

The nominee shared his thoughts on the seeming untouchable nature of the Football Associations and current crisis facing FIFA.

He shared his experience with the Committee when he handled a case at the High Court involving Tudu Mighty Jets and Ghana Football Association in which Tudu Mighty Jets was banned. He said he realised in a case he handled that GFA itself was not abreast with its own rules and regulations and so he referred them to their Association rules, the FIFA rules and regulations but they were not happy with his decision.

He explained that GFA went to the Court of Appeal to set aside his judgment because they thought he was intruding into their affairs. He asserted that football was now a question of money and people's lives so it could not be handled as a co-operative association.

He insisted that when it comes to the country's finances in support of the activities of GFA, the GFA should be made to account particularly with regard to the use of public funds.

He informed the Committee that, he has questioned the position of FIFA on the so-called independence of the football associations on a number of occasions.

He proposed that there was the need to adopt a new approach in terms of deepening transparency and accountability in the Federation of International Football.

Compulsory Retirement Age of Supreme Court Judges

The nominee informed the Committee that it was sad that at the peak of their profession, Supreme Court Judges are asked to go home. He said not only Supreme Court Judges but all other special professional personnel whose rich experiences could otherwise be tapped

are made to retire at age 70. He cited Professor Dateh-Baah who has contributed immensely to the development of the country's constitutional law for the short time that he has been at the Supreme Court.

He however stated that under article 199 of the Constitution, contract system had been provided where after attaining the compulsory retirement age, a public officer can apply to continue on contract for a maximum period of 5 years as a way of making room to tap this expertise.

His view on Death Penalty

The nominee informed the Committee that before he became a lawyer, he was a proponent of the death penalty. He said as a lawyer, his stand on the death penalty has changed. He said he used to think that the death penalty could help deter people from committing murder but over the years he has come to realise that that is not necessarily the case.

He agreed with the view that it is better to acquit 99 guilty persons than to convict one innocent person. He said as a Christian he holds the view that the death penalty was retributive and an aspect of the Mosaic Law which says "an eye for an eye and a tooth for a tooth". He explained that Jesus Christ came and said vengeance is the Lord's.

He however indicated that as a Judge, he cannot give decisions on the basis of his own whims and caprices but rather subject to the law and facts presented.

The Yaa Naa's Case

The nominee informed the Committee that he finds it difficult to say that the Yaa Naa's Case has come to its finality. He however conceded that on the facts that were brought before him as a Judge, the matter has been adjudicated upon but if there are any suppressed facts which the court was not made aware of by way of evidence, then it would be difficult to say that the case has come to a closure. As a Judge, if witnesses of crimes fail to testify due to fear of being intimidated, then one is limited to just those facts presented and the applicable laws.

He informed the Committee that the evidence brought before him indicated clearly that what happened between the Abudus and the Andanis for three days was a communal war. One of the young men who fought in the war told the court that a war erupted and the leader of one of the factions was killed. He said most of the media reports were inaccurate. The pathological report from 37 Military Hospital presented to the court was so clear.

The Jurisdiction of the Supreme Court

The nominee informed the Committee that, the Supreme Court operates as the highest court of the land because it has an original jurisdiction in the interpretation and

enforcement of the Constitution or where it is alleged that an enactment passed by Parliament contravenes a provision of the Constitution. It also has an appellate jurisdiction to hear appeals from the Court of Appeal. Furthermore, it has an appellate jurisdiction when it comes to the conviction of persons for high treason. Another is the chieftaincy appeal from the National House of Chiefs which goes straight to the Supreme Court, reference from the High Court on an issue which involves interpretation of the Constitution and lastly, there is also a supervisory jurisdiction as well as hearing matters in camera because they touch on national security.

Electronic Empanelling of Judges

In responding to the above, the nominee stated that his view is contrary even though the Chief Justice introduced the computer placement of Judges on panel, but a Judge who knows his duties, should not succumb to the interest of anybody just because he/she empanels that Judge.

Current State of Law Regarding the Interpretation of the word "Shall"

The nominee in sharing his view regarding the interpretation of the word "Shall" after the Election Petition stated categorically that, constitutional interpretation is not like statutory interpretation. One cannot interpret a constitution in the same way as interpreting a will or an enactment of Parliament or any other body authorized by Parliament. According to him, the Constitution is a living document and the framers of the Constitution crafted it with the aim that it would traverse so many years.

It is also known that every provision or issue has a mischief that it intends to cure. And in doing so, one has to look at the law, the interpretation Act which itself states that at times "may" could be "shall" and "shall" could also be "must". It is a fact that lower Courts are bound by the decisions of the Supreme Court.

The Speaker of Parliament Acting as President

On this issue, the nominee referred to the case of Asare vrs. Attorney-General where the Speaker of Parliament was expected to swear the Presidential Oath on two occasions. He wondered why the Speaker of Parliament should take the Presidential Oath when in fact the Speaker is not the President. He explained that the Speaker cannot take policy decisions even when the President and the Vice President are away. The only function the Speaker can perform when acting in the position of the President is probably to receive guests. The nominee asked whether it could be said that if the President travelled to say Burkina Faso or The United States, in this modern era where one can communicate in seconds, the President could not be performing his duties? On the other hand, if the Speaker is sworn in as President and the President of the nation too, is in the United States as President then it could mean we have two Presidents at the same time. For now he was bound by the decision of the Supreme Court and so respects their decision.

He reiterated that the Constitution is a living document with no one way of interpreting it. But where the meaning will lead to absurdity then one has to look at the objective and other rights that have not been added depending upon the circumstances of the time. The essence of interpretation and its purpose is to use the principles of interpretation and literal meaning, where the plain meaning is so clear.

