Ghana

Justice Sector and the Rule of Law

A DISCUSSION PAPER

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Introduction

Ghana's justice system has seen many encouraging developments since the restoration of civilian rule 15 years ago, especially since the installation of the current administration in 2001. The usual problems threaten its effectiveness: among others are poor coordination among the different actors in the sector; long delays in hearing cases; a lack of legal aid to help the poor to access justice; overcrowded prisons; and critical allegations of corruption among the police, as well as court staff, including judges and magistrates. However, there have been many interesting and useful initiatives to improve justice system performance, ranging from an increasingly merit-based system for appointment of judges, to a rapid expansion of legal aid, and to procedures to reduce delays and promote out-of-court settlements in the higher courts. Both civil society organisations and constitutionally mandated oversight institutions have played an important role in promoting these reforms.

More broadly, the government has shown, for the most part, an increasing respect for the rule of law, complying with difficult decisions handed down by the courts and appointing and respecting the findings of commissions of inquiry that have found government officials at fault. The current administration has also led an anti-corruption campaign that has touched its own members as well as those of the past government.

However, there have still been cases in which executive interference in prosecutions has been alleged, and some court rulings have not been fully respected; or attempts have been made to overturn them other than through the normal avenues of appeal. Moreover, weaknesses in the constitutional and legislative framework providing for the appointment of judges still provide the president with too great a discretion. Continued vigilance, as well as legal reform, is needed to ensure and promote respect for the proper separation of powers and independence of the courts.

A common feature of many of the encouraging innovations is that they have not been enacted into law. Repeatedly, a legal framework is missing, even where better practices have been introduced on the ground. Law reform has mostly been slow and piecemeal. Two recent laws, the Disability Act and the Domestic Violence Act, took years to be passed by Parliament, while other important proposed reforms remain stalled, including bills on the property rights of spouses, on alternative dispute resolution and on a right to information. Other important areas, including the laws governing the police and prisons, do not even have proposed new legislation on the table to update rules established 30 years ago.

Further work will be needed across the board to shape the justice system in the interests of Ghana's new democratic dispensation. Ghana is a leader in the West Africa region, and many of its justice sector reforms underline this fact: but it is too soon for it to rest on its laurels yet. This discussion paper highlights areas in which further effort is needed, proposing concrete steps for reform and action.

The paper is based on, but is not a summary of, the findings and recommendations of a comprehensive report on the justice sector and the rule of law in Ghana, commissioned by the Open Society Initiative for West Africa (OSIWA) and OSI's Africa Governance Monitoring and Advocacy Project (AfriMAP), and prepared by researchers in Ghana under the supervision of the Institute for Democratic Governance (IDEG).

1: International law, the Constitution and law reform

Ghana has ratified many of the major international treaties relating to the promotion of human rights and the rule of law, and its record in this regard has improved since the return of democracy in 1993. However, Ghana has yet to sign up for some important provisions – including several that allow for individual complaints to be heard by the treaty-monitoring bodies. A number of African treaties also remain outstanding, including the Protocol to the African Charter on Human and Peoples' Rights (ACHPR) on the Rights of Women in Africa. In 2003, Ghana signed a Bilateral Non-Surrender Agreement with the United States, agreeing not to hand over any US personnel to the International Criminal Court (ICC), thus undermining its own commitments under the Rome Treaty establishing the ICC.

It is surprisingly difficult to put together a complete list of Ghana's international treaty obligations, and it does not appear that any government ministry has the responsibility to maintain an up-to-date compilation of all international and African treaties that Ghana has signed or ratified. Either the Ministry of Justice or the Ministry of Foreign Affairs should be given this task and the duty to inform other departments of their obligations.

As the country review report prepared by the African Peer Review Mechanism (APRM) recommended, Ghana should publish a time-frame for its accession to outstanding international and African treaties; as well as taking steps to improve its poor reporting record to the treaty-monitoring bodies. Government should invite national organisations with particular expertise to contribute to the preparation of these reports. Other human rights groups can also learn from the example of the women's rights organisations that recently prepared a shadow report to the committee monitoring the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) to complement what the government itself presented.

