

# Ghana's justice system needs a major overhaul: here's what should be done



*by* **Prof. Raymond A. Atuguba**  
**Managing Partner | Atuguba & Associates**  
*Dean, University of Ghana School of Law*  
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Ghanaians are flocking to the courts at a much higher rate than before. Invariably this has put pressure on the civil litigation system; cases are being stretched and delayed. The system is clogged, and people who've turned to the courts are often frustrated and upset.

But Ghana's justice system is not just slow. It is also expensive and sometimes even harsh. Initiation of an action through the wrong processes or a lack of funds to sustain even the most legitimate cases could mean that a person is denied their day in court. This could explain why some frustrated people are seeking justice outside the law.

It is this frustration that has birthed rebellion against the country's courts. For example in July 2016, two panelists on an Accra-based radio station, Montie FM, made on-air threats to kill judges. They, along with the presenter, were subsequently convicted of contempt by the Supreme Court, and have come to be identified as the "Montie 3".

And vigilante groups are on the rise. For example, "Delta Forces" is one of a growing number of politically affiliated violent groups in Ghana. "Invincible Forces" is another.

The growing displeasure with the civil litigation process doesn't bode well for the courts, lawyers, or the integrity of the system of rule of law. If the system is to regain people's confidence it must undergo massive reforms. Recommendations for reform

Here are my top eight recommendations:

#### 1. Abolish the writ system

Ghana currently operates a writ system. When a plaintiff wants to institute an action, they must procure a particular original writ, and abide by specific usages and principles of law relating to the writ system. Any mistake in this process can be fatal. That should change. At least 99% of law suits should begin by application. Such an application will utilise an advanced front-loading system, where all documents and materials relating to a case are presented to the court before it sits.

This will ensure that the judge has the full picture of what the true issues between the parties are and the strength of their respective cases. Oral arguments lasting no more than 30 minutes for each party to the suit should be set within one week of all relevant documents being submitted. The judges should use better case management processes and be much firmer in determining whether a case falls into the 1% of really complicated cases that require oral evidence.

## 2. Use technology better

Information and communications technology (ICT) should be used more in filing and receiving orders, serving notices and other processes. This will help decongest Ghana's courts and save everyone's time. It will also be instrumental in the fight against corrupt practices in the court system by eliminating, or at the least, limiting person to person interactions, which tend to breed corrupt transactions.

Thankfully, some judges in Ghana are already fostering an environment for progress in this area. In the 2015 case of *Kwabena Ofori Addo v Hidalgo Energy & Julian Amoako Gyimah*, substituted service (service made otherwise than personally on the defendant) was ordered to be effected via WhatsApp. More recently, Justice Sophia R. Bernasko-Essah granted an order for substituted service via Facebook Messenger in *IFS Financial Services Limited v Jonathan Mensah & Stanley Owusu*.

## 3. The rules of enforcement of human rights

Article 33 of the 1992 Constitution of Ghana and Order 67 of the High Court Rules have provided suitable grounding for the protection of fundamental human rights.

The Ghanaian rules would benefit from borrowing a set of Nigerian Rules which allow for the court, where it is satisfied that exceptional hardship may be caused to an applicant before the hearing of the application, especially when life or liberty of the applicant is involved, to hear the applicant *ex parte* (without requiring all of the parties to the controversy to be present) and order such interim reliefs as the application may demand.

## 4. Make the Human Rights Commission the Human Rights Court

Ghana needs to prepare its Commission on Human Rights and Administrative Justice to be the Human Rights Court of the future. The commission's rulings should have the weight of a High Court judgment and should be directly enforceable without any other process. Of course, these judgments would be appealable to the Court of Appeal and the Supreme Court. This would ease pressures on the High Court by relieving it of its human rights obligations.

## 5. Fix reasonable fees for filing cases

Ghanaians are charged a Ghc 20,000.00 (USD\$4,407) filing fee to make a bona fide claim exceeding Ghc 100,000,000.00; and a Ghc 1500.00 (USD\$330) filing fee to recover one million cedis in an insurance claim. Access to justice is restricted by such high fees.

The courts should instead consider taking a reasonable amount of whatever award or costs flow from a suit, rather than add their fees to same. There is also the option of imposing a tax for the Independent Governance Institutions, especially the courts, the Commission on Human Rights and the Legal Aid Scheme. This way, access to these institutions can be absolutely free of filing and other fees.

## 6. Shy away from self-regulation

The making of court rules should be guarded from the unfortunate charade of self-regulation. New processes are needed to audit the judgments and orders of the courts for corruption. External agents are necessary to ensure the success of regulations on the judiciary.

## 7. Support Legal Aid

Ghana's legal Aid scheme does not function nearly as well as it should. The Scheme is tasked with providing legal assistance to the poor and indigent, as well as other persons in the prosecution and defence of their rights under the Constitution of Ghana. To effectively execute it's mandate, it must be given the resources it needs to implement its mandate. The few who are aware of and apply for aid face delayed services from a severely understaffed and underfunded scheme.

## 8. Customary dispute resolution

For many communities in Ghana, chiefs and elders are still the final authority for civil disputes. "Modernisation" should not look to substitute these alternative systems of community justice. Instead it should find ways of encouraging them, and making the most of the sense of obligation that some communities feel toward their chiefs and elders.

Why it matters

A functional justice system is crucial to peace and development. A better Ghana awaits only if the country has the courage to take on the challenge of reforming its courts.