Ideology Influencing Court Decisions

The nominee indicated that interpretation depended on the Judge. He was not sure whether Ghana had an ideology as a country. Quoting the words of Harry Truman, "appoint your friend to the Supreme Court and he becomes your enemy" which implies the fact that appointing a friend to the Supreme Court does not mean that the judge you appointed is necessarily going to do your bidding. Setting himself as an example, during the tenure of President Jerry Rawlings, he was appointed a High Court judge and during President J. A. Kufuor's regime he was appointed an Appeal Court Judge and so he sees his duty as applying the law as a Judge professionally without any strings attached to political Heads. He concluded the statement by stating that chapter six (6) of the Constitution of the Republic serves as a guide to all State Institutions.

Influences from the Cadre System

The nominee informed the Committee that the word "cadre" in the sense in Ghana could not be defined, and so he has his misgivings about the word. He said the military training received from his father, an ex-service man has made him acquire certain principles, such that no matter what one does he will never bend them. As a member of the National Investigations Committee he had a bungalow and a car but called it quits at a point in time when he decided enough was enough and left to Sunyani without a bicycle to start his legal practice.

Definition of Government

The nominee informed the Committee that without the Judiciary, the Executive cannot function. He stated that at all State functions, the Chief Justice sits by the side of the President and the Speaker of Parliament by the other side. The fact that the three arms have different roles does not mean that each was not part of Government. He said the Executive initiates policy, Parliament legislates and passes it into law to make the implementation of that policy possible. When Parliament passes the law to make the implementation of that executive policy possible and any dispute arises as to what that policy is, the Constitution mandates the Judiciary to interpret it. In quoting Dr. Darteh Baah in *Asare vrs. Attorney General* "the duty of the courts is to ascertain and give effect to the will of Parliament as expressed in its enactment," then "Judges are not legislators but are finishers, refiners and polishers of legislation that comes to them requiring varying degrees of further processing," so without the Judicial arm, the Executive will not function properly.

Increases in Court Fees

The nominee informed the Committee that Court charges are administrative decisions. Judges do not play any role in determining them. He went on to state that it all boiled down to the strength of the economy. Looking at the economy, if we want to be very tardy in some of these decisions, then a time will come when administration will grind to a halt. He was not in a position to say the fees were high or low because he did not know what went into its determination. He believes the learned people who determined the charges knew what they were about and could proffer better reasons why it had to be so.

Property Rights of Spouses

The nominee agrees with Lord Denning in his 50/50 principle of rights for spouses. Setting an example of his wife's effort in assisting him, he passionately stated that women make it possible for men to have the peace of mind needed to work and make the money. According to him, if these roles are quantified in monetary terms, it could possibly be worth more than the contribution of men. His view was that Lord Denning was so right when he came up with that because without the contribution of women in this regard men would achieve nothing. He indicated that the law states that where the woman is a woman of means and has more resources than the man, she too has the responsibility to take care of the home. If it was established that the property was acquired during the subsistence of the marriage, then the property belongs to both and so equality is equity.

Dress Code of Judges

The nominee said it was about time that perhaps Judges demystify their appearance in court. He informed the Committee that, when Her Lady Chief Justice introduced this new directive where Judges were not supposed to put on wigs in civil cases, the idea was a welcome one. This is so because in other countries for example in South Africa, they don't wear wigs and wigs. A tie and a gown were enough. And with the gown, to assert our independence, the nominee believed it could be designed in a way just as Parliament has done for the Speaker of Parliament, using kente to design something very beautiful for Judges.

Decoupling Attorney-General's Office from the Ministry of Justice

The nominee in stating why he thinks that the two functions should be decoupled said, he was of the view that instead of the Attorney General's position being a Minister of State, the position can be likened to that of the Commission for Human Rights and Administrative Justice (CHRAJ) or something of the sort, so that there is some independence with the Attorney Generals' work. In that vein, when it comes to the prosecution of cases involving public officials, then we are confident that irrespective of who the public officer is, the Attorney General will not have any inhibitions in carrying out his/her duties. He said if the Attorney General is a minister and he/she has to prosecute another minister from his party on criminal charges, it will be very difficult for

him/her to do so. Furthermore a Minister of Justice is a political position and so there is the need for an independent Attorney General who will be a prosecutor general and is prepared to prosecute anybody irrespective of political affiliation.

Perception of Corruption in the Judiciary

In responding to a question on the perception of corruption in the Judiciary, the nominee said he was glad the word "perception" was used and that as far as corruption was concerned, it was endemic. He said he could share examples of occurrences where people who are neither lawyers nor even members of staff of the Judiciary but happen to know him, used his name to collect money in respect of cases he was handling from the time he was a Magistrate, Circuit Court Judge, and a High Court Judge. Even at the Commission, he passed a comment and he believed some people did not take kindly to that, particularly some members of the Bar. He said he would always repeat it anywhere because, it is a fact he will not run away from. He went on to recall when this August House formed a Committee to go into the perception of corruption in the Judiciary some years back. A meeting was held at Chances hotel, Ho to deliberate on the committees' report. He represented the Judges as the then President of the Judges Association. He said he was glad that in the Committees' report, it was not stated anywhere that anybody appeared before the Committee to state that he/she had handed over to a judge some amount of money to influence him/her. According to him, people could also use complementary cards of Judges to deceive clients into paying moneys meant to be given to such Judges to influence them.

Views on Affirmative Action for Women

In his view, the nominee said, in Ghana, women and men have equal opportunity in all respects. He said he is aware that women have been fighting for a quota. He is of the view that if women want a quota then how would they respond to their maxim "what men can do women can do".

He questioned why they want a quota and not rather fight for the available positions.

