

# USES AND USERS OF JUSTICE IN AFRICA

## THE CASE OF GHANA'S SPECIALISED COURTS



THE WORLD BANK



REPUBLIC OF GHANA



NORWEGIAN MINISTRY OF FOREIGN AFFAIRS



**Uses and Users of  
Justice in Africa:  
The Case of Ghana's  
Specialised Courts**

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## Foreword

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This report is a collaborative effort between the Judicial Service of Ghana and the World Bank. It not only provides useful information about the work of the Specialised Land and Commercial Courts, but offers a review of legal services which have been scarcely analysed. Few documents of this nature exist on the work of courts in Sub-Saharan Africa—the breadth and depth of detail of the analysis is informative and contributes useful baseline data for anyone wanting information about the court system in Ghana in these specialised areas of justice delivery.

We began this joint research effort to learn the different capabilities of various specialised courts and their impact to decrease delay and deliver timely decisions to court users. We also sought ways to improve upon reforms and inform decision makers on policy matters in the Judicial Service. For example, the report indicates a higher rate of judgments than those indicated by even official statistics, which may be good news for the judiciary but also indicates a need to ensure that our judges and their staff are reporting on case flow accurately. One of the most important lessons we take from this report is the need to improve our own databases to reconcile and resolve discrepancies from year to year.

This report also demonstrates the utility of similar research for other court systems of sub-Saharan Africa (and elsewhere), in particular because it has been useful to evaluate the impact of reforms such as the creation of specialised courts and thus target where adjustments may be required.

Finally, I am pleased with the positive experience of working in cooperation with local and international academic researchers. Building alliances of this nature is not only useful for such tasks and analytical studies, but also in maintaining an interested external constituency in improving the administration of justice in our country. I congratulate the joint team, including Dr. Raymond Atuguba of the University of Ghana, Legon, members of the Judicial Service of Ghana, Dr. Linn Hammergren, Senior Rule of Law Consultant, and Lisa L. Bhansali, Task Team Leader for this study on land and commercial litigation in Ghana (see Acknowledgements).

Justice Georgina Theodora Wood  
Chief Justice of the Republic of Ghana



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## Acknowledgements

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This report was prepared by a team led jointly by Dr. Raymond Atuguba and Dr. Linn Hammergren, both Senior Rule of Law Consultants with the World Bank. Dr. Atuguba prepared the report and supervised the field work, while Dr. Hammergren provided guidance in the design of the project, including preparing the research questionnaires and subsequent analysis.

Task Team members for the World Bank included Lisa L. Bhansali, Senior Public Sector Management Specialist (Team Lead) and Nancy Chaarani Meza (Public Sector Consultant) in the Africa Region. The team sincerely thanks the Chief Justice of the Republic of Ghana, Her Ladyship Georgina Theodora Wood, for her interest in this project and for offering invaluable advice. It is also thanks to Her Ladyship that the team was able to work so closely with staff of the Judicial Service of Ghana to ensure access to caseload data as well as appreciate and learn directly from those charged with the administration of justice in Ghana. Many times, the Court Registrars and Clerks sat with the case file analysts through the process of completing the questionnaires and provided critical information without which the project would not have been completed successfully. The Research Associates are also acknowledged for their steadfastness and innovation in the face of the many challenges encountered in the course of the project. And, a special recognition is also due to Ms. Sandra Thompson, the Director of Judicial Reforms and Projects, and in particular her staff member Ms. Preko Gifty Yeboah.

The members of the team, including the Judicial Service, included: Julius Fobil, Baaba Amoah, Abdul Baasit Abdul Aziz, Rowland Atta Kesson, Emmanuel Ofori Abosi, Kwabena Oteng Acheampong, Sharon Baddoo, Justice Srem-Sai, Kofi Adinkrah, Selma Awumbila, Janetta Amewuga, Zeinab Ayariga, Ramona Patience Abugabe, Mercy Dellor, Alfa Nasir Mohammed, Kizito Akudago, Harold Atuguba, Noreen Nortey, Simon Quano, Felix Atsuvia, Steve Dzutorgbey, Charles Acheampong, Oppong Yaw Mensah, James Mensah, John Djeha, Philomena Brown-Acquaye, Roberta Orleans Lindsay, Rexford Gyimah, George Taylor, Henry Oppong, Prosper Dabanka, Nathaniel Nii Quarcoopome Sackey, John Bannerman, Kofi Affah, Adom Andrew K.B, Solomon N.A Botchway, Rahmatu Ammah and Emmanuel Plange.

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## List of Abbreviations

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ADR	Alternative Dispute Resolution
APRM	African Peer Review Mechanism
AU	African Union
BFLJ	Banking and Financial Law Journal of Ghana
CDD	Center for Democratic Development-Ghana
CHRAJ	Commission on Human Rights and Administrative Justice
CSOs	Civil Society Organizations
ECOWAS	Economic Community of West African States
GDP	Gross Domestic Product
GPRS	Ghana Poverty Reduction Strategy
ISSER	Institute of Statistical, Social and Economic Research
NDPC	National Development Planning Commission
PPA	Public Procurement Authority
SFO	Serious Fraud Office
SPSS	Statistical Package for Social Scientists



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## Executive Summary

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Judicial reforms, designed to increase overall adjudicatory effectiveness in judiciaries of the developing world, have been touted as essential to the promotion of the rule of law. Yet, with the effectiveness and sustainability of these reform efforts already a matter of controversy, it becomes imperative that further reforms are underpinned by findings from empirical studies.

The World Bank, as part of its efforts to develop a more effective strategy for its assistance to African judiciaries has commissioned this Ghana study to track court cases in divisions of the High Court in Ghana that have seen reforms and to identify improvements from and assess challenges to judicial reforms that have already been implemented.

The Ghana Court Uses and Users Study forms part of a series of similar studies commissioned elsewhere by the World Bank (e.g. Ethiopia, Brazil, Argentina). The study was conducted collaboratively by a team of independent researchers, statisticians and research associates and the staff of the Judicial Service of Ghana. It involved the design of a research instrument for tracking the progress of some 320 cases, 80 each in the Fast Track Division of the High Court (Fast Track Court), Commercial Division of the High Court (Commercial Court) and the Land Division of the High Court (Land Court), all automated, and 80 cases in the unautomated ordinary High Court for comparative purposes.

Some of the findings in the study confirmed what is already known about the judicial system in Ghana. Other findings have been startling. All together, the study clarifies the issues at stake as regards the nature, scope, content and target of future reform efforts.

The view that the automated courts in Ghana are primarily the preserve of large private legal actors was supported by the findings, although the study suggested that a fairly large proportion of individuals also used the automated court system.

Delays in the automated courts were found to be comparable to those in the unautomated court. The only exception was the automated Commercial Court which had high case disposition rates. All the cases sampled in the Commercial Court reached one form of closure or other. There was greater efficiency in service of processes and case management in the Commercial Courts, thus obviating the delays that are caused by non-service of court processes on parties and poor case management leading to several adjournments for long periods of time. The Commercial Court granted far fewer adjournments than the other courts. Rules of Court that

are applicable only to the Commercial Court require a mandatory attempt at pre-trial settlement for all cases. This form of mandatory, court-connected ADR ensured that a quarter of all cases filed in the Commercial Court were disposed of through that mechanism. All these factors resulted in speedier justice in the Commercial Court. This provides some insights as to the reasons court users, particularly institutional actors, use the Commercial Courts a lot, and seem to be gravitating from the Fast Track Court to the Commercial Court. To such users, time is usually of the essence.

We are able to conclude that the high case disposition rate of the Commercial Court is attributable to the more progressive Rules of Court applicable to only that Division of the High Court. It is safe to conclude that speedier administration of justice is attributable more to progressive Rules of Court and firmer application of rules for case management than to the fact of automation. However, automation appeared to be a necessary, but not sufficient, factor for speedier administration of justice. As already hinted above, the findings also showed that the mechanism of holding mandatory pre-trial settlement conferences in the Commercial Court is working to reduce the volume of cases that eventually go to trial.

Consistent with findings in other countries, appeals from judgments of courts of first instance were found to be less frequent than they are generally thought to be. Only a quarter of judgments were appealed. The proportion of defendants appealing was more than that for plaintiffs. On average, there are more appeals from the decisions of the automated courts than from the unautomated court.

The Ghana study findings on enforcement of judgments are consistent with findings elsewhere. More than half of judgments do not have any record of enforcement. This could be because judgements are not being enforced or simply that the parties do not register their enforcement with the court. Of all the courts, the Fast Track Court has the lowest proportion of record of enforcement. This is easily explainable. Land and commercial cases invariably involve further steps by the victorious party to benefit from the fruits of the judgment through specific enforcement processes in the Rules of Court. In land cases, a writ of possession may have to issue; in commercial cases, further steps relating to the sale of property or securing access to monies lodged in banks may have to be taken by way of enforcement procedures. This is what accounts for the higher record of enforcement in the Commercial and Land Courts.

In general, it may safely be concluded from the study that judicial reforms introduced in the recent past to speed up the disposition of cases have brought about measurable improvements in adjudicatory effectiveness. Yet, challenges abound. Based on the analyses of the sampled cases, the automated courts, the Commercial Court excepted, appear to be doing only marginally better than the unautomated courts with respect to the speed with which cases are effectively disposed.

The above state of affairs calls for a rethinking of how reforms are conceptualised and implemented. More fundamental and substantive reforms, including changes in legal content and legal process; the streamlining of institutional systems and processes; and more thorough monitoring and evaluation systems that incorporate the necessary feedback mechanisms appear vital to any further enhancement in the administration of justice in Ghana.

While the reforms so far have been effective in crafting appropriate interventions for speeding up the disposition of cases, there is an urgent need for a reengineering and better targeting and phasing of reform initiatives with the capacity to generate spill-over effects for overall adjudicatory efficiency and effectiveness. It is in this regard that the findings of this study are most significant.



## Introduction

### The Purpose of the Project

This research project involves the tracking of the progress of cases in Ghana's specialized courts. It seeks to provide data that are not usually available for a scientific assessment of the performance of the courts in Ghana. The project, therefore, captures information on the persons and institutions who use the courts in Ghana; what these claimants come to court for; the difficulties they encounter in the process; and the value added by recent court reforms in resolving these problems. Further analysis of this information is then used to make specific and targeted recommendations for improving overall adjudicatory effectiveness.

The project is part of the World Bank's series of studies in selected African countries, including Ghana and Ethiopia. It is in line with the Bank's efforts to develop a more effective strategy for its assistance to African judiciaries and to draw lessons from similar studies in Latin America and Eastern Europe. Such studies have proved useful to judiciaries in those countries working at improving the services they provide to their citizenry. Benefits from such studies typically include increased capacity for cooperating judiciaries to negotiate for higher budgets; promote legislative changes; demand full cooperation from other government agencies; and engage the private bar on measures needed for combating frivolous litigation and dilatory legal practices.

The project is similar to other World Bank studies in many respects. It is premised on a general belief that, almost everywhere, courts struggle to deliver quick, effective, accessible, and efficient justice. The huge disconnect between intention and reality is due to a number of factors, namely, the cost of litigation—an issue which bears directly on access to justice; unprecedented delays in case processing; real and perceived corruption within the courts and increasing uncertainty associated with judges' rulings.

Delays, generally defined as unreasonable time spent from case filing and processing to case disposition, stand out amongst the list of problems. There is, therefore, a recognised challenge that the judicial sector in Ghana is currently incapable of providing speedy justice, a critical ingredient for public and investor confidence in the justice system.

## Description of the Project

The Ghana study focuses on cases handled by three automated and specialized High Courts: the Fast Track Court, the Commercial Court and the Land Court. For comparative purposes a sample was also drawn from the unautomated and non-specialised High Court. Eighty (80) cases were drawn from each of these courts.

The samples draw from cases initiating between the 1<sup>st</sup> January, 2000 and 31<sup>st</sup> July, 2008. This period was chosen to include cases from 2000 that were transferred from the unautomated court to the automated Land Court and to cover the period beginning with the establishment of the first of the automated courts, the Fast Track Court in 2001, ending a year before the start of the project. This end date was chosen in order to capture only cases that have been in the courts for at least a year and would, therefore, be worth tracking.

The broad objectives of the study are to:

- Determine the character of parties to the suits in the cases brought to these courts; the types of cases filed; the nature of the disputes involved in those cases; the monetary values implicated; and the type of proceedings that ensue;
- Identify the procedural stages where there is more delay in the disposition of cases and determine the causes and agents of such delays;
- Document the extent to which legally required procedural steps, necessary or otherwise, may encourage dilatory practices on the part of parties and lawyers or otherwise impede the speedy and effective processing of a case;
- Identify other factors, such as institutional and human resource constraints, that may impede speedy processing and effective resolution of cases; and
- Assess the efficacy of specialized courts and other reform efforts in the efficient handling of cases.

## The Project Team

The implementation of the project was the responsibility of a team coordinated by a Principal Investigator and Project Director, Raymond Atuguba. Other members of the team were two statisticians, Julius N. Fobil and Emmanuel Ofori Abosi; one coordinator, Baaba Amoah; two Data Collection Supervisors, Abdul Baasit Abdul Aziz and Rowland Atta-Kesson; twelve Research Assistants as Data Collectors/Case File Analysts and a Secretary. The team worked closely with staff of the Judicial Service, particularly the statistician of the Judicial Service, court registrars, and court clerks. The World Bank's task team was composed of Lisa L. Bhansali (Task Team Leader), Linn Hambergren (Sr. Rule of Law Consultant) and Nancy Chaarani Meza (Public Sector Consultant) who worked closely with the Honorable Chief Justice of Ghana, Her Ladyship Justice Georgina Theodora Wood and the Director of Judicial Reforms of the Judicial Service of Ghana, Sandra Thompson.

## Background

### Ghana: The Land, the People, the Economy

Ghana is a small-size resource-rich-but-poor African country south of the Sahara. It has a population of 23.8 million made up of about one hundred ethnic groups.

Its major foreign exchange earners are minerals (gold, diamonds, manganese ore, and bauxite) and agricultural produce, especially cocoa. Ghana also exports a lot of timber and has an active tourism industry being the home of several tourist attractions such as forts and castles. A recent off shore oil find is fast generating significant international commercial interest in Ghana.



Since 2005 official sources have described the economy as robust even in spite of the shocks in fuel prices in 2008. The 2008 GDP growth rate was pegged originally at 6.2 percent and then later revised to 7.3 percent.<sup>1</sup> According to the 2008 State of the Ghanaian Economy Report, agriculture continues to be the main driver of the economy, despite its relatively slow growth rate of 5.1 percent in 2008. It continues to have the largest share of national output of 33.6 percent.<sup>2</sup> In other words, the dominance of the agricultural sector in the economy of Ghana ensures that nearly 40 percent of GDP and 50 percent of all employment are derived from the sector.<sup>3</sup>

### Governance Framework

Ghana is a constitutional democracy modeled along the American presidential system, although it retains part of its Westminster heritage. But unlike the United States, Ghana is a

<sup>1</sup> See Isser; The State of the Ghanaian Economy in 2008, at 8.

<sup>2</sup> id at 10–13

<sup>3</sup> Aryeetey, Ernest & Kanbur, Ravi *Ghana's Economy at Half-Century: An Overview of Stability, Growth and Poverty* in Aryeetey, Ernest & Kanbur, Ravi (ed) *The Economy of Ghana: Analytical Perspectives on stability, growth & poverty* (Woeli Publishing Services, Accra 2008) at 9.

unitary Republic. There is separation of powers and judicial powers are vested in the judiciary headed by the Chief Justice, under the current 1992 Constitution. Executive authority is vested in a President who in a number of critical instances acts in consultation with a Council of State, a constitutional body of 25, comprising 14 persons appointed by the President, 10 persons elected from the 10 administrative regions of Ghana and the President of the National House of Chiefs. The President is assisted by a Vice-president and must appoint more than half of his ministers from Parliament. The unicameral legislature of 230 members is relatively weak, being incapable of initiating legislation by itself, including legislation which determines the allocation of resources.

## Brief History of Ghana

Pre-colonial Ghana, the period before the year 1821, was characterised by traditional societies and strict adherence to custom. The Trans-Saharan Trade and the Trans-Atlantic Slave Trade were the major events of the period in terms of contact with the outside world. With the abolition of the slave trade and the onset of legitimate trade, Ghana was effectively colonised by the British between 1884 and 1901 and named the Gold Coast.

On 6<sup>th</sup> March 1957, Ghana became the first country in Sub-Saharan Africa to gain independence. It gained republican status within the British Commonwealth in 1960. Following independence, Ghanaians had hoped to enjoy vast and almost unlimited opportunities in the blessings of liberty under their first president, Dr. Kwame Nkrumah. Internecine conflict compelled Kwame Nkrumah to institute draconian laws and measures against anyone who opposed him. He was overthrown in a military coup d'état in 1966.

Between 1966 and 1992, Ghana was governed by military regimes, save for two brief periods of constitutional rule in 1969 and 1979, each lasting 27 months.

Ghana returned to constitutional democratic rule on 7<sup>th</sup> January, 1993. Indeed, Ghana is currently considered a beacon of African democracy, especially after successfully conducting elections that saw two admirable democratic transitions from one government to another government of a different political party and persuasion. It has held five successful elections since the return to multi-party democratic rule in 1992. Two of those elections (2000, 2008) resulted in a political turnover, involving a switch in positions of the sitting government and the largest opposition party. This underscores the resilience and universal acceptance of Ghana's democratic institutions among its electorate and politicians.

