

**IN THE SECOND SESSION OF THE SEVENTH
PARLIAMENT OF THE FOURTH REPUBLIC OF
GHANA**

**SEVENTEENTH REPORT OF THE
APPOINTMENTS COMMITTEE**

ON

**HIS EXCELLENCY THE PRESIDENT'S
NOMINATION OF JUSTICES TO THE SUPREME
COURT**

24 SEPTEMBER, 2018

**SEVENTEENTH REPORT OF THE APPOINTMENTS COMMITTEE ON
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1.0 INTRODUCTION

H. E. the President, Nana Addo Dankwa Akufo-Addo in accordance with Article 144 (2) of the 1992 Constitution, communicated to Parliament the nomination of four (4) Justices to the Superior Court for appointment on Tuesday, 3rd July, 2018.

The Speaker of Parliament, Rt. Hon. Aaron Michael Oquaye referred to the Appointments Committee the nominations for consideration and report pursuant to Order 172 of the Standing Orders of the House.

The nominees are:

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|------|---|---|---|
| i. | Prof. Emmanuel Nii Ashie Kotey | - | Justice -Designate to the Supreme Court |
| ii. | Justice Samuel Kofi Marful-Sau
(Court of Appeal Judge) | - | Justice -Designate to the Supreme Court |
| iii. | Justice Agnes Mercy Abla Dordzie
(Court of Appeal Judge) | - | Justice -Designate to the Supreme Court |
| iv. | Nene Abayaateye Ofoe Amegatcher | - | Justice -Designate to the Supreme Court |

2.0 REFERENCE DOCUMENTS

The Committee referred to the under-listed documents during its deliberations:

- i. The 1992 Constitution;
- ii. The Standing Orders of Parliament;
- iii. President’s Appointment Letter; and
- iv. The Curriculum Vitae of the Nominees.

3.0 CONSIDERATION OF THE REFERRAL

- 3.1 Pursuant to Order 172 (3) of the Standing Orders of the House, the Committee in the first instance caused to be published in the newspapers of national circulation, the names of the nominees and notice of the Committee's Public Hearings for the attention of the general public. The Committee further requested Memoranda from the general public on any of the nominees.
- 3.2 The Committee subsequently obtained Confidential Reports on the nominees from the Ghana Police Service and the Bureau of National Investigations (BNI) as part of its background checks. Tax Status Reports were also obtained from the Ghana Revenue Authority (GRA).
- 3.3 Public Hearings were thereafter held to consider the nominations. On commencement of proceedings, the nominees subscribed to the Oath of Witness and subsequently answered questions relating to their Curriculum Vitae, matters relating to judicial administration and justice delivery, their eligibility, issues pertaining to the offices to which they have been nominated and other issues of national concern.
- 3.4 The Committee duly considered the nominations and reports as follows:

4.0 PROF. EMMANUEL NII ASHIE KOTEY - JUSTICE DESIGNATE TO THE SUPREME COURT

Background

Professor Emmanuel Nii Ashie Kotey was born in Osu-Accra on 2nd October, 1953. He started school at the New Ghana International School, Osu from 1959 to 1962 and moved to Presbyterian Primary School, Ada Foah until 1964. From 1964-1965, he attended the Presbyterian Boys' Boarding Middle School, Osu and proceeded to Presbyterian Boys' Day Middle School, Osu until 1966. He attended St. Thomas Aquinas Secondary School for his GCE "O" Level from 1966 to 1971. From 1971 to 1973 he attended Apam Secondary School where he obtained his G.C.E 'A' Level Certificate in 1973

From October 1973 to June 1976, he enrolled at the University of Ghana and was awarded a Bachelor of Laws in 1976 in the same University. In 1977, he was awarded an LL.M from the University of London and in 1981. He obtained his PhD from the same University. He attended the Ghana School of Law, Accra from 1981 to 1982 and was called to the Ghana Bar in 1982.

Prof. Nii Ashie Kotey has been a Lecturer at the Faculty of Law, University of Ghana since 1981 to date. In addition, he worked as a Solicitor and Advocate at Azinyo Chambers in 1982 and was a Legal Consultant at Kotey and Associates, Accra from 1999 to 2007. He was the Chief Executive of the Ghana Forestry Commission from 2007 to 2009.

From 2003 to 2007, he was the Dean of the Faculty of Law, University of Ghana and from 2005 to 2007, and also acted as Director at the Ghana School of Law.

He was a Visiting Scholar at the North Western University School of Law, Chicago, USA from May to June 2001, a Visiting Professor in Human Rights and Democratization in Africa, the Centre for Human Rights at the University of Pretoria, South Africa from March to April 2001, a Visiting Scholar at the Queens University of Belfast, Northern Ireland, UK in March 2000, and also at the Faculty of Law, University of Leiden, the Netherlands from August to September 1999. He was also at the College of Law, Stetson University, St. Petersburg, Florida, USA in 1997 as a Visiting Professor in addition to many other academic engagements.