He informed the Committee that, when it comes to public appointments, he would agree that at least something positive must be done to introduce more women into public service but not in elections, where people are vying for the positions. Another thing to bear in mind according to him is the question of interest. He said there are women who do not show interest because of our cultural upbringing.

Discrimination Against Homosexuals

In his response, the nominee stated that he does not believe in discrimination in whatever form. He said the law recognizes marriage as a union between a man and a woman. According to him, the laws do not provide for marriage as a union between a man and a man or a woman and a woman. There are no such laws. He held the view that people who practice homosexuality in their privacy may escape the law.

man or a woman and a woman. There are no such laws. He held the view that people who practice homosexuality in their privacy may escape the law.

Independence of the Judiciary

In his response to the independence of the Judiciary in Ghana, the nominee informed the Committee that, Judges are independent in the pursuit of their vocation and in the dispensation of justice.

He however indicated that economically, the Judiciary is not independent because it is the Executive that provides the funding. He stated that the Judiciary is therefore not wholly independent.

Nomination as the President's Appreciation for work done

The nominee noted that people at the Bar who are also Hon. Members of Parliament and have practised before him know very well the sort of person he is. He said the Bar over the years has fought him severally on certain matters due to his position and so if anybody thinks he was being rewarded by the President of the Republic then it is wishful thinking. Because according to him, even if he had not served on the Commission, he believed one day he would be nominated to the Supreme Court. The nominee stated that all appointments are the sole preserve of the President, he decides who goes to the Supreme Court. And if the President appoints, the only criteria is that the person should be at least fifteen years at the Bar. After that this August House's Appointment Committee and the entire House have to determine whether this person has to go there or not, by approving or rejecting the President's nomination. The nominee said he never knew the President in person until the 8th of October when he appeared at the Castle to be sworn in as the Commissioner of the Judgment Debt Commission. He went on further to intimate that as at the time of his appointment he had completed his report a few months before and was waiting for a date to present it. A response to his written enquiry to the Presidency indicated that the President had travelled out of the country. So his nomination never influenced his report.

Lack of Distinct Sentencing Guidelines

The nominee in answering a question on the lack of clear and distinct sentencing guidelines in the criminal system in Ghana, informed the Committee that, he believes through the instrumentality of the Lady Chief Justice, there are now sentencing guidelines that guide the courts in their sentencing. And all Judges have been given copies.

Effect of Punishment on Crime Reduction

The nominee informed the Committee that he has no statistics on threat of punishment as a determinant of crime. There are occasions when one believes certain punishments could deter people from committing crimes. But every crime may have different reasons why it

mitigating factor in punishing when a crime is committed. He said, in law two plus two can be five depending upon the circumstances. So the gravity of punishment cannot necessarily or does not necessarily deter people from committing crime. The nominee further stated that he cannot be categorical but knows that there are instances where even caution could deter people from committing crimes instead of sentencing or jailing them. This is because sometimes when criminals are sentenced, they become hardened and are prepared to commit more atrocities. But with a caution, the person can reflect and be deterred from committing further crimes. So punishments per se or high sentences in his view do not deter offenders from committing crimes.

View on Custodial Sentencing

The nominee in his response agreed totally with the option of community sentencing as an option to custodial sentencing. He said he believed that was even more disgraceful than sentencing. He went on to implore Honorable Members to look at that area very well and introduce community services as part of criminal sentencing policy. He went further to say it was one best way of reducing the huge numbers of prisoners congesting our prisons. Another thing he mentioned as his experience was remand prisoners were not people remanded by the courts as such, and that they had been granted bail but there were no sureties for them. Secondly, the police also play a role to punish an offender. The Chief Justice introduced the justice for all programme to deal with this issue in the prisons. Even though Judges keep judgment orders, lawyers are better trackers of clients on remand. He further suggested a relook at the legal aid system as a tool that could be used to take up measures in this regard.

Delays in Justice Delivery

Delays in Court cases could be due to human factors, in that the lawyers sometimes have too much on their hands at a time. Also clients who do not pay for services rendered are the ones who worry the lawyers and push them to take adjournments from the courts. But a prudent Judge manages his court efficiently to avert delays and unnecessary adjournments.

Ministers Exercising Power by Law

The nominee in his response said there are specific duties assigned to the Ministry of finance and the Ministry of energy. He mentioned a recent case involving Ghana National Procurement Agency (GNPA) when the Minister of Trade tried to negotiate a debt the GNPA owed. In the nominee's view, a limited liability company operating on commercial lines should be able to explain why they run a deficit account. The Government should not jump in to pay debts of these corporations given special duties to function on commercial lines. And a Minister supervising the sector cannot run the corporation as if he is the managing director or the Board. He explained that Act 64 must be read in totality to make meaning out of it. Such an entity with a board and a managing

director are held liable in case there is anything wrong with the institution and called to render accounts of their stewardship.

Qualification of Jurors

The nominee informed the Committee that, there are times when the Judiciary is looking for Jurors to sit on indictable offences and they write to the public services for a list. Interestingly, more often than not it is the lazy ones are assigned to the courts, forgetting that these people are going to decide the fate of accused persons. The law has made it clear that when it comes to such capital offences, the common people should be made to decide the fate of their fellow beings. The duty of the Judge is to explain the law to the Jurors. Other times when Judges do not sum up well, the Jurors find it difficult to appreciate the law. This has been a challenge to the Jury. He believes therefore that there should be a qualification criteria for people who can serve as Jurors.

View on setting Upper Limit on the Number of Supreme Court Judges

The nominee expressed his views on the above and said in Ghana our situation is different, because the Supreme Court sits on a case with a panel of five, seven or nine Judges depending upon the nature of the case. He is of the view that fifteen as the upper limit will be ideal because the number should always be odd.

