Report on Access to Justice - Scoping Study of the Justice (Formal and Informal) Sector in Ghana

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1.0 Introduction

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 the purposes of STAR Ghana engagements, 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.

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.

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. The report is organized around six (5) main headings:

1. This Introduction;
2. Social Demand for Justice and Avenues for Justice;
3. Assessment of the various Avenues for Access to Justice;
4. Barriers and Challenges that Impinge on Access to Justice;
5. Civil Society Organisations (CSO) Initiatives in Access to Justice; and
6. Conclusion and Recommendations.

2.0 SOCIAL DEMAND FOR JUSTICE AND AVENUES FOR JUSTICE

2.1 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, Commercial Courts, and Land 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, 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.

2.2 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.

2.2.1 Formal Avenues

The formal avenues for Access to Justice include:

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

2. The resolution of chieftaincy disputes through the Judicial Committees of the Traditional Councils and Houses of Chiefs;
3. Quasi-judicial bodies such as the Commission on Human Rights and Administrative Justice (CHRAJ);
4. Administrative Complaints to offending institutions such as Ministries, Departments and Agencies of Government; and
5. Formal Alternative Dispute Resolution (ADR) mechanisms such as court connected ADR.

2.2.2 Informal Avenues

Informal Access to Justice avenues are too diverse and numerous to be contained in any report. The major categories include:

1. Community-based dispute resolution mechanisms that resolve interpersonal disputes including criminal matters (sometimes illegally resolving issues involving felonies such as murders and rape without knowing that they are acting illegally);
2. 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);
3. 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
4. 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.

3.0 ASSESSMENT OF THE VARIOUS AVENUES FOR ACCESS TO JUSTICE

3.1 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 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 there is desire to seek 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 are posted to fill the many empty slots in Magistrate Courts especially in the rural districts. This essentially is to take justice to the door of communities in the rural areas. There is the need for substantive assessment of the implications of this novelty. There have been noted observations of abuses by these magistrates[1].

The magistrate courts are the first point of call in the court system. This is where any litigant irrespective of whether poor or endowed can access formal justice. The Judicial Service in its bid to enhance access to justice to the majority of the poor and vulnerable and reduce the rising cost of litigation as well reducing the incidence of resorting to self-help and instant justice undertook a Magistrate Reforms programme. The programme essentially aims at establishing at least a Magistrate Court in each district, modernise and automate the Magistrate courts to improve case management with the ultimate goal of effective delivery of justice. For this reason, substantial funds have been received from Donor partners and Government. For instance under DANIDA GGHRP I&II, the Judicial Service received a total of USD8,637,467.54 for institutional support with the aim to strengthen access to justice both in terms of facilities/equipment and skills particularly at regional and district level.

To date there are 88 Districts that do not have Magistrate Courts. Many of the Magistrate courthouses have not been automated and/or in a state of dilapidation. In fact only 92 of the 285 courthouses in the country have been automated.

[1] Judicial Accountability Programme Reports , Civic Foundation/RAVI 2007 -2009,

In the adversarial system of administering justice, 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. It is for this reason that there is currently a fast growing ADR industry in Ghana.

The Judicial Service incorporated ADR into the adjudicating process in the courts. The foremost aim of the ADR Programme was to reduce the backlog of cases in the courts as well as enhance access to justice to the poor and vulnerable in the communities. Additionally, the programme aimed at "restoring confidence in the country's justice delivery system, promote good governance and rule of law, leading to sustained economic growth"[2]. The programme is in operation in 36 District and 11 Circuit Courts across the nation. The Service has annually reported a high settlement rate. As at 2011 the settlement rate was 46 %. Whilst it is true that the ADR system may be doing well in the face of several constraints, it is important to interrogate the extent of success as well as constraints. For instance, the records reveal that the Magistrates are reluctant to refer cases for mediation under ADR. Mediators posted to Wassa Akropong and Nalerigu District courts, which are beneficiaries of the DANIDA funded ADR mainstreaming, had not had any case referred to them as at December 2012[3].

3.1 The Cost of Formal Litigation

The formal court system is a business, an industry, and 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 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 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.

[2] Mr Justice Samuel Marful-Sau, Court of Appeal Judge in-charge of ADR programme at a special sensitization programme on Alternative Dispute Resolution (ADR) at Jasikan - [2010-02-08 - GNA/DS

[3] Nsaful and Associates, (2012) Report On The Performance Of Court Connected Alternative Dispute Resolution (CCADR)

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.