Prof. Nii Ashie Kotey has undertaken a number of research works, projects, technical reports and other studies. He has also reviewed a number of publications dating from 1992 to 2015.

Response to Questions

(1) Petition against the Nominee's Nomination

The nominee was asked to comment on the petition by Mr. George Larbi Koranteng, the CEO of Glikwood Ghana Limited and Glikwood Corporation, USA to the Committee against the approval of Prof. Nii Ashie Kotey to the Supreme Court. The petition was in connection to an allegation of misconduct in connection with a timber concession when he served as the Chief Executive Officer of the Forestry Commission between 2007 and 2009. In his response,

Prof. Nii Ashie Kotey told the Committee that the subject matter of the petition related to a concession which was granted sometime in 1996, over ten years before he assumed office as Chief Executive Officer (CEO) of the Forestry Commission; he could not have been the person in question in the granting of the said concession.

(2) Leader of the House

When asked about who the leader of Parliament is, in relation to a Paper the nominee delivered in 2008, titled “who leads the Parliament of Ghana” and who is the leader of the House of the Parliament of Ghana, Accra, Legal Resources Centre and Friedrich Ebert Stiftung PPH -27, Professor Ashie Kotey told the Committee that he delivered the paper at a time where there was lots of discussions in the public domain as to who leads Parliament; the Majority Leader or the Speaker of Parliament. He opined to the Committee that his position at the symposium was that there are various leaders in Parliament, likewise there are various leaders for different purposes. He intimated that on the grand scale, the **Speaker of Parliament** is the **head of the Legislature as an Organ of State**, while the **Majority Leader** is the **leader of Government Business**. He further elaborated by saying that the same question may be asked of who leads a company, the Managing Director or the Board Chairman? He proffered that both the Speaker of Parliament and the Majority Leader are Leaders for different purposes. He concurred with the suggestion that the **Leader of Parliament** under the Constitution, is the **Speaker of Parliament**.

(3) Nominee’s Expected Legacy for the Supreme Court

In response to the question on what he would want to be remembered for at the end of his tenure in the Supreme Court, the nominee intimated that he would like to be remembered for upholding the principles and values contained in the Preamble of the 1992 Constitution, which espouses Liberty, Equality of Opportunity, Freedom and Justice, Probity and Accountability. He assured the Committee that he would advance the Rule of Law and Democracy and promote Human Rights. He told the Committee that he would adopt the purposive approach in construing provisions of the Constitution and that the Supreme Court should be seen as the Apex Court of the land, not only in determining disputes between litigants but also as an important organ in upholding the principles and values of the country.

(4) Jurisdiction of the Supreme Court

The Nominee in response to a question on the Jurisdiction of the Supreme Court stated that the Supreme Court has very extensive jurisdiction; an original jurisdiction under Article 130 of the 1992 Constitution, final appellate jurisdiction in criminal and civil cases, election petition jurisdiction, appellate jurisdiction in cases and matters affecting chieftaincy under Article 273 (1) and 14(7) of the 1992 Constitution, jurisdiction relating to payment of compensation to convicted and imprisoned persons who have been acquitted on appeal, jurisdiction regarding production of official documents in court as well as Review Jurisdiction. He considered these functions as “huge jurisdictions” which needed careful examination and review. He said the Supreme Court is overburdened and its jurisdiction is too extensive, therefore it needs to be reduced.

The nominee suggested that, in the area of the Supreme Court’s original jurisdiction, that is interpreting and enforcing the provisions of the Constitution the Court should be allowed to select which of the constitutional cases to determine, as pertained in the United States of America, where legislation has been used to empower the United States Supreme Court to select cases it wants to determine.

Regarding the Review Jurisdiction of the Supreme Court, the nominee wondered why litigants should be given the right to review their cases which have been tried by the High Court and the Court of Appeal.

On the appellate jurisdiction of the Supreme Court, the nominee suggested that where the decision of a High Court, a Regional tribunal or Court of Appeal are same, an appeal to the Supreme Court in civil and criminal cases should not be allowed as of right but must be subject to leave by the Court of Appeal. He called for the deletion of the expression “*as of right*” from Article 131(1) (a) of the Constitution and suggested all such appeals should be by leave of the Court of Appeal. He explained that it is in the interest of the public that litigation ceases and unless a huge question of law is to be determined, the leave must be refused. He opined that he was not advocating for the right to be abolished entirely but for litigants to persuade the Court of Appeal or the Supreme Court that the matter merits on appeal.

In his response to circumstances where cases have been overturned by the Supreme Court on appeal from the High Court and the Court of Appeal, the Nominee insisted that where the appellant had lost twice, further appeal must be by leave.