Assets Declaration

The nominee told the Committee he declared his assets as a High Court Judge, and again as a Court of Appeal Judge. Any time one is appointed to a new hierarchy, the forms are submitted for a declaration. He believes it has turned into a mere formality without any real substance. This he said was because after submission of the forms nobody crosschecks to find out whether what one has declared is true or not. Something more purposeful must be done about assets declaration to make it meaningful otherwise it loses its venom. There are serious issues concerning this assets declaration issue, particularly where a property can belong to both spouses. So if for instance your spouse has certain properties and it is you who procured those properties in the name of your spouse, it will not appear even in your assets declaration because it is not your property.

Understanding of "Justice Emanates from the People"

The nominee in throwing light on the statement "Justice emanates from the people" intimated, it implies the people have the sovereign power. He said the people of Ghana have given themselves a Constitution. That is why it is said that, when any other law contravenes any provisions of the Constitution, then that law to the extent of the contradiction is void. Every law is supposed to emanate from the constitution. According to him, the constitution springs from the sovereign will of the people. It should be recalled that some of our laws are just imported such as the Common Law of the people of England, which was imported into our country when we were colonised. So we applied the English Common Law, and it's now that our Customary Law including the laws that

have been determined by the Superior Courts have been made part of the Common Law. Formerly it was the Common Law of England that we were using but now our Customary Law is part of our Common Law. So when we say Common Law in Ghana now, it's different from the Common Law in England.

Pleas available to Accused Persons

The nominee informed the Committee that under the criminal law jurisdiction, there are two types of pleas: "guilty" and "not guilty". There is no plea like "guilty with explanation". He said, "guilty with explanation" has its roots. The police when they make arrests, advise the suspects to plead "guilty" or "not guilty" in court since that was likely to end up in their being remanded.

However, the law provides that when somebody pleads "guilty" and he has something to say, you do not enter a plea of "guilty" immediately. You listen to the explanation and if the explanation amounts to a plea of "not guilty", you enter "not guilty". So anytime a charge was read in court and the plea is taken, and the person pleads "guilty", he takes the opportunity to explain the charge to the person, particularly with the charge of dishonestly receiving. Many people don't understand the ingredients of the offence. The nominee stated that the ingredients of the offence of dishonestly receiving are that, at the time one is receiving or assisting in disposing off the property, one knew that it had been stolen.

Recommendation

The Committee by consensus recommends that the House approves the nomination of Mr. Justice Yaw Appau for appointment as a Justice of the Supreme Court of Ghana

8.0 MR. GABRIEL PWAMANG – JUSTICE-DESIGNATE FOR THE SUPREME COURT

Background

Mr. Gabriel Pwamang, a Private Legal Practitioner and Notary Public of the Republic of Ghana, was born on 17th August, 1960 in Navrongo in the Upper East Region. He attended Nayagenia Primary and Middle Schools in Navrongo for his basic education from 1965 to 1975. He proceeded to the Nandom Secondary School in the Upper West Region where he obtained his Ordinary Level and Advanced Level Certificates in 1980 and 1982 respectively. Between 1982 and 1986, the nominee attended the University of Ghana, Legon and graduated with a Bachelor of Laws (LLB. Hons). The nominee went on to obtain a Professional Law Course Certificate at the Ghana Law School in 1988 and was called to the Ghana Bar in the same year.

Mr. Pwamang discharged his national service obligations as a Legal Officer at the Fanteakwa District Assembly in the Eastern Region from 1988 to 1989. After his national service, the nominee entered into private legal practice. He served as Legal Officer in Koi Larbi & Co. Law Firm, Accra on a part-time basis from 1989 to 1991 and on full time basis from 1991 to 2003. He later worked as a Senior Partner in Law Associates, Law Firm in Asylum Down, Accra (2003-2011), and a Managing Partner in Pwamang & Associates, Law Firm from 2011 until his nomination by His Excellency the President. While practicing Law at the Koi Larbi & Co. Law Firm on a part time basis, the nominee also worked as a Legal Officer for the Ghana-China Bicycle Project and as an Investment Officer for Zomah & Sons Bicycle Co, Kumasi.

Mr. Pwamang had been a member of the Peoples' National Convention, a political party, which he duly resigned from in 2012. He was elected as the First Deputy General Secretary of the Party in 1998 and served in this capacity until 2000 when he was elected as the General Secretary of the Party; a position he held until 2007.

The nominee has held a number of positions on various Boards. He was the Board Chairman of Alzuphar Group (Air Transport, Construction and Farming) between 2009 and 2012. He is the Chairman of the Board Directors of the Centre for Public Interest Law (CEPIL); a position he has held from 2009 up to the time of his nomination. He has also been the Director of Citep Consult Ltd (Consultants and Suppliers) since 2006.

From January, 2010 to December, 2011, he was appointed a member of the Constitution Review Commission (CRC) of Ghana by His Excellency the President. At the CRC, the nominee was a member of the Team in charge of report writing and legislative drafting. He was a Consultant to IEA/NiMD for the drafting of the revised Ghana Political Parties Code of Conduct in 2012 and the Committee on Electoral Reforms of the Electoral Commission of Ghana the tenure of which ended in May, 2015.

The nominee has participated in a number of international Conferences on political party financing and constitutional reforms in Germany, the Netherlands, and Mozambique between 1998 and 2012. He also presented a number of papers on constitutional and electoral reforms in Ghana to the Netherlands Institute for Multiparty Democracy and the Institute of Economic Affairs.