The 1992 Constitution has also created a number of independent bodies designed to enhance responsiveness, transparency, and accountability. These bodies include the Commission for Human Rights and Administrative Justice (CHRAJ); the Electoral Commission; the National Media

Commission; and an independent Auditor-General. Other critical governance institutions such as the Serious Fraud Office (SFO) and the Public Procurement Board (PPB) are set up by statute.

The aspirations of Ghanaians are now merged into the latest and most enduring democratic experiment under the 1992 Constitution, which arguably has gained recognition for Ghana as a leading democracy in Africa. This Constitution is currently under review to improve its operation.

## Ghana's Place and Outlook in the World

According to the 2009 Human Development Report of the United Nations Development Program (UNDP), Ghana's human development is medium, ranking 152 after Tanzania. Meanwhile, Ghana's constitutional democratic credentials and good governance record has been confirmed by several assessments and the recent visit by President Barack Obama of the United States of America. The Mo Ibrahim Index of African Governance ranked the country 7th in 2008. Similarly, according to the African Peer Review Mechanism, Ghana could rightly be described as an oasis of peace and tranquility in a sub-region perpetually in turmoil. Within the African region, Ghana has provided a stabilizing role, by contributing significant forces to the AU and ECOWAS peace keeping missions. It generally plays an active role in regional organizations.

The oil and gas find in Ghana has attracted international attention. Meanwhile, there are concerns that Ghana could fall into the trap of the resource curse, where the effect of oil is to generate corrupt and unaccountable public spending, and to crowd out the non-oil related sectors.

## The Justice Sector of Ghana

Ghana's justice sector is a conglomerate of government ministries, departments and agencies. These include the Ministry of Justice and Attorney General's Department, the Ghana Police Service, the Ghana Prisons Service, the Social Welfare Department, and the Judicial Service.

The justice sector is also characterized by legal and institutional pluralism for the settlement of disputes. At independence, the British left Ghanaians an established Common Law system. This means that Ghana's legal system, like that of the United States of America, Great Britain, South Africa, or Nigeria, makes use of judge-made-laws in addition to statute law. In addition, Ghana's legal system makes use of Customary Law, the ethnic norms and rules that govern various communities in Ghana.

As far as institutional pluralism goes, aside the regular courts, there are a number of administrative tribunals and quasi-judicial bodies for the resolution of disputes in Ghana. These

include the Commission on Human Rights and Administrative Justice (CHRAJ), the National Labour Commission, the Judicial Committees of the National House of Chiefs and the various state institutions which regularly use Alternative Dispute Resolution mechanisms, such as the Legal Aid Scheme. Again, institutions outside of the formal state apparatus, such as traditional authorities, resolve many disputes in their domain and these may be recognised and enforced by the regular courts as Customary Arbitration Awards. The APRM report also notes that there is a myriad of Civil Society Organisations (CSOs) complimenting the efforts of the regular courts in justice delivery. Prominent among these is the work of the Ghana Association of Chartered Mediators and Arbitrators.

### **The Court System in Ghana**

At the apex of the court system in Ghana is the Supreme Court, the highest court of the land which also doubles as the Constitutional Court. Immediately below the Supreme Court is the Court of Appeal and below the Court of Appeal is the High Court. Regional Tribunals, roughly equivalent to the High Court, have been introduced into the formal court system under the 1992 Constitution and have concurrent jurisdiction with the High Court in criminal matters. Together, these four courts constitute the Superior Courts of Judicature in Ghana.

Below the High Court are the Circuit Courts and the District Courts whose jurisdictions are limited to particular geographical areas and which adjudicate minor civil claims (with a monetary cap) and minor criminal offences.

### **Civil Procedure in Ghana's High Court and Causes of Delay**

Civil procedure in the High Court involves a number of key steps. These steps may in turn be neatly categorized into four stages, namely: the pre-trial stage; trial and judgment stage; the execution of judgment stage; and the review/appellate stage.

The pre-trial stage involves the following steps:

1. The issue of a Writ of Summons and a Statement of Claim by the plaintiff.
2. The service of these on the defendant personally, by substituted service, or by service out of the jurisdiction.
3. The entry of appearance within eight days of service by the defendant either in person or through a solicitor.
4. The filing of a statement of defense, with or without a counterclaim, by the defendant within fourteen days after the eight days for the entry of appearance.

5. The optional filing of a reply to the statement of defence of the defendant and/or a defence to any counterclaim of the defendant.
6. Closure of pleadings at the expiration of seven days after service of the reply, or where there is no reply but only a defence to a counterclaim, the pleadings close seven days after service of the defence to the counterclaim, or where there is no reply or a defence to counterclaim served, then pleadings close at the expiration of seven days after service of the defence.
7. Within one month after the close of pleadings, the plaintiff files an application for directions. The purpose of this procedure is to enable the Court to consider the preparations for trial, so that all matters which have not already been dealt with may be dealt with and directions may be given as to the future course of the action as appear best to secure the just, expeditious and inexpensive disposal of the case. In practice, the main outcome of this process is an agreement between the parties as to the main issues that will go to trial.
8. The final step is the hearing and determination of the application for directions, and this concludes the pre-trial stage.

A lot of delays are occasioned at this stage of the proceedings. Effecting substituted service can be time consuming. Where it is impracticable or difficult to locate a party to be served personally with a court process, a court may order substituted service. This means giving notice of the process to the party by for example publishing it in the newspapers or posting it on the notice board of the court. To secure an order of substituted service, one needs to prove to the court that he or she has attempted three or more times to effect personal service without success, and that any further attempt to effect personal service may result in undue delay; or that it is otherwise impracticable for any reason to serve the document personally. Clearly, this is an avenue for delay. Another avenue for delay is where the process involves service of the notice of the writ out of the jurisdiction. This requires an application for leave of the court to serve notice of the process out of the jurisdiction. Once leave is granted, the party has to arrange for the court to process and transmit the necessary documentation abroad. This may involve working with the foreign missions on either side.

Again, many lawyers and litigants enter appearance to a suit and do nothing after that. When the plaintiff obtains judgment in default against them, they suddenly appear in court with a litany of excuses, succeed in setting aside the default judgments and reset the clock of the case completely backwards. Even though such practices are often penalized by the courts and involve the payment of costs to the plaintiff, this has not been deterrent enough and the practice is still rife.

The next stage is the trial and judgment stage. This stage mainly involves the submission of evidence to the court, oral, written or otherwise. The practice is that evidence is provided by witnesses through examination-in-chief, cross-examination and re-examination. This is a significant source of delay. First, in the unautomated courts, and in instances of power outages and equipment failure in the automated courts, all of the evidence given during

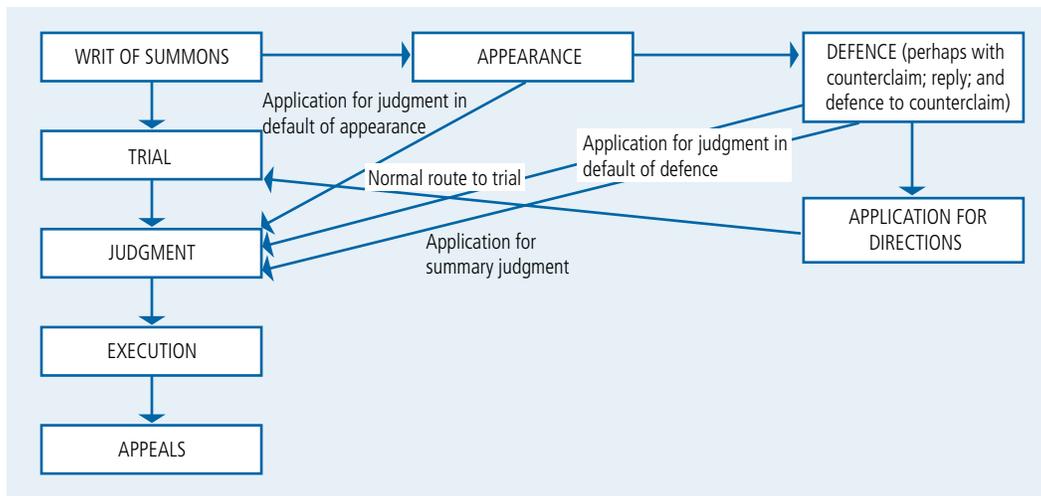
examination-in-chief, cross-examination and re-examination is taken in longhand. Again, a case may only proceed when the witnesses and the lawyers or parties who may examine, cross-examine and re-examine the witnesses are present. In many cases, the absence of anyone of them leads to an adjournment of the case.

After all the necessary evidence is taken, the various parties to the case sum-up the evidence, applying the relevant law to the facts as established. A date is then fixed for judgment, which date is supposed to be no more than six weeks after the close of the case, according to the Rules of Court. In many cases, this six weeks period is exceeded by several months.

A judgment needs to be entered in court before it is executed. The Entry of Judgment is a notice that is filed in court by the winning party and served on the other party(ies) to the effect that judgment has been given in her favour and stating the terms of the judgment. Sometimes a judgment requires further actions to be taken in order for it to be effective. This may involve the possession or repossession of property, the seizure of funds, the surrender and/or cancellation of documents and so forth. These processes are called the execution of the judgment. The process of executing a judgment can cause delays. Where a party appeals a judgment, an application may be brought in the High Court, and if unsuccessful, in the Court of Appeal, to stay execution of the judgment. Once this is granted, the execution of the judgment must await the determination of the appeal.

The final stage of civil procedure in the High Court is the review/appellate stage. A party may bring an application in the High Court for a review of the judgment of the Court. A party may also appeal the decision of the High Court to the Court of Appeal. A further appeal lies from the Court of Appeal to the Supreme Court. These review/appeal avenues also cause a lot of delay. The major cause of delay is the processing of the record of appeal. This involves the agreement between the parties as to which of the documentation in the case may be transmitted to the Court of Appeal; the assemblage and production of at least five copies of all the documentation agreed to by the parties (which usually runs into hundreds of pages); the payment of the cost of production of the documentation (which usually runs into hundreds of US dollars); the provision of security against costs of the trial by the appellant; and the transmission of the record to the Court of Appeal. These processes sometimes run into years, especially when parties are unable to secure the relatively huge sums to pay for the production of the record or provide security against the costs of the trial. Delays are also caused when equipment at the court registry are unavailable or malfunction or when there are many appeals pending and one has to go to the back of the queue. In the case of appeals to the Supreme Court, the documentation is larger and the number of copies to be produced is usually twelve. A party who is dissatisfied with the decision of the Supreme Court may apply to that Court for a review of its decision.

Below is a simple flow chart of the normal civil procedure in the High Court in Ghana. As indicated in the flow chart, the normal route in the civil procedure journey is to proceed past



the application for directions to trial and judgment. However, a party may in appropriate cases, short-circuit the process by applying for judgment in default of appearance, judgment in default of defence or summary judgment.

All the applications mentioned above, including many other applications that may be made in the course of the case, are opportunities for seeking a review of the ruling of the High Court on the application or an interlocutory appeal to the Court of Appeal. Each of these usually results in delay. Interlocutory appeals, for example, can take several months, even years, to complete.

## The Court System at Work in Ghana

Ghana's legal calendar begins on 1<sup>st</sup> October and ends on 31<sup>st</sup> of July every year. The period from 1<sup>st</sup> August to 30<sup>th</sup> September is the legal vacation. During this period, only urgent legal matters are dealt with by vacation judges.

As part of its judicial reform efforts, the Judicial Service started publishing its annual reports in the 2003/2004 legal year. Court statistics collected before this year were only available internally at the Research and Monitoring Department of the Judiciary. Some courts did not submit their statistical returns, and even when they did, they contained several errors. This severely affected the integrity of the data gathered. For instance, as shown in Table 1, according to the Annual Statistical Report for the year 2000, 610 (representing 22.4 percent) of the total of 2724 statistical returns expected were never submitted. Some 19 courts in the entire nation did not submit any returns at all in the year 2000.

**Table 1: Number of Statistical Returns – Defaulters: 2000**

Number of returns	Frequency	Percentage (%)
Total number not submitted	610	22.4
Total number captured	2114	77.6
Total number expected	2724	100

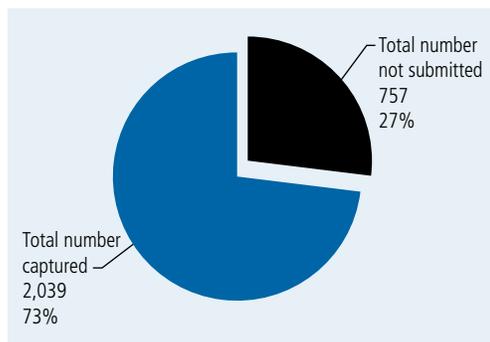
Figure 1 below further illustrates the errors in the statistics of the Judicial Service referred to above. The Annual Statistical Report for the year 2000 reported the total caseload pending in the High Court to be 25,949 cases at the end of 2000. The Report further indicated that 24,590 cases were pending in the High Court at the beginning of that year. There were 4,075 new cases lodged in the year, while 1,777 cases were disposed of in the year. A simple arithmetic calculation would reveal the total caseload at the end of 2000 to be 26,888 cases instead of 25,949 cases. The integrity of this data was the subject matter of comments in the Annual Statistical Report. It was noted that the figures did not add up, an indication that some of the figures quoted were erroneous. Having noted the disparities in the reported figures, the report concluded that record keeping in the High Courts and the resulting figures were suspect.

The next legal year also suffered a similar fate. The 2001 Annual Statistical Report contained only approximations of reality. An obvious anomaly in this report is the fact that it did not cover the Court of Appeal and the Supreme Court. The reason for this was that they submitted no statistical returns to the Research and Monitoring Department. It was reported that 18 courts did not submit any returns for the year. Additionally, 126 courts failed to submit at least one-month's returns for the year. As shown in Figure 1 below, in all, 144 of the 233 Courts listed in the Report failed to submit 757 returns out of the expected 2,796.

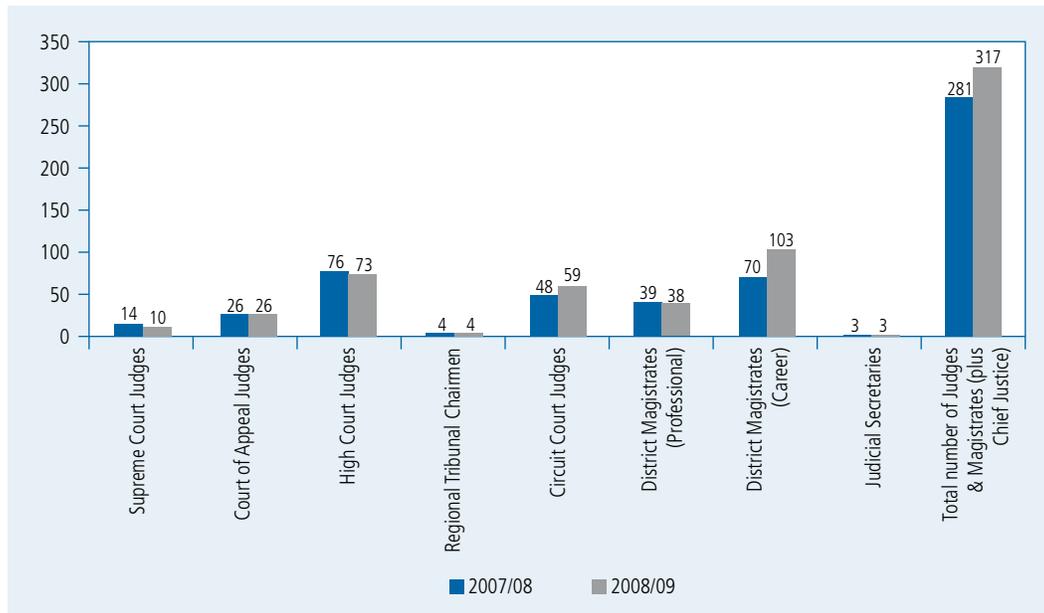
Rolling forward, it is important to give a sense of the situation in the various courts by the end

of June, 2009. The integrity of the statistics has not improved. There were 25,782 cases pending in all the High Courts, regular and specialized by that date. This figure is calculated from the summary statistics as reported in Appendix 1 on page 29 of the 2008/2009 Annual Report of the Judicial Service of Ghana. Arithmetic checks on the detailed statistics in the rest of the report reveal numerous errors. For instance, the breakdown of these statistics in Appendix 4 at pages 32 to 33 of the 2008/2009 Annual Report indicated that there were 19,275 civil cases and 31,740 criminal cases pending in

**Figure 1: Number of Statistical Returns – Defaulters**



**Figure 2: Comparison of the Numerical Strength of Judicial Service Staff for 2007/2008 and 2008/2009 Legal Years**



the High Court at the end of June 2009. This clearly far exceeds the total of 25,782 reported in the summary statistics in Appendix 1 of that Report.

In terms of staff strength for the Judicial Service, there were a total 4,774 staff at the end of the 2007/2008 legal year (31<sup>st</sup> July 2008). This included 281 judges and magistrates and 4,492 administrative staff. The 281 judges and magistrates included the Chief Justice, 14 other Supreme Court judges, 26 Court of Appeal judges, 76 High Court judges, 4 Regional Tribunal Chairpersons, 1 Judicial Secretary, 2 Deputy Judicial Secretaries, 48 Circuit Court judges, 39 Professional District Court Magistrates, and 70 Career District Court Magistrates.