(5) Property Rights of Spouses

The nominee commenting on the adoption of the legal cliché “equality is equity” principle adopted by the Supreme Court in the sharing of spousal property upon divorce, told the Committee, that in a number of cases the Supreme Court has given substance to Article 22(1) of the Constitution which states “A spouse shall not be deprived of a reasonable provision out of the estate of a spouse whether or not the spouse died having made a will”. This is to ensure that women are not deprived of reasonable share of property they helped to acquire during the subsistence of marriage. He opined that Article 22(1) of the Constitution is the anchor provision which the Supreme Court had relied on to make such determinations and believed that the inability of Parliament to pass the legislation on spousal rights to property should not gag the Court from giving effect to the said provision of the Constitution.

(6) Limiting the number of Justices of the Supreme Court

As to whether the nominee, Prof. Nii Ashie Kotey concurs the suggestion that the number of Justices of the Supreme Court should be capped at a certain number, the Nominee told the Committee that he had observed that the Supreme Court was already burdened with a lot of cases due to the extensive jurisdiction of the Court, and that accounted for the delays in adjudication of cases by the Court and also the cause of long adjournments. The Nominee posited that he was satisfied with the current state of the law, however, he would rather support a move to reduce the jurisdiction of the Supreme Court.

(7) Preferred Approach to Interpretation

The Nominee in response to his preferred approach to constitutional interpretation of the law, he quoted the oft-cited case of *Tuffour v. Attorney-General [1980] SCGLR 637* and said that a literal interpretation of the Constitution will not do because the Constitution has a spirit which is vested in the Preamble to the Constitution and this informs judicial decision-

making. On that premise, he indicated that he preferred the modern purposive approach to interpretation of the constitution.

(8) Contribution to knowledge of Law

On the nominee's contribution to the advancement of Law, he responded that he has over the years contributed a lot through his writings and research. He stated that through his works, he has contributed generally to knowledge in law, legal research and legal analysis. With respect to legal analysis, Professor Ashie Kotey told the Committee that every law should be analysed within its context; the context of the society or the country within which the analysis is being done. He explained that there are limits to the law and law works best when it is in sync with social realities and the aspirations of the people.

(9) Progress in Land Administration

On whether measures directed at developing proper land administration system has been successful, the nominee said he believed that there have been some gains, however there is more work to be done. The major problem in Ghana's land administration system has been that of the enforcement of the Law. He observed that, on many occasions when the country is confronted with a problem, we tend to think about enacting new legislation; the law is adequate, what is left, is its enforcement. He suggested that we should improve the traditional sector and the State sector in the management of the country's land.

He called for the surveying and mapping of the lands in the country as the first step, insisting that no amount of reforms would have the desired effect without adhering to these steps. He called for the registration of all allodial interests and the demarcation of all boundaries. He told the Committee that there should be a systematic registration of all lands in the urban and peri-urban areas with concentration on recording of land transactions to reduce land disputes.

On delays in adjudication of land disputes, he stated that the process of taking oral testimonies accounted for most of the general problems. He however acknowledged ongoing efforts and urged that current efforts be expedited.

(10) Compulsory Acquisition of Land by the State

In response to a question on compulsory land acquisition by the state, the nominee informed the Committee that he had written an article on the subject under Article 20(3) of the Constitution in which he pointed out that the law as of today and practice of the law on compulsory acquisition in the colonial times was different. He said that during the colonial era, compensation was paid promptly upon acquisition of land by government but the situation changed after independence. He noted that the current law required that acquisition should not be done unless under a law which makes provision for prompt payment of fair and adequate compensation. He further stated that the present law does not make payment of compensation a condition precedent for compulsory acquisition which should not be the case. He emphasised that compensation should be paid before acquisition.

The nominee informed the Committee that a provision had been made in a proposed Land Bill to the effect that money for compensation must be paid into an Escrow Account before an acquisition could be done. The nominee, acknowledged other challenges in compulsory acquisition such as change of use or the purpose of acquisition and the right of pre-emption. He was of the view that careful reading of Article 20 of the Constitution bring to the fore two conditions before the rights of previous owners to re-acquire land could be exercised, the conditions are, that the land should not have been used for the purpose for which it was acquired or should not be used in the public interest. He stated that, that view is supported by several decisions of the Supreme Court.

(11) Appointment of Academicians to the Supreme Court

On whether he envisaged any challenge when appointed to the Supreme Court from the academia straight to the Supreme Court, the nominee stated that he did not particularly foresee any challenges. He believed that it was important to have a Supreme Court with Justices of diverse backgrounds, different perspectives and different starting points. He was of the view that the works of academicians, academic writers and their training are essential for work as a Justice of the Supreme Court. He also stated that, on many occasions the Supreme Court does not deal with trial of cases and that the lack of long years of trial experience would not be a major bar in that regard.

He related to the fact that the country has had very good Justices of the Supreme Court, who were a mixture of academicians and those through the ranks to the Supreme Court who have equally delivered judgments since the beginning of the Fourth Republic.

