



Commonwealth Lawyers Association

Statement of Concern by the Commonwealth Lawyers Association on the Suspension of the Chief Justice of Ghana.

On 22nd April 2025, the President of Ghana, John Dramani Mahama, suspended the Chief Justice of Ghana, Gertrude A. E. S. Torkornoo.

The Commonwealth Lawyers Association (CLA) notes the Statement of the Ghana Bar Association (GBA) on 24th April 2025 and the GBA Resolution published on 29th April 2025.

The Resolution states:

The Ghana Bar Association calls for the immediate revocation of the suspension of the Chief Justice as it considers the suspension to be unconstitutional.

The Constitution of the Republic of Ghana at Section 146 states:

A Justice of the Superior Court or a Chairman of a Regional Tribunal shall not be removed from office except for stated misbehaviour or incompetence or on ground of inability to perform the functions of his office arising from infirmity of body or mind.

The CLA notes the concerns expressed by the GBA and wishes to stress that the grounds on which judges may be removed from office and the process for removal should be clearly discernible from the legal framework under which they serve.

The Commonwealth Charter states:

“ .. we support an independent, impartial, honest and competent judiciary and recognise that an independent, effective and competent legal system is integral to upholding the rule of law, engendering public confidence and dispensing justice”

The Commonwealth (Latimer House) Principles on the Accountability of and Relationship between the Three Branches of Government (“Latimer House Principles”) declare *that ‘appropriate security of tenure’* should be guaranteed for the judiciary. This shields judges from external pressure when they hold powerful individuals or government bodies accountable, and thereby contribute to sustaining an independent judiciary, which is an essential element of the rule of law.

Removal or suspension from office is a very serious form of judicial accountability. The Latimer House Principles declare that judges *'should be subject to suspension or removal only for reasons of incapacity or misbehaviour that clearly renders them unfit to discharge their duties'*. The *"misbehaviour and or incompetence"* wording of Section 146 should be applied in this context.

The Privy Council in **Re Chief Justice of Gibraltar** ¹ held that removal of a judge *'can only be justified where the shortcomings of the judge are so serious as to destroy confidence in the judge's ability properly to perform the judicial function'*. It was also decided that international standards as set out in the Bangalore Principles of Judicial Conduct 2002 are relevant to evaluating the behaviour of judges but conduct falling short of those standards does not automatically constitute grounds for removal.

Thus, the bar for the removal (and suspension) of judges is set high.

The CLA also notes that *the "The Appointment, Tenure and Removal of Judges under Commonwealth Principles; A Compendium and Analysis of Best Practice. ("the Compendium")* ² provides a comprehensive review of the principles and standards that should apply in the removal and suspension of Judges and the processes which should be undertaken. The Compendium is commended to the authorities and to all persons in Ghana who are involved in this matter

The Compendium notes that judges should not be vulnerable to removal for errors which are not of their own making but may be caused by systemic factors such as excessive caseloads or inadequate administrative support. Where there is an expectation of standards of conduct, for example in a Judicial Code, the Compendium notes that not every breach of a Code will be sufficiently serious to warrant removing a judge from office.

As regards the appointed Committee (Tribunal), common law principles of procedural fairness require a presumption of innocence in questions of wrongdoing; sufficient time to prepare a defence; the opportunity to present evidence and where relevant to cross-examine witnesses; a right to legal or other representation; a right to reasons, particularly in matters in which there is great public interest; and the possibility of judicial review to ensure that all the legal requirements of the removal process are adhered to in practice, and, where appropriate, also an appeal which may consider both questions of law and fact.

Suspension of a Judge raises important issues for the rule of law. As the Compendium observes there are understandable reasons why it may be appropriate that a judge who faces credible allegations of serious misconduct should take no part in the administration of justice until those allegations are resolved. Such action may be necessary, depending on the nature of the alleged misconduct, to maintain public confidence in the courts. On the other hand, there is the risk that the power to suspend a judge may be abused to penalise or intimidate independent-minded judges and to prevent them from deciding cases.

¹ [2010] 2 LRC 450

² Authored by the Bingham Centre and published by British Institute of International and Comparative in 2015

The UN Basic Principles on the Independence of the Judiciary highlight the need for proceedings to be completed without undue delay: A charge or complaint made against a judge in his/her judicial and professional capacity should be processed expeditiously and fairly under an appropriate procedure.

The CLA urges all parties involved in the process in Ghana to be mindful of the Commonwealth Charter, Latimer Houses Principles, the UN Basic Principles on the Independence of the Judiciary and to be informed by the Compendium.

The CLA exhorts that accepted principles and standards in Administrative Law for the conduct of the process be adhered to, and

The CLA expresses the hope that all parties involved in the matter will act reasonably and proportionally bearing in mind the comments of the Privy Council in the **Chief Justice of Gibraltar** case.

The CLA will continue to monitor the matter and maintain contact with the GBA to be informed of the progress of the matter.

Commonwealth Lawyers Association (CLA)

7th May 2025

The **Commonwealth Lawyers Association** is an international non-profit organisation which exists to promote and maintain the rule of law throughout the Commonwealth by ensuring that an independent and efficient legal profession, with the highest standards of ethics and integrity, serves the people of the Commonwealth. commonwealthlawyers.com