Table of Contents

INTRODUCTION
THEORETICAL, POLICY AND LEGISLATIVE BASIS FOR ACCESS TO JUSTICE IN GHANA
SOCIAL DEMAND FOR JUSTICE AND AVENUES FOR JUSTICE
Social Demand for Justice
Formal Avenues
Informal Avenues
Assessment of the Various Avenues for Access to Justice
The Adversarial Court System
The Cost of Formal Litigation
The Houses of Chiefs
The Commission on Human Rights and Administrative Justice (CHRAJ)
The Police
Administrative Complaints
Alternative Dispute Resolution (ADR)
Traditional/Informal ADR
Extra Legal Avenues for Justice
BARRIERS AND CHALLENGES THAT IMPINGE ON ACCESS TO JUSTICE
ISSUES FOR FURTHER INVESTIGATION
CONCLUSION
BIBLIOGRAPHY
CONSTITUTIONS
SUBSIDIARY/SUBORDINATE LEGISLATION
BILLS AND DRAFT REGULATIONS
BOOKS, REPORTS, PAPERS, ETC
INTRODUCTION

The purpose of this report is to provide information on Access to Justice as the basis for a broader and deeper elite interview and field survey on the topic. The Paper will also serve as the background paper for the meeting of a select Faculty/Reference Group on Access to Justice that has been convened by Civic Foundation for the purpose of interrogating the premises, methodology, data, findings and recommendations of the broader study on Access to Justice.

The report is organized around six (6) main headings:
This Introduction;
Theoretical, Policy and Legislative Basis for Access to Justice;
Social Demand for Justice and Avenues for Justice;
Barriers and Challenges that Impinge on Access to Justice;
Issues for further Investigation; and
Conclusion.

The expression “Access to Justice” has varied meanings. In very broad terms, it refers to the provision of access to state-sponsored health, welfare, education and legal services, particularly for the poor. In this regard, Access to Justice is seen in terms of mechanisms for ensuring the broad ideals of Social Justice, in terms of affording individuals, groups and communities fair opportunities and treatment in the allocation and use of social/public services and goods. For our purposes, we will define Access to Justice as access to state-sponsored or state sanctioned legal services. These legal services include: access to information about legal rights and responsibilities; legal advice; legal counseling; legal representation; and other legal advocacy services. At the individual level, Access to Justice may be defined as a person’s ability to seek and obtain fair and effective responses for the resolution of conflicts, the control of abuse of power and the protection of rights through transparent, accountable and affordable mechanisms and processes that are responsive to broad social needs and sensitive to culture and the needs of disadvantaged groups.
The business of governments is to govern, and all democratic governments seek to do good governance. Good governance means inclusive, participatory, transparent, accountable, processes for generating resources; distributing resources; and managing resulting conflicts. Flowing from this, a properly functioning system that affords easy, inexpensive, speedy, efficient, effective and user-friendly access to quality justice according to law is indispensable in any society that chooses the good governance pathway. A workable system that allows easy Access to Justice has the dual capacity to enable citizens live a fulfilling, rewarding and entrepreneurial life and for ensuring political and social stability borne out of a firm conviction that resources will be generated and distributed fairly and according to predictable and transparent rules and that disputes arising out of the distribution of resources will be justly and impartially determined. In short, the very lives and freedoms of the citizenry and the integrity of the political and social systems depend on Access to Justice. Access to Justice is indeed one of the fundamental principles upon which good governance rests.

In societies faced with immense socio-economic developmental issues such as Ghana, the issue of Access to Justice is inextricably linked to the special circumstances of vulnerable groups such as the poor, women, Persons With Disabilities (PWDs), Persons Living with HIV/AIDS (PLWHAs) and other socially disadvantaged persons. Such persons face economic, social, cultural, and attitudinal barriers in their quest to access justice and the effects of limited or no access to justice can be damning indeed. To take one example in the area of child maintenance, gender roles increase women’s responsibility to provide day to day care for their children (despite the poorer economic conditions in which they find themselves) and absolve fathers of the same level of responsibility. This means that any study or intervention on Access to Justice must be nuanced enough to take adequate account of critical poverty, gender, power-relational and other issues. Since the sum total of disadvantaged groups forms the majority in Ghana (e.g. Poor 40%, Women 51% etc) Access to Justice as a mechanism for ensuring the realization of constitutionally guaranteed rights for the broader goals of poverty reduction and development cannot be achieved without these critical segments of our
population. This must be the thrust of studies which have the potential of informing policy, such as the one which will follow this desk review.
THEORETICAL, POLICY AND LEGISLATIVE BASIS FOR ACCESS TO JUSTICE IN GHANA

Access to justice encompasses two major facets, namely, legal justice and social justice. The distinction between these two aspects of Access to Justice is important because even if legal justice, as legal justice were effectively administered, it would still produce a severely limited kind of justice and would most certainly not deliver social justice. This is because it may not take account of critical factors such as the different stations of life of different people and may unrealistically assume that a wholesale application of its tenets would yield the same result in each case. This brings to fore a serious theoretical issue in any discussion on Access to Justice.

