

IN THE FIRST SESSION OF THE FIFTH PARLIAMENT OF THE
FOURTH REPUBLIC OF GHANA

FOURTEENTH REPORT OF THE APPOINTMENTS
COMMITTEE ON H.E. THE PRESIDENT'S NOMINEES FOR
APPOINTMENT AS JUSTICES OF THE SUPREME COURT

1.0 INTRODUCTION

His Excellency, President J.E.A. Mills in a letter dated 20th August, 2009 communicated to Parliament for the approval of the nomination of the following persons for appointment as Justices of the Supreme Court pursuant to Article 144(2) of the Constitution:

1. Justice Benjamin Teiko Aryeetey
2. Justice Nasiru Sulemana Gbadegbe
3. Justice Vida Akoto-Bamfo

In accordance with Order 172(2) of the Standing Orders of the House, the nominations were referred to the Appointments Committee for consideration and report.

The names of the nominees were subsequently published in the media in accordance with Standing Order 172(3). Memoranda were also invited from the public as part of the mechanism to ensure that each of the nominees satisfies the requirements of the Constitution, particularly article 128(4).

2.0 REFERENCE DOCUMENTS

The Committee referred to and was guided by the following documents during deliberations on the above mentioned nominees:

1. The 1992 Constitution of the Republic of Ghana
2. The Standing Orders of the Parliament of Ghana

3. The Curricular Vitae of the nominees

3.0 PROCEDURE

The Committee noted that despite two weeks of advertisements requesting memoranda from the general public, none was received.

In line with the procedure of the Committee, each nominee took the oath of a witness or made a solemn affirmation in that regard. They also answered questions on issues ranging from their records of office, experience on the bench, the positions to which they have been nominated through general matters of legal, judicial and/or national concern.

4.0 OBSERVATIONS AND RECOMMENDATIONS

4.1 JUSTICE BENJAMIN TEIKO ARYEETAY: JUSTICE-DESIGNATE OF THE SUPREME COURT

BACKGROUND

Justice Benjamin Teiko Aryeetey was born on June 14, 1941. He attended Mfantshipim School from 1956 to 1960 where he obtained a first division Certificate in the West African School Certificate Examination and later attended the Winneba Training College from 1960 to 1962 where he was awarded a Teachers Certificate 'A'. He continued to Achimota School from 1963 to 1965 for his General Certificate of Education Advance Level. He obtained his LLB degree from the University of Ghana in 1968 and further pursued a Post Graduate Certificate in Law at the same University.

He was first appointed District Magistrate Grade II in April 1971. He rose through the ranks and was appointed a Justice of the High Court in 1989. In 1990, he was appointed Judge Advocate for the Ghana Armed Forces.

Justice Aryeetey was subsequently appointed a Justice of the Court of Appeal in 1999 where he has served to date.

He has participated in various international conferences including Operation Cross Roads, African Programme on American Legal Institution

and Jurisprudence in the USA and Commonwealth Magistrates and Judges Association Workshop in The Gambia.

He has held several other positions including chairman of Maranatha University College Board and a member of the Judges and Magistrates Association. He is also a lecturer on *Judicial Ethics* for the Career Magistrates Programme and an examiner on *Practical Advocacy* for final year students of the Ghana School of Law.

Experience on the Bench

His Lordship Justice Aryeetey informed the Committee that he has been on the Bench for 38years. During this period he has worked in Accra, Akim Oda, and Cape Coast.

Judicial Activism

When asked about his understanding on Judicial activism, the nominee opined that it means not being there just to interpret the law but being proactive to solve problems as and when the need arises and being willing to effect change when necessary.

Opinion on law on 'willfully causing financial loss to the State'

On the law of 'willfully causing financial loss to the State', Justice Aryeetey indicated to the Committee that he has never dealt with the law but has a fair idea about it.

Quizzed further on the "actus reus" and the "mens rea" of the Law on willfully causing financial loss to the State, the nominee stated that it is important that the "actus reus" and the "mens rea" are established in determining the criminal liability of a person charged with willfully causing financial loss to the State.

MPs on Governing Boards and Conflict of Interest

Questioned on whether the appointment of Members of Parliament to Boards and Councils of Public Corporations does not have inherent conflict of interest, the nominee opined that the matter should not be generalized but must be looked at on case by case basis.