Fig 3 below shows the staff strength for 2007/2008 and 2008/2009 Legal Years (core staff only). The figures for 2008/2009 legal year show that there was a marginal increase in staff strength in that year. This stood at 5,257 with 336 judges and magistrates, and 4,921 administrative staff. There were 11 Justices of the Supreme Court (a decrease by 3 Justices from the preceding year). The number of Court of Appeal judges from 2007/2008 remained the same at 26. There were 73 High Court judges (a decrease by 3 Justices from the preceding year). The number of Regional Tribunal Chairpersons still stood at 4. The number of Circuit Court judges increased by 11 to 59 judges. This time round there were 38 Professional District Court Magistrates. The number of Career District Court Magistrates saw the most significant increase; there were 103 of them compared to the 70 Career Magistrates at the end of the 2007/2008 legal year.

Table 2: Annual Caseload and Case Disposition in the High Court from 2000 to 2009

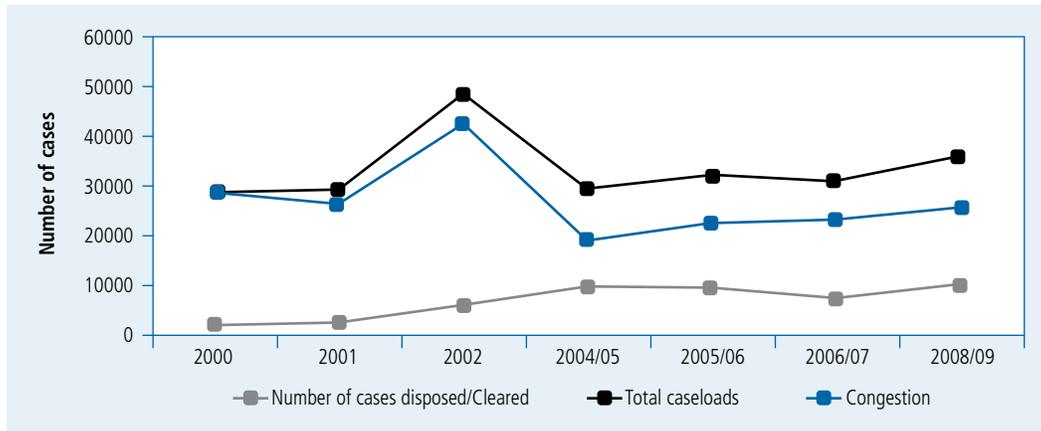
Rate\Year	2000	2001	2002	2003	2004/05	2005/06	2006/07	2007/08	2008/09
<b>Number of cases disposed of</b>	1,777	2,822	6198	—	10,111	9,726	—	7,494	10,286
<b>Total caseload</b>	28,665	29,313	48,629	—	29,461	32,131	—	31,022	36,071
<b>Rate of clearance/disposition</b>	6.2%	9.6%	12.7%	—	34.3%	30.3%	—	24.2%	28.5%
<b>Pending cases at close of year</b>	26,888	26,491	42,431	—	19,350	22,405	—	23,528	25,785

These statistics reveal a very significant High Court judge to case ratio. In the 2008/2009 legal year, the total number of cases pending at the beginning of the legal year and those filed during the legal year for all the 73 judges of the High Court was 36,068 (as calculated from the summary statistics reported in Appendix 1 on page 29 of the 2008/2009 Annual Report of the Judicial Service of Ghana). If this figure is assumed to be correct, it translates into a ratio of 1 High Court Judge: 494 Cases. Meanwhile the total number of cases concluded by all the High Court judges for that period was 10,286. Thus, each judge, on average, concluded 141 of her share of 494 cases.

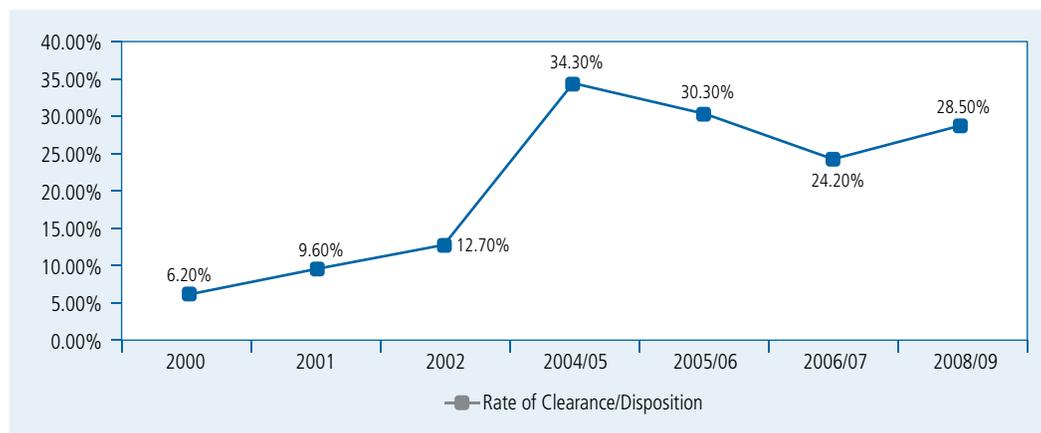
As shown in Table 2 and Figure 3 below, a closer examination of the reported statistics by the Judicial Service over the period of study generally reveals an increasing trend in the number of cases in the High Court. In the year 2000, there were a total of 28,665 cases in the High Court. This increased over the period and peaked at 48,629 cases in 2002, and then gradually decreased to 31,022 cases in the 2007/2008 legal year, after which it increased again to 36,071 cases by the close of the 2008/2009 legal year.

The number of cases disposed of in the High Court over the same period followed a somewhat fluctuating trend. A total of 1,777 cases were disposed of in 2000, increasing over time up to 10,111 cases by the close of the 2004/2005 legal year. This figure saw a gradual decrease for the next two legal years and stood at 7,494 cases in the 2007/2008 legal year. The number then sharply increased in the 2008/2009 legal year to 10,286 cases, the highest number of cases disposed of over the period. Figure 3 above shows the trend in the disposition of cases in the High Court from 2000 to 2009. The corresponding rate of disposition is shown in Fig 4 below. Aside the period 2004 to 2008 when the rate decreased from the peak of 34.30 percent to 24.20 percent, there was generally a steady increasing rate of disposition over the period; from 6.20 percent in 2000 to 28.50 percent in 2009.

**Figure 3: Trend of Caseload and Case Disposition in the High Court from 2000 to 2009**



**Figure 4: Rate of Disposition of Cases in the High Courts – Cases from 2000 to 2009**



Many possible conclusions may be drawn from the caseload analysis. Such conclusions would, however, be reckless given the many and obvious errors in the computation of caseload in the Judicial Service Statistics.



## The Study

### Hypothesis – General Perceptions of the Judicial System in Ghana

Trust in the Ghanaian courts is minimal according to recent studies on the subject. The March 2008 Round 4 Afrobarometer Survey in Ghana confirms this assertion. The study showed that only 30 percent of respondents had a lot of trust for the courts in Ghana. Luckily, 28 percent had some trust in the courts and 23 percent had just a little trust in the courts, while 15 percent did not trust the judicial institutions at all.

Comparing the most current scores on trust in the courts to what obtained three years earlier, it is observed that the level of trust has dropped. The 2005 Survey showed that 35 percent of respondents had a lot of trust in the courts.

The perceptions about judicial corruption are equally significant and followed a similar worsening trend. In the 2008 Survey, 50 percent of respondents stated that some of the judges and magistrates are involved in corruption. In the 2005 Survey, only 36 percent of respondents held that view. It appears that perception of judicial corruption is on the increase. A recent research report by the Ghana Integrity Initiative, the local chapter of Transparency International, indicates that even judges concede that corruption exists in the judiciary. Corruption and delays in the processing of cases by the judiciary are often cited as two of the chief reasons why confidence in the courts in Ghana is eroding, according to a recent study by the Open Society Initiative for West Africa (OSIWA). The APRM report also notes that ADR has become an innovative and cost effective mechanism for speedier justice in Ghana. Part of the reason for the increasing endearment of the public to ADR is that it has the capacity to obviate the two principal shortfalls in the ordinary justice system—corruption and delay.

### Reform Efforts

The last decade in Ghana has seen the most far reaching reforms in the justice sector. The more visible reforms are the creation of a second Court of Appeal to service the northern sector of the country; the creations of more divisions of the High Court and more District Courts; and, of course, the creation of the Fast Track Division of the High Court and other specialised divisions of the High Court such as the Commercial Court, the Land Court, the Financial and Economic

Crimes Court, the Industrial Court and the Human Rights Court. Other visible reform efforts are the opening of a new Faculty of Law, the second in a public university (plus the involvement of the private sector (private universities) in providing basic training for lawyers); the engagement of more personnel for the courts; the introduction of the private bailiffs system to enhance the service of court processes; and finally the production of informative annual judicial reports, newsletters and magazines.

There have also been a lot of soft reforms. These include the creation of the Judicial Training Institute for the training of new and sitting judges and other court personnel; the creation of the Public Complaints and Court Inspectorate Unit of the judicial service to receive and resolve complaints about the administration of justice; and the creation of a website for the Judicial Service that is regularly updated to indicate the list of cases to be heard in the courts on weekly basis. Other reforms include the passage and coming into force of new High Court (Civil Procedure) Rules in 2005 and the mainstreaming of ADR into the work of many courts in Ghana. A Court Reforms Directorate has been set up to take charge of coordinating and monitoring all these reforms.

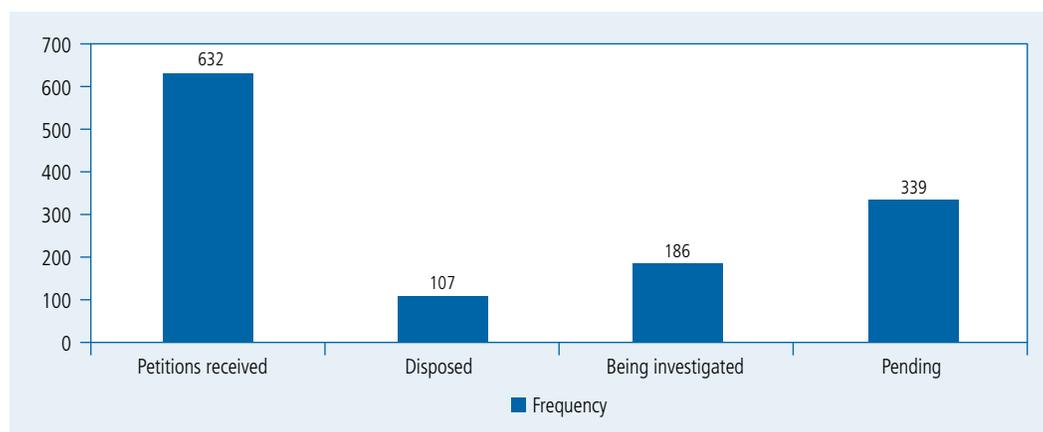
Of the various specialized divisions of the High Court, the Commercial Court stands out. Commissioned on the 4<sup>th</sup> of March 2005, its aim is to ensure speedy, effective and efficient delivery of justice in commercial disputes. The expectation was that Commercial Court cases would normally be completed within six months from the date of filing the initial court processes to the date of delivery of judgment, in the event that the suit proceeds to trial. The overall purpose was to ensure a better judicial environment for the business community in order to promote trade and investment in Ghana. The Commercial Court has six court rooms which can hear cases simultaneously. They are all located in Accra. The Court has a President, an Administrator and a Registrar.

In the Commercial Court, a pre-trial settlement conference is mandatory and is held within 30 days of the close of pleadings. The Commercial Court discourages parties from taking judgment on admission or applying for summary judgment before the pre-trial settlement conference. They are, however, at liberty to apply for and obtain default judgment or summary judgment at any stage of the proceedings after the pre-trial settlement. The pre-trial settlement is conducted according to ADR principles. There is also the option to use assessors at the pre-trial settlement stage to assist the parties arrive at an out of court settlement. Failing settlement, the case goes before a different judge for trial.

## ■ Assessment of the Reforms

The rationale for all these reforms has been to make the administration of justice speedier, effective and efficient and to restore public confidence in the justice system. This is particularly

**Figure 5: Returns of the Courts Inspectorate and Public Complaints Unit for its Inception Year, 2005/2006**



the case for the automated and specialized divisions of the High Court. Since their creation, these divisions seem to have helped expedite cases for litigants.

There are, however, some issues with the reforms. The key operational mechanism of the automated courts is to get litigants to pay more, for speedier justice. Since this option is cheaper in the long-term, (because delays in the unautomated courts make them more expensive in the long-run), calculating litigants are being stampeded away from the regular unautomated courts into the automated (Fast Track) and specialized courts. The result is that the automated courts are slowly getting clogged with cases. In the absence of proactive and effective counter-measures, these automated courts are slowly becoming like the unautomated courts. According to an OSIWA study on the justice sector in Ghana, for example, numerous adjournments and consequential delays, missing case dockets and slow processing of documentation and processes are gradually becoming the norm in the automated and specialized courts.

Another critical reform measure worth assessing is the work of the Courts Inspectorate and Public Complaints Unit. The 2005/2006 Judicial Service Annual Report indicates that soon after this Unit was set up in 2005, a total number of 635 petitions were received. Of this figure 107 were disposed of, 186 were being investigated at the time of the said report, and 339 petitions were awaiting investigations. The 107 cases disposed of included 13 complaints concerning delays and irregularities in the delivery of judgments; 19 complaints against courts/judges/magistrates in terms of frequent adjournments, delays of cases and dissatisfaction with court judgments, orders and procedures; and 21 complaints against judicial staff in the context of bribery, forgery, service of processes, Receiverships and Managerships, compilation of appeal records and records of proceedings, execution, and estate matters. Others were 1 complaint of

corruption at CHRAJ; 1 case of bribery against a judge; 4 cases of missing dockets; and 4 complaints against decisions or orders made by judges.

Clearly, the establishment of the Courts Inspectorate and Public Complaints Unit is one of the commendable aspects of the judicial reforms. However, the dearth of information on the performance of this Unit in the succeeding years leaves much to be desired. In fact, the two most recent annual reports of the judicial service are silent on data on complaints lodged with the Unit, and in the circumstances, it is to be wondered if the admirable performance of the unit in its first year of establishment was not a nine-day-wonder.

It is clear that better monitoring of reform efforts is needed in order to prevent a rollback on gains made so far. For monitoring to be effective, we need data, analyses, finding and conclusions on how these reforms have fared.

## Methodology

### *Study design and sampling procedure*

A longitudinal design, which allowed for the tracking of caseload and case characteristics in four different court types over time, was used for the study. The study sampled and analyzed cases from the automated Fast Track Court, Commercial Court and Land Court, as well as the unautomated High Court including records of the progression of some of these cases to the Court of Appeal. None of them was traced to the Supreme Court.

All cases filed at the different courts from January 2000 to August 2008 were pooled together. In the Fast Track, Commercial and Land courts the average size range of the pools was 800–1200. The average size range of cases for the particular division of the ordinary High Court we selected was about 1,500. To ensure that each case file stood an equal chance of selection, case-file numbers were written on strips of paper and dumped in a basket and thoroughly mixed. The strips of paper were then drawn from the basket without replacement. The case-file number corresponding to the number on the selected strip of paper was taken out and listed for inclusion in the study. In cases where a selected case-file could not be found, or contained too little information to merit inclusion, we simply repeated the procedure to get a substitute.

A sample of 80 case-files for each of the courts was deemed appropriate for review. This is particularly so, as our interest was not to determine caseload in the different courts, but to track case characteristics such as the types of litigants, the number and types of disputes, delays in case progression, causes of delays, etc. Thus, from the pool of cases filed at the four courts from January 2000 to July 2008, we drew the follows sample:

- 80 cases drawn from those filed in the Commercial Court over the period;
- 80 cases drawn from those filed in the Land Court since its inception in 2008 and those transferred from the ordinary High Court to that Court during the period;
- 80 cases drawn from the Fast Track Court in Accra; and
- 80 cases drawn from those filed in the unautomated High Court in Accra over the period.

### *Data capture and analyses plan*

Information in the case dockets was captured into a database using an electronic data entry form created in SPSS software. Using pre-coded survey instruments (one of 147-questions and the other of 105-questions), pre-designed according to the structure of information stored on the case-files and the electronic data form, the data held on the case-files were transferred into the electronic database in SPSS. We then ran descriptive statistics to estimate the proportion, distribution and trends in caseload and case characteristics among the different court types.

### *Limitations of the study*

The major limitation of this study was unavailable and incomplete case dockets and statistical information.

Although record keeping at the courts in Ghana has improved dramatically, it is still quite poor, despite significant improvements in court infrastructure in the last decade. It was noted that many dockets were missing from the shelves. The level of incompleteness was not uniform and varied widely by court and case type, thus introducing differential bias in case reporting across courts and by case type.

To accommodate and adjust for missing cases, we adopted repeated sampling which allowed for the missing dockets to be excluded in the analysis. This meant that the observed distribution of cases across the different courts could be skewed in favour or against one or more case types.

Additionally, it was observed that there was lack of consistency and lack of agreement in case tallies in the case transfer processes. While records in the lower courts showed that cases were transferred to the appellate courts, some cases could not be traced and were not located at the appellate courts.

