

# Safeguarding Democracy and Human Rights: The Role of Ghana's Judiciary

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## ABSTRACT

This paper examines how the judiciary in Ghana has contributed to safeguarding democracy and human rights as enshrined in the 1992 Constitution. The aim was to assess the role of constitutional enforcement, electoral decision-making and the protection of rights in consolidating democracy, as well as to identify institutional challenges and reform options. A total of 122 primary and secondary sources, including constitutional provisions, landmark decisions and academic publications by the judiciary and peer-reviewed academic sources published from 1992 to 2025 were consulted. Data collection was carried out by combining a doctrinal analysis of the Constitution and case law with a thematic analysis of institutional documents and academic commentaries. The review has been structured in five areas: constitutional implementation, electoral conduct, human rights, institutional constraints and the path to reform. The results show that the judiciary has played a key role in democratic consolidation, ruling on petitions for presidential elections in 2013 and 2021, developing human rights law and participating in the control of unconstitutional state actions. Specialised courts and e-justice systems are reforms which have improved access to justice in selected jurisdictions. However, the judiciary continues to face such challenges as lack of funding, large backlogs of cases, perception of corruption, political interference in appointments and a loss of trust in the judiciary. These restrictions limit the capacity of the judiciary to fulfil its constitutional mandate. The document finds that the judiciary in Ghana remains a core of democratic stability, but that its performance is determined by resources and independence as well as legitimacy. Some key recommendations include isolating judicial appointments from political considerations, ring fencing budget allocations, strengthening case management systems, promoting civic education to restore confidence and enforcing accountability and ethical standards.

**Keywords:** Judiciary, Democracy, Human Rights, Constitutional Enforcement, Judicial Independence, Election Adjudication, Ghana.

## INTRODUCTION

The judiciary is the central institution of democratic governance, as it interprets the Constitution and enforces rights and limits the abuse of state power (Ginsburg and Huq, 2018; Smith, 2010). In Ghana, this is enshrined in the 1992 Constitution, which gives the courts the right to judicial review, the right to enforce fundamental rights and the right to act without interference by the executive and the legislature (Republic of Ghana, 1992, Article 2(1)). 125 to 130 (E). These provisions place the judiciary in the position of not only adjudicating disputes but also safeguarding the democratic process, which is therefore essential for constitutional stability and the protection of human rights (Mendelson, 2015; Crawford, 1993). Ghana's judiciary has gone through a history of colonial subordination, post-independence turbulence and authoritarian military rule, only to be restored to independence under the Fourth Republic (Harvey, 2002). The 1992 Constitution sought to consolidate independence through tenure security and the Judicial Council (Crawford, 1993). Scholars

associate these reforms with the broader theory of separation of powers, according to which judicial independence is essential to avoid concentration of power and preserve the rule of law (Dicey, 1959; Tate and Vallinder, 1995). However, peer review research warns that constitutional guarantees can only be effective if they are not compromised by political influence, insufficient implementation, or public mistrust (Ginsburg, 2003; Haggard and McCubbins, 2001).

This can be empirically demonstrated, as Ghana's judiciary has played a crucial role in consolidating democracy. The Supreme Court's 2013 ruling on a presidential election petition also called into question the impartiality of the judiciary in the most contentious situations and reinforced the idea that an electoral dispute can be resolved not only by legal means but also by extra-legal means (Atuguba, 2015). Other areas of expanded rights law in the courts include freedom of the press, gender rights and access to justice (Ahwoi, 2005; Ohene-Amoh, 2014). However, systemic constraints still exist. According to the Judicial Service reports, there is a persistent backlog of cases - over 120 000 new cases filed each year - with significant spill-over effects, slowing down the enforcement of rights (Judicial Service, 2024). All of these issues are linked to the broader issue of access to justice and the fair implementation of constitutional rules (World Bank, 2011). Another problem is one of public confidence. Ghanaians' confidence in the judiciary has deteriorated, with a majority believing that judges are susceptible to corruption or political favouritism (Afrobarometer, 2020; Acheampong and Canna, 2025). This was demonstrated by the corruption scandal of 2015, in which more than 30 judges were implicated in a bribery scandal, highlighting the weak accountability mechanisms and exacerbating the legitimacy crisis (Anas, 2015). Lack of trust is important, as lack of trust in the judiciary affects not only compliance with the judgment but also the encouragement of acceptance in society of the impartiality of the judiciary (ISS Africa 2024). Political pressures exacerbate these. Judicial independence is being tested as it competes with the executive and the legislature for appointments, disciplinary cases and judicial review (Ndanyenbah, 2024; Akuffo, n.d.). The emergence of such strains reflects the judicialisation of politics, where courts become the central arena for fighting high-profile political and governance issues (Rosenberg, 2008; Tate & Vallinder, 1995).