Upper limit for the number of Judges on the Supreme Court

On his take on a possible upper ceiling for the number of Supreme Court judges, the nominee noted that based on the 1992 Constitution, there is no such upper limit. He said currently, the Court of Appeal is expanding and as the economy grows, there could also arise the need to expand the Supreme Court. To him, the current frame of the Constitution allows for flexibility but "when you don't need it you don't bring it on board".

Retirement in 2 years at the Supreme Court

Members wanted to know if the two years left for the nominee to retire was not too short a time for him to make any impact at the Supreme Court. He responded and explained that "others have been there for shorter periods and still performed" and so he will manage with the two years at his disposal.

Paneling for Constitutional Interpretations

On the suggestion of empanelling the full complement or membership of the Supreme Court to sit on matters *constitutional matters*, the nominee expressed the view that the court should stick to the minimum of five (5) so that in case of a review others could be brought in.

He further stated that it is "illegal" for any body or group to insist that the Supreme Court should be empanelled by all the justices for any case.

Judicial Delays

Justice Aryeetey attributed the delays in disposing of cases at the courts to several factors and said frustrations put in the way of cases by some lawyers also contribute to the delay.

Landmark Case

Upon enquiry, the nominee informed the Committee that in his view one of the landmark cases he has presided over was a case involving the government's intention to sell out some shares in the then Ashanti Goldfields Corporation (AGC). He said he tried the case and gave his

ruling the effect of which was that the government could sell the shares. It is significant to note that there was no appeal in the matter.

Judges and Remand Prisoners

The issue of remand-prisoners, according to the nominee, is a disturbing one. He said ordinarily, a remand prisoner should appear before a judge every two (2) weeks, but it is not the judge's duty to bring the prisoner to court. Also, changes in judges and transfers contribute to some remand prisoners being "forgotten".

On what should be done to solve the problem, he said the rules should be followed rigidly so that remand prisoners would be brought to court as stipulated.

Court Buildings

The nominee bemoaned the deplorable nature of many court buildings in the country saying many of the court buildings "are far below what one expects to be called courtrooms". He indicated that some District Assemblies are helping to provide court houses explaining that court fine retentions are too insignificant to put up court houses. He said the Judicial Service is doing its best to solve the problem but this is not enough.

Judicial Corruption

The nominee informed the Committee that he is very much interested in the subject of *ethics and conduct of judges* in their duties.

He subsequently decried the situation in which allegations are frequently made against judges but no one is willing to come forward to prove it or make a case for investigation. Consequently, he advocated vigorous public education on the matter so that people could complain to the Complaints Unit of the Judiciary if the need arose.

Directive Principles of State Policy

In the opinion of the nominee, the Directive Principles of State Policy contained in Chapter six (6) of the Constitution of Ghana (articles 34 -

41) are meant to be guiding principles. Even though they are not *justiceable* in his view, they are taken into account during judgments.

Obstacles in his Duties

Having moved from a Magistrate to an Appeals Court Judge, the nominee intimated that every stage and location he has served came with its own obstacles and hindrances. He said hitherto, lack of vehicles was the main problem but now they have vehicles so that is no more a problem.

He further explained that currently at the Court of Appeal, the needs of judges are reasonably catered for but the same cannot be said of the lower courts.

Political Coloration of Judges

The nominee stated that the constitution does not allow judges' to show their political coloration or persuasion. Therefore trying to get judges to publicly declare their political bias would be illegal.

Recommendation

Justice Aryeetey acquitted himself creditably before the Committee. His demeanor and clarity of thought were respectively commendable and very visible.

In the event, the Committee *by consensus* recommends that the House approves of the nomination of Justice B . T. Aryeetey as a Justice of the Supreme Court.

4.2 JUSTICE NASIRU SULEMANA GBADEGBE: JUSTICE-DESIGNATE OF THE SUPREME COURT

BACKGROUND

His Lordship Justice Nasiru Sulemana Gbadegbe was born on 8th December 1950 at Ho in the Volta Region. He obtained his LLB degree from the University of Ghana in 1973 and subsequently his Qualifying

Certificate in Law in 1975 from the Ghana School of Law. He was called to the bar in 1975.

Justice Gbadegbe was appointed a High Court Judge in 1989 and subsequently a Justice of the Court of Appeal in 1999 where he has served to date.