Perhaps related to the lack of a central unit that keeps track of Ghana's international commitments, the country also has a fairly poor record with regard to incorporation of international human rights treaties into national laws. There is thus a need for a mechanism to ensure the more consistent and effective domestication of ratified treaties. Nevertheless, the government has taken some important steps to review, repeal and amend existing statutes or enact new ones to conform to the country's obligations under international law. These include laws protecting

the rights of children and refugees.

The 1992 Constitution provides guarantees for the full range of civil and political rights as well as substantial protections for economic, social and cultural rights. Among notably strong protections are those provided for the rights of children, the disabled, and the property rights of women (important in the context of customary law discrimination against women's inheritance). In all three cases, the Constitution requires Parliament to enact legislation to give effect to its provisions: this has been done in the case of two important acts protecting children's rights both in general and in the justice system, as well as the long-awaited 2006 Disability Act. However, a bill on the property rights of spouses has been pending in draft form for some years, and remains with the Attorney-General's (A-G's) Office. Although the continuance of some traditional practices in violation of the Constitution and international law may be attributed to the fact that there is often a limit to what the law can do, legislation required by the Constitution should be enacted, and must go hand in hand with other methods of inducing change.

Ghana's bill of rights is also unusual in providing an explicit justiciable right to education; though protections for economic and social rights are more extended in the 'directive principles of state policy' that provide guidance in constitutional interpretation. The Supreme Court has held, against the trend in some other jurisdictions, that the economic, social and cultural rights in the directive principles are in fact justiciable, where they are clearly linked to the rights established in the bill of rights. However, there is not a large amount of jurisprudence in this area.

The Supreme Court's record in upholding the 1992 Constitution has been positive, although the mid 1990s saw some disappointing decisions. The first prominent case came in 1993 when the court held (in the case of *NPP v. IGP*) that a requirement established by a military decree for a permit to hold demonstrations was unconstitutional. It also held that the ACHPR could be invoked without formal incorporation into local laws, where the same rights were also protected in the Ghanaian Constitution. Courts should make good use of and expand this precedent. The *NPP v. IGP* case triggered the repeal of the Public Order Decree and its replacement by the Public Order Act. In general, however, judges in Ghana have little knowledge of international human rights law, and training to encourage the application of international law principles in national courts should be expanded.

Ghana's framework of laws is largely built on the system inherited from the colonial period. In 1968, a Law Reform Commission was established by statute and tasked with the responsibility to review statutory and customary laws and suggest reforms. The Law Reform Commission's efforts toward legal reform have, however, been slow and its contribution has been marginal. Factors responsible for the commission's limited place in the law reform agenda include lack of adequate resources, backlogs in the legislative agenda of Parliament and over-dependence on the Office of the A-G for follow-up to its recommendations. In 1998, the Law Reform Commission was supplemented with the Statute Law Revision Commissioner, whose mandate was to prepare a revised version of all acts in force to bring them into compliance with the Constitution. This process led to a large number of detailed revisions, including changes to criminal justice penalties and gender-specific language.

Despite the existence of these two bodies, law reform has generally been piece-meal and uncoordinated, dependent on the help of the donor community, and undertaken without a systematic effort to build a modern and democratic justice system. In practice, the most effective law reform proposals have been driven by civil society, often working with the Commission on Human Rights and Administrative Justice (CHRAJ): civil society organisations were the leading spirits behind two important recent statutes, the Disability Act of 2006 and the Domestic Violence Act of 2007. Long-outstanding proposals for new laws include the Right to Information Bill as well as the Property Rights of Spouses Bill. Moreover, where laws have been adopted, the government has also been criticised for neglecting to put in place effective mechanisms for their implementation.