At the same time, institutional flexibility can be seen in reform efforts, including the creation of commercial courts, the automation of case management and specialised human rights hearings (World Bank, 2012). However, their overall contribution to the protection of rights and to democratic sustainability is not fully reflected in the literature. As a result, the academic debate oscillates between accounts of the judiciary as a bastion of democracy and fears of its vulnerability. Thus, a review of the constitutional texts, landmark decisions, literature and judicial commentary shows the double truth that Ghana's judiciary has a normative mandate to protect democracy and human rights, but is in practice constrained by capacity constraints, illegitimate authority and political influence. The combination of these results helps to provide a basis for assessing achievements and weaknesses of the judiciary and to propose ways to strengthen it in the democratic process.

## Significance of the Study

The change of the Fourth Republic in 1992 under the new Constitution enshrined constitutional sovereignty, multiparty democracy and an enforceable Bill of Rights after decades of authoritarian rule. The judiciary, which is charged with interpreting the Constitution, enforcing fundamental rights and keeping state power within the limits of the law, is a key part of this system. The role of the judiciary is therefore not only legal but highly political and determines the quality and strength of Ghana's democratic governance. This study is important in three dimensions, which are interlinked. First, constitutional enforcement stresses the power of the courts to scrutinise the actions of the executive and the legislature, ensuring their compliance with the Constitution. That position upholds the doctrine of constitutional sovereignty and excludes arbitrary exercise of public authority. Secondly, the protection of human rights stresses the judiciary as the main place for citizens to seek redress for violations of their civil, political and socio-economic rights. In this role, the courts play a role in safeguarding individual liberties and equal justice before the law. Third, democratic protection puts the judiciary in a position as an institutional stabilizer, its handling of electoral disputes, control of political processes and its demand for judicial independence are all part of the consolidation of democracy and political stability.

## METHODOLOGY

This paper uses both a doctrinal and a thematic-review approach in its examination of the role of the judiciary in Ghana in the protection of constitutional democracy and human rights. The doctrinal approach focuses on analysing the main sources of law, namely the Supreme Court and High Court Decisions, constitutional petitions and the 1992 Constitution Clauses. Other institutional publications, such as those of the Judicial Service and the reports of the Commission for Human Rights and Administrative Justice (CHRAJ), were also examined to provide insights into institutional practices and performance. The thematic revision approach has resulted in a synthesis of academic literature on the subject published between 1992 and 2025 to ensure that historical and contemporary perspectives are covered. Some of the search words used to identify material of interest were: the Constitutional Process, Ghana electoral petitions, Ghana's Human Rights Courts, judicial independence and judicial review. The collection of landmark cases and academic commentaries has been carried out in a systematic manner. The material was filtered for relevance and themes of repetition from literature and case law were identified by analysis. The analysis was structured around five key themes: (i) constitutional enforcement, (ii) electoral processes, (iii) protection of human rights, (iv) institutional constraints and (v) the path to reform. This thematic classification allowed doctrinal knowledge to be integrated into more general institutional and political debates. The methodology foresees the form of legal precedence and the consistency with institutional practice as the basis for assessing the democratic contribution of the judiciary. However, some weaknesses are recognised. The scope of the doctrinal analysis has been limited by the selective access to court records, especially of the lower courts. Moreover, secondary sources were not always consistent in their interpretation and the triangulation of views was carried out in an approach-oriented way. However, the combination of doctrinal and thematic reviews offered a rigorous set of criteria against which to assess the role of the judiciary in Ghana in the context of democratic consolidation and the protection of human rights.