At the Bench he has worked at several duty stations including Tema, Cape Coast and Koforidua. He has also served in several capacities including chairman of the Commission of Inquiry into International Player Transfers and other related matters in 1999.

Justice Gbadegbe has attended a number of international programmes including Comparative Law Seminar in Stockholm, Sweden in 1996.

He is also a part time lecturer of *Ghana Legal Systems* for the Career Magistrates Programme and a Resource Person for the Judicial Training Institute.

Experience on the Bench

Justice Nasiru Gbadegbe informed the Committee that he has served on the Bench in the Superior Courts of Judicature for a period of 20 years. He said he was motivated to join the Bench as he sees it as the best way for one to be remembered as a lawyer.

Work of the Supreme Court

The nominee informed the Committee that the main work of Supreme Court is to interpret the Constitution and enforce the constitution in its context and language. He promised to interpret the Constitution on matters properly brought before the Supreme Court in the language and context of the constitution and by taking into consideration our cultural circumstances.

Judicial Independence

On the independence of the Judiciary, the nominee expressed the view that enough constitutional provisions exist to enable the Judiciary to

assert its independence, therefore if its independence is not asserted, then it's not the fault of the law but the Judiciary itself.

He further indicated that he would want to identify himself with judges who are doing their work without being actuated by any influences other than the law.

Time Frame for adjudication of cases

The nominee explained to the Committee that delays in disposing of cases by the courts has to do with what he termed "case flow management". He indicated that the Judicial Service is providing training to judges in this regard. He prayed the Committee and Parliament to gracefully provide enough budgetary allocations for the Judiciary.

Part of the Constitution Requiring Amendment

On the issue of amending the constitution, the nominee said as a judge, he has taken an oath to interpret and implement the laws of the country as they are and therefore any comment or opinion in this regard may prevent him from sitting on some cases and hence he would not want to proffer any opinion in that regard.

Unconditional Pardon and Legal Ramification

In the opinion of the nominee, a pardon that is "unconditional" means a pardon that releases the affected person from obligations attached to him by virtue of the conviction. He further explained that an unconditional pardon may in certain circumstances disqualify the person so pardoned from holding certain public offices.

Executive Manipulation of the Judiciary

Justice Gbadegbe explained that people are "manipulated" if they are influenced or induced by others to do things that they would ordinarily not do. So if "manipulation" is attached to "executive" then it means that the executive arm of government is influencing the Judiciary to give ruling in one way or the other.

He however categorically affirmed that judges give judgment based on their own knowledge and understanding of the law and that he does not know of any case where a judge has given a judgment based on an influence from the executive or any other quarters.

Capital Punishment

Asked on his views on capital punishment, the nominee indicated that he believes and implements capital punishment "on day to day basis because it is part of our criminal justice system".

Interrogation without Counsel

The nominee informed the Committee that he is aware that recently the High Court delivered a clear judgment on the matter regarding some security agencies interrogating suspects without their counsel or lawyers. To him, since the High Court has jurisdiction in the matter, he stands by that decision.

Directive Principles of State Policy

According to the nominee, the Constitution stipulates that the Directive Principles of State Policy are intended to be a guide to policy makers including the Judiciary. He promised to be guided by these principles in interpreting the Constitution.

Instant/Mob Justice

The nominee admitted being aware of instances where people mete out instant justice to perceived or suspected criminals. He however disagreed with a suggestion that perceived discontent with the work of the courts is the reason to blame for that situation.

Ceiling on the number of Supreme Court

Questioned on his opinion on possible ceiling for the number of Supreme Court Judges, the nominee stated that as a judge, he has no voice outside the law and being an apparent beneficiary of the non-maximum limit, he would be embarrassed to say that there should be a ceiling on the Supreme Court Judges that the country should have.

Relationship between Parliament and the Judiciary

Justice Gbadegbe advised that in order to show the general public that that these two institutions are committed to the rule of law, the relationship between these two arms of government must strictly be as prescribed in the constitution and nothing more.

Recommendation

The Committee was very impressed by the responses of Justice Nasiru Sulemana Gbadegbe to questions posed to him. He was often very precise and concise and came across as sharp and discerning.

Accordingly, the Committee *unanimously* recommends to the House to approve of the nomination of Justice Gbadegbe as a Justice of the Supreme Court by consensus.