Access to Justice literally means that everyone, no matter her circumstances and station in life, must have equal rights, obligations and opportunities for redressing a wrong and for the settlement of disputes. Yet, a literal operationalization of this ideal will lead to far more injustices because of the differential circumstances of the citizenry. Such a system will mean that persons who can buy legal services, for example, at commercial rates should also be entitled to sya legal aid for the purpose of prosecuting claims. To avert such a situation, Access to Justice, paradoxically implies systems for accessing justice that are partial to the disadvantaged, through the establishment of systems, processes and social agencies to facilitate the provision of justice services to the needy. The key theoretical and policy challenge here is how to ensure that differential treatment of the citizenry, in order to privilege the disadvantaged and give them the opportunity to access justice on equal terms with the privileged, does not inadvertently create opportunities, fodder, and avenues for the manipulation of the justice system by the privileged to serve their own interests. It is with this theoretical issue at the background that we should view the non-discrimination clause in Ghana’s 1992 Constitution (and similar other provisions in the Constitution) as it relates to Access to Justice.

The Article provides for equality of all persons before the law. This commendable provision, at first blush, offers a level terrain for access to justice to all manner of persons and enhances
equity and fairness. However, in practice, this provision might be high sounding and dead letter if it is applied in a sweeping manner without particular reference to the circumstances of the economically challenged and the socially disadvantaged. Not infrequently, allegations of unequal treatment are a direct product, not of outright discriminatory rules, but of the differing social and economic conditions and situations in which different people actually exist, and especially the power-relational function that leads to actual exploitative and oppressive relationships.

In line with the constitutional injunction of equality before the law, the State has been charged, under the directive principles of state policy (Article 37(1) of the 1992 Constitution), to pursue a social objective of directing “its policy towards ensuring that every citizen has equality of rights, obligation and opportunities before the law.” This ideal is to be based on a secure and protected “social order founded on the ideals and principles of freedom, equality, justice, probity and accountability.” Article 35 (3) also provides that “the State shall promote just and reasonable access by all citizens to public facilities and services in accordance with law”. This obviously includes public facilities for Access to Justice, and immediately implicates the state as the key duty-bearer in the provision of public facilities for Access to Justice.. Whilst we may note that our Supreme Court has held that the Directive Principles of State Policy such as articles 35 and 37 of the Constitution, are not of themselves justiciable (unless they are expressly tagged to some other enforceable article of the Constitution), the guiding principles they enshrine remain valid according to the terms of Article 34, and may serve as a basis for the enactment of laws that promote Access to Justice.

The Ghana Poverty Reduction Strategy Paper (2003) also notes that Access to Justice is one of the fundamental principles upon which good governance rests. The document further states that “…the application of these principles to reduce human deprivation, promote human rights and achieve sustainable growth requires close, determined and sustained political commitment …” Ghana has aligned Access to Justice with poverty reduction and good governance. Access to justice is, therefore, not merely a legal problem but one that has
political, economic as well as social dimensions.

To operationalize these policies and laws, Article 125(1) of the Constitution, an entrenched provision of the Constitution, establishes a judiciary, meant to be independent, and charged with administering justice to all. The very words of the article are instructive indeed:

“Justice emanates from the people and shall be administered in the name of the Republic by the Judiciary which shall be independent and subject only to this Constitution”.

Equal Access to Justice under the law is a fundamental principle guaranteed under the 1992 Constitution of the Republic of Ghana. Equal justice implicitly includes equal Access to Justice. However, equal justice is currently impossible to achieve due to the different economic circumstances and social situations of the citizenry. A definition of Access to Justice must, therefore, include a function that allows for all manner of persons, however situated, being capable of bringing a legal problem to a person or body which can decide the issues and if necessary provide an appropriate remedy.

The second theoretical issue is that of Access to Justice in a pluralistic legal system. By a pluralistic legal system, we mean a legal set-up that has two or more legal systems co-existing in the same social field such as a community or a country. In such a situation, the individual is afforded, whether through the imposition of mandatory requirements or by a system of voluntary subscription, a range of rules that provides her with alternative causes of action and indeed institutions for seeking remedies for legal and social problems. Article 11 of the 1992 Constitution and the Courts Act of 1993 (especially Sections 54 and 55) reaffirm legal pluralism in Ghana by recognizing and providing for the simultaneous existence and operation of statutory law, the Customary Law and the various aspects of the inherited English Legal System. If we add to these, those aspects of religious law that are arguably sanctioned by the other two legal systems, then we have a plural legal system in Ghana indeed.
Whilst a pluralistic legal system affords flexibility and individual choice, problems of forum and avenue shopping, choice of law problems, and the development of incoherent and potentially conflicting legal philosophies, principles and rules attend it. What is more, “natural” economic and social selection processes may lead to the consignment of certain Access to Justice avenues only to the economically and socially disadvantaged and a consequential neglect of those systems. It is important that these issues are factored into any initiatives for improving Access to Justice in Ghana.