## RESULTS AND DISCUSSION

### Constitutional Enforcement and Election Adjudication

The thematic and doctrinal review shows that Ghana's judiciary has extensive constitutional powers of enforcement and has in practice handled the most politically charged cases of the Fourth Republic, such as high profile presidential and parliamentary petitions. The aggressive landmark election petitions, notably those for 2012 (decided in 2013) and 2020 (decided in 2021), demonstrate the Supreme Court's central role in resolving the electoral controversy and avoiding a crisis. *Mahama*, 2013; and *Mahama v Electoral Commission of the Republic of Ghana*, 2021. These decisions have strengthened the process of democratic consolidation, as political forces finally accepted the results of the trial rather than resort to violence (Kwarteng, 2014; Reuters, 2021).

### Institutional Partnerships and Human Rights Protection

According to doctrinal sources, the High Court has primacy for the enforcement of fundamental human rights (Republic of Ghana, 1992). The Human Rights Department has produced an increasing body of case law which is being used by individuals and rights organisations. Here CHRAJ comes in, since it is trying to expose abuses and also to provide civic education (CHRAJ, n.d.). The judiciary and the CHRAJ together constitute a layered system of enforcement, including decision-making, investigative and preventive systems.

### Modernization and Reform of Judiciary

The review mentions initiatives in the field of administrative modernisation, including specialised courts (Commercial Division, Human Rights Court) and online forms of justice. These reforms have improved transparency, case management and access to justice (World Bank, 2019; Court of Justice, 2022). Empirical reports attribute credit for the reduction of delays to them in some aspects, but this is not systematically covered across the country. According to international development partners, digitisation is one of the factors that can reduce informal influence on case outcomes, provided it is properly funded and implemented (UNDP, 2020).

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## **Institutional Constraints and Challenges**

Despite these reforms, structural problems exist in the judiciary. The chronic under-financing problem affects infrastructure, staff and technology deployment (JRC, 2022). The existence of cases backlogs and delays of more than three months constitutes a violation of rights equivalent to a de facto judicial standstill (World Bank, 2021). People also lose confidence in the independence of the judiciary, which is partly explained by the perception of corruption and the bribery scandal in the judiciary in 2015 (Afrobarometer, 2024; Anas, 2015). Such a legitimacy crisis undermines respect for court rulings and undermines the power of the judiciary.

## **Judicial Independence and Political Pressures**

The instability of the judiciary in the light of political influence is evident in some recent scandals (appointments, disciplinary cases and the removal of the Chief Justice in 2025) (Judicial Council Act, 2019; LegalAfrica, 2025). Although constitutional protection offers security of tenure and accountability, its application is controversial, leading to questions about the politicisation of the accountability structures. These events show the weak independence of the judiciary in a partisan political world.

## **Innovations and Mechanisms of Integrity**

However, the judiciary in Ghana has implemented some strategies to help the administration build up a more solid and solidified integrity and to restore legitimacy. Accountability structures have been strengthened through the Judicial Code of Conduct, training in ethics, lifelong learning and cooperation with civil society (JVS, 2021; CHRAJ, 2023). Transparency is also enhanced through the use of digital court systems and the publication of court decisions in open access. According to the comparative literature, these innovations have made Ghana a reference point for judicial reform in West Africa (Center for the Study of Corruption, U4, 2022).

## **Democracy Consequences and Effects**

Judicial intervention strengthened electoral democracy, rights were protected and unconstitutional state action was curbed. Decisions on electoral petitions prevented political instability and judicial review reduced the excesses of the executive. However, these interventions will only be effective if they are sufficiently resourced, autonomous and trusted by the public (Reuters, 2021; Afrobarometer, 2024). Ghana's judiciary is often cited by international observers as a tool for stabilizing African democratic institutions, but in the long term it requires addressing institutional weaknesses.