The Law Reform Commission should be strengthened through the appointment of additional permanent staff and the allocation of adequate funding. The A-G's discretionary power to act on or ignore recommendations by the commission should be limited. Parliament's institutional capacity should also be enhanced to enable it to be part of the law reform process. Simple steps to achieve this could include supporting and facilitating joint working sessions between the Law Reform Commission and selected parliamentary committees; making the commission report informally to parliamentary committees on progress of its work; and directing part of the funding for law reform to strengthening the capacity of members of Parliament to comment on and provide input on draft laws. Delays in the A-G's Office must be reduced, and government should use its parliamentary majority to ensure that long-standing bills can be enacted.

An important brake on law reform in Ghana is the restriction on Parliament's powers set out in Article 108 of the Constitution, which provides that Parliament may not debate laws that impose taxes or make a charge on public funds unless the bill is introduced on behalf of the president. Since virtually any law will have financial implications, this prevents the introduction of any law reform initiative that does not have the backing of the executive. Private members bills, a source of law reform in many countries with a parliamentary system, are thus almost unknown. Amendment of Article 108 is needed to ensure that Parliament can play a fuller role as a law-making institution.

II: Government respect for the rule of law and separation of powers

Separation of powers between the three arms of government is emphasised in the 1992 Constitution. Executive powers are subject to checks by Parliament, the judiciary, and to a limited extent the Council of State, an advisory body, as well as by constitutional oversight institutions such as CHRAJ. Disobedience of a decision of the Supreme Court on the constitutionality of any act is a crime, and a ground for removing the president or vice-president from office.

As is the case in many common-law countries, the constitutional separation of powers is compromised by the fact that the A-G is both the head of the prosecution service and also a minister and the chief legal adviser to the government. Moreover, since independence, the A-G and the Minister of Justice have been the same person. This places an obvious strain on the independence of prosecutorial decisions in high-profile cases. Indeed, the National Democratic Congress (NDC) opposition party has alleged that prosecutions of former ministers from the NDC administration in office up to 2000 were politically motivated. Calls for a separation of the two positions in order to strengthen the independence of the prosecution system should be implemented.

Nevertheless, the government generally obeys the laws of the land and abides by court decisions and rulings of quasi-judicial bodies. In several cases since the re-establishment of civilian rule the government has been forced under difficult circumstances to pay compensation to persons who were wrongfully dismissed, or has complied with politically contentious judgments against it. These include the *NPP v. IGP* case already mentioned, as well as decisions relating to the provision of equal access to state media for opposition political parties (*NPP v. GBC*); the approval of government-nominated district chief executives ahead of district assembly elections (*NPP v. Electoral Commission*); and the authority to appoint the chairperson and other members of the governing bodies of public corporations managing the state-owned media (*NMC v. A-G*). In 2001, a minister of sports appointed by the New Patriotic Party (NPP) administration that came into office in 2000 was prosecuted and convicted for fraud.

However, there are other cases involving politicians where investigations have been characterised by undue delays that have created the perception of interference by the executive. Since the conviction of the former minister of sports, there have been no prosecutions of government

officials, in spite of serious allegations in Parliament and elsewhere of mismanagement and misappropriation of funds. In some cases the implementation of decisions against the government has been resisted.

In one important policy matter, the 'poultry farmers case', the government introduced a law in Parliament to overrule the effect of a High Court decision that it must implement its earlier law imposing a tariff to protect domestically produced chicken. The case is before the Supreme Court, on the grounds that Parliament is constitutionally forbidden from passing a law to alter a specific court judgment.

In addition, the executive has misused its power to grant pardons and immunity from prosecution. In most cases, pardons are based on the recommendation of prison officers. However, in 2005, at the 48 anniversary celebrations of Ghana's independence from colonial rule, the president remitted the remainder of the sentences of some former ministers of state who had been convicted and sentenced for conspiracy and wilfully causing financial loss to the state. In non-political cases the grant of pardon has also caused adverse media comment, when released criminals have reoffended. Government should (in accordance with Article 296 of the Constitution governing the exercise of discretionary power) publish and follow clear-cut criteria, based on the advice of professionals, to guide the grant of pardon and immunity from prosecution.