**SOCIAL DEMAND FOR JUSTICE AND AVENUES FOR JUSTICE**

**Social Demand for Justice**

What exactly is the social demand for justice in Ghana today and what avenues exist for satisfying this demand? The Constitution boldly asserts that “Justice emanates from the people”. This implies a close link between the people and justice, where the former determines the latter. Yet the exact composition of “the people” here is problematic.

In the last two and a half decades, we have nurtured a justice system to reflect and respond to an economy badly in need of foreign exchange and foreign investors. We have established Fast Track High Courts and Commercial Courts to meet the needs of mostly foreign investors as they sue Ghanaians to claim debts for sometimes overpriced services that are poorly rendered. The filing fees for initiating a case in the Fast Track High Court (not counting legal fees) is well beyond the pocket of ordinary Ghanaians. We have also seen the establishment of Commercial Crime and Property Crime Units within the Ghana Police Service and the use of the criminal process to recover private debts for businesses. The demand for formal justice services in Ghana involves mostly the business or propertied classes as litigants. The major sources of civil litigation in Ghana are commercial disputes and land and property disputes. The poor rarely appear in court except as defendants in civil suits and criminal prosecutions. The Annual Report of the Judicial Service of Ghana for 2005/2006 speaks eloquently to these conclusions. This is alright if we seek to establish the judicial
function as a supplier of services in a market driven by demand. Yet this is not the case. Judicial services in our scheme of things are meant, by constitutional injunction, to be a public good to which both the economically and socially advantaged and disadvantaged will have recourse. If it were otherwise, the economically and socially disadvantaged will possess a limited capacity to express effective demand for judicial services. This is because the actual and opportunity costs of getting the justice system to work will be well beyond the reach of ordinary poor folk. This demand constraint is a direct result of poverty and has important implications for the analysis of access to justice.

**Avenues for Access to Justice**

Access to Justice avenues in Ghana may be broadly divided into formal and informal systems. The former is almost always sanctioned by the State in the sense that they are State sponsored or are endorsed by the State. The latter are private initiatives and may or may not be state sanctioned. Indeed, they may actually be classified as illegal operatives by the State.

**Formal Avenues**

The formal avenues for Access to Justice include:

The Regular Courts for the resolution of civil and criminal disputes-the Magistrate’s Court, the Circuit Court, The High Court and Regional Tribunal, the Court of Appeal, and the Supreme Court;

The resolution of chieftaincy disputes through the Judicial Committees of the Traditional Councils and Houses of Chiefs;

Quasi-judicial bodies such as the Commission on Human Rights and Administrative Justice (CHRAJ);

Administrative Complaints to offending institutions such as Ministries, Departments and Agencies of Government; and

Formal Alternative Dispute Resolution (ADR) mechanisms such as court ordered ADR.

**Informal Avenues**
Informal Access to Justice avenues are too diverse and numerous to be contained in any report. The major categories include:
Community-based dispute resolution mechanisms that resolve inter-personal disputes including criminal matters (sometimes illegally resolving issues involving felonies such as murders and rape without knowing that they are acting illegally);
Chieftaincy-based ADR where chiefs as part of their general stewardship and superintendence over their people resolve interpersonal disputes (again, sometimes illegally resolving issues involving felonies);
Faith based resolution systems and processes, where various religious groups use their Pastors, Imams etc as mediators and conciliators in the resolution of social problems against the background of religious doctrines; and
Extra-legal dispute resolution mechanisms by criminal groups that are disillusioned by the formal systems of Access to Justice, act in full realization that they are illegal, determine issues, give awards and specify sanctions and enforce same.

Assessment of the Various Avenues for Access to Justice

The Adversarial Court System
The main formal Access to Justice mechanism in Ghana is the formal court system. The processes of formal litigation in courts in Ghana are modeled on the common law adversarial system by which the parties strive to establish their cases in a usually hostile fashion while the court plays, to a large extent, the non-interventionist role of an umpire. The Courts Act establishes an elaborate and complex court structure for the redress of both civil claims and complaints resulting from crime. The Civil Procedure Rules and the new Magistrate Court rules that are in the offing also contain elaborate rules for the conduct of civil litigation. The Criminal Procedure Code is the equivalent of the Civil Procedure Rules for criminal matters. The Courts Act establishes several courts of first instance. These are the Magistrate Courts, Circuit Courts, Regional Tribunals and the High Court. A litigant may resort to any of these courts depending on the nature and value of his claim. In addition, we have the Court of
Appeal and the Supreme Court as appellate courts although a person may invoke the original jurisdiction of the Supreme Court when she seeks to have a provision of the constitution interpreted and enforced.