Petitions concerning the Nominee

The committee received two petitions against his nomination. The first one had to do with litigation involving title to land in respect of which the Nominee represented one of the parties to the suit as counsel. After perusing the relevant document and meeting with the petitioner, the Committee came to the conclusion that it was a matter in respect of which the Committee lacked jurisdiction to deal with and the issues raised fall within the jurisdiction of the Judiciary.

The second petition was raised by a member of the Disciplinary Committee of the General Legal Council, through the Chief Justice to the Committee, drawing attention to the fact that at the time of his nomination, there was pending before the said Disciplinary Committee a complaint against the Nominee.

The Committee therefore wrote to the Chief Justice requesting for the final decisions of the Disciplinary Committee to assist in the assessment of the nominee's competence to occupy his designated position.

The Disciplinary Committee of the General Legal Council wrote to the Committee indicating that the complaint against the nominee had since been withdrawn, and so there was nothing pending before it against the nominee.

Appointing politically identifiable individuals to the Supreme Court

The nominee disagreed with the suggestion that the appointment of individuals identifiable with political parties would affect the sanctity of the Supreme Court. He explained that judges take oath to administer justice to all manner of persons without fear or favour. He said judges determine matters on the basis of the evidence and the law.

He said the fact that he has once held a position in a political party would not be an encumbrance on him in the discharge of his duties as a judge if given the nod.

What the nominee brings on board

The nominee acknowledged the fact that he had no experience on the Bench. He however informed the Committee that he is coming from the background as a private practitioner. He is not a mainstream person and therefore he would come with a different background and perspective which he believes would augment the work of the Bench.

He said the business of adjudication is mainly done by the lawyer. The judges usually determine the acceptable facts, determine the law and apply the law to the facts to arrive at the conclusion. He intimated that as a practising lawyer, he performs this exercise from his perspective of a lawyer and hope that the judge would go along with his thinking.

He said if he is given the nod, he would be doing this same exercise but this time from the perspective of a Judge.

Appointing Supreme Court judges from the Bench, Bar and Academia

The nominee agreed to the suggestion that having Justices of the Supreme Court coming from difference backgrounds namely the Bench, Bar and Academia is a good policy.

He however pointed out that he was not in the position to make an assessment of what is there as these decisions are for the appointing authorities to make and not him.

Delays in administering justice

The nominee admitted that there are instances that the courts have delayed in delivering their judgments. He identified the existing court structures as a contributory factor as some of the structures are in deplorable conditions.

He said some courts resort to manual recording of proceedings. The courts with computers take up to two months before clients and lawyers could have access to the proceedings. He also acknowledged that some lawyers also contribute to the delay by their absence from courtrooms which sometimes lead to adjournment.

He however praised judges for ensuring that cases before them are disposed of within the stipulated time.

He opined that if the proper investments are made, then judges would put in place proper case management systems in their courts matched with timelines in order to deliver justice. There is also the need to upgrade the skills of stenographers in order that they can record whilst proceedings are taking place. He therefore called for more resources for and investment in the judicial system.

Internal disputes of political parties going to Court

The nominee informed the Committee that he was of the opinion that political parties should settle their internal disputes amicably. He said even the Courts have been advising the political parties to settle their internal disputes amicably.

He urged political parties to also use the Alternative Dispute Resolution mechanism available to them.

He however indicated that If all these peaceful mechanisms don't work then the Courts would have to settle them in accordance with the facts and the law with respect to each case.

Removing Justices from the Supreme Court

The nominee elaborated on the recommendation proposed by the Constitution Review Commission on the removal of justices from the Supreme Court. He said after interactions with the Judiciary, the Commission came to the conclusion and recommended that the procedure for the removal of justices of the Supreme Court should also be the same as that of the Chief Justice.

He said this came up when the Commission was looking at the composition of the Committee that would have to determine a prima facie case for the removal of the Supreme Court Justices.

He made reference to the case of *Adjei Twum v Attorney-General and Bright Akwetey*, where the Supreme Court held that a petition for the removal of a Chief Justice should

first be sent to the Council of State to determine whether there is a prima facie case against the Chief Justice.

The Commission then came to the conclusion that if the Supreme Court justices and the Chief Justice were in the same category, then there should not be any distinction between the procedures for their removal from office. The Commission therefore recommended that removal of Supreme Court justices should follow the same procedure as that of the Chief Justice. This is to ensure that the removal process for the Supreme Court justices is regulated.

Review Jurisdiction of the Supreme Court

Mr Pwamang also elaborated on another recommendation made by the CRC on the review jurisdiction of the Supreme Court.

The nominee explained that the practice has been that after the panel had considered a matter; two more judges are added to the existing panel to conduct the review.

During the work of the Commission, it came to the fore that litigants and lawyers were treating the review jurisdiction of the Supreme Court as of right as though it was an appellate Jurisdiction. So when people lose a case, they seek a review of the decision. Due to this, reviews were very rampant.

The Commission was of the view that the Review Jurisdiction should not be abused and therefore if the Chief Justice empanels the same justices who heard the case earlier, the abuse would reduce considerable. He further explained that the idea of a review is usually on a point of law not taken into consideration at the time of judgment and therefore the judges who heard the case earlier would be better placed to appreciate the new facts and the law with respect to the case.

Speedy Trial during electoral petitions

The nominee opined that currently there is no substantive law to regulate presidential petitions.

He informed the Committee that however, there is the Representation of the People Amendment Law which governs the elections of Members of Parliament. He said in that law, there is a provision for enquiry in the instance where a petitioner alleges that the counting of votes or the coalition was not done properly, the courts could also order an inquiry into the allegation. The Courts also have the power to order the Electoral Commission to bring the original votes cast to Court. The Court would then appoint someone to do a count and the court would use that information as well as other evidence before it to determine the matter.