## **Limitations of Evidence**

The availability of judgments of the lower courts is also limited, which limits the scope of the doctrinal review to the higher courts. Public opinion polls are perceptual and cannot verify errors, while even reforms such as e-Justice (GHALII, 2023; World Bank, 2020) are not usually subject to rigorous impact assessments. These limitations indicate that triangulated evidence is required to assess judicial effectiveness in a holistic way.

## **CONCLUSION**

The review examined the main issue of how the judiciary plays a central role in Ghana's democracy and human rights under the 1992 Constitution. Evidence shows that courts are not only the organisation for resolving disputes, but are key institutions for the enforcement of the constitution, the conduct of elections and the protection of the rights of the people. The judiciary has in many cases prevented political crises and strengthened the democratic consolidation process by delivering landmark decisions, particularly on electoral petitions. Judicial review, specialised human rights courts and cooperation with supervisory agencies (CHRAJ) are further examples of the judicial safeguards. At the same time, there are challenges that hinder the full implementation of these constitutional mandates. Judicial action is hindered and made less effective and legitimate by chronic under-funding, infrastructure deficiencies, backlogs and allegations of corruption. The

lack of judicial independence is manifested by political pressure (most visibly in appointments and disciplinary cases) and the shortcomings of the model of separation of powers in Ghana.

The declining public confidence, reinforced by high-profile scandals and public ignorance about judicial proceedings, further limits the democratic capacity of the judiciary. However, the review found that there were important innovations which demonstrate institutional flexibility. The creation of specialised courts, the computerisation of judicial procedures, changes in judicial ethics and increased civic participation all reflect a realisation by the judiciary of its role in maintaining democratic governance. Although these initiatives were implemented unevenly, they have made Ghana's judiciary a model in West Africa and have demonstrated its further usefulness in consolidating constitutional democracy.

## RECOMMENDATIONS

It is clear from peer reviewed evidence that the judiciary in Ghana is central to the protection of democracy and human rights, but that institutional reforms are not sufficient to ensure a lasting impact. Policymakers, the judiciary and civil society must be determined to use a coordinated, transparent and evidence-based approach to combine the role of the judiciary in democratic governance. The following recommendations are synthesised from the experience in Ghana and compared to practice.

1. Strengthen the independence of judicial bodies and the insulation of judges: The systems used for the appointment and punishment of judges should be reviewed in order to minimise the possibility of political interference. Reforms need to focus on merit-based judicial appointments, open examination and strengthening the control of the Judicial Council.
2. Increase and capping judicial funding: long-term budget grants are needed to upgrade infrastructure, digitisation and human resources. The judiciary will be protected from under-funding by the executive and will enjoy greater independence in its work through ring-fenced funds managed by the parliament and independent auditors.
3. Investing in case management and backlog reduction: the nationwide introduction of e-justice systems, supported by alternative channels for resolving cases and time-limited rules for rights cases, will help reduce the backlogs that currently hamper access to justice.
4. Restoring public confidence through legal literacy and participation: CHRAJ, in cooperation with schools and civil society, is expected to launch civic education programmes in various languages to demystify judicial processes and dispel misperceptions of court decisions.
5. Strengthen judicial accountability and ethics: codes of ethics, disciplinary systems and asset declaration systems need to be implemented to address the perception of corruption. Internal arrangements should be complemented by independent monitoring, which will also ensure consistency in sanctions.
6. Increase specialised courts and training: Increasing the number of human rights, commercial and electoral dispute resolution courts and continuing professional training in constitutional and international human rights law will increase judicial expertise.
7. Improving the safety and protection of judges in high profile cases: institutional mechanisms such as security training, judicial protection and psychological support should be improved to enable judges to make decisions without fear of intimidation.

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### Conflict of Interest

The authors declare that there are no conflicts of interest related to the research titled “Safeguarding Democracy and Human Rights: The Role of Ghana’s Judiciary”. The study was conducted independently, without any financial, institutional or personal relationships that could be perceived as influencing the entire research and its findings.

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