A novelty in the judicial system in Ghana which started at the beginning of this century is the creation of the post of Career Magistrate. These lay magistrates, non-lawyers who have been given two years of training in law at the Ghana School of Law, are posted to fill the many empty slots in Magistrate Courts especially in the rural areas. They are essentially to take justice to the door of communities in the rural areas. The first two sets of graduants under this scheme have already started work and the main study must contain a substantive discussion of the implications of this novelty. This will include a discussion of how the new magistrates are faring, the opportunities and challenges they face, the extent to which they are meeting the demands for justice of people in the communities they serve, and the policy issues that this solution to access to justice issues at the local level throw up.

Many Ghanaians are not satisfied with the adversarial system of administering justice, which often produces outright winners and losers. In this system, the burden is placed on the parties to establish their cases, most often than not in a hostile fashion, with the court playing the role of an umpire. This not only leads to a situation where the better resourced party becomes right but also leads to situations where the adversarial nature of litigation is carried from the courts to homes thus affecting family and community relations. It is common knowledge that our deepest disputes have disturbing relational meanings and are markers of identity. When these sensitive issues of our daily existence are reduced to banal legal tussles, moves and schemes, the results are often revolting indeed. Ghanaians are also not satisfied with a system of justice that uses the rules of procedure and of evidence to undo substantial justice by resort to time bars, format errors and evidentiary exclusionary rules. It is for this reason that there is currently a fast growing ADR industry in Ghana. Whilst it is true that the current justice system is doing very well in the face of several constraints, it is important for the main study
to interrogate the precise reasons why many would rather not be involved in the affairs of the court and why in Ghana, to take someone to court, in ordinary parliance, has embedded in its meaning a sense of punishment and a tinge of powerplay. The preliminary argument here is that this has something to do with the adversarial system that is used by our justice system to resolve disputes and to administer justice.

**The Cost of Formal Litigation**

The formal court system is a business, an industry, a club. This industry needs to be sustained and the integrity of the club assured. This costs money. And money well beyond the pocket of the ordinary Ghanaian seeking Access to Justice. Cost is therefore a major challenge for persons seeking to use the formal court processes to access justice. With particular respect to civil claims, the combined effect of the Courts Act and the High Court Civil Procedure Rules ensures that the actual beneficial enjoyment by a successful litigant of the fruits of his judgment through the operation of execution of judgment mechanisms is several millions of cedis away. And although we are yet to realize it, most of the backlog of cases in our courts and the delays in administering justice are due mainly to the legal tactics (often sanctioned by the complex rules of procedure) that lawyers use to increase their fees, and to adjournments that are borne out of the inability of clients to pay lawyers for drafting processes and for attending court. In the area of criminal trials, an accused person is to be afforded a fair and speedy trial by reason of Article 19 of the Constitution, yet logistical constraints ensure that this right is constantly violated because investigations are snail paced, record keeping poor, investigators and witnesses are unable to attend court, and accused persons are not conveyed to court. Such cases, which number in the thousands, could easily be struck out for want of prosecution. But for the majority of indigent defendants, financial constraints ensure that they are unable to hire counsel to have such cases struck out.

It is true that Article 294 of the Constitution provides for the institution of a legal aid scheme, which consist of representation by a lawyer, including all such assistance as is given by a lawyer, in the steps preliminary or incidental to any proceedings or arriving at or giving effect to a compromise to avoid or to bring to an end any proceedings. To this end,
Parliament enacted the Legal Aid Scheme Act in 1997 (Act 542). Under this Act, legal aid is available to a person:

for the purposes of enforcing any provision of the Constitution, if he has reasonable grounds for taking, defending, prosecuting or being a party to the proceedings relating to the Constitution;

if he earns the Government minimum wage or less and desires legal representation in any criminal matter; or civil matter relating to landlord and tenant, insurance, inheritance with particular reference to the Intestate Succession Law, 1985 (P. N. D. C. L. 111), maintenance of children and such other civil matters as may from time to time be prescribed by Parliament; or

if in the opinion of the Board the person requires legal aid.

Again, financial constraints have ensured that the Board has limited its mandatory interventions to instances where a person may face a death penalty or life imprisonment. All others must join the queue and wait for years for their turn to access justice. A number of Non-Governmental Organizations (NGOs) run legal aid clinics but these are also swamped with cases well beyond their capacity. The main study must discuss these public and private systems for improving Access to Justice in Ghana and the possibilities for cooperation, cross-fertilization and the development of learning for replication and scaling-up from the best practices that exist.