The ceiling for claims under Civil Jurisdictions of Magistrate Court is GHC 5000.00 and summary offence punishable by fines should not exceed 500 penalty units. Court officials have intimated that the average costs for filing a case in the District Courts is between 30 and 40 GHC. However, a survey[4] of 3 Nsaful and Associates, (2012) Report On The Performance Of Court Connected Alternative Dispute Resolution (CCADR) 4 Nsaful and Associates, (2012) Report On The Performance Of Court Connected Alternative Dispute Resolution (CCADR) court users has revealed that litigants are paying between 70 and 80 Ghana Cedis, excluding legal fees.

Another cost issue of concern to litigants is the Court Servers processing fees. The Judicial Service privatised the bailiff system to become what is known as the Private Court Process Servers Scheme. The reason for the change was to reduce the corrupt practices that had bedevilled its bailiff system. Unfortunately, this new scheme has not performed to the contrary. Court users still report of incidents of bribery on their service. These issues make the cost of litigation high and a threat to effective access to justice for the poor in particular.

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

[4] Nsaful and Associates, (2012) Report On The Performance Of Court Connected Alternative Dispute Resolution (CCADR)

- 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. There will be the need assess these public and private systems for improving Access to Justice in Ghana and the possibilities for cooperation, crossfertilization and the development of learning for replication and scaling-up from the best practices that exist.

3.2 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. A key
constraint facing Traditional Authority adjudication is the lack of enforcement options; some jurisdictions do not accept any objections to a panel member by the parties; and a lack of homogeneity in taking testimonies.

A baseline[5] on the role of Traditional leaders in Adjudication has revealed two significant challenges:

1. Many of the traditional leaders have not been exposed to any guidelines or the proper precedents for conducting effective customary arbitration proceedings; and
2. Defendants are not informed that they are being summoned to the customary tribunal for the purpose of resolving a dispute through arbitration.

A thorough examination of the role of chiefs in securing Access to Justice is crucial. The record of their performance in this role and ways of linking their activities to other systems for the provisioning of Access to Justice is necessary.

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

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

[5] Shawbell Consulting, (2010) Baseline Survey to determine the Importance and Role of Traditional Authorities in Adjudiciation

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 adavanced 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.

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. A recommendation by the Constitutional Review Commission when enacted will see CHRAJ directly enforcing its decisions.

Like the Judicial Service, CHRAJ has also received funding from DANIDA to strengthen its capacity and resources to fulfill its mandate at regional and district levels. The intervention places emphasis on strengthening the presence and functions of the CHRAJ. The objective of the intervention is to provide better access to justice, promote good governance and protect human rights at all levels of society, in particular at regional and district levels. In relation to the STAR intervention it would be important to generally monitor the performance of CHRAJ and specifically monitor the productivity and disposal rates in the CHRAJ offices that have been refurbished or constructed as part of the DANIDA intervention.

3.4 The Police

In Ghana, the Police Service is mandated to prevent and detect crimes, apprehend offenders, 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 of persons 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 become 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 Centre 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 Centre'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 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.

Ensuring a police-friendly institution will bridge the gap between the police and members of the communities to ensure effective policing. The police, as peacemakers need to exhibit proper conduct when dealing with the public in a manner that will alleviate any ill-feeling between the two groups. Creating a "police-friendly" institution where people can easily approach the police with their genuine cases to begin the process of seeking justice is important.

3.5 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 Ghanaians 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.

3.6 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 may 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-connected ADR, under which the courts either admonish disputants to resort to ADR or refer 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.

The Commercial Courts implement the integrated approach, while all other courts (High, Circuit and Magistrate) 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. Apart from court referred ADR, there exists other institutionalized forms of ADR. There are several ADR institutions like the Association of Certified Mediators of Ghana (GHACMA) 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 ArbitrationAct provides for the enforcement of all such arbitral awards and the execution of same as the enforcement and execution of judgments of the courts.

The Judicial Service has made significant claims that the 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.