With the Presidential, there is no substantive law. Due to this, the petitioners would have to come, give evidence. The petitioner would also have to supply all relevant information and documentation that the EC actually has and be cross-examined before the Courts

could make a determination. He said with this procedure, the trial is likely to last for long periods.

He said reading from the judgment of the Supreme Court in the recent Election Petition, he observed that some of the pink sheets were not legible but the court did not have access to the original documents or biometric machines used for the election. There is also no time limit to determine the matter. The Supreme Court amendment rules only set the time-limit for determining the matter after the hearing. He said in his opinion, if the Electoral Commission had provided the documents to the Court, the trial would have been much shorter.

He informed the Committee that in Kenya, the Constitution had set the time limit. A petitioner had seven days from the date of the declaration of the results to file a petition and the courts have fourteen days to determine the matter. Concerns about fair hearing, among others have been raised but it is generally agreed that with respect to election matters it is better to dispose of it quickly so that the nation moves on.

He held the view that if there is a substantive law to regulate the determination of election petitions, and it is drafted similar to the Representation of the People Amendment Law and the Courts are given power to order enquiry and have access to all the original documentation of the election, the trial period can be substantially reduced. After all, the original documentations in the custody of the Electoral Commission were official records.

He recommended that there is the need to amend the Constitution and provide for a time limit within which presidential election petitions filed could be dealt with. In addition, he recommended that a substantive statute which sets out the framework for determining presidential petitions should be passed in order to enable the Courts to determine the petition in good time.

Doing away with bye-elections

The nominee disagreed to the suggestion that bye-elections should be cancelled and in its stead, the political party that won the seat be made to choose a replacement. He argued that this proposition undermines the basic principle of representation.

He explained that some voters cast their votes not for the parties but for the candidate and his/her qualities. Others also vote for him/her because they have faith in the person. He said Ghana elections are based on first past the post and not proportional representation. The challenge is the cost associated with bye-elections.

~~He said in his opinion it is far better to manage with the cost of the elections as democracy is expensive.~~

Indemnity clauses in the Constitution

The nominee informed the Committee that the Constitution Review Commission came to the conclusion that these clauses in the Constitution should be maintained. He said the Commission interviewed a wide section of Ghanaians and many people expressed the opinion that there is no need going back. They strongly held the position that the nation should move on and concentrate on its development agenda.

National Development Agenda

The nominee informed the Committee that one of the changes that the CRC recommended was for the establishment of the National Development Planning Commission (NDPC) as an independent Commission and its development plan should be binding on all Governments and Political Parties.

He indicated that the current constitutional arrangement makes the NDPC an advisory body and therefore it only advises the President on the Development program of the country. The advice is not binding.

He said when the Commission interviewed and interacted with the public in the exercise of its mandate, the feedback was that most people were not happy with the frequent changes of the development projects due to changes in government. This does not auger well for planning.

The nominee also disagreed with the suggestion that since the Supreme Court has held that the provisions covering the Directive Principles of State Policy were justiciable and therefore Article 35 (7) should be enough to enable citizens to compel Governments to continue with on-going projects.

He explained that Article 35 (7) states that "as far as practicable...." and therefore the provision is also not binding enough as governments are likely to explain that complying with the provision is not practicable.

The nominee further disagreed with the suggestion that the NDPC developing a general development plan from which Political Parties would be drawing their manifestoes would be denying people of choices.

He explained that the directive principles of state policy have already given the general development framework for which political parties are to develop their program of work.

He informed the Committee that during the work of the CRC, the Commission was informed that the development agenda of the nation is something that both sides of the political divide agree on. The NDPC is only establishing a framework within which the political parties would only develop their manifestoes.

Majority of Ministers drawn from Parliament

The nominee informed the Committee that the Commission also looked at the issue of the appointment of majority of Ministers from Parliament.

After careful consideration, the Commission was of the view that the limitation to appoint majority of Ministers from Parliament as provided for in Article 78 (1) of the Constitution should be removed. This is to allow the President to freely decide whether majority of the Ministers should come from outside Parliament or not.

He said the current provision restricts the President and the recommendation seeks to keep a balance and the free hand for him to decide whether to choose his ministers from parliament or not.

Addressing the issue of overcrowding in prisons

The nominee informed the Committee that a number of issues have contributed to the overcrowding of prisoners in the prisons.

He said the first contributory factor is the issue of remand prisoners. He said the issue with remand prisoners has been the inability of the prisoners to be transported to court to have their cases tried. He identified the lack of transport to convey prisoners and prosecutors to court a factor. He indicated that the non-availability of witnesses to testify also occasion unnecessary adjournment of cases. He informed the Committee that since the remand prisoners are temporarily at the prisons, the prison officers concentrate more on those with custodial sentences. As a result, remand prisoners are placed at a disadvantaged position.

He said the law provides a specified period for adjournment after which the suspects are to be brought back to court. He said if the prosecution have been following these laid down regulations, then the issue of remand prisoners would have greatly reduced. He said there is a view that the courts are expected to keep track of cases before them but due to challenges, there is a disconnect.

He also identified lack of investment as another factor contributing to overcrowding. He said some prison facilities have also been abandoned such as the one in Gomoa. Due to this, there is overcrowding in most of the prison facilities like, Kumasi and Nsawan. As a result, the reform function of the prisons cannot be achieved. He said there should be investment in the prison system as human rights are expensive.

He acknowledged some difficulties that prosecutors face in a case. He said there are times that people make complaints against other persons but are unable to produce evidence or are reluctant to testify before the court. Yet when the accused person is released, they start complaining. He said the system cannot please these people in society at the expense of other people's rights.