(12) Mining in Forest Reserves

On whether he supported the idea of allowing mining within the country's forest reserves, the nominee stated that life and development is about prioritization and making sound choices. He intimated that he would not be able to give an answer to the question. He told the Committee that such a decision ought to be made on case by case basis after a detailed analysis had been done. He intimated that the analysis should consider a number of factors such as the environmental impact and the possibility of planting more trees at other places.

The nominee told the Committee that to mine or not was determinant on undertaking the cost-benefits analysis of which no definite answer could be given. He said that in each case there should be scientific study, analysis of possible environmental impacts including water issues and the various roles of the forests such as preservation of water bodies, when taking the decision of whether to mine or not.

He noted that as a country, we do not plant enough trees yet we continue to cut down trees without a corresponding planting of same. He urged the country to plant more trees.

(13) Nationalisation of Lands

The nominee in responding to a question on whether lands should be nationalized in the country to ensure better management while giving beneficial ownership to the owners, told the Committee that his experience in the management of land in the country does not tend to support that proposal. He suggested that the State be more vigorous in the enforcement and implementation our land laws.

(14) Review of the 1992 Constitution

The nominee told the Committee that he did not support the approach that the Constitution must be reviewed in whole. He shared the view point that a constitution should not be frequently tinkered with as that would defeat the

preservation of the almost sacred sanctity of the Constitution. He expressed the view that, we as a country are yet to encounter any constitutional problem which could not be dealt with. He explained that we have operated through the interpretation of the 1992 Constitution for over twenty years and that the Constitution should not be touched.

On his view on who has the power to initiate Bills for the amendment of the Constitution, the nominee said that he did not see any problem with the President initiating the process. He intimated to the Committee that all that was required was that a constitutional amendment to be introduced in Parliament. He posited that the constitution does not specify who has the power to initiate a Bill to that effect, and that in Ghana, almost all Bills emanate from the President. The law does not say that a Bill to amend the Constitution must emanate from the President or Parliament.

(15) View on the Hybrid System

The nominee in response to a question on the Hybrid System of governance as practiced under the constitution said that the reason which has led to the call to do away with the hybrid system was that our Parliament is weak, relative to the Executive branch and from his close reflection, some Members of Parliament doubling as Ministers of State was flagged as one of the major causes of that state of affairs. He affirmed that he did not share that view and the reality was that, the practice in the United States where Members of Parliament could not be Ministers was an exception. He noted that in both the advanced and emerging democracies like France, Germany, Canada and Austria, MPs doubled as Ministers.

He observed that in Ghana, all MPs belonging to the President's political party tend to vote along the side of the Government and that has nothing to do with the hybrid system. He advised that we identify the real reasons why Parliament is weak which should include resource constraints.

(16) View on the Effect of Article 108 of the 1992 Constitution

The Committee, soliciting his view on the real effect of Article 108 of the Constitution which relates to a Private Members' Bills, Prof. Ashie Kotey stated that the said Article did not operate as a bar to the introduction of Bills by Members of Parliament. He opined that he did not see the provision

as a fetter at all and that what the provision did was to exclude financial Bills from Bills which could be introduced by Members of Parliament.

(17) Appointment of Chief Justice

On whether the most senior Justice of the Supreme Court should be appointed as the Chief Justice, the nominee told the Committee that the relevant constitutional provision for the appointment of Chief Justice was clear and that did not require the President to appoint the most senior Justice of the Supreme Court as the Chief Justice.

(18) Establishment of Sanitation Court

Commenting on a proposal to establish a sanitation court, the nominee said that there were fundamental issues about our behaviour, attitudes and education which must be dealt with first, and that, the emphasis should not be on the establishment of a specialized court on sanitation.

(19) Reforms in the Judiciary

On his ideas about reforms to improve the workings of the Judiciary, Professor Ashie Kotey stated that there was still the need to further streamline the processes of the courts. He therefore called for more digitisation and the application of other electronic applications to reduce paper work, reduce Statement of a Case to a summary and improve the case management system.

(20) Role of Religious and Personal beliefs in Judicial Decision-Making

The nominee stated that he did not foresee any conflict between his religious and moral principles and his work as a Justice of the Supreme Court. He assured the Committee that any time he has to write his opinion on any matter before the Court, he would write his opinion strictly according to law with no other consideration in mind.

He explained to the Committee that by swearing the judicial oath, he undertakes to administer justice according to law and remain faithful to the Constitution and the laws of Ghana and his opinions would not be influenced by gender, creed, association and other extraneous factors.

(21) The Role of the State in Infrastructural Development by Churches

On whether churches could be compelled to establish schools, Prof. Ashie Kotey expressed the view that he did not think that would be a proper exercise of State power because the management of the affairs of a church was for the church and their members and called on members to hold their leaders accountable. He posited that it would be improper to compel churches to build schools.

