

Judicial Independence, Accountability, and Constitutional Fidelity: A Legal Practitioner's Perspective on the Joint Statement of 14th August 2025 by the Bar Council of England & Wales and the Commonwealth Lawyers Association

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Introduction

On August 14, 2025, the Bar Council of England & Wales and the Commonwealth Lawyers Association issued a joint statement expressing “serious concern” over the suspension of Ghana’s Chief Justice. While their commitment to the universal values of judicial independence is commendable, the statement reflects a significant misapprehension of Ghana’s constitutional framework and binding judicial precedents. What is portrayed as a threat to judicial independence is, in fact, the lawful exercise of constitutional mechanisms designed to preserve both independence and accountability.

As a legal practitioner duly licensed and practising within Ghana’s jurisdiction, I offer this analysis not to dismiss international concern but to enrich it with an insider’s perspective rooted in constitutional fidelity and daily legal practice. This article will demonstrate that Article 146 of the 1992 Constitution, interpreted and applied by our Supreme Court, provides a robust and legitimate pathway for addressing serious allegations against judicial officers. Far from undermining the rule of law, the present process affirms it, showing that no office, not even the highest in the judiciary, stands above accountability.

Structure of the Commentary

To situate the joint statement in its proper context, this commentary proceeds in a structured manner.

- 1. Understanding the Context** — clarifying the principles of judicial independence, judicial accountability, and constitutional fidelity.
- 2. Trends in Judicial Petitions in Ghana** — showing that petitions are not novel but part of constitutional practice.

3. **The Joint Statement** — summarising areas of agreement.
4. **Points of Misapprehension and Legal Clarifications** — correcting factual and legal misinterpretations.
5. **Conclusion** — reaffirming constitutional fidelity as the safeguard for both independence and accountability.

1. Understanding the Context

Judicial Independence

Judicial independence is the principle that judges must be free to decide cases impartially, without influence or pressure from the Executive, Legislature, private interests, or public opinion. It is a safeguard for the rule of law, ensuring that decisions are based solely on law and evidence, not political expediency or personal relationships. In Ghana, this independence is constitutionally guaranteed under Article 127 and reinforced by security of tenure and protection from arbitrary removal. However, independence does not mean insulation from lawful oversight; it means freedom from improper interference, not freedom from accountability.

Judicial Accountability

Judicial accountability refers to the mechanisms by which judges are held responsible for their conduct and performance in office. This includes compliance with the Constitution, statutes, codes of conduct, and ethical standards. In Ghana, Article 146 of the Constitution provides the process for investigating allegations of stated misbehaviour, incompetence, or inability of the Justices of the Superior Courts and Chairmen of Regional Tribunals. The purpose is to maintain public confidence in the judiciary by addressing misconduct while protecting judges from unfounded attacks. As history shows, the current Chief Justice (suspended) has not one, but three petitions currently pending against her and there was an earlier petition from one **Professor Stephen Kwaku Asare (Kwaku Azar)** against the current Chief Justice, which did not go through scrutiny on merit due to a procedural bar applied by the then

President, in consultation with the Council of State in fidelity with the constitution of Ghana, the system aims to balance the dignity of judicial office with the right of citizens to seek redress. Though the petitioner, P... has publicly disagreed with the position of the then President and the Council of State, the decision of the then president remained binding in strict fidelity with the provisions of the constitution

Constitutional Fidelity

Constitutional fidelity means strict adherence to the text, spirit, and processes laid down in the Constitution. It requires that all actors, including judges, the Executive, petitioners, and the public, respect the rules that govern how disputes, including disciplinary matters, are handled. It is the commitment to follow the lawful process even when outcomes are uncertain or unpopular. In matters of judicial discipline, fidelity to Article 146 ensures that proceedings are neither rushed in a way that undermines fairness, nor obstructed in a manner that defeats accountability.