Finally, it was not possible to estimate caseload from the samples and we had to rely on court statistics presented in the annual reports. However, when the court statistics presented in the annual reports were compared with the statistics captured in the court registries, the statistics in the annual reports were found to be inflated which meant that the estimates on annual caseload were over-estimated.



## Findings

### Analysis: Users

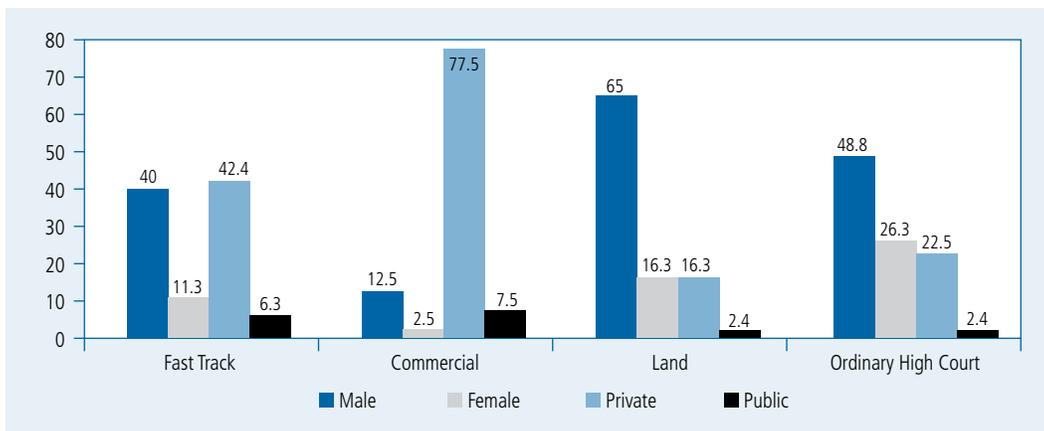
From the sampled cases, considerable variation was observed in litigant type and the gender of users.

#### *Global (across all courts sampled)*

Court use and court user characteristics varied across the four Courts sampled. In general, while there was strong evidence of differences in litigant type and the gender of court users, there was little evidence of differences in legal representation. There was legal representation for most parties across all the courts sampled and across all litigant types.

Court users comprised both natural persons and legal persons (institutions). Court use by males as plaintiffs or defendants was remarkably high, exceeding female plaintiff or defendant use in all the courts. The patriarchal character of Ghanaian social arrangements may in large measure account for this state of affairs. Moreover, there was evidence of institutional actors, particularly private firms, dominating as parties in the automated Fast Track and Commercial Courts, but not in the unautomated ordinary court. It is clear from Figure 7 that the preponderance of plaintiffs in the Commercial Court tilts in favour of private firms.

**Figure 6: Court User Types**



**By court**

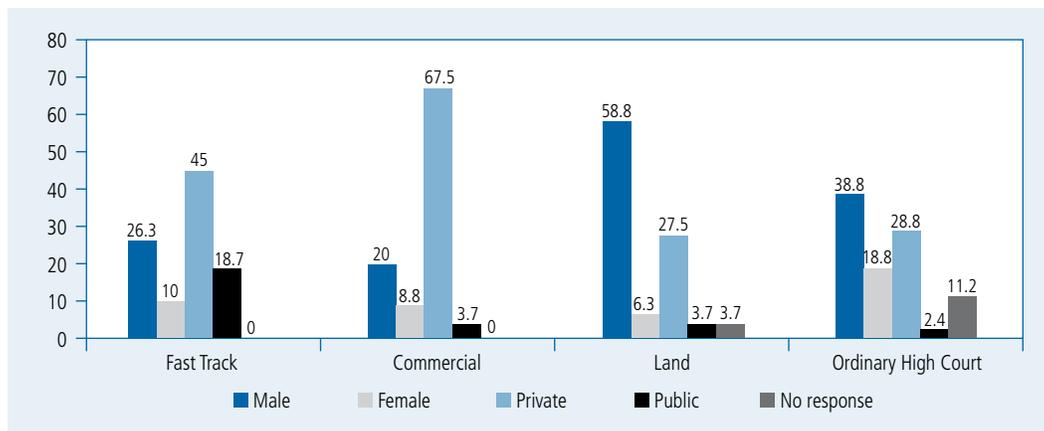
Figure 6 above shows the breakdown of plaintiffs according to gender and also according to private firms and public institutions. This is done at the level of the four courts. Male plaintiffs in the Fast Track Court constituted 40 percent of all plaintiffs in that court, 13 percent in the Commercial Court, and about 65 percent in the land court. Women trailed males as plaintiffs in all courts. Furthermore, private firms dominated as plaintiffs in both the Fast Track and Commercial Courts, constituting 77.5 percent of all plaintiffs in the Commercial Court, and 42.4 percent of all plaintiffs in the Fast Track Court.

In addition, private firms exceeded public institutions as both plaintiffs and defendants across the four courts. The finding that the proportion of private firms as plaintiffs only marginally exceeded the proportion of males as plaintiffs in the Fast Track Court was quite unexpected, since the conventional wisdom is that the Fast Track and the Commercial Courts tend to attract many more cases from private firms than from individuals. The reason is most probably that private firms are gravitating more towards the Commercial Court and leaving the Fast Track Court to individual male plaintiffs. Most landed property is held in the name of males in Ghana and many women still encounter problems when they try to secure landed property by registering it in their names. There are many instances where women have registered their landed property in the name of their male spouses or relatives. This is what explains the huge proportion of male plaintiffs and defendants in the Land Court. The picture is basically the same in the case of defendants as shown in Figure 7 below.

**Automated versus unautomated**

Comparative analysis between automated courts (aggregated) and the unautomated court from the findings showed that 39.2 percent of plaintiffs in the automated courts were males, 10

**Figure 7: Defendant Types**

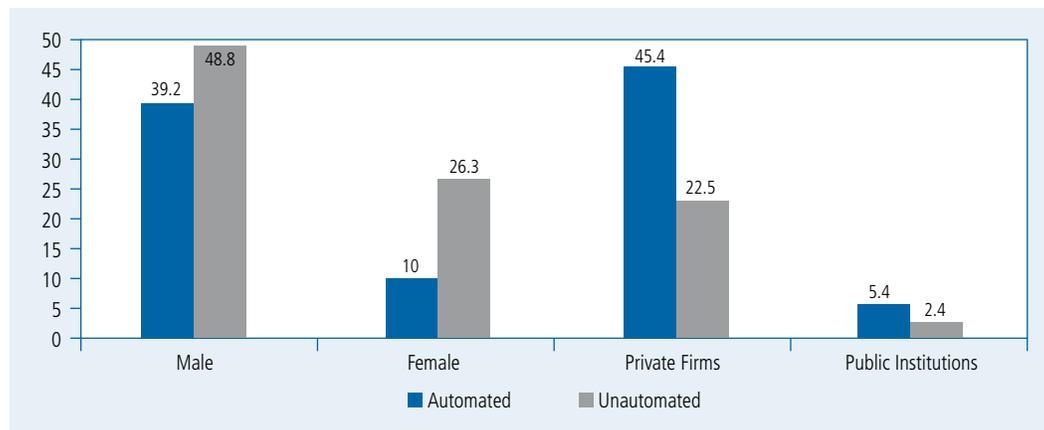


percent females, 45.4 percent private firms, and 5.4 percent public institutions. This contrasted with 48.8 percent males, 26.3 percent females, 22.5 percent private firms, and 2.4 percent public institutions for the unautomated High Court. Figure 8 below illustrates these findings. Again, it is clear that private firms are gravitating towards the automated courts.

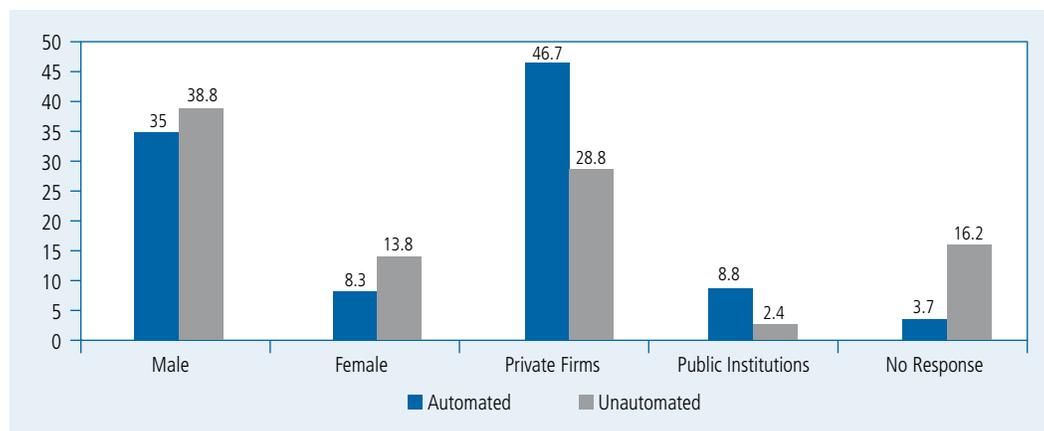
Male and female plaintiffs in the unautomated court exceeded the proportion of male and female plaintiffs in the automated courts.

In terms of defendants, Figure 9 shows 35 percent of defendants in automated courts being males, about 8.8 percent being female, 46.7 percent being private firms, and 8.8 percent being public institutions. In the unautomated High Court, there were 38.8 percent males, 13.8 percent females, 28.8 percent private firms, and 2.4 percent public institutions as defendants.

**Figure 8: Proportion of Male, Female, and Institutional Plaintiff in the Automated and Unautomated Courts**



**Figure 9: Type of Defendant by Court: Automated/Unautomated**



Interestingly, the proportion of individual use of the automated court system was similar to that of institutions. Figure 9 provides additional evidence that institutional actors, particularly private legal actors, tended to be more active in the automated courts. Although it is not unexpected that individuals account for the majority of plaintiffs across all courts, it is surprising that the proportion of individual and institutional plaintiffs in the automated courts was much closer than previously thought. Individuals are slowly catching up with institutional actors, especially private firms, in the automated courts.

## Analysis: Individuals and Institutions

The analysis below focuses on individuals (males and females together) as plaintiffs and defendants and institutions (private firms and public institutions together) as plaintiffs and defendants.

### *How many individuals and institutions use the courts as plaintiffs?*

Figure 10 shows the type of litigants suing as plaintiffs. Individuals constituted about 55.6 percent of all plaintiffs across all courts sampled, while institutions comprised 44.4 percent. When disaggregated into automated and unautomated courts, individuals constituted 49.2 percent of plaintiffs in the automated courts, while institutions comprised 50.8 percent in the same courts. In the unautomated court, 75.1 percent of the plaintiffs were individuals. These findings are shown in Figure 11.

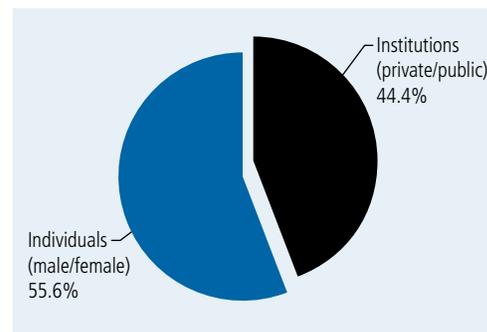
At the respective court levels, except for the Commercial Court, individuals constituted the largest percentage of all plaintiffs in all courts. This is illustrated in Figure 12 below. Eighty-five (85 percent) of plaintiffs in the Commercial Court were institutions.

### *How many individuals and institutions are in court as defendants?*

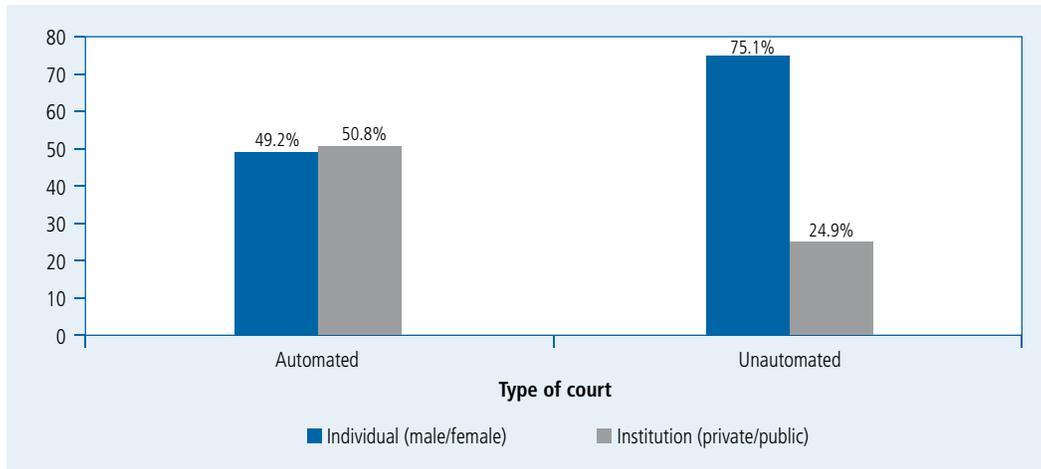
Individuals constituted about 45.6 percent of all defendants; institutions comprised 49.4 percent. Generally, institutions as defendants varied according to court type.

At the respective court level, the percentages of individuals as defendants in the Land and Ordinary Courts exceeded those of institutions in the same courts. On the

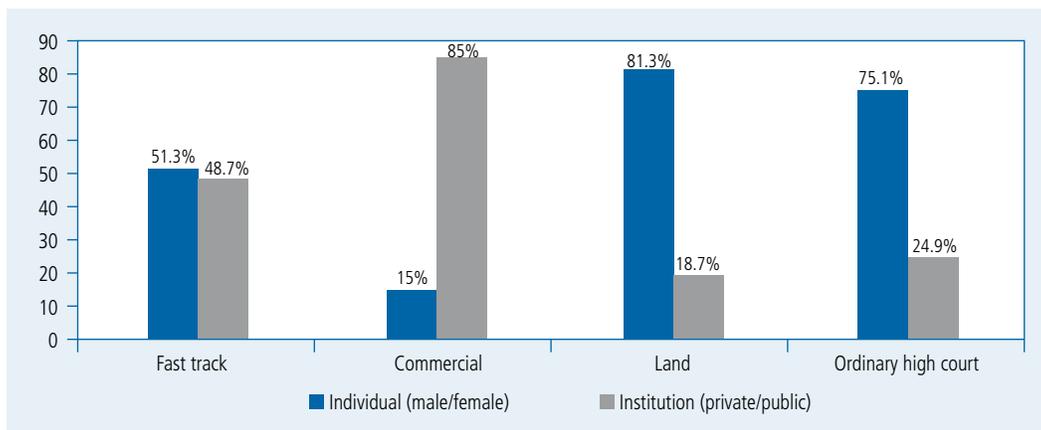
**Figure 10: Types of Plaintiffs across all Courts**



**Figure 11: Types of Plaintiffs by Court: Automated/Unautomated**

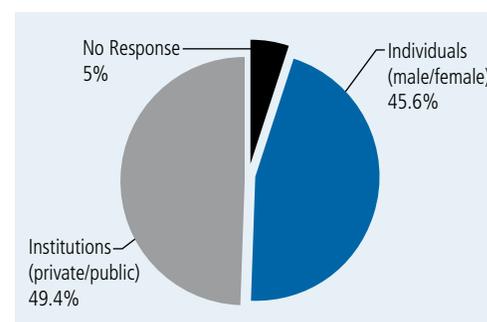


**Figure 12: Proportion of Plaintiffs in the Various Courts**



other hand, the percentages of institutions as defendants in the Fast Track and Commercial Court exceeded those of the individuals in the same courts. For example, while in the Commercial Court, 71.2 percent of defendants were institutions, the corresponding percentage of individual defendants in the same court was 28.8 percent. These findings are illustrated by Table 3 below.

**Figure 13: Types of Defendants across all Courts**



**Table 3: Type of Defendants by Type of Court**

Type of litigants		Automated courts			Unautomated court
		Fast track	Commercial	Land	Ordinary high court
Defendant/gender	Male	21(26.3%)	16(20%)	47(58.8%)	31(38.8%)
	Female	8(10%)	7(8.8%)	5(6.3%)	11(13.8%)
Institution	Private	36(45%)	54(67.5%)	22(27.5%)	23(28.8%)
	Public	15(18.7%)	3(3.7%)	3(3.7%)	2(2.4%)
	No response	0	0	3(3.7%)	13(16.2%)

In the automated courts, institutional defendants constituted 55.4 percent. The high percentage of institutional defendants in the Commercial Court provides additional evidence in support of the hypothesis that institutional actors tend to be more active in the Commercial Courts.