On regulation of churches, he stated that he did not support the assertion for the State to regulate churches however the state can regulate the activities of charities as done in other jurisdictions such as the UK. He explained that charities have objectives which must fall within four areas which are: advancement of education, advancement of religion, eradication of poverty and for other purposes beneficial to society. He stressed that what is needed was a body to ensure the prudent use of the resources of the charities.

(22) Constitutionality of Capital Penalty

The nominee stated that the Courts have variously held that capital punishment is part of our laws and did not breach any constitutional provision. He noted that no person sentenced to death has been executed for some time now however, he was not in favour of capital punishment except in cases where the convict took a life in an extremely cruel manner such as armed robbery, robbing a victim and cutting short his life, et cetera. He however insisted that, capital punishment was part of the laws of Ghana and for that matter, if his nomination is approved, he would not sit in the Supreme Court to administer his beliefs, rather he would uphold the Constitution and the law.

(23) National Reconciliation

On whether the national reconciliation exercise which was done in 2001 achieved its objective, the nominee said that by and large, the people of Ghana had been reconciled through that exercise. He believed that the country was at peace with its past and what was left was for the country to forge ahead in unity.

(24) Threats to Judicial Independence

The nominee concurred with the assertion that there were threats to judicial independence and stressed that what was required of us was to guard against those threats. He said that the threats came from obvious areas however, the more dangerous ones were the insidious ones. The nominee advised the entire Judiciary to stand up and be counted to maintain its independence in all such situations.

(25) Speedy Delivery of Justice

The nominee acknowledged that certain factors were responsible for delays in the administration of justice in the country, some of which were within the Judiciary. He cited the difficulty with getting witnesses and frequent remands, as some of the internal factors. External challenges had to do with the Police. He promised to do everything within his power as Justice of the Supreme Court to deal speedily with criminal cases, in particular, cases that affect the liberty of people.

(26) Promotion of Alternative Dispute Resolution (ADR)

On what he would do to promote Alternative Dispute Resolution (ADR) mechanisms if appointed as a Justice of the Supreme Court, the nominee stated that he would start his promotional campaign with litigants and members of the Bar. He said that, for many years, the work of a lawyer has been about going to court and that when lawyers are advised to settle cases through ADR mechanisms, clients tend to reject it. He stressed on the need for more education to change that mindset.

(27) Integrity of the Judiciary

According to the nominee, the integrity of the Judiciary was paramount and if lost, it would have dire consequences on the country. He intimated that the Judicial integrity had to be preserved at all cost. He noted that after the Judiciary exposé, various mechanisms had to be put in place to ensure that things worked properly including instituting a more robust complaint system within the Judiciary, better training and sensitization of Magistrates and Judges. He reiterated that there should be mechanisms within the Judiciary

for finding out about the members who misconduct themselves and punishment to be meted out.

(28) Proposal to convert CHRAJ into Human Rights Court

The nominee commenting on a proposal to convert the Commission on Human Rights and Administrative Justice (CHRAJ) into a human rights court answered in the negative. According to him, the Courts and CHRAJ performed different roles, the latter being less technical uses less legalese is more informal and uses more ADR mechanisms in its processes. Though he noted that CHRAJ was not as vibrant as it supposed to be, he advised for the Commission to be better resourced to do its work, stressing that the solution did not lie in turning it into a court.

(29) Turf war between the National Communication Authority (NCA) and National Media Commission (NMC)

On what would be his advice to end the alleged turf war between the National Media Authority (NMA) and the National Communication Authority (NCA) in terms of improving the frequency regime of our country, the nominee stated that he does not think there ought to be a turf war between the two. The nominee stated that the NCA allocates frequencies while the NMC regulates content, the two should collaborate as much as possible.

(30) Quality of legal Education

On the basis of the fact that some aspects of the question had been subject of a pending suit in court, the nominee chose to speak generally on the subject. He described the problem of Ghana's legal education as "very serious". He disclosed that he was part of a panel that interviewed applicants for admission into LLM programme at the Faculty of law of the University of Ghana at which some LLB holders lacked understanding of basic principles of law and could not also discuss basic constitutional law cases including the *31st December* case. He cautioned that if we did not take care, we will be unleashing unqualified lawyers on the people of Ghana.

In that regard, he suggested that any effort to reform legal education must start from the accreditation of law faculties. He suggested that we confront

the problem and that if we had to disaccredit all Law Faculties including the Law Faculty of the University of Ghana to ensure that the right thing is done, he would support such move. He also accepted an appeal of the Committee to submit a paper to the Chief Justice on how to reform Ghana's legal education.

Recommendation

The Committee recommends to the House for the approval *by consensus* the nomination of Prof. Nii Ashie Kotey for appointment as Justice to the Supreme Court of Ghana.