The current petition against the Chief Justice is therefore part of an established constitutional tradition, not an aberration. It is against this background that the 14th August 2025 joint statement by the Bar Council of England & Wales and the Commonwealth Lawyers Association must be examined.

2. Trends in Judicial Petitions in Ghana

Petitions against judges of the Superior Courts are not new in Ghana's legal landscape. They are part of the checks and balances that sustain judicial integrity.

i. The 2014 Petition Against CHRAJ Commissioner Laretta Lamptey

In 2014, the Commissioner for the Commission on Human Rights and Administrative Justice (CHRAJ), Laretta Lamptey, faced a petition for her removal from office over allegations of abuse of office and misappropriation of public funds. The petition, lodged by the present Member of Parliament for

Nsawam-Adoagyiri, Frank Annoh Dompok, and the Progressive Nationalist Forum, centered on the expenditure of over \$200,000 on rent for her accommodation at the AU Village and a hotel, while her official residence underwent renovations costing approximately GH¢182,000.

Following the submission of the petition, President John Dramani Mahama, acting on the advice of the Chief Justice, suspended Ms. Lamptey in January 2015 after a prima facie case was established against her. A five-member committee was subsequently set up to investigate the matter. The committee's report, submitted in September 2015, found her guilty of the allegations and concluded she was unfit to hold the position. Based on these recommendations, President Mahama removed Ms. Lamptey from office in November 2015, demonstrating the efficacy of the Article 146 process for non-judicial officeholders who hold a rank equivalent to a Superior Court judge.

- ii. **The 2015 Anas Aremeyaw Anas Judicial Corruption Exposé**
A watershed moment in Ghana's judicial history, a 2015 investigative piece by journalist Anas Aremeyaw Anas and his Tiger Eye PI team exposed widespread corruption within the judiciary. Secretly filmed footage showed dozens of judges and judicial staff allegedly accepting bribes to influence cases. This exposé triggered formal proceedings under Article 146 of the Constitution against 34 judges. Following investigations by committees established by the Chief Justice, the process led to the dismissal of 12 High Court judges and 22 lower court judges.

One of the implicated judges, Justice Paul Utter Dery, challenged the legality of the investigation, in the Supreme Court case of **His Lordship Justice Paul Utter Dery Vrs Tiger Eye P.I. and Others [2016] GHASC 2** arguing that the public screening of the evidence violated the confidentiality clause of Article 146(8). However, the Supreme Court dismissed the suit, affirming that while

the confidentiality clause was breached, it did not invalidate the entire removal process. The Court underscored that the Article 146 procedure is the exclusive and constitutionally mandated pathway for judicial discipline.

iii. **The 2017 Petition Against Former Electoral Commission Chairperson Charlotte Osei**

In July 2017, a petition was filed by staff of the Electoral Commission (EC) seeking the removal of the then Chairperson, Charlotte Osei, on grounds of procurement breaches, incompetence, and abuse of office among others. The 27-point petition alleged numerous procurement breaches, including the unilateral awarding of contracts without following due process. The tense situation escalated with public accusations and counter-accusations between Mrs. Osei and her two deputies, Amadu Sulley and Georgina Opoku Amankwaa, who also faced petitions for their removal.

President Nana Akufo-Addo, in accordance with Article 146 of the Constitution, referred the petitions to the Chief Justice, who established a five-member committee to investigate the claims. The committee found Mrs. Osei and her deputies liable for "stated misbehaviour and incompetence" and recommended their removal. Consequently, in June 2018, the then President Akufo-Addo removed all three commissioners from office. Subsequent legal challenges to the removal were dismissed by the Supreme Court.