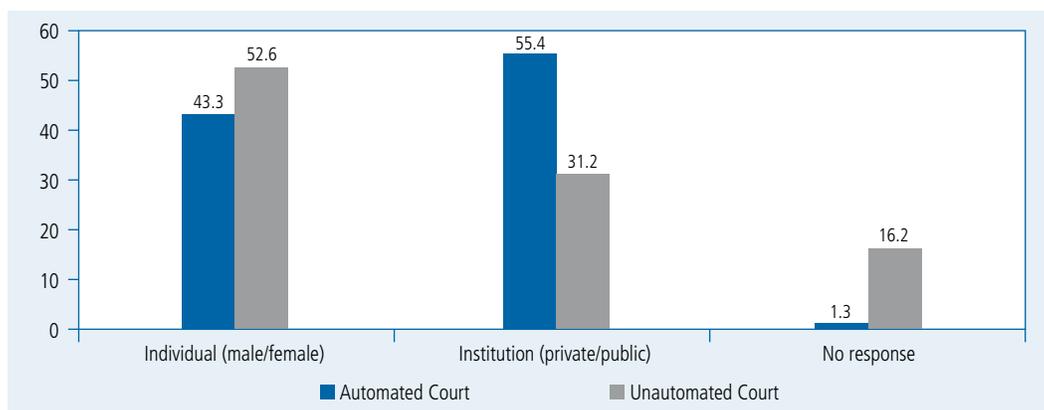
Figure 14 below compares proportions of individual and institutional defendants in the automated and unautomated courts.

As shown, 43.3 percent of defendants were individuals, while in the unautomated court individual defendants constituted 52.6 percent.

*How many individuals are suing individuals?*

Generally, and as should be expected, the number of individuals suing individuals varied across the courts. The study revealed that in the Fast Track Court, 19 individual plaintiffs sued individual defendants representing 23.9 percent of all plaintiffs in that court. The equivalent

**Figure 14: Proportion of Defendants in the Automated and Unautomated Courts**



number of individual plaintiffs who sued individual defendants in the Commercial Court was 7, representing 8.8 percent of plaintiffs in that court. In the Ordinary Court, there were 37 individual plaintiffs (46.3 percent of plaintiffs) suing individual defendants. The Land Court saw the highest number of 46 individual plaintiffs suing individual defendants. This represented 57.5 percent of plaintiffs. The matrix in Table 4 illustrates these findings. The finding that there were more individual plaintiffs suing individual defendants in the Land Court is not the least surprising. Land in Ghana is primarily held by stools, families and individuals and when stools and families sue, they sue per an individual representative.

### *How many individuals are suing institutions?*

As also shown in Table 4, in general, the number of individuals who sued institutions varied. While 22 individuals (27.5 percent of plaintiffs) in the Fast Track Court sued institutional defendants, in the Land Court there were 17 of such individual plaintiffs. In the Commercial Court there were only 5 of such plaintiffs. Overall, 17.2 percent of all plaintiffs across all the courts sampled were individuals suing institutions.

### *How many institutions are suing individuals?*

Overall, 11.6 percent of all plaintiffs across all the courts sampled were institutional plaintiffs suing individuals. In the Fast Track Court, 10 institutional plaintiffs representing 12.5 percent of the plaintiffs in that court sued individuals. In the Commercial Court there were 16 of such institutional plaintiffs suing individuals. This represented 17.8 percent of plaintiffs in the Commercial Court, nine percentage points more than the equivalent number of individual plaintiffs who sued individual defendants in the same court. This finding, that institutional actors sued individuals more in the Commercial Court and Fast Track courts, provides additional evidence that the Commercial Court is the primary platform for institutional actors. The matrix in Table 5 shows the number of individuals sued by institutions in the respective courts.

### *How many institutions are suing institutions?*

Table 5 below also shows the number of institutions sued by institutional plaintiffs in the respective courts. Significantly, 52 institutional plaintiffs sued institutions in the Commercial

**Table 4: Matrix of the Number of Individuals and Institutions Sued by Individuals**

	Fast track court		Commercial court		Land court		Ordinary court	
	Individual defendants	Institutional defendants	Individual defendants	Institutional defendants	Individual defendants	Institutional defendants	Individuals defendants	Institutional defendants
Individual plaintiffs	19 (23.9%)	22 (27.5%)	7 (8.8%)	5 (6.3%)	46 (57.5%)	17 (21.3%)	37 (46.3%)	13.8%

**Table 5: Matrix of the Number of Individuals and Institutions Sued by Institutions**

	Fast track court		Commercial court		Land court		Ordinary court	
	Individual defendants	Institutional defendants	Individual defendants	Institutional defendants	Individual defendants	Institutional defendants	Individuals defendants	Institutional defendants
Institutional plaintiffs	10(12.5%)	29 (36.3%)	16 (17.8%)	52 (65%)	6 (7.5%)	8 (10%)	5 (6.3%)	17.5%)

Court. This represented 65 percent of all plaintiffs in the Commercial Court. The fact that majority of institutional actors sued other institutional actors in the Commercial Court provides additional evidence that the Commercial Court is the key domain of institutional actors.

## Analysis: Type of Reliefs Sought

As Table 6 indicates, the various litigant types go to court for a variety of reliefs. The table shows the most frequent reliefs claimed. The study revealed that while male plaintiffs sued in commercial cases principally for the enforcement of contracts and the interpretation of business documents, female plaintiffs sued for the protection of their investments in business ventures and for the enforcement of hire purchase agreements. In Ghana, it is generally

**Table 6: Reliefs Most Frequently Sought**

Type of case	Litigant type	Type of relief	Frequency
Commercial cases	Male	Enforcement of contracts and the construction of business documents	13
	Female	Protection of their investments in business ventures and for the enforcement of hire purchase agreements	8
	Private firms	Banking and financial services and restructuring of payments	76
Labour cases	Male	Wrongful dismissal and for contractual benefits	5
	Female	Wrongful dismissal.	1
Land cases	Private firms	Trespass/boundary dispute	5
	Male	Capacity to dispose of land	8
		Unauthorized disposition of private lands by government entities	1
		Wrongful ejection from lands	16
		Boundary disputes and trespass to land	28
	Female	Enforcement of contracts for the sale of land	4
		Enforcement of a right to inherit landed property	7
		Trespass to land.	8

known that the preponderance of business people who give out goods on hire purchase terms is female.

Private firms sued mainly in matters relating to banking and financial services and restructuring of payments.

In land cases, male plaintiffs sued over capacity to dispose of land, unauthorised disposition of private lands by government entities, wrongful ejection from lands, boundary disputes and trespass to land. Female plaintiffs sued mainly for enforcement of contracts for the sale of land, enforcement of a right to inherit landed property and trespass to land. Private legal persons sued for trespass to land and in matters relating to land boundary disputes.

In labour cases, male plaintiffs sued for wrongful dismissal and for contractual benefits due them from their employers which were not provided. Female plaintiffs sued mainly for wrongful dismissal.

### *What is sought from institutions as defendants?*

The principal reliefs plaintiffs sought in cases against institutions were the following: restructuring of debt payments; renegotiation of the terms of banking and financial services; relief for trespass to land; definition of land boundaries; and rectification of unauthorised disposition of landed property.

## **Analysis: Types of Cases**

### *What are the types of cases?*

Global (by all courts):

Remarkable variation was also observed in case types and nature of complaints.

By court

In Ghana, the High Court has jurisdictions in all matters except those for enforcement and interpretation of the 1992 Constitution. The High Court may, however, enforce and interpret the human rights provisions of the 1992 Constitution. The creation of the specialised divisions of the Court is only to enable these divisions focus on the relevant specialised areas.

Commercial Cases dominated in all courts (except for the land court). For example, over 51 percent of cases in the Fast Track, 98.8 percent in the Commercial Court, 23.2 percent in the land court, and 40 percent in the ordinary court comprised commercial cases. A remarkably high percentage of Commercial Court use related to banking and financial services.

Figure 15: Reliefs Sought by Litigants

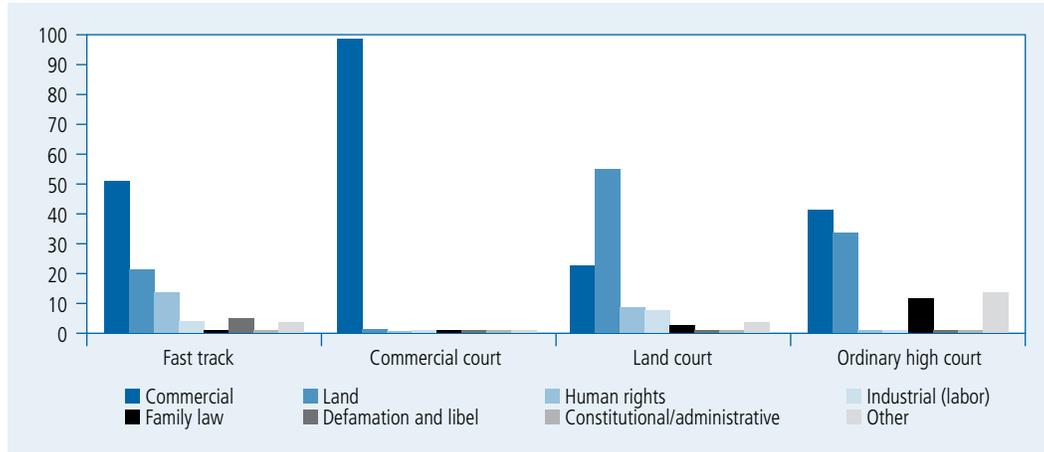


Table 7: Type of Cases

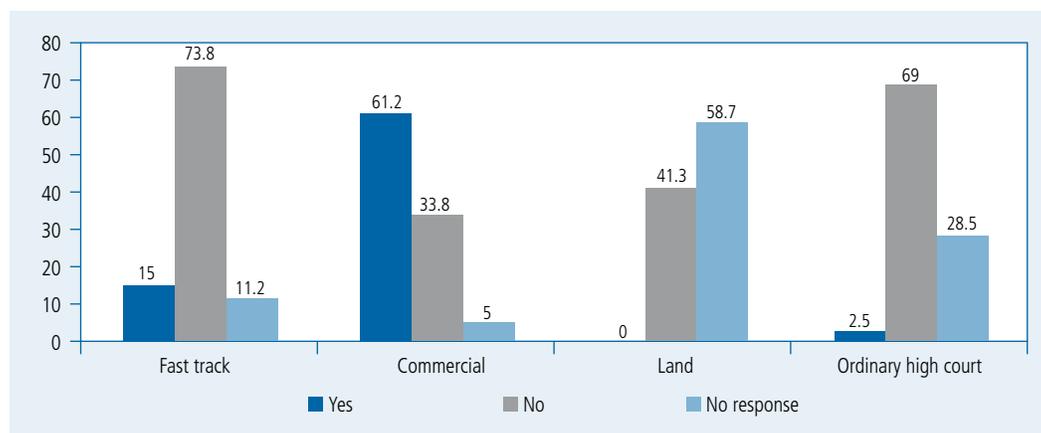
Case type	Division of court				Total
	Fast track	Commercial	Land	Ordinary	
Commercial	41(51.3)	79(98.8)	18(22.5)	33(41.3)	<b>171</b>
Land	17(21.3)	1(1.2)	44(55)	27(33.7)	<b>89</b>
Human rights	11(13.8)	0	7(8.8)	0	<b>18</b>
Family law	0	0	2(2.5)	9(11.3)	<b>11</b>
Industrial (labour)	3(3.7)	0	6(7.5)	0	<b>9</b>
Defamation and libel	4(5)	0	0	0	<b>4</b>
Constitutional/ administrative	1(1.2)	0	0	0	<b>1</b>
Other	3(3.7)	0	3(3.7)	11(13.7)	<b>17</b>
					<b>320</b>

## Analysis: Pre-Trial Settlement

There was variation in the impact of the pre-trial settlement processes.

### Global and by court

As shown in Figure 16, there was evidence to suggest that only a minority of cases in courts other than the Commercial Court underwent pre-trial settlement processes. For example, there was no evidence that pre-trial settlement processes were used in the Land Court. On the other

**Figure 16: Pre-trial Settlement**

hand, there was evidence that 61.25 percent of cases in the Commercial Court underwent pre-trial settlement. This is not surprising since it is only the Commercial Court that has a mandatory pre-trial process under the rules of court. Across all courts, there was strong evidence of differences in the use of the pre-trial procedure, with the highest use being registered in the Commercial Court as already noted, followed by the Fast Track court at 15 percent, the ordinary court at 2.5 percent and the land court at 0 percent.

The relatively limited use of pre-trial processes in the Fast Track court contrasts sharply with the rate of success of the pre-trial process when it is deployed in that court. For example, half of the 12 cases in which pre-trial settlement was attempted in the Fast Track Court were successful at reaching an agreement. There was evidence that 4 of these agreements were carried out. There was no evidence that any of the 2 pre-settlement agreements reached in the Ordinary High Court were carried out.

It should be noted that in the Commercial Court, it was by far easy to determine from a case docket whether or not a pre-trial settlement was attempted. In the other courts it is not that

**Table 8: Outcome of Pre-Trial Settlement**

	Fast track court	Commercial court	Land court	Ordinary high court
Number of cases with pre-trial settlement conference	12	49	0	2
Number of pre-trial settlement conference successful at reaching an agreement	6	18	0	2
Record of agreements effected	4	7	0	0

easy to decipher since the pre-trial settlement is not mandatory and may not be formally recorded in the case docket. This accounts for the high incidents of “no responses” in Figure 16 above.

***Automated versus unautomated:***

A comparative analysis of automated as against unautomated courts showed remarkable differences. While 25.4 percent of cases in the automated courts showed evidence of use of a pre-trial settlement conference, only 2.5 percent of cases in the unautomated courts showed evidence of a pre-trial settlement conference. In general, an appreciable proportion of agreement was reached (50 percent in the Fast Track and 36.7 percent in the Commercial Court) through the instrumentality of pre-settlement processes. There was strong evidence that pre-settlement processes reduced the caseload that eventually proceeded to trial. Since the pre-trial settlement procedure is compulsory in the Commercial Court, the less than 100 percent of cases undergoing a pre-trial settlement means that those cases in which there was no attempt at pre-trial settlement were either abandoned or disposed of through default judgment proceedings.

**■ Analysis: Delay**

***What is delay in Ghana?***

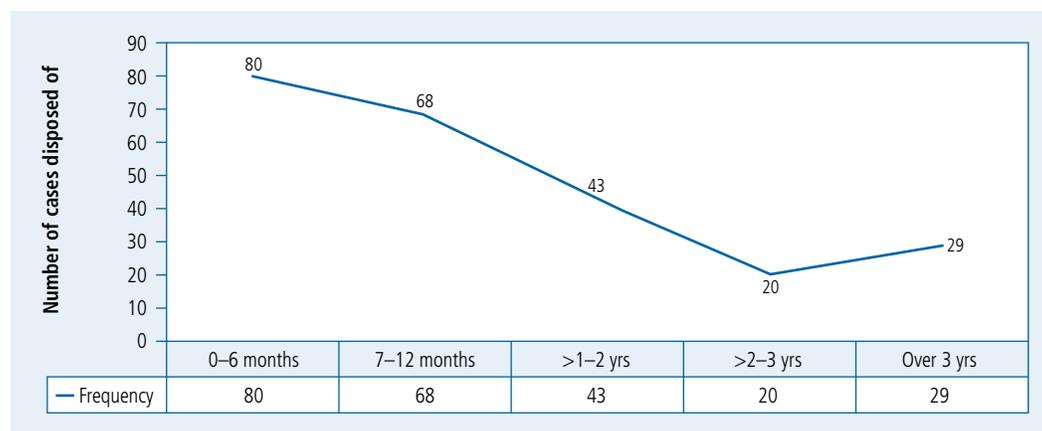
The judicial service aims to complete cases within 6 months of their commencement. This normative standard provides our definition for delay. Any time after 6 months of the commencement of a case is delay.

Table 9 below shows the proportions of cases that were resolved within the 6 months timeframe and those that exceeded that timeframe. In total, 291 cases reached one form of closure or another (struck out, judgement in default of appearance, judgement in default of defence, pre-trial settlement, summary judgement, or judgement on the merits). Of this number, only 240 were reviewed for the analysis below. We were unable to determine the exact time to disposition of the other 51 cases due to the absence of vital data in the case dockets. For example,

**Table 9: Disposition of Cases within Stipulated Timeframes**

Length of time	Frequency	Percentage
0–6 months	80	33.3
7–12 months	68	28.3
1–2 yrs	43	17.9
2–3 yrs	20	08.3
Over 3yrs	29	12.2

Figure 17: Total Number of Cases Disposed within Stipulated Timeframes



although it was clear that certain cases were adjourned to be settled, and were indeed settled out of court, it was not possible to determine the date of settlement. This means that the data may be skewed.

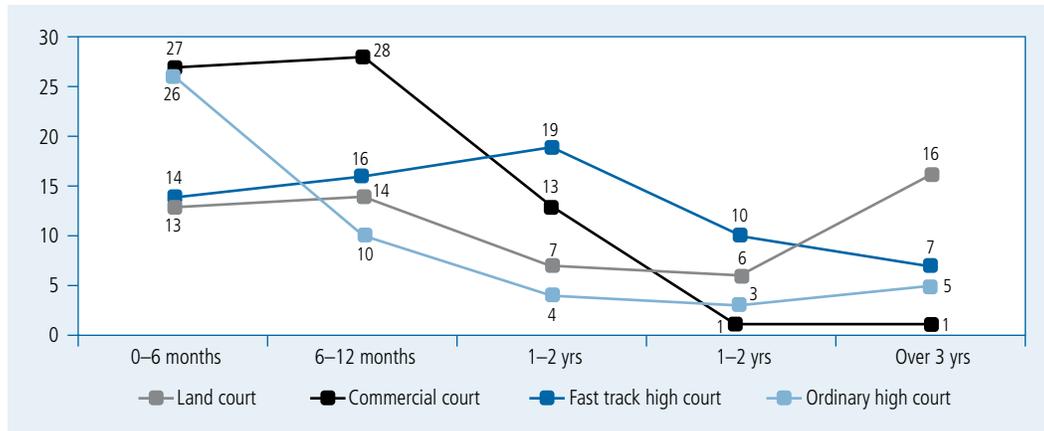
Out of the 240 cases reviewed, 33.3 percent were completed within the six months target set by the Judicial Service. It took from 7 months to 12 months to dispose of 28.3 percent of the cases. Table 9 further shows that the number of cases that were completed after the twelve month mark tapered down until the three year mark. A significant 12 percent of cases were completed after three years.