5.0 JUSTICE SAMUEL KOFI MARFUL-SAU - JUSTICE DESIGNATE TO THE SUPREME COURT

Background

Justice Samuel Kofi Marful-Sau, Justice of the Court of Appeal was born in Assin Adubiasie on 3rd February 1957. He attended the Methodist Primary School, Assin Adubiasie from 1963 to 1965 and later continued at Sempe '1' Primary & Middle School, Accra from 1965 to 1969. In 1969 to 1972, he attended the Urban Council Middle 'A' School at Mankessim. From September 1972 to June 1973, he moved to Assin Manso Secondary School at Assin Manso. He was later enrolled at Feden High School, Accra from September 1973 to June 1974. From September 1974 to June 1977, he attended Breman Asikuma Secondary School where he obtained a GCE'O' Level. From September 1977 to June 1979, he obtained his GCE'A' Level from Navrongo Secondary School, Navrongo.

Justice Samuel Kofi Marful-Sau, from August 1979 to July 1982, enrolled at the University of Ghana, Legon and obtained a Bachelor of Laws (LLB) degree. He subsequently attended the Ghana School of Law in 1982 and was awarded a Barrister at Law (BL) in October 1984. He later attended the University of Dundee, Scotland from September 2008 to October 2009 and obtained a Master of Laws (LL.M) in Petroleum Law and Policy.

Justice Marful-Sau did his National Service as a Legal Assistant at the Castle Information Bureau, Office of the Provisional National Defence Council (PNDC) and briefly as a Prosecutor in the Office of the Special Public Prosecutor from August 1984 to July 1986. In July 1986 to September 1987, he was attached to the Office of the PNDC after he was selected during the National Service period for a six month course in Intelligence Studies at a Security and Intelligence Academy in Moscow.

From October 1987 to June 2002, Justice Marful-Sau was a Private Legal Practitioner at Vidal. L. Buckle & Co, Accra. As a Private Legal Practitioner, he was also a member of the Law Reform Commission from August 1998 to October 2005 and a member of the Ghana Frequency Regulation and Control Board from 1993 to 1998. He was appointed a Justice of the High Court from June 2002 to November 2006 and has been a Justice of the Court of Appeal since November 2006.

He has since October 2010, been a lecturer in Oil & Gas Contracts at the Faculty of Law - University of Ghana, and a Senior Lecturer in Civil Procedure at the Ghana School of Law.

Nominee's Responses to Questions

(1) Jurisdiction of the Supreme Court

On whether he would support a view that the supervisory jurisdiction of the Supreme Court be ceded to the High Court as a way of reducing the workload of the Supreme Court, the nominee, Justice Marful-Sau observed that too many cases relating to the supervisory jurisdiction were being filed in the Supreme Court by litigants. According to him, the growing practice had been occasioned by the fact that litigants considered that channel faster, relative to appeal through the Court of Appeal. He proffered to the Committee that even though the growing practice had created some difficulties, it was within their rights to do so once they satisfy the legal and constitutional requirements. The nominee proposed a constitutional review that would cede the supervisory jurisdiction of the Supreme Court to the High Court to deal with the issue, to ease the pressure on the Supreme Court. He also believes that the review would enable the Supreme Court to concentrate on dealing with cases that go to it under its original exclusive jurisdiction for the interpretation and enforcement of the Constitution, and its appellate jurisdiction role.

(2) Property Rights of Spouses - Spousal Rights

His response to a question on whether he considered gifts as part of properties that the Courts would share between spouses in the event of divorce pursuant to Article 22(1) of the Constitution, the nominee lauded the Supreme Court for providing guidelines for determination of such cases as in *Mensah v Mensah [2012] 1 SCGLR 391*. That notwithstanding, the nominee believed there remained some gaps which needed to be filled by legislation that Parliament is required to pass under that provision. To buttress the urgent need for the legislation, the nominee told the Committee that, when he was at the High Court, he had to determine property rights between a husband who was resident abroad and a wife resident in Ghana involving two plots of land; a developed land and an undeveloped one. He said, at the end of the trial, it became apparent that the man provided the funds for the development of the land but the woman could not prove by evidence any contribution she had made to the developed property. On the account of that, he gave the developed property to the man and the undeveloped land to the woman. He conceded that, he did not take into account the intangible contributions that the woman would have made to the development of the property through supervision of the project, purchasing items, among other essential roles. He intimated to the Committee that he regretted his ruling in that instance and that if there was the legislation on spousal property at that time, he would have been guided. The nominee appealed to Parliament to pass the Property Rights Bill as a matter of urgency.

(3) Promotion of Alternative Dispute Resolution Mechanisms in Ghana

The nominee, on how he would promote Alternative Dispute Resolution mechanisms (ADR) as viable alternative to the resolution of disputes by the Courts and thereby reduce litigation indicated to the Committee that ADR must be promoted more vigorously. He intimated that ADR was an effective system of resolving disputes because it was cheaper, less controversial, less antagonistic and faster. He opined that most of the cases that were sent to the Courts for adjudication could be easily resolved by means of ADR. He however alluded to some challenges militating against the promotion of ADR in the country, including inadequate financial and human resources and low public education. He posited that the funding challenges for the promotion

of ADR accounted for the non-establishment of ADR Centres in every District of the country as required by the Alternative Dispute Resolution Act, 2010 (Act 798).