The inclusion in the 1992 Constitution of transitional provisions granting an absolute and permanent immunity from prosecution to members of former military regimes for acts committed by these regimes has also been controversial. The National Reconciliation Commission appointed by the administration of President Kufuor when it took office in 2001 recommended that these indemnity clauses be put to a new referendum. This and other recommendations of the commission should be implemented.

Other commissions of inquiry established for more routine investigations have played important roles in monitoring the legality of government actions, unearthing the cause of the problems and recommending solutions to prevent their recurrence. In general, the government has accepted their findings. But the functioning of the commissions of inquiry has been weakened by a number of factors. In many cases the government has imposed long delays in publication of the reports of the commissions. The government has also exercised its discretion to implement only those recommendations that it finds acceptable. As in the case of the power to grant pardons, government should publish rules to govern its response to the recommendations of a commission of inquiry. In particular, government should have to publish the report promptly, and provide reasons if it does not implement the recommendations.

III: Management and reform of the justice sector

The government departments and public servants with responsibilities in the justice sector are: the Ministry of Justice and A-G's Department, the Ghana Police Service, the Ghana Prisons Service, the Social Welfare Department, and the Judicial Service (judges and other court staff). The Ministry of Justice and A-G's Department plays a more-or-less coordinating role, though the police and prisons services fall under the Ministry of the Interior. The Social Welfare Department has its own ministry. The segmented manner in which these institutions are structured contributes to a weak level of coordination, cooperation and communication among the various interest groups, which are at the heart of the bottlenecks and backlogs plaguing the justice system.

Since 2001, the current administration has introduced numerous reform initiatives, under the umbrella of a judicial reform and modernisation programme housed in the Ministry of Justice and A-G's Department. The Judicial Service has also made increased efforts at reform on its own initiative, including the promotion of greater access to information about the courts.

Amongst the highest profile innovations have been the introduction of 'fast-track' automated courts and the creation of a new Commercial Division of the High Court, with redesigned procedures aimed at reducing delays in the administration of justice. These innovations have helped to expedite cases for litigants with the resources to use them. Particularly interesting is the introduction of pre-trial settlement conferencing in the commercial courts. However, it is becoming obvious that the 'fast-track' courts are being clogged by the same bottlenecks affecting the regular courts: a coordinated approach that addresses the problems of the whole system will be needed, especially to increase access to effective justice for those at the poorest end of society as well as the richest.

Future reform of the justice sector should be undertaken by adopting a holistic, system-wide approach that lays emphasis on greater integration and coordination of the roles, functions and activities of the various components of the criminal justice system.

IV: Independence, conduct and training of judges and lawyers

Executive interference in the courts was prevalent under previous military regimes in Ghana. The 1992 Constitution sought to promote the independence of the courts by including strong language protecting judicial independence. The Constitution contains detailed provisions aimed at promoting and ensuring the independence, the integrity and impartiality of the judiciary. The judiciary is trying to shed itself of its historical image as a corrupt institution. Recently conducted surveys, however, indicate that there are still perceptions among the public that the judiciary is subject to executive influence.

In particular, the structural independence of Ghana's judges is undermined by weaknesses in the appointments process. Of particular concern is lack of guaranteed independent input into the choice of judges. Unlike several other African countries, including South Africa, Malawi and Nigeria, Ghana does not have a judicial service commission or equivalent body that has a strong role in judicial appointments. The consultative nature of the Judicial Council established under Article 153 of the Constitution gives the president almost complete discretion as the appointing authority for the chief justice (CJ) and other superior court judges. Magistrates and circuit court judges are appointed by the CJ. Although the practice in recent years has been for a more regularised and merit-based process, with examinations and interviews by the Judicial Council, this is not guaranteed by any legally binding instrument.