He suggested that the rules should be re-written to mandate the Prison Authorities to escort suspects and other convicts to Court and hand them over to the various prosecutors in order to address the issue of remand prisoners. He said if the prosecutor is not ready to prosecute and there is a justifiable reason, the Courts may adjourn the case.

Criminalisation of suicide

The nominee stated that his understanding of the policy behind the law on suicide is to protect society. The law seeks to discourage people from taking their own lives. Society exists because people are alive. The law seeks to discourage suicide so that society can continue to exist.

He however agreed to the suggestion that the punishment could be looked at again. The person suspected to have attempted suicide could first be referred to the Psychiatric Hospital for examination.

Death Penalty

The nominee agreed to the suggestion that before the death penalty is taken off the books, there is the need to seek the views of the people through a referendum since the provision is an entrenched clause of the constitution.

He explained to the Committee that during its work, the Commission heard arguments and presentations on propositions that the death penalty should be maintained whilst others also said it should be taken off the books. He said after collecting the views of the people, the Commission arrived at its conclusion contained in the report. He said the final decision which would be the Amendment Bill which is out of the Commission's hands.

Mode of Referendum

The Nominee agreed to the suggestion that voting during Referendum could be challenging especially when there are a number of issues drawn up for amendment.

He said the Commission took advice and recommended on how to conduct the referendum.

He opined that for the ease of conducting the referendum, classifying the amendments into lots would be helpful. Under the lot system, where there is a class of amendments with similar issues, it can be grouped into one lot. He however indicated that this is the practicality of the situation but it is the function of the Electoral Commission to conduct the referendum.

Usurping the power of Parliament with respect to amending un-entrenched clauses of the Constitution

The nominee disagreed with the suggestion that the mode by which the Executive chose to amend the Constitution may have usurped the power of Parliament and that whilst serving on the Commission, he should have advised the President to find a way of

interacting with Parliament in a better way especially on the amendment procedure of the un-entrenched clauses of the Constitution.

He said he was appointed with an Instrument. He was given a job along with eight Commissioners and they carried out what the terms of reference requested them to do. He informed the Committee that there was a case in the Supreme Court on the progress of the work of the Commission and he was hopeful that the Supreme Court would pronounce on it soon.

Ensuring the independence of the Judiciary

The nominee informed the Committee that the Constitution has made a number of provisions that are aimed at strengthening the independence of the Judiciary. One of such provisions is tenure of judges. He said once judges are appointed, they serve until the constitutional limit provided for. This ensures that judges administer justices fairly and without fear or favour. Another provision in the constitution is the restrain it places on other arms of government from interfering with the work of the judiciary.

The Constitution also provided for some financial independence for the Judiciary. So once the money has been approved, it is incumbent on the Executive to release the funds quarterly.

He admitted that the challenge was the timeous release of the funds. He suggested to Parliament that it can assist by ensuring that the Executive releases the required funds meant for the Judiciary on time.

Upholding the rights of Spouses

The nominee affirmed that Article 22 of the Constitution provided that a spouse should not be deprived of a reasonable provision out of the estate of a spouse whether or not the spouse died having made a will. The Article further states that Parliament shall, as soon as practicable after the coming into force of this Constitution, enact legislation regulating the property rights of spouses. He said by the above provision, spouses should have equal access to property. In the event of a divorce, the property acquired jointly should be shared equitably.

He said enacting legislation regulating the property rights of spouses rests squarely on Parliament as provided in Article 22. Indeed it is Parliament that is empowered to make laws. He however indicated that since Parliament is yet to enact legislation on the property rights of spouses, the courts have taken the position to develop jurisprudence on it.

~~The Courts have also indicated that they would handle each case on its own merits. He gave the case of Mensah v Mensah as an example. In Quansah v Quansah, the Courts departed from the equality principle and gave judgement on the merits of the case. He said the Courts are not making law for Parliament but administering justice.~~

He opined that with those who have benefited from family support, the beneficiary should support the family but with respect to property, the women and children should not be made worse off.

He reiterated his earlier comment that the Constitution has placed the duty on Parliament to legislate on property rights of spouses and urged Parliament to comply.

Challenges in implementing the intestate succession law

The nominee identified the definition of "wife" as a challenge towards the effective implementation of the Interstate Succession Law. He explained that when it comes to polygamous marriages, the division of property among wives had been a challenge. There is the need to define "wife" in these circumstances to help implement the law. He also said there is the need for the law to be expanded in this area to include wives of the deceased who are not staying in the matrimonial home

He explained that the intention of the law was to protect the nuclear family from the extended family that usually come and take over the property of the deceased. Unfortunately, due to the challenges of defining who a wife is, the nuclear family is not benefiting from the law.

He intimated that the intention of the law was to ensure that women and children are not made worse off upon the sudden death of a breadwinner.

Government White Paper on the Report of the Commission

The nominee agreed to the fact that Articles 289 and 290 did not provide for a Government White Paper in relation to amending provisions of the Constitution.

He however explained to the Committee that he sees the Commission as a Commission of Inquiry and that its report is that of a report from a Commission of inquiry. In that breath, the Report of the Commission had to go to the President who established it. Once that has been done, the Constitution provides that the President is enjoined to publish the report of the Commission of Inquiry together with the White Paper on it within six months after the date of the submission of the report by the commission.

He said when the Report is brought to Parliament; the discussions should take into account the recommendations in the Report of the Commission and the basis for issuing the White Paper.

Appointment of the Chairman of the Electoral Commission

The nominee informed the Committee that as a lawyer, if he was called to advise the President on the procedure for the appointment of the Chairman of the Electoral Commission, he would draw the President's attention to the current provisions of the Constitutions. He said the constitution states that he has to get the advice of the Council of State on the nominee he wants to appoint and then when he gets the advice, he can go ahead to appoint the nominee.