4.3 MRS. JUSTICE VIDA AKOTO-BAMFO

BACKGROUND

Her Ladyship Mrs. Justice Vida Akoto-Bamfo was born on 7th February 1949. She attended Accra Royal Primary and Middle School from where she continued to the Mfantsiman Girls Secondary School for her Ordinary Level Certificate from 1963 to 1967. She later obtained her GCE Advanced Level Certificate from Aburi Girls Secondary School in 1969.

Mrs. Justice Akoto-Bamfo was awarded LLB Degree from the University of Ghana in June 1972 and in 1975 she acquired her Qualifying Certificate in Law at the Ghana School of Law.

She was appointed a District Magistrate Grade 1 in 1981 and rose through the ranks to become a Justice of the High Court in 1991. She was subsequently appointed a Justice of the Court of Appeal in 1999.

Mrs. Akoto-Bamfo has attended a number of seminars and conferences including a Commonwealth Judges and Magistrates Association Seminar in Sydney, Australia in 1991 and a Colloquium for Senior Women Judges in Africa held in Zimbabwe in 1994.

She has chaired a number of Bodies such as Assets Commission of The Gambia and Securities Regulatory Commission.

Judges making laws

Mrs. Akoto Bamfo informed the Committee that in her opinion, judges primarily are not supposed to make laws but to interpret and apply the laws as they are. Upon further probing however, she agreed that final decisions of the superior courts of judicature become case laws which are binding and to that extent it could be said that judges make law.

Settlement of Rape and Defilement Cases out of Court

The nominee was of the view that the practice of withdrawing rape and defilement cases out of court for amicable settlement was wrong.

Assets Review Commission of The Gambia

As to how she came to be part of an Asset Review Commission of The Gambia, the nominee explained that when the current Gambian President assumed power, a request was made to the Government of Ghana for the assistance of some Ghanaian Judges. She informed the Committee that she applied and was duly selected. She added that when she got to the Gambia, she was made the chairperson of the Commission. She informed the Committee that the Commission had the mandate to look into the assets of the former President of The Gambia and other government officials. She returned to Ghana a day after she presented her report to the Government of The Gambia.

Non-Custodial Sentencing

The nominee promised to support initiatives aimed at introducing the imposition of non-custodial sentencing for minor offences that would make offenders do community service.

Appeals Court Judges sitting as Additional High Court Judges

Mrs. Akoto Bamfo opined that in the absence of any extreme necessity, the practice of making Appeals Court Judges to sit as additional High Court Judges should be discouraged as it sends the wrong signal that those at the High Court are not up to the task. Also a future overturning of such a decision on appeal could embarrass the particular judge of the Court of Appeal who might have sat as an additional High Court judge.

Public Criticism of Judges

As to whether it is appropriate for members of the public to openly criticize judges, the nominee stated that the Judiciary thrives on the confidence that the people have in it. Therefore if anybody thinks or disagrees with a judgment, he/she can criticize it or go for an appeal but then any criticism should be constructive and "charitable".

Recommendation

The Committee observed the friendly posturing of Justice Vida Akoto Bamfo. Her humaneness was almost infectious. She endeavored to answer questions posed to the best of her ability.

The Committee recommends that the House approves of the nomination of Justice Mrs. Akoto-Bamfo as a Justice of the Supreme Court *by consensus*.

5.0 CONCLUSION

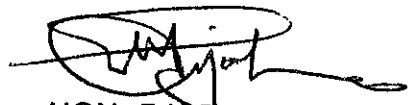
The Appointments Committee has carried out its duty diligently in accordance with the Constitution and the Standing Orders of this House in respect of the three nominees to the Supreme Court, namely:

1. Justice Benjamin Teiko Aryeetey
2. Justice Nasiru Sulemana Gbadegbe
3. Justice Vida Akoto-Bamfo

After the hearing process, the Committee retreated to deliberate on the eligibility, qualifications and competence of the nominees. After careful

analysis, the Committee is satisfied that the nominees have met the requirements of the 1992 Constitution of the Republic of Ghana, particularly article 128 (4) thereof. The Committee therefore unanimously recommends their nomination to the House for approval by consensus.

Respectfully submitted.



HON. E.K.B. ADJAHO
FIRST DEPUTY SPEAKER AND CHAIRMAN,
APPOINTMENTS COMMITTEE



ALHAJI IBRAHIM GOMBILLA
DEPUTY CLERK
29th OCTOBER 2009