The Constitution and legislation should be amended to ensure that the system for appointment of the chief justice (and other superior court judges) meets the minimum threshold requirements set by the International Bar Association for the involvement of the Judicial Council. Ghana should follow the Nigerian example where the Judicial Council makes a recommendation on the CJ to the president. The mechanisms put in place for the removal of the CJ should also be strengthened, along the lines set for other justices, such as the establishment of a *prima facie* case of misconduct before the process can be initiated. Approval by Parliament of judges of the superior courts should be by a super, as opposed to a simple, majority.

Following the adoption of a damning parliamentary committee report on corruption in the judiciary in 2003, systems for action against judicial misconduct have been strengthened, through the establishment of a Public Complaints and Court Inspectorate Unit in 2005 and the

adoption of a new code of conduct for the judiciary. Investigations by the disciplinary committee of the judiciary led to charges being brought against two judges and their conviction in 2005. These are encouraging steps and should be monitored to ensure the systems are as effective as possible.

Historically, judges in Ghana received no additional training on appointment to the bench, a trend the creation of a Directorate of Continuing Judicial Education in 1988 sought to reverse. In 2002, the directorate became the Institute of Continuing Judicial Education of Ghana, now known as the Judicial Training Institute (JTI), whose primary objective is to improve the quality of delivery of justice by developing the human resource needs of the Judicial Service of Ghana, including judges and other court staff. The JTI has been instrumental in a reform and modernisation programme being undertaken by the Judicial Service. During 2004/05, the institute organised 20 training programmes, covering alternative dispute resolution, land administration, rules and practice in the commercial courts, the new High Court Civil Procedure Rules, and other matters.

In addition to improved training, judicial performance could also be substantially improved by ensuring much more consistent access to up-to-date legislation and jurisprudence. The slow pace of publication of law reports has affected the ability of judges – and other lawyers – to access interesting and precedent-setting judgments and to write expert comments and analysis on such cases and apply them in their own work. This situation has the tendency to stifle the progressive development of law in the country. The new *Ghana Monthly Law Reports*, so far covering only the Supreme Court and Court of Appeal, should be extended progressively to the High Court and other courts and made available in all court buildings and online.

Human rights law should become a compulsory course in the various faculties of law where Ghana's lawyers receive their education. The JTI's curriculum should also include training in human rights law, including the application of international precedents in Ghana's courts. Social context training would also enable the justice community to better understand and deal with gender-, child- and disability-sensitive issues, including domestic violence. Human rights education and awareness-creation should also be under taken among the general population by the National Commission on Civic Education (NCCE).

V: Crime and policing

Reforms introduced from within by the Ghana Police Service have enhanced its capacity to collect data on criminality. There is no annual or other systematic reporting process in which these figures are published, though crime data are made available to the public upon request, and are reported intermittently in speeches by the minister of the interior or police officers. These statistics indicate an increase in the reporting of certain crimes over recent years: of particular public concern is the reported increase in armed robberies. However, the improved data collection has not led to the development of a comprehensive national crime-prevention strategy. Although the Inspector General of Police (IGP) and the director-general in charge of the Criminal Investigations Department (CID) meet regularly to discuss the crime situation and plan operations, the police approach has in the main been reactive and based on the adoption of ad hoc measures.

Political party manifestoes, the president's 'state of the nation' addresses, and other documents have not offered any national crime prevention strategy. A comprehensive national survey on crime should be undertaken to chart the course for concrete national strategies to deal with the issue. Such a strategy should include not only increasing the number of police (which is low) and improving police performance, but also on addressing crime in the broader context of poverty and social inequality.

Nevertheless, in response to civil society advocacy, the government has taken several initiatives since 1992 to increase the protection for vulnerable groups, including women and children, especially those who have been subjected to harmful traditional practices. The police Domestic Violence Victim Support Unit (DOVVSU) has done important work in this area. There has been some concern about overlapping mandates between CHRAJ and DOVVSU in relation to domestic abuse, while the Serious Fraud Office, CHRAJ and the recently established Office of Accountability in the Office of the President all look at cases of corruption. Improved coordination should therefore be a focus both of legislative reform and administrative action.