The minimum time of disposition was 1 month, the median was 9 months and the maximum time of disposition was 119 months. On the average, it took 13 months to dispose of a case. The table below show the time of disposition of the 240 cases by court type.

Table 10: Number of Cases Disposed of in the Various Courts within Stipulated Timeframes

Length of time	Land court	Commercial court	Fast track high court	Ordinary high court	Total
0-6 months	13(16.3)	27(33.8)	14(17.5)	26(32.5)	80(33.3)
7-12 months	14(17.5)	28(35.0)	16(20)	10(12.5)	68(28.3)
>1-2 yrs	7(8.8)	13(16.25)	19(23.8)	4(5)	43(17.9)
>2-3 yrs	6(7.5)	1(1.3)	10(12.5)	3(3.8)	20(8.3)
Over 3yrs	16(20.0)	1(1.3)	7(8.8)	5(6.3)	29(12.2)
<b>Total</b>	<b>56</b>	<b>70</b>	<b>66</b>	<b>48</b>	<b>240</b>

Figure 18: Number of Cases Disposed of in the Various Courts within Stipulated Timeframes



As shown in Figure 18, the Commercial Court was the best performing court in terms of disposition rate of cases. Almost thirty-four percent (33.8 percent) of cases was completed within six months, and 68.8 percent within one year.

It is not surprising that the Land Court is the worst performer. In Ghana, the system of land administration has many intractable challenges. Next to human resources, land is perhaps the most valuable natural resource. Land disputes consequently have very high stakes. This has meant that parties and lawyers resort to all the panoply of legal strategies and procedures in such cases. This invariably leads to delay. Thus, only 13 percent of cases were completed within 6 months and only an extra 1 percent within 12 months in the Land Court.

The Ordinary Court performed better than the Land and the Fast Track Courts. It took relatively shorter periods to dispose of cases in the Ordinary Court than in the Land and the Fast Track Courts. Some 36 cases in the Ordinary Court were disposed of after 1 year as opposed to 30 and 27 in the Fast Track and Land Courts.

Table 11: Statistical Features of Disposition Time of Cases

Court type TIME (months)	Land court	Commercial court	Fast track high court	Ordinary high court
Average	17	9	17	9
Median	14	7	13	4
Minimum	< 1	< 1	< 1	< 1
Maximum	107	44	59	119

As indicated earlier, the automated land court fared worse than the ordinary High Court in terms of time to disposition. This is, again, not surprising since the disposition rate of land cases in Ghana is generally known to be low on account of a variety of factors including the incidence of dilatory practices on the part of litigants, the sheer number of plaintiffs and defendants in any one land case and the difficulty and delays associated with producing official and other evidence in support of or in defence of land claims. These findings give very strong indication automation alone does not expedite justice delivery, if not accompanied by progressive and proactive rules of court and good case management. The rules in the Commercial Court (the conduct of mandatory pre-trial settlement conferences within a fixed time and the enforcement of fixed timelines for settlement of issues and trial) provide the best examples of such rules and practices.

These statistics compare well with those from the Judicial Service. Table 12 below shows the disaggregated statistics as reported in and computed from the Judicial Service Annual Reports. From those statistics, the Commercial Court has the highest rate of disposition<sup>4</sup>. In both

**Table 12: Disaggregated Caseload and Case Disposition in the High Court from 2005 to 2009**

Rate/year	2005/2006			2006/2007**			2007/2008			2008/2009		
	Regular courts	Fast track	Commercial court	Regular courts	Fast track	Commercial court	Regular courts	Fast track	Commercial court	Regular courts	Fast track	Commercial court
Number of cases disposed of	9,190	246	290	—	—	—	6,894	270	330	8,179	458	1,649
Total caseloads	30,675	791	665	—	—	—	27,750	1,331	1,941	30,623	1,587	3,858
Rate of disposition	30.0	31.1	43.6	—	—	—	24.8	20.3	17.0	26.7	28.9	42.7
Pending cases at close of year	21,485	545	375	—	—	—	20,856	1,061	1,611	22,444	1,129	2,209

\*\*There was no Annual Statistics for 2006/2007.

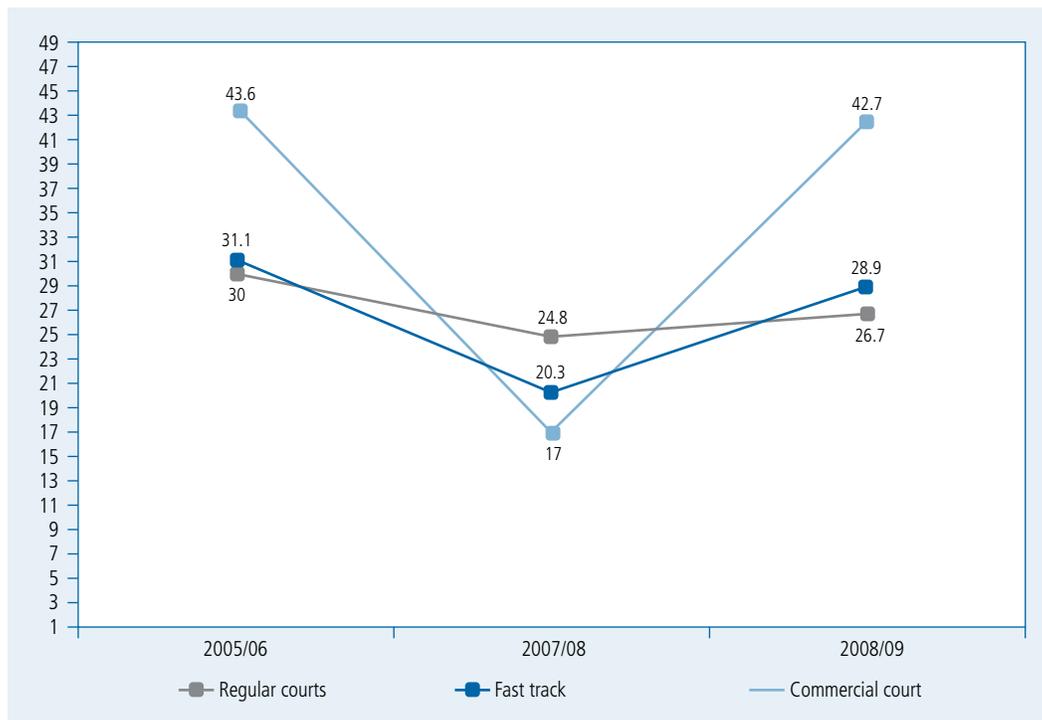
<sup>4</sup> However, it should be noted that disposition rate here is calculated as dispositions over total caseload (new and carry over cases). If calculated more conventionally (dispositions over new cases), the results change and owing to a decline in the number of new cases for the Fast Track and Ordinary Court, both of them do better than shown here.

2005/2006 and 2008/2009 legal years, the Commercial Court disposed of a little under half of the total number of its caseload (290 out of 665 cases in 2005/2006 and 1,649 out of 3,858 cases in 2008/2009). These respectively translated to rates of disposition of 43.6 percent and 42.7 percent. The low rate of 17.0 percent for the 2007/2008 legal could be considered as an anomaly or due to errors in data gathering and analyses.

As shown in Figure 19, a comparison of the statistics of the Commercial Court to those of the Fast Track Court shows the Commercial Court outperformed the Fast Track Court which is also automated. In the 2008/2009 legal year for instance, the caseload for the Fast Track High Court was 2,271 cases less than the Commercial. Yet, the Fast Court managed to dispose of only 458 cases (28.9 percent rate of disposition) compared to the 1,649 cases disposed of by the Commercial Court at a rate of 42.7 percent.

The Judicial Service's statistics further disclose that the performance of the Fast Track Court is not significantly different from the Regular Court even though the latter is not automated. In 2005/2006 for instance, the Fast Track Court disposed of cases at only a rate of 1.1 percent faster than the Regular Court. In comparison, the Commercial Court disposed of cases at a rate of 13.6 percent faster than the Regular Court.

Figure 19: Rate of Case Disposition in High Courts of Ghana from 2005 to 2009



## Analysis: What Slows Down Cases?

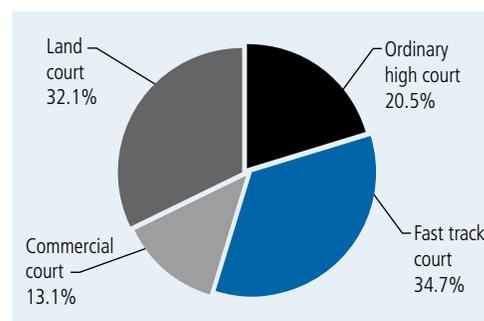
The reasons for delay relate mainly to adjournments, interlocutory applications, interlocutory and main appeals and their attendant applications for stay of execution and stay of proceedings.

### Adjournments

Table 13 shows the number of adjournments of court sittings revealed by the study. The table shows that the Commercial Court accounted for the least number of adjournments. There were 383 adjournments recorded in that court as opposed to the highest number of 1000 adjournments recorded in the Fast Track Court.

Table 14 below shows the total number of adjournments for all cases reviewed during the study. In all 2,918 adjournments were granted with the Fast Track, Land, Ordinary, and Commercial Courts record-

**Figure 20: Proportions of Adjournments in Different Courts**



**Table 13: Adjournments**

	Fast track court	Commercial court	Land court	Ordinary high court	Total
<b>Number of adjournments granted</b>	<b>1000(34.7)</b>	<b>383(13.1)</b>	<b>938(32.1)</b>	<b>597(20.5)</b>	<b>2918 (100)</b>

**Table 14: Number of Adjournments and Hearings Held**

	Fast track court	Commercial court	Land court	Ordinary high court	Total
Number of adjournments requested by plaintiff and granted	170(57.4)	22(7.4)	83(28.0)	21(7.1)	296(100)
Number of adjournments requested by defendant and granted	145(55.8)	15(5.8)	82(31.5)	18(6.9)	260(100)
Number of adjournments resulting from other reasons	685(33.9)	346(14.6)	773(38.3)	558(27.6)	2020(100)
<b>Total number of adjournments granted</b>	<b>1000(34.7)</b>	<b>383(13.1)</b>	<b>938(32.1)</b>	<b>597(20.5)</b>	<b>2918(100)</b>

ing the highest number of adjournments granted in a decreasing order. The 1000 and 938 adjournments respectively granted in the Fast Track Court and Land Court represented 34.7 percent and 32.1 percent of all adjournments granted for all cases reviewed. These significantly exceeded the 597 adjournments recorded in the Ordinary Court and the 383 adjournments recorded in the Commercial Court respectively, representing 20.5 percent and 13.1 percent of all adjournments granted. Figure 21 below illustrates the proportions of the total number of adjournments granted for all cases in each of the courts sampled.

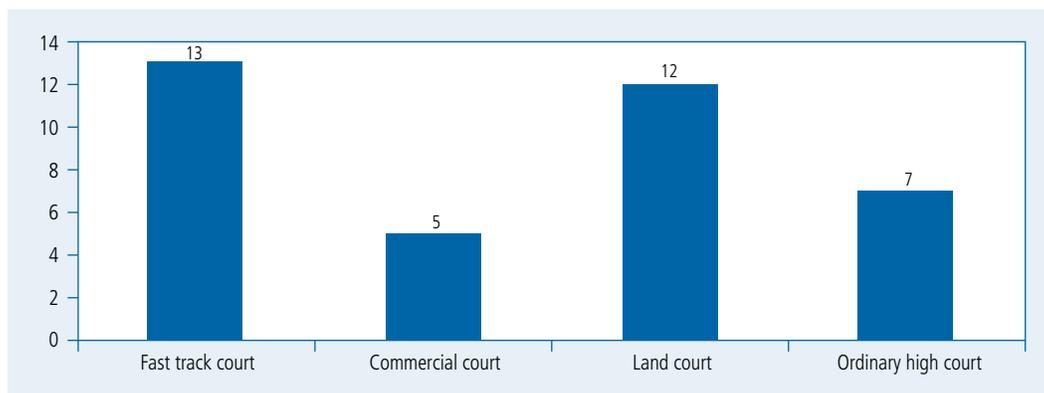
The average number of adjournments per case (for each of the 80 cases sampled in each court) is also shown in figure 21 below. Consistent with the trend above, the Fast Track Court had the highest adjournments granted per case (13). This was followed by the Land Court (12), Ordinary High Court (7), and the Commercial Court (5) adjournments.

It can safely be inferred that the high number of adjournments granted in the Fast Track and Land Courts contributed significantly to the relatively low rate of case disposition in those courts. The evidence showed that the proportion of adjournments largely correlated with the low case disposition rates and with delays in those courts.

The reasons given for adjournments were varied. In no particular order, these may be broadly categorised under the following:

1. Absence of parties from court.
2. Absence of lawyers of parties from court.
3. To afford parties the opportunity to comply with Rules of Court.
4. To allow for the transfer of a case to another judge.
5. To join other persons as parties to the case.
6. To allow for a change of lawyers.

Figure 21: Average Adjournments Granted per Case in the Respective Courts



7. To attempt settlement out of court.
8. To afford parties the opportunity to procure and furnish the court with evidence.
9. To afford parties the opportunity to satisfy orders made by the court.
10. To complete examination-in-chief, cross-examination, or re-examination of witnesses.
11. To enable parties to amend various processes filed in court.
12. To enable parties procure proceedings of previous court hearings.
13. To enable the court to consider various interlocutory applications.

### *Motions*

Under the Rules of Court, every application in pending proceeding is required to be made by a motion. In practice the terms “motion” and “application” are often used interchangeably to refer to the process by which a party moves the court for an order directing something to be done in the applicant’s favour. Ordinarily a motion is to be made only after a notice has been given to the parties affected, but in certain cases it may be made ex-parte (without notice).

A person who may be adversely affected by a motion and who is given notice is entitled to be heard in opposition to the motion. In situations where the motion is made ex-parte, and on hearing the motion the court takes the view that any person to whom notice has not been given ought to have had notice, the Court may either dismiss the motion or adjourn the hearing in order that the notice be given. Generally, motions ex-parte are granted under very strict conditions.

Depending on what is sought from the court, the determination of a motion may take several days or weeks. The time for disposing a case is, therefore, prolonged by the pendency of a motion. The more motions there are in a case, the longer it takes to dispose of the case. Parties sometimes resort to many interlocutory applications to buy time and frustrate the ends of justice.

Table 15 shows the total number of motions recorded from all the cases reviewed. For the purpose of this study, motions for summary judgment and default judgment were not counted

**Table 15: Number of Motions Recorded**

	Fast track court	Commercial court	Land court	Ordinary high court	Total
Number of motions	216	166	168	116	<b>666</b>
Average number of motions per case (rounded up)	3	2	2	2	
Maximum number of motions per case	14	8	10	6	
Minimum number of motions per case	1	1	1	0	

as motions because these were terminal motions leading to the disposition of the case. There were 666 motions in all. Thus, across all the four courts sampled, there was an average of 2 motions per case. The Fast Track Court, Land Court, Commercial Court and Ordinary Court recorded the most motions in a decreasing order of 216, 168, 166 and 116 motions. This worked up to an average of 3 motions per case in the Fast Track Court, and 2 motions per case in the Commercial, Land and Ordinary Courts.

The figure below shows the parties who filed the most motions in a case. As shown, plaintiffs filed more applications than defendants in all the courts.

On average, land cases bordering on unauthorized disposition of land and trespass and boundary disputes attracted more motions, followed by commercial cases, where the reliefs sought comprised restructuring of payments and recovery of debt.

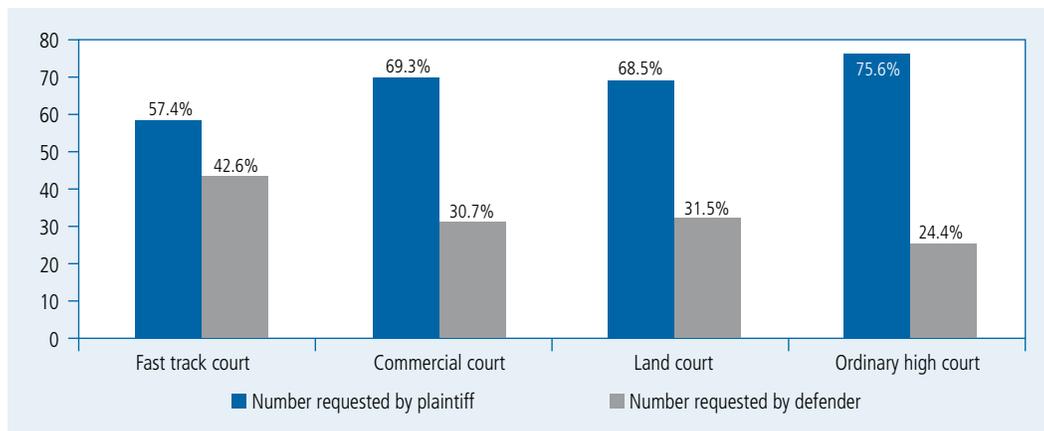
### Analysis: Judgments

In line with the pattern observed so far there was considerable variation in the sampled cases that went to final judgment.