iv. **Professor Kwaku Azar's 2024 Petition Against Chief Justice Torkornoo**

In December 2024, Professor Stephen Kwaku Asare, a US-based Ghanaian academic also known as Kwaku Azar, filed a petition for the removal of Chief Justice Gertrude Torkornoo, citing allegations of misbehaviour and incompetence related to her administrative functions. In January 2025, then-President Nana Addo Dankwa Akufo-Addo dismissed the petition. The presidency stated that after a thorough review, the petition did not establish

a prima facie case, noting it was submitted without supporting evidence and was prematurely circulated in the public domain, contrary to constitutional provisions. Professor Asare later contested the handling of his petition, arguing that the President's role is not to conduct a full inquiry but to determine if the petition merits the establishment of an investigative committee.

v. **The 2025 Petitions Leading to the Suspension of Chief Justice Torkornoo**

The issue of judicial accountability was brought to the fore again in 2025 following a change in government. Three separate petitions were submitted to President John Dramani Mahama seeking the removal of Chief Justice Gertrude Torkornoo. The petitioners were a group named Shining Stars of Ghana, a private citizen Daniel Ofori, and Assistant Commissioner of Police/Senior Lawyer (ACP) Ayamga Yakubu Akolgo (Esq).

The allegations were multifaceted, centring on claims of financial misconduct, abuse of power, and controversial administrative and judicial decisions. After consulting with the Council of State, President Mahama determined that a prima facie case had been established, leading to the historic suspension of Chief Justice Torkornoo in April 2025, pending an investigation by a five-member committee as mandated by Article 146. The suspended Chief Justice has since challenged the legality of the proceedings in court.

vi. **Petitions Against the Current Electoral Commission Leadership**

The accountability mechanism of Article 146 extends to other high-ranking officials, including the Chairperson of the Electoral Commission (EC). In January 2025, a civil society organisation, the Positive Transparency and Accountability Movement-Africa (PTAAM-Africa), petitioned President Mahama for the removal of EC Chairperson Jean Mensa and her deputies. The petition cited grounds of alleged financial loss to the state related to the procurement

of a new biometric voter system for the 2020 elections, misconduct, and actions that purportedly created a constitutional crisis. This demonstrates the broad application of the petition process as a tool for ensuring public office holders remain accountable.

The cases discussed above reinforce the principle that no public official, including the Chief Justice, is above scrutiny, and any investigation into their conduct must strictly adhere to the procedures established by the Constitution. The Supreme Court's decision in *Dery v. Tiger Eye Pl & Chief Justice & Attorney-General [2016] GHASC 2* demonstrates the court's commitment to upholding the integrity of the process outlined in Article 146, even in the face of procedural breaches. It additionally and centrally confirms that the constitutional provisions for judicial accountability are paramount and are to be followed exclusively.

Therefore, the ongoing proceedings related to the current petitions are not an aberration but a continuation of this constitutional framework for accountability. It is against this backdrop of established precedent and constitutional procedure that the joint statement of 14th August 2025 and the broader discourse on judicial independence must be assessed. These petitions ultimately serve to strengthen, rather than undermine, public trust in the judiciary.

These precedents highlight that petitions do not undermine judicial independence but strengthen public trust in the judiciary by ensuring that no judge, however high-ranking, is placed above scrutiny.

3. The Joint Statement — Summary and Areas of Agreement

On 14th August 2025, the Bar Council of England & Wales and the Commonwealth Lawyers Association issued a joint statement expressing “serious concern” over the suspension of the Chief Justice. They emphasised that:

“An independent and impartial judiciary is a cardinal feature of any country governed by the rule of law... Disciplinary proceedings... should include the right to be fully informed of the charges, to be represented, to make a full defence, and to be judged by an independent tribunal.”

On these principles, there is full agreement. Ghana is committed to judicial independence, fair hearing, and due process, values embedded in the Commonwealth Charter and Ghana’s Constitution. The call for *clear and transparent rules of procedure* is also commendable.

However, parts of the statement reflect a misinterpretation of Ghanaian law and overlook crucial facts.

4. Points of Misapprehension and Legal Clarifications

a. “Prima facie breach” of Executive duties?