There are some internal and external accountability mechanisms in place to check police behaviour, ensure effective performance of duties and protect human rights, and it is encouraging that CHRAJ has recorded a decreasing number of complaints relating to the police over the last decade. However, surveys indicate that police abuse of suspects is still a problem, and corruption among police officers is widely reported. Greater civilian oversight of the police is neverthe-

less needed, at all levels. In addition, CHRAJ should be given the means to carry out investigations of complaints against the police independently from the police command structure.

Legislative reform in relation to the police lags behind other administrative, policy and officer enhancement programmes. The primary law governing the police service, the Police Act, is a 30-year-old law that has not been amended to conform to modern policing in a democratic state. Article 200 of the1992 Constitution also provides that the police 'shall be equipped and maintained to perform its traditional role of maintaining law and order', rather than providing a framework aimed at protection of citizens. Recommendations – and subsequent government white papers – from the many commissions of inquiry that have reported on issues relating to policing have not resulted in legislative reform. A comprehensive legislative framework should implement proposals for the police to be subject to greater civilian oversight and more attuned to protection of citizens with full respect for the human rights guaranteed in a democracy.

VI: Fair trial and effective punishment

The right to fair trial as provided for in the Constitution is generally respected by the courts. Accused persons are presumed innocent until the contrary is proved, trials are public, and defendants have a right to be present, to be represented by an attorney (at public expense if necessary), and to cross-examine witnesses. In practice, authorities generally respect these safeguards. The habeas corpus procedure has been successfully enforced, although it is limited in its use. Important new legislation on juvenile justice has improved protections for young persons who come in contact with the criminal justice system, though implementation in patchy.

However, constitutional guarantees are routinely violated by long delays in bringing cases to trial: the police, magistrates, and A-G's Department each assert that the others are to blame for this situation. Although the Ghana Legal Aid Board (GLAB) provides legal aid to criminal defendants, many charged with criminal offences do not have legal representation in court. Witness protection is of particular concern. Some victims of armed robbery have reportedly expressed fear of reprisals by the suspects or their agents. Although the police and courts have taken some measures to respond to these problems, such as by conducting in-camera hearings and providing police protection, these are inadequate to address the need. As a result, witness intimidation has led to cases being dropped.

The legal framework governing sentencing and prison management is, like the police law, out of date. The Prisons Service Decree dates from a period of military government in 1972. Although piecemeal amendments have been made to the Criminal Code on sentencing, lawyers complain that sentences handed down in court focus too much on imprisonment, without providing for alternative non-custodial options. On the other hand, women's and children's rights groups have urged higher and more consistent sentencing in cases of rape or defilement (sexual intercourse with a child). Although the death penalty remains on the books, the last execution was in 1993.

Since 2003 considerable efforts have been devoted to rehabilitation and construction of prison facilities. However, prison overcrowding and poor conditions of detention remain the biggest challenges facing Ghana's Prisons Service. The Constitution mandates CHRAJ to investigate complaints concerning the functioning of the Prisons Service, and CHRAJ has played an important role in highlighting problems and providing some redress to prisoners. As in many countries, one of the main reasons for prison overcrowding is the large number of prisoners held

in pre-trial detention for long periods, sometimes running into several years without going to trial. Innovative approaches to address this problem used in other jurisdictions could be adopted for application in Ghana, including mandating magistrates to hold hearings in prisons on a regular basis to screen and dispose of simple criminal cases or order bail.

For the legal system to be seen to be working, and 'mob justice' avoided, trials must take place speedily and sentencing practices should be seen to be uniform and fair. Non-custodial sentencing must be encouraged to reduce the number of persons who end up in prison and increase the possibilities for rehabilitation. Initiatives to achieve this will require legislative reform to bring the legal framework into line with international best practice.