#### Global and by court

As already indicated, a total number of 291 cases (representing 90.9 percent of all cases reviewed) reached one form of closure or another either because the case was simply struck out, or that a judgment on the merit, default or summary judgment was delivered, or that it was settled out of court or at pre-trial conference. This is illustrated by table 16 below.

Figure 22: Proportions of Motions Requested by Parties



**Table 16: Number of Cases that Reached Closure**

	Automated			Non-automated	Total
	Fast track	Commercial court	Land court	Ordinary high court	
Final judgments on the merits	49(61.3)	30(37.5)	44(55)	39(48.8)	162
Default Judgments (Judgment in default of appearance/ judgment in default of defence)	11(13.8)	25(31.2)	12(15)	12(15)	60
Summary judgment	12(15)	4(5)	2(2.5)	3(3.8)	21
Settled at pre-trial conference	6(7.5)	18(22.5)	0	2(2.5)	26
Settled out of court	0	0	2(2.5)	2(2.5)	4
Struck out	1(1.3)	3(3.8)	12(15)	2(2.5)	18
<b>Sub-total</b>	<b>79</b>	<b>80</b>	<b>72</b>	<b>60</b>	<b>291</b>
Pending cases	1(1.3)	0	8(10)	20(25)	29
<b>Total</b>	<b>80</b>	<b>80</b>	<b>80</b>	<b>80</b>	<b>320</b>

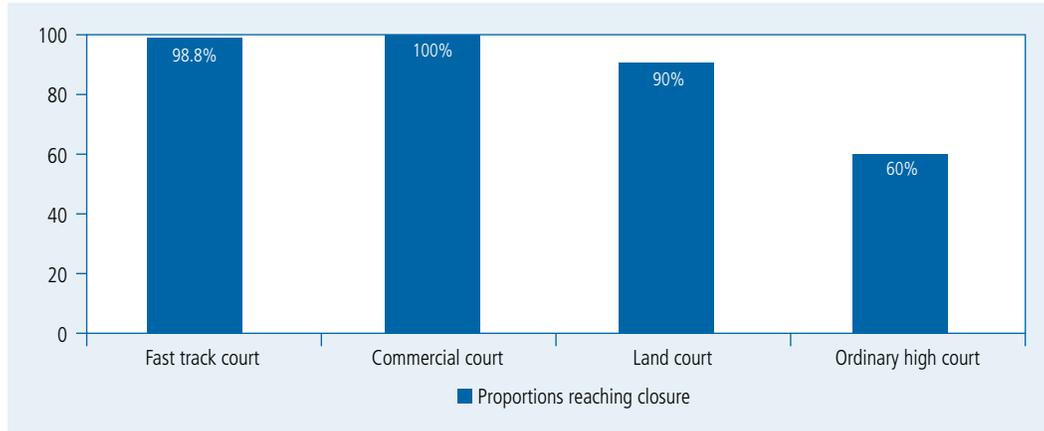
This, however, does not give the full picture. As already discussed, out of the 240 cases disposed of and analysed to estimate the disposition rate of cases,<sup>5</sup> only 33.3 percent were completed within the six months target by the Judicial Service to dispose of cases. A significant 12 percent of the cases were completed after three years. (See Table 10 and Figure 18 above).

Between the automated and unautomated courts, while about 96.3 percent of cases in the automated courts reached closure, a lesser figure of 75 percent of those in the unautomated High Court reached closure. At the level of individual courts, the Commercial Court led the pack with 100 percent of its cases reaching closure. This was followed by the Fast Track Court with 79 cases (representing 98.8 percent of cases in that court), the Land Court with 72 cases (representing 90 percent of cases in that court) and the Ordinary Court with 60 cases (representing 75 percent).

To put these high figures in context, it must be remembered that the cut off period for the sample was one year clear of the date of commencement of the research project. Thus, all cases had a one year period to run before they were sampled and analysed.

<sup>5</sup> The short fall of 51 cases was due to the poor record keeping at the courts which made it impossible to fairly estimate the time it took to resolve those cases. This is because the relevant dates of issuance of writs, judgments, settlement etc were far from being clear.

Figure 23: Proportions of Motions Requested by Parties



### *Judgments in individuals suing individuals*

In the Fast Track Court 47.4 percent of individuals suing individuals won their cases. In the Commercial Court 57.1 percent of individuals suing individuals won their cases. In the Ordinary High Court the proportion of individual who won cases involving individual defendants was 48.6 percent.

### *Individuals suing institutions*

In the Fast Track Court 59.1 percent of individuals who sued institutions won their cases. In the Commercial Court, 40 percent of such individual plaintiffs won their cases. The Ordinary Court registered 72.7 percent of such victorious individual plaintiffs.

Table 17: Matrix of Successful Individual Plaintiffs

	Fast track court		Commercial court		Land court		Ordinary court	
	Individual defendants	Institutional defendants	Individual defendants	Institutional defendants	Individual defendants	Institutional defendants	Individuals defendants	Institutional defendants
Successful individual plaintiffs	9	13	4	2	11	7	18	8
% of Successful individual plaintiff	47.4	59.1	57.1	40	23.9	41.8	48.6	72.7

**Table 18: Matrix of Successful Institutional Plaintiffs**

	Fast track court		Commercial court		Land court		Ordinary court	
	Individual defendants	Institutional defendants	Individual defendants	Institutional defendants	Individual defendants	Institutional defendants	Individuals defendants	Institutional defendants
Successful institutional plaintiffs	7	16	13	25	3	6	4	11
Percent of successful individual plaintiff	70	55.2	81.3	48.1	50	75	80	78.6

### *Institutions suing individuals*

While in the Fast Track court 55.2 percent of institutions suing individuals won their cases, in the Commercial Court the figure was much higher at 81.3 percent. In the ordinary High Court, the proportion was 81.3 percent of institutions suing individual defendants.

### *Institutions suing institutions*

In the Fast Track Court about 55.2 percent of institutions suing institutions won their cases; in the Commercial Court the figure was just a little lower at 48.1 percent. In the Ordinary High Court the proportion was 78.6 percent of institutions suing institutions.

## **Analysis: Enforcement of Judgments**

One unexpected finding was the proportion of cases with a record of enforcement. Over 65 percent of judgments obtained did not have any record of enforcement, with only about 34 percent of cases having records of enforcement. As shown in the figure below, of all the courts, the Fast Track court had the lowest proportion of records of enforcement at 22.8 percent.

Where record of judgment existed, not all judgments were executed (except in the unautomated High Court which recorded evidence of 100 percent enforcement where record of judgment existed). The figure below further illustrates this. For instance, only 46.2 percent of the cases that went for judgment in the Fast Track Court contained records of enforcement.

Figure 24: Record of Enforcement of Judgment

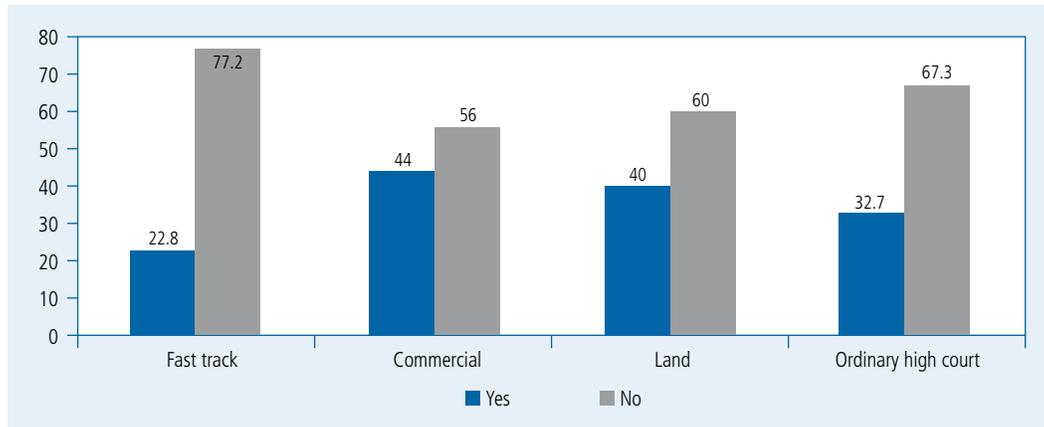
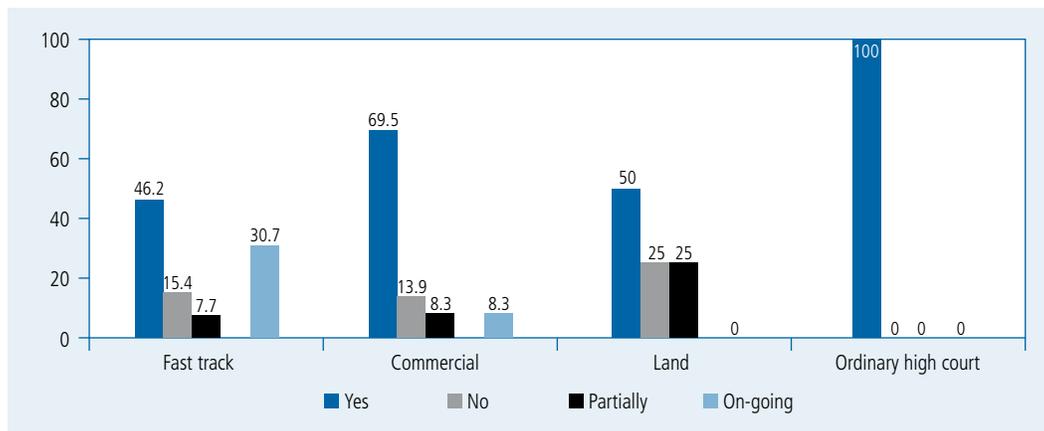


Figure 25: Record of Execution



It must be noted, however, that enforcement proceedings are hardly recorded nor carried out where there is voluntary compliance with the orders of the court. This might account for the absence of records of enforcement in many cases. The higher record of enforcement in the Commercial and Land Courts as opposed to the Fast Track Court is easily explainable. As noted earlier in this report, Land and commercial cases invariably involve further steps by the victorious party to benefit from the fruits of the judgment through specific enforcement processes in the Rules of Court. In land cases, a writ of possession may have to issue; in commercial cases, further steps relating to the sale of property or securing access to monies lodged in banks may have to be taken by way of enforcement procedures. Unless a case in the Fast Track High Court or the unautomated High Court involves landed property or is a commercial case, these further steps are invariably unnecessary. It has to be noted again that in cases where there is no evidence of enforcement proceedings on the record, there might have been voluntary compliance of the terms of the judgment.

## Analysis: Appeals

There was considerable variation in appeals. As Table 19 below shows, the proportion of all judgments across all courts that went on appeal was 24.5 percent. While in the Fact Track court, it was about 38.4 percent, it was 24.2 percent in the Commercial Court, and 18.6 percent in the Land Court.

As between the automated courts and the unautomated courts, there was evidence that more appeals were filed from judgments of the automated courts. While the proportion of appeals from the automated courts was about 27.3 percent, the corresponding figure for the unautomated court was about 14.3 percent.

There was also evidence that the proportion of successful requests to stay execution of judgments accompanying the appeals was highest in the Fast Track court (at about 69 percent), and least in the Commercial Court at about 27 percent. This finding seems to be related to the delay in the Fast Track Court and the speed in the Commercial Court as applications for stay of execution invariably prolong cases. Under the Rules of Court, an application for stay of execution normally operates as an automatic stay of execution until the application is determined. Thus, a victorious party would have to wait for the determination of the application before enjoying the fruits of her judgment. This may take several weeks or months. As previously noted, where the application is granted, the execution of the judgment would have to await the hearing and determination of the appeal, which process may take several months, even years.

### *How many appeals are won?*

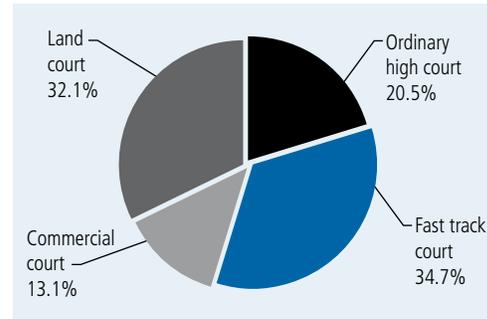
Across all courts and on average, while about 23 percent of appeals resulted in reversal of judgment, about 20 percent of judgments are upheld on appeal. However, there was a large

**Table 19: Judgments Appealed**

	Fast track court	Commercial court	Land court	Ordinary high court	Total
Total Number of judgments (all types of judgment on the merit, summarily, by default and by striking out case)	73	62	70	56	<b>261</b>
Judgments appealed	28	15	13	8	<b>64</b>
Appeals requested by plaintiffs	10	4	5	3	<b>22</b>
Appeals requested by defendant	18	10	8	5	<b>41</b>
Appeals requested by both	0	1	0	0	<b>1</b>
Proportion of judgments that go on appeal	<b>38.4%</b>	<b>24.2%</b>	<b>18.8%</b>	<b>14.3%</b>	<b>24.5%</b>

proportion of cases still pending on appeal (about 71 percent from the Fast Track and 38 percent from the Ordinary Court). Fig. 25 below illustrates the outcome of appeals.

**Figure 26: Outcome of Appeal against Final Judgment**



### Analysis: Why Do People Go to the Automated Courts?

Unlike the unautomated courts, the automated courts are newer, nicer and air-conditioned. They also process cases faster. The judges in the automated courts most often do not take down notes in longhand. The caseload in the automated and specialised courts is far lower than those in the unautomated ordinary High Court. A study of the Judicial Service's Annual Reports from the 2005/2006 to 2008/2009 legal years revealed the following case caseload in Table 20 below.

The specialised courts also build subject matter expertise over the years and get more efficient as time goes on. This may attract litigants and their lawyers to them.

#### *Are the specialized courts attracting more cases?*

As shown in Table 21 below, from the 2007/2008 and the 2008/2009 Annual Reports of the Judicial Service, there were mixed results in the number of cases filed in the specialized courts. For example, in the Fast Track court the number of cases filed in 2008/9 had declined to 526 from 587 for the previous year, while in the Commercial Court it had increased from 1,221 for 2007/2008 to 2,247 for 2008/2009. Conversely, the number of cases in the regular High Court had reduced to 8,156 cases from a previous high of 11,289 recorded for

**Table 20: Caseload High Court from 2005 to 2009**

	2005/2006			2006/2007**			2007/2008			2008/2009		
	Regular courts	Fast track	Commercial court	Regular courts	Fast track	Commercial court	Regular courts	Fast track	Commercial court	Regular courts	Fast track	Commercial court
Total caseload	30,675	791	665	—	—	—	27,750	1,331	1,941	30,623	1,587	3,858

\*\*There were no Annual Statistics for 2006/2007.

**Table 21: Number of New Cases Filed in Court**

Rate/year	2007/2008			2008/2009		
	Regular high courts	Fast track	Commercial court	Regular high court	Fast track court	Commercial court
Number of cases filed	11,289	587	1221	8,156	526	2,247

2007/2008. Thus, it is the Commercial Court that seems to be attracting more cases for reasons already discussed.

### **Analysis: Why These Outcomes?**

While some of the major findings are not surprising, since they are consistent with what practicing lawyers and keen observers know about or perceive the operations of the judicial system to be, others have been quite unexpected. For example, it has been thought for a while that the automated courts are dominated by institutional actors, with individual actors dominating in the land courts. However, the findings indicate that the difference in the proportion of institutional and individual actors in the automated courts (excepting the Commercial Court) is much smaller than generally believed.

Another finding which is consistent with what is generally thought to be the case is the use of the Commercial Court by private firms, principally for debt recovery and other issues relating to banking and financial services. As the Commercial Court suffers from the least incidence of delay, it is not surprising it is the primary platform for debt collection by private firms for whom time is usually of great essence.

What is surprising is the finding that the Ordinary High Court is faring better in terms of rates of disposition of cases than the Land Court and the Fast Track High Court. The transfer of land cases from the Ordinary High Court to the Land Court may explain the state of affairs in the case of the Land Court, but not in the case of the Fast Track Court. The findings by the OSIWA study to the effect that the Fast Track Court is beginning to experience delays is thus confirmed. It is not surprising that the Fast Track Court is recording lower cases in recent times (as shown in the Judicial Service statistics) as litigants seem to gravitate towards the better performing Commercial Court.

Another surprising finding is that there were more adjournments in the automated courts than in the unautomated court. A possible explanation is that cases in the Ordinary High Court tend to be adjourned less often, but for longer periods of time as case time is spread thin over lots of cases.

### *Legal content and process reasons for the outcomes*

The variations in user characteristics including case types, appeals, delays, pre-trial settlement and judgments, have a lot to do with specific subject matter jurisdictions and other requirements for the use of the court types. For example, since the Commercial Court focuses on business and commerce-related cases, it ordinarily does not handle land cases, which from the evidence tend to have longer disposition periods. Also, the fact that the proportion of pre-trial settlements attempted is highest in the Commercial Court can be explained by the mandatory pre-trial settlement processes in that court. Additionally, the finding that there is no evidence of any pre-trial settlement attempted, reached or effected in the land court may have an association with the amount of delays in the land court.