The **Alternative Dispute Resolution Act, 2010** mandates the establishment of an ADR Centre to facilitate the practice of alternative dispute resolution. The functions of the Centre as listed in the Act are:

a) provide facilities for the settlement of disputes through arbitration, mediation and other voluntary dispute resolution procedures;
b) exercise any power for alternative dispute resolution conferred on it by parties to a dispute but shall not be involved in actual resolution of the dispute;
c) keep a register of arbitrators and mediators;
d) provide a list of arbitrators and mediators to persons who request for the services of arbitrators and mediators;
e) provide guidelines on fees for arbitrators and mediators;
f) arrange for the provision of assistance to persons as it considers necessary;
g) from time to time examine the rules of arbitration and mediation under this Act and recommend changes in the rules;
h) conduct research, provide education and issue specialised publications on all forms of alternative dispute resolution,
i) set up such regional and district offices of the Centre as the Board considers appropriate;
j) register experienced or qualified persons who wish to serve as customary arbitrators and keep a register of customary arbitrators; and
k) request the traditional councils to register and keep a register of persons who wish to serve as customary arbitrators.

The Centre is expected to be governed by a board appointed by the Presidents in accordance with 70 of the Constitution. Since the passing of the Act in 2010 both the Centre and its Board still remains an aspiration.

3.7 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 persons 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, as has been indicated earlier. When this is 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.

3.8 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.

4.0 BARRIERS AND CHALLENGES THAT IMPINGE ON ACCESS TO JUSTICE

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. Access to the judicial system is mostly barred by the long and tiring legal processes at the courts, ignorance of the law and the judicial system, the usually long distance one has to travel to access the services of a court, ignorance about the court system, poverty/ low level of income, adjournment of cases, perceived acts of impropriety at the courts, fear of the judicial system due to low level of education/ poverty, fear borne out of intimidation and provocation from court officials.

Other factors are the cost implications for accessing justice from both informal and formal avenues, fear and mistrust in the traditional authorities and the courts, delays in police investigations, inaccessibility to lawyers, high legal fees by lawyers, and perceived corrupt attitude of court officers.

There are also gender challenges. In many Ghanaian cultures, women and children are generally afraid to speak in public. Hence, they may not be able to go to court or the traditional authorities to state their case. In practical terms, and flowing from all of the above, there are peculiar obstacles faced by many in accessing justice. These obstacles can be summarised as:

1. Limited or no knowledge about legal rights and entitlements;
2. 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;
3. Limited or no effective access to inexpensive social services which will forestall the need for justice avenues to resolve disputes relating to access;
4. Limited voice for real stakeholders on the design of policies on Access to Justice;
5. 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
6. Discriminatory practices against disadvantaged groups such as the poor, women, children, the physically and mentally challenged, PWDs and PLWHA.

5.0 CIVIL SOCIETY ORGANISATION INITIATIVES IN ACCESS TO JUSTICE

A limited range of activities exist. These include Legal Aid Services/Programmes, Paralegal Training, Legal Literacy Education, Policy Engagement, Legal Research, and Monitoring the Judiciary.

Legal Aid Services/Programmes

The Legal Aid Services is the largest initiative. It seeks to protect and promote human rights of the poor and marginalised through legal empowerment. The programme creates an enabling environment for the poor and marginalised to seek equitable justice through formal and informal systems. The services include Legal Clinics, Legal Education, Alternative Dispute Resolution (ADR) mechanism, Counseling, and Legal Referrals.

Legal aid clinics are provided across the country. The clinics seek to help those who cannot afford to pay court and legal fees. Cases of public interest have also been taken up to promote human rights principles as enshrined in the 1992 Constitution of Ghana, other pieces of legislation and international treaties Ghana has ratified. A number of Organisations are involved in legal aid programs in the form of counseling, mediation, court representation and legal outreaches.

The International Federation of Women Lawyers-Ghana, (FIDA-Ghana) provides Legal Aid Program services in the following areas: Alternate dispute resolution and court representation; Child maintenance and paternity of children; Custody of children and child marriages; Enforcing inheritance rights of adolescents who will otherwise fall prey to exploitative sexual activities for reasons of survival; Enforcing the inheritance rights of HIV/AIDS orphans; Enforcing the property rights of spouses, particularly upon divorce.

Under its Anti-Violence Program (AVP), the Ark Foundation provides Legal Aid Service which responds to violence against women and children (VAWC).The Legal Resource Centre (LRC) also offers legal aid to indigents, most especially in the Nima/Mamobi community.

Paralegal Training

This training offers community leaders like youth and traditional leaders, basic knowledge in law, to help identify and address instances of injustice and abuse. The trainees after the training act as referral points to receive and refer cases to relevant legal agencies for redress. In the quest to providing access to justice FIDA-Ghana trains many women as paralegals. WiLDAF is also trains paralegals and legal literacy volunteers in various communities to serve as first aid to women who want to assert their rights. These volunteers are trained not only as first “aiders” in the law but also used to undertake awareness creation on the on the laws.