The Houses of Chiefs
The Houses of Chiefs have real potential to deal with the adversarial and cost issues that bedevil the regular court system. However, the mandate of the Houses of Chiefs is constitutionally circumscribed to “causes and matters affecting chieftaincy”. Chapter 22 of the Constitution specifically limits their jurisdiction to disputes relating to the nomination, election, selection, installation or deposition of a person as a chief.
However, chiefs are a first port of call for many Ghanaians who seek justice. The significance of traditional governance in Ghana has been such that the various constitutions of the country have guaranteed its existence and operation. The 1992 Constitution of the Republic of Ghana continues to recognize and guarantee the institutions, although it bans chiefs from participating in partisan politics. The Chieftaincy Act, 1971 (Act 370), sets out the guidelines for the functioning of the various Chieftaincy institutions. It legitimizes and defines the operation of the various Houses of Chiefs and mandates the National House of Chiefs to undertake the progressive study, interpretation and codification of customary laws. The constitutional guarantees reflect the relevance of traditional governance in modern democratic governance and justify, clearly, the inclusion of the institution in any discourse on nation building and development.

That the inability of central government to follow through on its policies and development agenda in the remotest parts of the country has created leadership and authority vacuum is indisputable. This vacuum is filled by traditional authority. The Access to Justice vacuum is no exception. Again, the traditional authorities as custodians of the land and other natural resources play a critical role in the economic activities of the people, such as farming, mining, construction etc. As custodians of the history and culture of the people, they are also regarded as one of the critical echelons of leadership through which the Ghanaian development agenda of poverty reduction and wealth creation could be achieved. It follows that any disputes related to all of these matters are naturally referred to chiefs for resolution. It is clear that the main study will not be complete without a thorough examination of the role of chiefs in securing Access to Justice, the record of their performance in that role and ways of linking their activities to other systems for the provisioning of Access to Justice.

**The Commission on Human Rights and Administrative Justice (CHRAJ)**

The CHRAJ has a more expansive mandate that the formal mandate of the Houses of Chiefs. Established under Article 216 of the Constitution, CHRAJ is tasked to investigate, *inter alia*, complaints of violations of rights and freedoms, complaints concerning the functioning of administrative organs and services of the state, complaints concerning practices and actions
by persons and private institutions, and to take proper action with a view to remedying the complaints. CHRAJ is also required to educate the public as to human rights and freedoms. It has the following as its objectives:

- ensuring a culture of respect for the rights and obligations of all people in Ghana;
- dispensing and promoting justice in a free, informal and relatively expeditious manner;
- ensuring fairness, efficiency, transparency and application of best practices; and using a well-trained and motivated workforce and the most technology.

To this end, CHRAJ has, since its advent in 1993, received, investigated and acted on thousands of cases involving human rights violations and administrative due process. The sheer number of cases received and dealt with by CHRAJ places it as a potent avenue of justice. This immensely improves access to justice without which a great number of individuals who have been wronged in diverse ways would have been left with no choice but to resort to expensive and time-consuming litigation. Two examples will suffice.

In Case No. 257/96 decided by CHRAJ, the Complainant alleged that the Akwapim South District Council unlawfully impounded his vehicle and thereby denied him the economic benefits he could have derived from its use. His case was that he used his end-of-service benefits to purchase a Peugeot Estate car, which he intended to use in a commercial venture. The Respondent impounded his vehicle, in spite of his protestation, arguing that the vehicle had been purchased with part of the money allegedly embezzled by the Complainant’s brother. Indeed, the Respondent persisted in its refusal to release the vehicle though the Complainant’s brother had been cleared of the embezzlement charge. The Respondent later asked the Complainant to take the vehicle back, but he refused because it was damaged. CHRAJ awarded him a monetary compensation.

In another case, No. 4/2000, the Complainant, a 21 year old woman, sought compensation for sexual harassment she claimed she suffered at the hands of the Respondent for whom she worked as a cook and general housekeeper. The Respondent, an expatriate employed by a
multinational, dismissed the Complainant claiming she had stolen a sum of money from his bedroom. As both parties were amenable to settlement, CHRAJ facilitated a settlement through mediation. The Complainant accepted the Respondent’s offer of monetary compensation.

However, the CHRAJ, whilst far less adversarial, and less based on technical rules due to its capacity to investigate complaints, also suffers many logistical problems. Thus, like the Legal Aid board and the NGOs engaged in Legal Aid services, it cannot deal with all the demands for justice. In addition, CHRAJ cannot enforce its decisions and it must of necessity resort to the regular courts for this purpose. This presents a cyclical scheme of affairs for individuals who chose the avenue of justice via CHRAJ to avoid the problems associated with the formal court system.