VII: Access to justice

Ghana has an impressive record of encouraging public education on fundamental human rights as a means to improve citizens' access to justice. NGOs have engaged in human rights promotion campaigns to complement education programmes conducted by two constitutionally-mandated institutions, CHRAJ and the NCCE. However, access to justice has been constantly hampered by a geographical imbalance in court distribution tilted to favour areas with higher economic activities rather than areas with high density of population. Corruption in the justice system and unreasonable delays have resulted in erosion of the people's confidence in the courts. At the district court level, the base of the court pyramid, there are significant shortages of magistrates, and an expansion in the recently instituted training programme for career magistrates is needed to fill these gaps.

The cost of legal advice is an important impediment to accessing justice, in Ghana as all over the world. A highly formalised court system, with strict rules of procedure for submitting a complaint of violation of constitutional rights, has exacerbated the problem. Article 294(1) of the Constitution provides for legal aid for the indigent and GLAB, set up almost 20 years ago, plays an important role in providing representation to the poor. GLAB has recently increased its nationwide coverage, but it is still not present in many districts. This is not only a question of money, but also of the lack of lawyers to provide representation in the more rural areas, and the absence of a formal requirement for lawyers to do pro bono work. Non-governmental organisations also provide paralegal services, with FIDA-Ghana leading the way in with a programme established in 1985. The APRM country review report and programme of action for Ghana made recommendations for the extension of legal aid services, which should be implemented as a matter of urgency. Other avenues should also be explored, such as the establishment of legal aid clinics at all university law faculties and amendments to the rules governing lawyers.

In this context, the role of CHRAJ in providing a forum to hear complaints of abusive treatment by public officials has proved hugely important. CHRAJ has also been an important voice in campaigns to end harmful traditional practices. Despite the challenges of under-resourcing, which should be addressed, CHRAJ deserves its reputation as a leading member of the national human institutions that have been established on the African continent.

A more recent initiative to increase access to justice has been the promotion of alternative dispute resolution (ADR) to divert cases from the courts. An Alternative Dispute Resolution Bill

was published in 1998, new High Court Civil Procedure Rules were adopted in 2004, and in 2005 a new Commercial Division of the High Court was established, with mandatory mediation during the pre-trial phase of a case. The judiciary have also promoted ADR on their own account, attempting to resolve cases in out-of-court settlements at the beginning of each legal term. Many judges, magistrates and lawyers have been trained in ADR techniques. A legal framework, as provided for in the ADR Bill, is now needed to provide certainty and allow the expansion of ADR to all courts in Ghana.

Although the Constitution does not recognise any traditional court institutions (with the exception of the role of the regional and national houses of chiefs in adjudicating chieftaincy disputes), chiefs' traditional councils have nevertheless extended their jurisdiction beyond strictly chieftaincy-related matters to family and property disputes, including divorce, child custody, and land. Recognising such important de facto jurisdiction, individual institutions such as the World Bank have supported provision of training to traditional chiefs in basic law and ADR mechanisms. There is a need for greater consultation on the role of justice mechanisms under the authority of the chiefs, in order to consider measures to capitalise on the accessibility of these mechanisms, while ensuring that they are respectful of human rights, especially in relation to gender equality.

8. Coordination of external funding to the justice sector

Development partners have played a significant role in pushing the agenda for judicial, legal and justice reforms in Ghana. The funds have helped greatly in the modernisation of the justice system to deal with delays, corruption and other weaknesses. However, coordination of these funds is generally weak and some of the reform measures are criticised as being driven by the donor community to meet its own particular agendas. In some cases, there is duplication of donor-funded projects and activities.

To address these problems of coordination, the government should establish a joint ministerial committee to consider the needs of the justice sector in a holistic manner, make proposals for financial assistance and coordinate project design. The donor community is advised to do the same. It is important that the independence of the various training institutes be protected and not compromised by their relationships with the donor community. Donor funding should be made more flexible, so that government, the judiciary or civil society organisations would have the freedom to apply the funds in areas that they believe critically need help, rather than being required to use them for pre-set priorities chosen by development partners.