Legal Literacy Education Projects

This component seeks to improve access to justice by giving the public the information that is needed to understand the law, how to deal with the legal issues that affect their lives and how to use the opportunities and the protections offered by the legal system. It represents the bridge between the justice system and Ghanaians and ensures that the citizenry have access to justice.

FIDAGhana is involved in the simplification, interpretation and translation (principal local languages) of legislation, particularly those that affect women and children. It undertakes mobile outreaches to communities in general and women in particular to create awareness about the human rights laws in Ghana, its contents and implications.

LAWA-Ghana also undertakes sensitization on various laws, particularly for illiterate women on their legal rights. WiLDAF facilitates knowledge that help people to access government or civil society sponsored legal aid services.

Legal Research

Efforts in this regard are aimed at building a significant and well respected body of knowledge about the legal and access to justice needs of disadvantaged people. LAWA – Ghana has undertaken legal research on various issues of concern to women and made recommendations for law reform. They have also drafted some laws for the consideration by law makers and made proposals for the enactment of policies to protect women's human rights.

Through research policy initiatives have been developed. The Ark Foundation initiated the National Advocacy Partnership (NAP) Project, which lobbied and engaged Government to adopt a *National Policy* and Plan for the implementation of the Domestic Violence Act (Act 732 of 2007), and to ensure that the Policy addresses sexual and gender based violence issues broadly in institutional arrangements. Key actors in the project included both state and non-state actors including AWLA, FIDA, WILDAF, WISE, DOVVSU, MOWAC, Domestic Violence Coalition.

WiLDAF Ghana is engaged in policy work using data captured from its legal awareness programmes. Some of the policy engagement work has led to establishment of child panels, and the ending to the use of Free Notes to dissolve marriages and child maintenance.

Generally a number of the CSOs in Access to justice are regularly consulted by the State for input into formulation of pro-poor policies and strategies by national institutions, for e.g., in the work for a National Social Protection Strategy, the Ghana Growth and Poverty Reduction Strategy II, development of a Medium Term Economic Framework; issues concerning orphans and vulnerable children (OVC Policy framework), women in difficult circumstances, etc.

Monitoring the Judiciary

The 1992 Constitution of The Fourth Republic of Ghana has generally enlarged the need for accountability of all those who wield public power. However, in order to uphold its independence and ensure a continued trust in its operations, the judicial arena – both in terms of geographical space and operations – has invariably been distant from the wider citizenry. There has been a growing drive towards enhancing accountability and wider good governance principles across all facets of public office holding – including that of the judiciary.

The Ghana Integrity Initiative has monitored corruption within the Judiciary, whilst the Civic Foundation monitored the performance of the courts and engaged the Judiciary on issues of challenges and anomalies in the courtroom.

Networking and Strengthening Partnerships

This is an emerging area of work. CSOs engage in knowledge-generating sessions to collaboratively achieve mutual strategies that directly impact access to justice. Alongside providing direct service, with partner support from likeminded legal aid and human rights institutions, these partnerships are able to collaborate in Public Interest Litigations (PILs). A critical success in this direction has been the WISE6 initiative where collaborative partnerships have been formed with existing organizations to provide a range of services including counselling, training and development, advocacy, and support to meet the needs of victims of violence and their families.

[6]Women Initiative for Self Empowerment (WISE) is a Ghanaian, non-governmental, non-profit organization dedicated to providing counseling and support services to women and children survivors of violence.

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6.0 CONCLUSION

The problems of Access to Justice faced by the poor, women and marginalized groups have different etiology. The issues may be divided into two groups. The first group is associated with poverty and the lack of enforcement of social, economic and cultural rights; and the second with the supply of justices services. The causes of these specific issues need to be addressed and long term solutions adopted in the social, economic, and political arena to promote access to justice. The judicial system does not address the social problems, but deal with conflicts after they have arisen.

Besides, conflicts do not just become justiciable cases. Individuals need to be empowered with knowledge of their rights and legal awareness, to entitle them to lodge complaints against abuses of rights and seek redress. Some of these issues are may actually be of a criminal nature but are barely reported. In other situations people are aware that a right is being violated or crime committed, but there are no known available channels that they can use to seek justice.
It is therefore necessary to facilitate:

1. Legal awareness and rights dissemination among the poor, women and the marginalised groups;
2. Provide legal representation for the poor and marginalised; and
3. Facilitate access to justice service for them.