**The Police**

An efficient police service that acts with a high sense of professionalism and is transparent with respect to its activities is an important factor in any democratic society. In Ghana, the Police Service is mandated to prevent and detect crimes, apprehend offenders, and to maintain public order and secure the safety of persons and property. Thus, the Ghana Police Service often becomes the first point of call for complainants who have been victims of a wrong in the nature of a crime. However, it is not unheard of that police officers are often used by individuals and institutions as debt collectors for a fee. Where the complaint is such that criminal sanctions must be invoked, the complainant must defer to the police, in terms of investigations and the decision regarding seeking redress in court. Therefore, the inaction or indecision regarding a complaint ultimately implies that the complaint may never be redressed.

Sometimes, the police in Ghana becomes an instrument of abuse. Not infrequently, the police arrest, detain, investigate, charge and prosecute a suspect all by itself without reference to any other institution of state. A concrete example may be taken from the Remand Prisoners and Suspected Criminals Access to Justice Project designed by the Center for Public Interest Law (CEPIL). The Project has revealed that the police often fall foul of fundamental human rights
provisions of the Constitution by keeping suspected criminals in custody for periods far above the constitutional injunction of 48 hours. And in a great number of cases, the police use arrest as a method of investigation than as the result of a concluded investigation. The Legal Resources Center’s Project to Project, Promote, and Protect the Rights of Prisoners has also revealed that the Police are readily disposed to arresting, charging and detaining suspects in remand homes and prisons and then abandoning them indefinitely. Such practices place suspects in jails for indeterminable lengths of time and it is even more egregious if the suspect is innocent.

Despite all of these lapses, the police still constitute the first port of call for many who seek justice, and the police deal with both criminal and civil cases, even where such civil cases have virtually no criminal element in them.

**Administrative Complaints**

In addition to CHRAJ, other administrative adjudicating units exist for the redress of specific issues for which they have oversight responsibility. These include, the National Labour Commission, the Reconciliation Committee of the Department of Social Welfare and Community Development, the National Media Commission, and the National Communications Authority.

A properly functioning administrative complaints system ensures that fewer cases go to court or to other formal dispute resolution fora. The potential for this is contained in articles 23 and 296 of the 1992 Constitution. These provisions require administrative officials and bodies to act reasonably and according to the law and to exercise discretionary powers fairly and reasonably and without partiality and discrimination. Persons aggrieved by the decisions of administrative officials and bodies have the option of resorting to the formal courts to seek redress. Yet a bad service and customer/consumer protection culture ensures that administrative bodies and officials do not stem the tide of formal litigation by nipping disputes in the bud. Many ordinary dare not complain about poor services rendered to them by public and private service providers alike. The potential for addressing Access to Justice
through administrative complaint systems is therefore still unexploited.

**Alternative Dispute Resolution (ADR)**

ADR refers to a range of methods and techniques for resolving disputes, including unassisted negotiation, non-binding third-party intervention (conciliation or mediation), and binding arbitration. ADR has been in existence even before the advent of the formal court system. In light of the immense difficulties associated with the formal court system, court sponsored ADR and community based ADR have gained a high level of attraction as the panacea for enhancing the performance of the justice delivery system. The assumption is that ADR serves two purposes at least: resolving disputes before they progress to the courts; and facilitating the disposal of cases that are already pending before the courts. ADR fora have a large clientele because of their relative flexibility, accessibility and cost effectiveness. The bulk of the socially disadvantaged naturally subscribe to ADR as the overwhelming majority of the poor do not have access even to the lowest level of the formal justice system.

There are several permutations of ADR. First, we have court based ADR, under which the courts either admonish disputants to resort to ADR or refers them to compulsory ADR. Under the latter, which is termed integrated or mandatory approach, ADR is integrated into the court process as a mandatory requirement.

In 2001, the Judicial Service launched a reform programme to infuse ADR processes into the court system. Under the programme the new commercial courts are to implement the integrated approach, while all other courts (High, Circuit and Magistrate) are to implement the referral ADR approach. The programme is intended to provide a transparent, speedy, efficient and inexpensive system for the resolution of disputes and prosecutions. Emphasis has been placed on the Magistrate Courts because they are more accessible to the rural poor, women, children and other socially disadvantaged persons who can neither afford the costs nor appreciate the complex processes associated with the higher courts.

Apart from court referred ADR, there exists other institutionalized forms of ADR. There are
several ADR institutions that train personnel in ADR methods, serve as dispute resolution agencies, or facilitate ADR processes for the public. These are in addition to purely small and privately arranged ADR processes largely associated with disputes among commercial entities. It should be noted that the Arbitration Act provides for the enforcement of all such arbitral awards and the execution of same in the same manner as the enforcement and execution of judgments of the courts.