Separating the Attorney-General from the Minister of Justice

The nominee expressed the opinion that many people have called for the separation of the Attorney-General from the Minister for Justice in order to make the Attorney-General more independent and devoid of political influence.

He informed the Committee that if the President appoints the Attorney—General separate from the Minister of Justice, the Attorney-General would still be a minister of state and therefore the mischief would not have been cured. Further, if the Attorney-General is stripped of his ministerial title, then he becomes a public servant who has to work through a Minister. The mischief would continue to exist.

He informed the Committee that other countries that have created a separate prosecutor had not been too successful in curing the mischief they intended to cure.

He said during the work of the Commission, evidence was taken from former and current Attorneys-General and they were of the opinion that the current arrangement is the best.

He said he was of the view that the best way forward is re-tooling the Attorney-General's Department to equip them to perform their functions better. The Attorney-General can also establish and delegate his prosecution powers to a Director of Prosecutions. The Attorney-General can intervene when the need arises.

Capping the creation of constituencies

The nominee informed the Committee that he was in favour of a recommendation for a ceiling to the creation of constituencies at 275. He said the current number of constituencies is 275. Reducing it would affect the sensibilities of people.

Empaneling judges to hear a presidential petition

The nominee agreed to the suggestion that all the Supreme Court Judges should be empaneled to hear a Presidential Election petition.

Funding of political parties

The nominee reiterated the call that political parties should be funded by the State. He said this matter had been discussed several times. At an IEA meeting of political parties, the consensus among all participants was that there should be public funding for political parties.

He explained that since the political parties privately raise funds and file their returns, accountability is difficult to exert. If public funding is introduced, it would be easier to demand accountability.

He further indicated that Political parties have a role to play by shaping the political will of the people and this role is recognised by the Constitution.

Covering Court proceedings Live On Television

The nominee agreed to the suggestion of making proceedings of the Courts live. He said it was a good idea but the cost is an issue.

Judicial Corruption

The nominee confirmed that the Commission agreed to the Report of the Committee of Parliament that corruption in the Judiciary is no longer a perception but a reality. The Commission also made recommendations to improve the conditions of the judiciary. He said the recommendation of the Commission was arrived at as a result of the information it gathered in the course of its work.

He further informed the Committee that the Chief Justice has also called for support to fight judicial corruption. He insisted that allegations of corruption should be reported and investigated. He said when it is investigated and sanctions applied, it would deter people. He held the opinion that this is the only way that the corruption can be stopped.

Power by the High Court to review its own decisions

The nominee explained to the Committee that at Common Law, the High Court has an inherent right to review its own decisions. He stated that since under Article 11, Common law and the rules of equity are part of the nation's laws then the High Court can review its decisions. This is also confirmed by the provisions of the High Court Rules which provides for the High Court to review its decision. He indicated that this is not inconsistent with the Constitution.

Abortion

The nominee informed the Committee that he is unable to answer or express an opinion on abortion. He explained that abortion was a policy issue and may likely come to the Supreme Court for a determination one day. In view of this, he would want to reserve his comments.

Recommendation

The Committee by consensus recommends that the House approves the nomination of Mr. Gabriel Pwamang for appointment as Justice of the Supreme Court of Ghana.

9.0 **CONCLUSION**

Having duly considered the nominations in the light of the provisions of the 1992 Constitution and the provisions of the Standing Orders of the House, the Committee is satisfied that the under-listed are qualified to be appointed as Justices of the Supreme Court of Ghana.

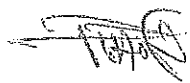
The Committee therefore recommends to the House to adopt its Report and to approve the following nominations by consensus as Justices of the Supreme Court of Ghana:

- i. **Justice Yaw Appau**
- ii. **Mr. Gabriel Pwamang**

Respectfully submitted.



.....
HON. EBO BARTON-ODRO
(FIRST DEPUTY SPEAKER AND
CHAIRMAN, APPOINTMENTS COMMITTEE)



.....
PEACE FIAWOYIFE (MS.)
(CLERK TO THE COMMITTEE)

APPENDIX 1

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GENERAL LEGAL COUNCIL

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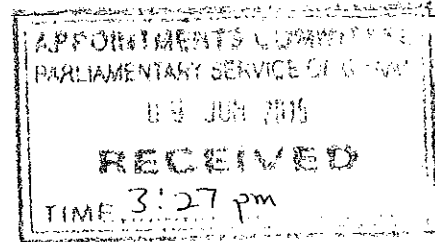
ACCRA

9th June, 2015

*In case of reply, the
number and date of this
letter should be quoted.*

Our Ref. DC.4/2015/14

**CLERK TO THE APPOINTMENTS COMMITTEE
PARLIAMENT HOUSE
ACCRA**



ATTENTION: PEACE FIAWOYIFE (MS)

**RE: CONFIRMATION OF THE STATUS OF THE DISCIPLINARY COMPLAINT
LODGED BY MADAM EVA OBOSHIE SAI AGAINST LAWYER GABRIEL
PWAMANG**

I refer to your letter dated 3rd June, 2015 with reference number PS/AC/15/17 on the above subject matter which was referred to the Disciplinary Committee of the General Legal Council by the Hon. Lady Chief Justice.

I have been directed by the Chairperson of the Disciplinary Committee of the General Legal Council to inform you that the said complaint against Mr. Gabriel Pwamang has been withdrawn by the complainant Madam Eva Oboshie .

There is therefore no petition pending before the Committee against Mr. Gabriel Pwamang.

Please accept the compliments of the Chairperson of the Disciplinary Committee of the General Legal Council.

**BERNARD BENTIL
SECRETARY
DISCIPLINARY COMMITTEE**