The statement’s claim that the suspension of the Chief Justice is “prima facie in clear breach” of Executive duties is unsupported by Ghanaian law. Such a statement can only be made when Ghana’s 1992 Republican Constitution is not carefully studied:

- A key feature of Ghana's constitutional democracy is the power, vested in the President to suspend a Chief Justice once a prima facie case for their removal has been determined. This authority ensures that no office, including the highest judicial position, is beyond proper scrutiny and accountability. However, this power is not unchecked. According to **Article 146(10)(a)**, the President must act **"in accordance with the advice of the Council of State."** This creates a crucial safeguard, ensuring the decision to suspend the head of the judiciary is a deliberated one, balancing executive authority with the counsel of a key advisory body, thereby protecting the process from potential political overreach.

- It is stated in the case of **Awuah vrs Chief Justice and Another [2019] GHASC 92 (19 December 2019)** that:

“It is clear, as earlier mentioned, that the Constitution gives the President power to suspend a judge who is facing an impeachment committee...It must be emphasized that, where a judge is facing an impeachment committee, the provisions under article 146(10)(b) in respect of suspension of such judge, must prevail.”
- **The necessity is evident:** The rationale behind the authority given to the President for suspension goes to the heart of the legal principle that justice must not only be done but must be seen to be done. The office of the Chief Justice holds immense power; they preside over their own court, select panels of judges, and control the case docket. To allow a Chief Justice to wield this authority while under a formal investigation for their removal creates an untenable situation. It risks eroding public confidence, as the proceedings could be tainted by the perception of bias. Suspension is therefore an imperative step to safeguard the judiciary's legitimacy in the eyes of the public.

b. **Petitioners using witnesses**

The statement objects to petitioners relying on witnesses. However,

- Contrary to the assumption in the statement, there is no immutable law in Ghana that requires a petitioner to be the first to testify in proceedings. This flexibility is supported by both statute and case law. Ghana's **Evidence Act, 1975 (NRCD 323)**, allows for procedural adaptability. More explicitly, the Supreme Court addressed this in **Allotey Vrs Electricity Company Ltd [2023] GHASC 81 (5 July 2023)** in saying that

“In dealing with the principles of natural justice, one has to bear in mind that the principles are substantive rather than procedural safeguards. Therefore, the fact that a particular formal procedure is not adopted, does not itself imply that the principle has not been applied in an appropriate case...what is of

importance is whether the essence of the principles of natural justice, as to fair hearing, etc, have been observed”

This principle means that as long as the respondent is given a full opportunity to confront and cross-examine any evidence or witness testimony brought against them, the tribunal has the discretion to determine the order of proceedings.

A key precedent regarding witness testimony emerged from the 2020 election challenge. The 2020 Election Petition: *Mahama & NDC vs. Electoral Commission & Akufo-Addo*

Following the 2020 presidential election, the National Democratic Congress (NDC) and its candidate, John Dramani Mahama, petitioned the Supreme Court to challenge the validity of the results declared by the Electoral Commission. A pivotal moment in the trial occurred when the Chairperson of the Electoral Commission, Mrs. Jean Mensa, who was the first respondent's key witness, elected not to mount the witness box for cross-examination, despite having filed a witness statement.

The petitioners' lawyers vehemently objected, arguing that the EC Chairperson had a duty to account for her stewardship and could be compelled to testify. However, the lawyers for the EC argued that the burden of proof lay with the petitioner and they were not obliged to present a witness. In a landmark, unanimous ruling, the Supreme Court held that it could not compel a witness to give evidence. The court reasoned that a witness statement does not constitute evidence until the witness takes an oath in the box; therefore, a party has the right to decide against calling a witness they had previously put forward. This ruling affirmed the legal principle that no party can be forced to testify in a case and that a petitioner must build their case on the strength of their own evidence, not on the hope of compelling testimony from the opposition.