Court sponsored ADR has made a huge impact in reducing the case load of the courts and in reducing the cost to litigants. However, the wide powers of litigants to reject ADR as an option and to use the court processes to intervene in ADR processes or annul them when they are completed hang over ADR like a dangling sword. Again, where ADR is extremely formalized, the difference with ordinary court proceedings, in terms of adversarial processes and the cost of litigation, becomes slim indeed.

**Traditional/Informal ADR**
The mechanisms of ADR also exist in the informal and traditional set-up. Informal justice system refers to those traditional processes which are not formally regulated and includes other forms of social control practices that occur outside the bounds of legal regulation. We will deal with this latter category in the next section. In practice, the formal systems of justice deal with a very small proportion of the justiciable events that arise in society. The bulk of these are dealt with by informal systems.

Traditional systems of arbitration are community based arrangements for resolution of inter-personal and intra and inter-family disputes. These are clan based systems which have varying degrees of visibility and formality and differ from community to community in the degree to which there is a discernible structure and process of decision-making. Most of them are neighbourhood-based processes that draw on neighbours as mediators.

Not infrequently, disputes are brought before the traditional councils, family heads, religious leaders, and other community leaders for amicable settlement. In the case of customary
arbitration (as the name suggests), reliance is placed heavily on customary law as applicable in a particular society. Awards obtained using these avenues may be brought before the formal courts for enforcement. These forms of ADR are further endorsed by Article 125(2) of the Constitution which provides that citizens may exercise popular participation in the administration of justice through the institution of public and customary tribunals. It is arguable that but for these avenues for accessing justice the country would have collapsed under the weight of the cumulative cry for justice from its citizenry.

There are six main problems with these ADR processes. The cost of accessing these services are sometimes more prohibitive than the cost of accessing the regular courts. Again the courts have consistently insisted on the observation of various rules of fairness such as the rules of natural justice, and have on many occasions intervened to stop or reverse the processes of these ADR options, thus penalizing the use of the option by the citizenry. Third, the operators of these ADR options often go over the mark and illegally subject issues that should not be the subject matter of ADR to ADR processes. It is common knowledge that many murder, rape and defilement cases are dealt with by ADR in many places in Ghana! When these are found out they are struck down by the courts or by the law enforcement agencies. Even when they are not found out they work substantial injustice to person such as victims of rape who are mandatorily required to have such cases settled outside of the criminal process. Fourth, these systems carry with them entrenched biases and rights violations that are inherent in today’s traditional set-up. Thus, these systems reflect issues such as discrimination against women, the lack of voice for children etc. Again, some of the awards and penalties of such tribunals infringe current and universally accepted notions of human rights. Fifth, the traditional justice systems are only effective where enforcement of awards at the local level is possible and convenient. When this not the case, a successful party will have to seek enforcement from the formal justice system. Such a move is often beyond the means and is often inconvenient for the average person who accesses justice from traditional ADR fora. Since the effectiveness of a justice system depends on the efficacy of its enforcement mechanisms, such situations easily lead to victories in principle at best and pyrrhic victories at
worst. Lastly, there is sometimes some hostility and indifference by the judiciary and the bar toward non-formal justice systems. Many criticize the informal sector for not being like the courts, pointing out lack of evidentiary rules, lack of reference to relevant laws, lack of understanding of the principles of separation of powers, and so forth. Yet the strength of these systems is exactly in the fact that they are not like the courts!

All in all, the informal justice systems are usually better attuned to the needs of local communities. This is because they use the inquisitorial and restorative approaches to dispute resolution instead of the adversarial, winner-looser approach of litigation. The customary/traditional/informal justice systems can be made to work more effectively if measures are taken to encourage them to constitute panels that are more reflective of the different segments of the society; incorporate more fairness in their processes; and settle disputes with greater regard for current notions of human rights.

**Extra Legal Avenues for Justice**

A phenomenon that has always been with us is the resort to self-help and other extra judicial methods of settling disputes. Although it is tempting to characterize these systems as mainly spontaneous reactions and sporadic forms of social control practices that occur outside the bounds of legal regulation, there is increasing evidence that these systems, when properly mapped, portray an integrity, consistency, order and command and control that surpass the most organized formal systems of justice.

It is common practice for people to take the law in their hands to mete out their own form of private justice. One stark example is the spate of mob justice or street justice which takes the form of lynching suspected criminals. The most advanced forms of extra legal fora as avenues for justice are prevalent in the inner cities of urban areas (such as Nima, Mamobi, NewTown, James Town, Ashiaman) where bands of youth use their local knowledge, energy, connections to local power brokers and other resources to create fiefdoms. They then provide access to justice, sometimes free of charge, and sometimes for a fee. They settle disputes, give awards, and enforce same. However we may disdain the mushrooming of these systems, they are a
function of the inefficiencies and ineffectiveness underlying the administration of our justice system and the consequential erosion of public confidence in the system.