On Court-connected ADR, the nominee observed that the practice of ADR at the Commercial Courts had been very effective because that was part of the Commercial Courts' process and same was factored into the architectural design of the Court buildings. He however said that the situation was regrettably different at District Courts where due to lack of infrastructure, ADR sessions were held in open places under trees. This situation, he said, had discouraged many disputants from taking advantage of ADR to amicably resolve their disputes.

(4) Role of Traditional Authorities in Dispute Resolution

On whether traditional leaders be given judicial powers to determine certain cases as part of the country's formal adjudication system, the Nominee stated that the provisions of the prevailing law vested final adjudicatory powers in the Judiciary and had not provided for that. He however acknowledged the fact that in the past when there were no formal rules, traditional leaders played significant role in the resolution of disputes in ensuring order in society. In that regard, he indicated that future law reforms could take that into consideration to empower traditional leaders to exercise adjudication over matters such as enforcing environmental laws within their areas of jurisdiction.

(5) Court Automation

On the status of the implementation of the court automation exercise being undertaken by the Judicial Service, the nominee indicated that the lower Courts buildings in the rural areas were not being considered under the project including the ongoing E-Justice project. According to him, for the purpose of achieving effective and efficient justice delivery in Ghana, it would have been a preferred situation if all Court buildings in Ghana were automated. He however recounted some challenges in achieving that objective including the scattered nature of the lower Courts, the architectural designs of the lower Court buildings and inadequate financial resources to extend the project to all District Courts. The nominee concurred with a suggestion that Parliament should consider allocating part of the

Common Fund to support infrastructural development of the lower Courts at the district level.

(6) Declaration of Ideological Leanings of Justices of Supreme Court

As to whether Justices of the Supreme Court be required to publicly declare their ideological leanings as done in other jurisdictions, the nominee stated that the current Code of Ethics of Judges did not permit public declaration of the ideological and the voting patterns of Supreme Court Judges. He however indicated that such public declaration might be relevant in future, however Ghana's democracy had not evolved to the level where Judges should be made to declare their political ideologies.

(7) Capping the Number of Supreme Court Justices

On whether he would support the view that there should be a cap on the number of Justices of the Supreme Court as opposed to the current open-ended number, the nominee endorsed the suggestion to place a cap on the number. As to the ideal number, he proposed a maximum of fifteen (15) Justices which is consistent with the practice since the commencement of the Fourth Republic.

(8) Review of the Evidence Act, 1975 (NRCD 323)

On whether he would recommend for review of the Evidence Act, 1975 (NRCD 323), Justice Marfu-Sau said that the law had been tried and tested and had proven to be robust and largely responsive to the dynamics of modern society. He however pointed out that the only challenge was that the law did not provide for the use of scientific evidence that notwithstanding, he explained to the Committee that the Electronic Transactions Act, 2008 (Act 772) filled that lacuna. He said that once the authenticity of such electronic communication can be established, it could be admitted as evidence. On that basis, he emphasized his position not to recommend for review, NRCD 323.

(9) Fighting White Colour Crimes

In response to a question on white colour crimes, the nominee assured the Committee that white colour crimes such as cybercrime, money laundering, financial and economic fraud among others would be fought decisively with the law when he is given the nod as a Justice of the Supreme Court.

(10) Burden of Proof in a Civil Procedure

On what the burden of proof should be in a civil procedure, the nominee stated that the burden of proof should be the reasonable probability. He told the Committee that, after taking evidence in a civil matter, one should lean towards the evidence that is more probable or believable and where the standard of truth is beyond reasonable doubt. He added that the burden is on the prosecutor to establish proof against the accused. Criminal procedure he stated requires a higher standard of proof than in the civil.

(11) Ideology

When asked to state his legal ideology, the nominee stated that his ideology is to ensure social justice is done and rule of law respected or upheld rather than rule of men.

(12) Membership of the Chief Justice Committee

On why he being a member of the Chief Justice's Committee that considered the immediate Chairperson of the Electoral Commission and two others was conspicuously missing on his CV, the nominee indicated that his being on that Committee was part of his duties as a Justice of the Court of Appeal as stated in Article 146 of the 1992 Constitution and did not see it as a special assignment.

(13) Demolition of Judicial Training School and Residences of some Judges for a National Cathedral

Commenting on the demolition of the Judicial Training School and residences of some Judges to make way for the construction of a national cathedral, Justice Marful-Sau indicated that so long as those affected are properly accommodated, that should not be a problem. He alluded to the fact that even if the Judges are accommodated in private properties and the

Government does all the needed negotiations without the involvement of the Judges, and the Judges only move in, that should also not be a problem.