- **Petitioners here have not closed their case and may yet testify.** It is therefore crucial to note that the petitioners in this matter have not yet closed their case and may still testify. The approach of hearing other witnesses or presenting evidence before the petitioners themselves take the stand is entirely consistent with the flexibility embedded in Ghanaian jurisprudence. Consequently, any assertion that the proceedings are procedurally flawed on this basis is made without foundation in the established law and practice of Ghana.

c. **Lawyer mistreatment**

Regarding the allegation of persistent mistreatment of the Chief Justice's lawyers, this claim is not borne out by the broader record. While an incident was noted on the first day of the committee proceedings, (as stated by the Chief Justice in many forums, including her press conference), which was subsequently addressed, as evidenced by the fact that the Chief Justice is being represented by lawyers at the Committee Hearing, which is ongoing, the claim of ongoing harassment was formally tested in court. The Chief Justice invoked the supervisory jurisdiction of the judiciary by filing a judicial review application at the Supreme Court and another process at the High Court, which included the allegation that her legal team was prevented from representing her. However, both the High Court and the Supreme Court dismissed the said processes. The High Court in particular ruled that it lacked jurisdiction to intervene in the internal proceedings of the Article 146 committee, which the Constitution mandates are to be held "in camera," and further described parts of the application as an abuse of process. **The matter was therefore judicially addressed and did not succeed.**

d. Delay in proceedings

The statement blames the State or the executive for the delay in finalising the proceedings of the committee investigating the petitions against the Chief Justice.

- However, in reality, multiple legal challenges filed by the Chief Justice in Ghana and at the ECOWAS Court had, in the intervening period, automatically stayed the process. Several applications have been dismissed, reflecting on her litigation approach rather than the State's willingness to proceed.

e. Breach of in-camera requirement

The most glaring breach of the process has been the violation of the "in camera" rule, led by its primary beneficiary. Article 146 of the Constitution explicitly mandates that proceedings for the removal of a Justice be held in private to protect the integrity of the process. It was stated in the Paul Utter Dery case that Article 146(8) is violated when the proceedings are published to unauthorised persons, before the termination of the proceedings. It is also stated that indeed it is unconscionable to void the petition because its contents have been divulged to others

In an unprecedented move, the Chief Justice herself convened a press conference in which she publicly detailed the contents of the confidential petitions, the ongoing committee proceedings, and the internal processes of the hearing. This action single-handedly moved a constitutionally mandated private inquiry into the public domain, creating a situation where the individual protected by this safeguard became its most prominent violator. Moreover, this is not grounds enough to discontinue proceedings.

f. Overlooking petitioners' rights

Conspicuously absent from the joint statement under discussion is any consideration for the constitutional rights of the petitioners who initiated this process. The focus has remained entirely on the respondent, while the serious allegations brought by citizens are overlooked. For instance, one petitioner, himself a lawyer, has made grave allegations against the Chief Justice. These include claims of being deliberately humiliated in open court and, most seriously, the alleged alteration of court records with the specific intent to obstruct his right to an appeal. Such weighty claims, which strike at the very heart of judicial administration and fairness, cannot be sidelined; they demand a thorough and impartial investigation in their own right.

5. Conclusion

Ultimately, judicial independence cannot mean immunity from lawful scrutiny. Article 146 of the Constitution is a carefully calibrated instrument: it protects judges from arbitrary removal while ensuring they remain accountable to the public they serve.

Viewed through this lens, the Council of State's advice to suspend the Chief Justice was a lawful and necessary step to protect the integrity of the process. While the joint statement's calls for fairness are valid, such calls must be matched by an equal commitment to factual accuracy, a deep respect for Ghana's constitutional framework, and a clear recognition of the petitioners' rights to have serious allegations properly examined.

This commentary is not an endorsement of any party in this matter. It is, however, a firm reminder that international commentary on Ghana's judicial processes must be grounded in verified facts and measured against our own constitutional and legal standards. Our system, while not perfect, deserves to be evaluated on its own legal terms, the same standard of deference rightly applied to judicial processes in any sovereign nation.