We have seen that a plethora of avenues exist for the redress of wrongs in Ghana. We have assessed their various strengths and weaknesses and we now have a sense that the utility of these systems is hampered greatly by legal, political, economic, social and cultural bottlenecks. We will now examine some of these bottlenecks.
BARRIERS AND CHALLENGES THAT IMPINGE ON ACCESS TO JUSTICE

According to the Ghana Poverty Reduction Strategy (GPRS II):

“…. The major difficulties associated with the administration of justice in Ghana can be categorised into two, namely judicial and attitudinal. Those that can be traced to the judiciary include delays and costs in administration of justice resulting in lack of confidence in the judiciary, and inaccessibility of justice and legal institutions. Key attitudinal issues relate to poor compliance with rules, regulations and procedures and weak enforcement of existing rules, regulations and procedures”.

The judicial processes are cumbersome and most poor people do not have access to the formal channels for justice services. The main principle of Access to Justice is that the legal/justice system should be structured and administered in such a manner that it provides the citizenry with affordable and timeous access to appropriate institutions and procedures through which they can claim and protect their rights. The formal system is, however, not structured or administered in this manner. Rather, as is often said “the wheels of justice grind slowly” and in the context of Ghana, the wheels of justice have almost come to a halt in many respects. It is in this context that the mushrooming of informal/extra legal systems of justice must be assessed.

In practical terms, and flowing from all of the above, there are obstacles faced by many in accessing justice. We set out some of the key obstacles here:

Limited or no knowledge about legal rights and entitlements;
Limited or no knowledge about legal and social responsibilities leading to the infringement of the rights of others and the denial of entitlements to those that deserve and have a right to them;
Limited or no effective access to inexpensive social services which will forestall the need for justice avenues to resolve disputes relating to access;
Limited voice for real stakeholders on the design of policies on Access to Justice;
Limited and ineffective real access to courts and other dispute resolution avenues due to the cost of travel to the centers or the cost of legal processes, fees and penalties; and
Discriminatory practices against disadvantaged groups such as the poor, women, children, the physically and mentally challenged, PWDs and PLHWA.
ISSUES FOR FURTHER INVESTIGATION

We propose that the Faculty/Reference Group should consider the following issues during their meetings. We also propose that some of these issues should form the basis for the semi-structured questionnaire to be used for the elite survey and the field survey. The rest of the issues may be analyzed during brainstorming sessions by the Faculty.

How do we ensure that we fashion systems for Access to Justice that will lead almost automatically to the satisfaction of the citizenry’s needs for Social Justice?

How do we deal with all the issues of legal pluralism we have in Ghana and their implication for Access to Justice?

How do we ensure that the citizenry are aware of their rights and entitlements within a broader framework of Legal Literacy and Legal empowerment by providing information, capacity development, and learning?

How to we ensure that duty-bearers are aware of their responsibilities and discharge same appropriately?

How do we ensure that the citizenry have quick and effective avenues for accessing justice for the enforcement of their rights and entitlements?

How do we stem discrimination against the economically, socially, physically, and mentally disadvantaged in Access to Justice?

How do we ensure that justice administered to the citizenry takes account of their deepest sense of justice and fair play (drawn from their worldview of culture, religion, technology etc) and results in social harmony and cohesion?

How do we ensure that the avenues for Access to Justice are user-friendly, so that ordinary citizens do not go through any hassle to access same, either because the processes are complex or because the processes are in a strange tongue etc?

How do we institute innovative mechanisms for delivering low-cost but effective and real justice (civil and criminal) to the citizenry, including local solutions to local justice issues?

How do we manage the interface of Access to Justice and other issues such as the multiplex and varied Access to Justice initiatives, poverty reduction programmes, political will, administrative lethargy, change-phobia, police powers, traditional authority etc so that the
Access to Justice train is not derailed or kept perpetually at low gear?
CONCLUSION

When justice is inaccessible, the result is injustice. Injustice leads to bitterness, anger, revolt and ultimately political and social disintegration. In this regard, there is a real, compelling and immediate need to eliminate barriers to Access to Justice.

The Ghana Poverty Reduction Strategy Paper (2003) notes that Access to Justice is one of the fundamental principles upon which good governance rests. Access to Justice for all is possible in today’s Ghana. Some organizations such as the Legal Resources Centre (LRC), the Ark Foundation, African Women Lawyers Association (AWLA), Women in Law and Development (WILDAF) and the Centre for Public Interest Law (CEPIL) have developed very innovative methods of provisioning a broad range of legal services to communities in Ghana. With its enhanced capacities and resources, the Judicial Service can provide an effective framework for Access to Justice for all in partnership with other public and private sector operatives in the justice sector.
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