(14) Decongesting Prisons in the Country

Commenting on what he would do to decongest prisons in the country, Justice Marful-Sau stated that the prisons are congested due to remand prisoners who have been granted bail but cannot provide sureties for their bails and that delayed cases.

He stated that the law has been clear and settled, as such, there is now no non-bailable offence in Ghana. He called for Judges to be sensitised to refrain from remanding accused persons to custody unjustifiably, once the option of bail is available. He however admonished that if there is evidence that the accused person when bailed could abscond or engage in same offence then the person should be kept in custody.

(15) Ghana at 50 Ruling and Committees of Enquiry Report

The nominee was asked to offer some education on how a commission of enquiry should be used in the country based on the Judgement he gave on 10th August 2010 in the Ghana at 50 Case, the nominee, Justice Marful-Sau told the Committee that, that case made him research extensively on commissions of enquiry. His research according to him started with the constitutional proposals of 1969 and the 1979 and Report by the Committee of Experts of the 1992 Constitution.

The thinking of the framers according to Justice Marful-Sau was that when there is a national issue which the Executive thinks needs investigation, a commission of enquiry could be set up to enquire and make recommendations for us as a country to learn lessons from those situations to help us not get into that situation as a nation again. He reiterated that all the constitutional proposals did not intend for such enquiries to be used as the basis for prosecution. The provision prescribed sanctions to be applied if there are adverse findings. A commission of enquiry by the constitutional proposals are therefore not to be used as basis for prosecution.

He added that if a government wants to prosecute, it would have to use the prosecuting institutions like the Police, EOCO, Auditor-General, among others.

He opined that even where a commission of enquiry makes a finding of fact which results in some financial loss to the State, the persons involved could still not be prosecuted. The reason being that, once the findings are accepted, it becomes a Judgement of the High Court. What could be done is to refer the matter to the police to conduct further investigations for those found culpable to be prosecuted based on the new investigations by the police.

(16) Judicial Activism

The nominee, commenting on a publication by Justice Date-Baah on Reflections on the Supreme Court which sought to say that there is more scope for the Supreme Court and that there should be more judicial activism and more judge made laws where there are lacunas in the law, stated that, all organs of government be allowed to do their work and if there are lacunas allowing injustice to be perpetuated, the Judiciary can step in, however he strongly believe in the separation of powers and the rule of law. He reiterated that judges are not lawmakers but the enforcers.

(17) Role of Religion on Judgements

Justice Marful-Sau commenting on the role of his religion on his judgements stated that he applies the law to the latter and does not allow his religious inclinations to cloud his judgements. He told the Members that he quotes a lot of scriptures in his judgements to support the law because most of our laws are from the Bible.

(18) Legacy of Her Ladyship Justice Georgina Wood

On what footprints Her Ladyship left on the Judiciary, the nominee stated that she continued the reforms initiated by His Lordship Justice G. K. Acquah. She also sought for funding which enabled judges pursue their Masters Degrees in institutions outside Ghana and improved on the infrastructure of the judiciary.

Recommendation

The Committee recommends to the House to approve *by consensus* the nomination of Justice Samuel Kofi Marful-Sau for appointment as Justice to the Supreme Court of Ghana.

6.0 JUSTICE AGNES MERCY ABLA DORDZIE - JUSTICE DESIGNATE TO THE SUPREME COURT

Background

Justice Agnes Mercy Abla Dordzie was born in Taviefe-Deme in the Volta Region on 2nd October 1952. She attended the Roman Catholic Primary School, Taviefe-Deme from 1957 to 1962. From 1962 to 1964, she attended the Roman Catholic Girls Middle School, Ho. In 1964 to 1965, she attended Atibie Methodist Middle School, Atibie-Kwahu and obtained a Middle School Leaving Certificate from L/A Presby 'B' Extension Middle School, Koforidua from 1965 to 1966. In the 1967/1968, she enrolled at Awudome Secondary School, Tsito and continued at OLA Secondary School, Ho from 1969 to 1972 where she obtained her G.C.E Ordinary Level in 1972 and the G.C.E Advanced Level in 1974 at the same school.

Justice Agnes Abla Dordzie subsequently enrolled at the University of Ghana, Legon and studied BA (Hons) Law and Political Science from 1974 to 1977. She attended the Ghana School of Law from January 1979 to November 1980 where she obtained a qualifying Certificate as a Barrister at Law (BL), she was called to the Ghana Bar in November 1980. She later enrolled at the Institute of Theological Studies, Ghana in 2014 for six months where she obtained a Diploma in Christian Counselling. From 2007 to 2010, she attended the Commonwealth Open University British Virgin Islands (UK) (Long Distance Learning) and was awarded a Master of Arts (MA) in International Relations.

Justice Agnes Dordzie worked at the National Council on Women and Development, Koforidua from 1977 to 1978 as a National Service Person. She