Different mechanisms, institutions, and bodies, with or without legal capacity to deliver justice, deliver justice services. People prefer some mechanisms rather than others, due to geographical or economic accessibility, cultural understanding, the particular subject matter, or capacity to deal with conflicts. However, it is important that the institutions of state mandated to provide justice be monitored to ensure that they are up to the task and are performing.

Over the past decade, the Judicial Service of Ghana for instance, has initiated and implemented a number of reform and modernization activities with the primary aim to enhance the delivery of justice at the courts and respond proactively to the general public's concerns and critic of delays in the disposal of cases as well as allegations of corruption in the judiciary.

In spite of the reforms, there are still serious delays in case management, a great accumulation of cases in the courts, limited access to services (especially by the poor), corrupt practices, issues of predictability of judicial decisions, and an appreciable level of mistrust among citizens regarding judicial decisions and corruption.

Given these shortcomings, the role of CSOs becomes imminent. The political importance and coverage of these organisations empower them to pass judgment on the legitimacy of institutional and cultural change. By promoting the participation of and alliances with sectors

such as mass media, trade associations, academia, and the private sector in general, CSOs become a powerful instrument in promoting access to justice as they monitor and follow up on the assurances and commitments of duty-bearers in this sector. At the same time, CSOs end up promoting trust and support for governance institutions when they disseminate successful results of initiatives.

CSOs can significantly contribute to the diffusion and evaluation of comprehensive, reliable, and timely statistics on the justice system, which bears several advantages for a sector characterized by "secretive" handling of information and resistance to accountability. A great deal of Civil Society Organisations may directly get involved in the rendering of legal and educational services to the community, as well as in private conflict resolution activities.

With regards to activities that can be pursued by CSOs, the following may be of interest:

1. Compilation of statistics and evaluations of judicial performance and making them available to the public;
2. Building alliances with the judiciary to establish pilot projects in order to apply innovative case management methods and to carry out training programs needed to fight court delays.
3. Organization of legal awareness educational programs to promote better knowledge of rights and duties, and comprehension of justice systems, mechanisms and procedures.
4. Provision of ADR services, legal aid, and public defender programs to low income citizens and communities.

However, it is important to note that the impact of the work by CSOs can diminish if insufficient communication among them is not curtailed. Insufficient cooperation will have a negative impact on the entire component in that implementing CSOs will frequently be unaware of potential partners and useful projects that they might incorporate into their programs. The achievements and experiences attained by CSOs would be worth sharing regularly as well as the institutional changes they have been promoted through their novel approaches.

6.1 Recommendations

Flowing from the above discourse a civil society organisations' (CSO) component into Access to Justice should provide support to civil society organisations to participate in the improvement of justice services:

1. Empower, the poor, women and marginalised groups through rights and legal awareness, building capacity. Guarantee the participation of the poor, women and marginalized groups to present their demands and proposals directly to different levels, in order to improve their access to justice;
2. Establish mechanisms for transparency and accountability in the delivery of justice services;

3. Promote citizen participation and inter-institutional cooperation for the improvement of access to justice at different levels (district, regional and national).
4. Establish mechanisms for better coordination among justice services. This will ensure a systemic vision of all the justice services, establishing a distribution of functions among the formal justice and the informal justice systems. A pilot plan could be established to implement multi-sector roundtables at the district and regional levels to develop strategies relating to justice service improvement.

The implementation of these activities will ensure:

- Improved access to justice for vulnerable and marginalised groups;
- Improved awareness and knowledge of the justice sector systems for vulnerable and marginalised groups; and
- Enhanced accountability of the Judiciary and other justice sector players through policy dialogue and strengthening the capacity of CSOs.

Chief Justice William Rehnquist of the United States Supreme Court has observed "*Justice is too important a matter to be left to the judges, or even to the lawyers; the American people must think about, discuss, and contribute to the future of their court*s."[7] It is extremely important for STAR Ghana can take opportunity of this advice.

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. With enhanced capacities and resources, the Civil Society can provide an effective framework for Access to Justice for all in partnership with other public and private sector operatives in the justice sector.

[7] Quoted in Samuel F. Harahan and Waleed H. Malik, *Partnerships for Reform: Civil Society and the Administration of Justice.* Washington, D.C.: World Bank, June 2000), p. 1.

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