The automated courts when aggregated seem to fare better under all variables as compared to the unautomated courts although in many instances the differences between the automated and unautomated courts are far less than expected. This is especially the case when the Commercial Court is taken out of the equation. When this is done, the figures do not justify the higher costs of accessing justice and the larger investments in human capital and infrastructure in the automated courts. For example, the incidence of delay is worse in the automated Fast Track and the automated Land Court than in the unautomated High Court. This raises serious issues about the goal of the automated court process of effective and speedy justice. When these findings are viewed in the light of the fact that the automated courts handle relatively fewer cases than the unautomated courts, it becomes imperative that the operations of the automated court are re-examined. Overall, it is worth noting that the specific but limited areas of specialisation of the automated courts, the mandatory pre-settlement process in the Commercial Court, and relatively better case management processes at the automated courts, combine to explain some of the differences in performance between the automated and the unautomated courts. None of these factors, standing alone, can create better performance.

## **Analysis: Comparing Ghana to Other Jurisdictions**

### *How does Ghana stand in relation to other countries that have tried reforms?*

Empirical research on the operations of courts in other countries including Mexico and Argentina has generated findings that are inconsistent with what the "experts know". In this light, it is noteworthy that the Ghana court user study has also produced certain unexpected findings. Even with the findings that agree with what the experts know, the Ghana study throws further light on the extent of the issues at stake.

First, the view that the automated courts in Ghana are the primary preserve of private firms is not supported by the findings. Evidence from the Ghana study suggests that when the automated courts are aggregated, private firms dominate as litigants, however, a fairly large proportion of individuals also use the automated court system when the data is disaggregated. The automated Commercial Court is the only court, where there is overwhelming evidence of dominant use by private firms and this skews the total picture. These findings are not different from the findings in Mexico and Argentina where individuals accounted for a little over 50 percent of all plaintiffs.

A finding consistent with what the experts claim is the proportion of delays in the court system. Surprisingly, the proportion of delay in the unautomated High Court is lower than that for the Fast Track and Land Courts. Although it is generally believed the incidence of delay is increasing in the automated courts, the figures are a little startling when compared to the performance of the unautomated courts. The Commercial Court, which seems to experience the least amount of delay, happens to be the only court with a mandatory pre-trial settlement procedure. As in other studies in Argentina and Mexico, there is remarkable variation in delays across court types.

Consistent with the findings in other countries, appeals from judgments of courts of first instance are much less than generally thought, although the proportion of defendants appealing is more than that for plaintiffs. Only a quarter of cases are appealed. Beyond this, on average there are more appeals from cases in the automated courts than from the ordinary High Court.

The Ghana study findings on enforcement of judgments agree with findings elsewhere in Mexico and Argentina. Over 65 percent of judgments obtained did not have any record of enforcement, with only about 34 percent of cases having records of enforcement. Of all the courts, the Fast Track Court has the lowest proportion of records of enforcement at about 23 percent. Where record of enforcement of judgment exists, not all judgments are carried out (except in the unautomated High Court which records evidence of 100 percent enforcement where record of enforcement exists). This finding suggests that in judicial reform planning, attention should also focus on enforcement processes since reliance on the statistics of judgments may provide an insufficient basis for comprehensive targeted reforms. The caveat here is that many persons against whom judgment is given may have voluntarily complied with the judgments, rendering enforcement mechanisms nugatory.

Last but not least, the pre-trial settlement procedure seems to be working in reducing the volume of cases that eventually go to trial but the fact that not all cases filed in the Commercial Court undergo pre-trial conference suggests a significant proportion of cases filed in the Commercial Court are either abandoned or disposed of through default proceedings. The records show that over 30 percent of cases in the Commercial Court are concluded by judgment in default of appearance or of defence.

Significantly, the Ghana study shows that exclusive focus on private firms may derail efforts at effective reforms as individuals are catching up with the firms in the utilisation of the automated courts.

Again, considering the relative success of the pre-trial settlement processes in the Commercial Court, it may seem that encouraging flexible ADR processes in the courts, as the Ghana judiciary is seeking to do, will speed up resolution time and help in reducing the case backlog in the court system.

## Recommendations

The Ghana Court Uses and Users Study provides valuable input for reform planning and implementation as regards the nature, scale, scope, content and operationalization of judicial reforms. Specific recommendations are grouped under the following categories: Legal Content and Legal Process, Institutional Structures, Systems and Processes, Administration of Justice, and Monitoring and Evaluation.

### Legal Content and Legal Process

Most of the slight advantages the automated courts have over the unautomated courts are the result of legal content and legal process considerations. For example, the mandatory pre-trial settlement procedure in the Commercial Court has reduced the proportion of cases going to trial. Change in legal content and process rules, including compulsory institutionalization and further roll-out of ADR at all levels of the trial courts should have visible impact in reducing case backlog. Yet, compulsory dispute resolution mechanisms within and outside the court system should be flexible enough to avert undermining the rule of law, and efficiency considerations. Insisting on compulsory pre-trial processes in the Commercial Court when the plaintiff can go for summary judgment appears to be inefficient as it delays securing a quick judgment.

Additionally, legal content and process reforms can aim at reducing frivolous appeals through consolidated procedural processes and the award of costs against lawyers for frivolous appeals, but in order to check abuse strict guidelines need to be instituted as to circumstances that warrant the award of costs against lawyers.

Simplified procedural steps can reduce the number of legal manoeuvres lawyers deploy through motions to delay cases. Specifically, the arrangement by which all decisions in interlocutory applications are automatically appealable to the appellate courts may have to be reconsidered. This arrangement may contribute to the numerous cases pending in the Court of Appeal.

## **Institutional Structures and Systems**

Improved and measurable supervision of judges, increased staff numbers, upgrading and refurbishing court structures, equipping court registries, court automation and honing court process management skills of staff, strategic planning for the judiciary, including priorities and indicators for improving and assessing performance, are critical to enhancing overall judicial effectiveness. Moreover, building the capacity of the staff and judges through design and delivery of prioritised training programmes and development of specialised skills and minimizing contact between judicial staff and lawyers and clients to stem corruption, should be significant components in improving and upgrading institutional structures, systems and processes.

Furthermore, the registries of the courts, particularly the unautomated High Courts, are saddled with acute documentation and case management issues. This means that the integrity of statistics from the courts cannot be assured, the incidence of missing dockets cannot be stemmed, and so effective monitoring and evaluation cannot be done. Without the institutionalization of proper and effective case management, documentation and record-keeping processes, change will continue to be elusive as the material for the proper diagnoses of the problems of the judiciary will continue to be unavailable.

## **Administration of Justice**

Increased transparency and accountability in the administration of justice through a further roll-out of the complaints system should improve institutional image, thereby increase public confidence in the judiciary. Demonstrable evidence of judicial independence through incentives to be independent, improvement in the conditions of service of judges, insulating the judiciary from subtle executive influences, and the open enforcement of the code of conduct of judges is also critical. To this end, a Strategic Plan driven by the vision of increased, measurable, and effective integrity and proper case management is crucial.

## **Monitoring and Evaluation**

Finally, it is recommended that the Judiciary should institute effective and continuously updated M&E systems with effective input in formulation and implementation from all stakeholders, including civil society. Specifically, the introduction, collection and processing of statistics (including gender-disaggregated statistics, case disposition rates, appeal disposition rates, judgment reversal rates); assessment of performance and its publication in annual reports; should not only work towards the achievement of the constitutional values of transparency and accountability, but will also help in improving citizen trust for the judiciary.



## Conclusion

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The recent reform efforts introduced by the judiciary have produced measurable improvements in the delivery of justice relative to previous judicial performance. The institutionalization of the automated courts, private bailiff system for enhanced service of processes, the complaints and inspectorate division, among others have produced the requisite impetus for the relative speeding up of the delivery of justice.

Yet challenges remain. There are signs all is not well with all the courts including the automated courts. The caseload in the Commercial Courts is increasing, the Fast Track court is experiencing delays worse than the unautomated regular court, and case management processes have improved, but record-keeping processes are still underdeveloped.

In dealing with these, quick and aggressive policy is needed for targeted reforms that will have maximum spill over effects for the goal of achieving speedier, more effective and more efficient disposition of cases. The findings and recommendations in this study suggest the possible areas in need of urgent attention.



## Bibliography

1. 1992 Constitution of Ghana
2. High Court (Civil Procedure) Rules, 2004 (C.I. 47)
3. Court of Appeal Rules, 1997 (C.I. 19), as amended
4. Supreme Court Rules, 1996 (C.I. 16) as amended
5. Association of Magistrates and Judges of Ghana, News Journal, October, 2009 Edition
6. African Peer Review Mechanism, *Country Review Report of the Republic of Ghana* (June 2005) available at <http://www.nepad.org/2005/files/aprm/APRMGhanareport.pdf> (last accessed on Monday, January 11, 2010)
7. Amisshah, A.N.E., *The Contribution of the Courts in Government: A West African View*, (Claredon Press, Oxford, 1981)
8. Aryeetey, E & Kanbur, R (eds), *The Economy of Ghana: Analytical Perspectives on Stability, Growth & Poverty*, (Woeli Publishing Services, Accra, 2008)
9. Atuguba, R.A. et al., *Child Maintenance in Plural Legal Systems in Ghana: Institutional and Legal Research* (Ministry of Justice, Ghana and GTZ Legal Pluralism and Gender Pilot Project, Access to Justice Series No. 4, March 2004).
10. Atuguba, R.A., "Ghana @ 50: Colonised and Happy", in H. J. A. N. Mensa-Bonsu et. al. (eds) *Ghana Law Since Independence: History, Development and Prospects*, (Faculty of Law, University of Ghana, Legon, 2007), p. 571.
11. Atuguba, R.A., "Judicial Reforms and Judicial Reformers: Some Reflections on Ghana's Recent Experiences". Foreword to Tracy Smith *Judicial Reform and its Impact on the Administration of Justice: Case Study Focused on Court Reforms in Accra*, (CUSO, 2008).
12. Bennion, F. A. R., *The Constitutional Law of Ghana*, (Butterworth & Co (Publishers) Ltd, 1962)
13. Boahen, A., *Ghana: Evolution and Change in the Nineteenth and Twentieth Centuries*, (Longman Group Ltd., London, 1975)
14. Boahen, A. with Ade Ajayi J.F. and Tidy, M., *Topics In West African History*, (2<sup>nd</sup> ed) (Longman Group UK Ltd., 1986)
15. Brobbey, S.A., *The Law of Chieftaincy in Ghana: Incorporating Customary Arbitration, Contempt of Court and Judicial Review*, (Advanced Legal Publication, 2008)
16. Buscaglia, E & Dakolias, M., *Judicial Reform in Latin America Courts: The Experience in Argentina and Ecuador*, (The World Bank, 1996)
17. Center for Democratic Development-Ghana, *Round 3 Afrobarometer Survey in Ghana, 2005* available at <http://www.afrobarometer.org/Summary%20of%20Results/Round%203/gha-R3SOR-231jan07-final.pdf> (last accessed on Monday, January 11, 2010) also at <http://www.jdsurvey.net/afro/AnalyzeQuestion.jsp> (last accessed on Monday, January 11, 2010)

18. Center for Democratic Development-Ghana, *Round 4 Afrobarometer Survey in Ghana, 2008* available at [http://www.afrobarometer.org/Summary%20of%20Results/Round%204/gha\\_R4SOR\\_4mar09\\_final.pdf](http://www.afrobarometer.org/Summary%20of%20Results/Round%204/gha_R4SOR_4mar09_final.pdf) (last accessed on Monday, 11th January 2009)
19. Central Intelligence Agency, *The World Fact Book*, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/gh.html> (last accessed on Wednesday, December 2009)
20. Government of Ghana, *The 1968 Memorandum on the Proposals for a Constitution of Ghana*
21. Government of Ghana, *The 1978 Memorandum on the Proposals for a Constitution of Ghana*
22. Ghana Integrity Initiative, *Report on Judicial Corruption Monitoring Exercise in Ghana*, (August, 2007) available at [http://www.tighana.org/Report\\_on\\_judicial\\_corruption\\_monitoring\\_exercise\\_in\\_Ghana.pdf](http://www.tighana.org/Report_on_judicial_corruption_monitoring_exercise_in_Ghana.pdf), (last accessed on Monday, November 31st, 2009)
23. Hammergren, L., *Uses of Empirical Research in Refocusing Judicial Reforms: Lessons From Five Countries*, (World Bank), available at <http://www.argenjus.org.ar/argenjus/articulos/leen.pdf>, (last accessed on Monday, November 31st, 2009)
24. Hensler, D.R., *The Contribution of Judicial Reform to the Rule of Law*, (A paper prepared for delivery at the Conference on New Approaches for Meeting the Demand for Justice in Mexico City, May 10–12, 2001). Available at <http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/henslerspeech.pdf> (Last accessed on Monday, January 11, 2010)
25. ISSER, *The State of the Ghanaian Economy, 2008*
26. Judicial Service of Ghana, Annual Statistical Report, 2000
27. Judicial Service of Ghana, Annual Statistical Report, 2001
28. Judicial Service of Ghana, Annual Statistical Report, 2002
29. Judicial Service of Ghana, Annual Statistical Report, 2004
30. Judicial Service of Ghana, 2005/2006 Annual Report
31. Judicial Service of Ghana, 2007/2008 Annual Report
32. Judicial Service of Ghana, 2008/2009 Annual Report
33. Judicial Training Institute, *The Judiciary*, (the Newsletter of the Judicial Training Institute, 2<sup>nd</sup> ed, June 2009)
34. Kumado & Gyandoh (eds), *Sourcebook on Constitutional Law in Ghana*, (2<sup>nd</sup> ed) (Vol 1)
35. National Development Planning Commission, *Ghana Poverty Reduction Strategy-An Agenda for Growth and Prosperity, 2003–2005*
36. National Development Planning Commission, *Growth and Poverty Reduction Strategy (GPRS II), 2006–2009*
37. Kotey, N.A., Dowuona-Hammond, C. and Atuguba, R., *Ghana Land Administration Project: Legislative and Judicial Review*. A Research Report for the Government of Ghana and the World Bank, (February, 2005)
38. Nukunya, G.K., *Tradition and Change in Ghana; An Introduction to Sociology*, (2<sup>nd</sup> ed) (Ghana Universities Press Accra, 2003)
39. Open Society Initiative for West Africa, *Ghana Justice Sector and the Rule of Law-A Discussion Paper*, (A Review by AfriMAP, OSIWA, and the Institute for Democratic Governance, IDEG), 2007. Available at [http://www.afriMAP.org/english/images/report/AfriMAP\\_Ghana%20JusticeDD.pdf](http://www.afriMAP.org/english/images/report/AfriMAP_Ghana%20JusticeDD.pdf) (Tuesday, December 1 2009)

40. Oquaye, M., *Politics in Ghana, 1982–1992: Rawlings, Revolution and Populist Democracy*, (Thomson Press (India) Ltd, 2004)
41. Marful-Sau, S., *Operations of the Commercial Court of Ghana*, (2004–2006) 2 BFLJG 60
42. United Nations Development Programme, *2009 Human Development Report*
43. Yeboah, K.Y., *The Courts Act, 1993 (Act 459): New Elements* in Bimpong-Buta, S.Y. (ed), *Ghana Bar Association Lectures in Continuing Legal Education*, 1993–94.
44. Yeboah, K.Y., *The History of the Ghana Legal System: The Evolution of a Unified National System of Courts* [1991–92] Vol. XVIII RGL 1



## Websites Visited

1. [http://www.judicial.gov.gh/index.php?option=com\\_content&task=view&id=103&Itemid=52](http://www.judicial.gov.gh/index.php?option=com_content&task=view&id=103&Itemid=52), (last visited on Tuesday, December 01, 2009)
2. <http://www.statsghana.gov.gh/KeySocial.html>
3. [http://www.ghanaweb.com/GhanaHomePage/country\\_information/](http://www.ghanaweb.com/GhanaHomePage/country_information/) last accessed on Monday, January 4, 2010
4. <http://www.state.gov/r/pa/ei/bgn/2860.htm#econ> last accessed on Monday, January 4 2010
5. <http://www.state.gov/r/pa/ei/bgn/2860.htm#geo> last accessed on Monday, January 04, 2010.
6. <http://www.state.gov/r/pa/ei/bgn/2860.htm#political> last accessed on Monday, January 04, 2010



# Appendices

## APPENDIX A: Case-file Review Form

*Explanation: this is a long questionnaire, but for most cases, not all sections will be relevant. Cases disposed by a default or summary judgment, through settlement, or struck out early, will at most go through half of the questionnaire (although it will be necessary to indicate whether an appeal was filed or not, and if so, continue through that section. The final section on enforcement will also be relevant for cases ended by default or summary judgments).*

### *Initial Information*

1. ID: \_\_\_\_\_ Data collector: \_\_\_\_\_
2. Date: \_\_\_\_\_ / \_\_\_\_\_ / 2009
3. Court (to which case assigned for trial or last pre-trial stage): \_\_\_\_\_
4. Judge (to which case assigned for trial or last pre-trial stage): \_\_\_\_\_  
\_\_\_\_\_
5. Docket no: \_\_\_\_\_
6. Case List: 1> Main list 2> Substitute list 3> Substitute of substitute
7. Was the docket transferred from another court? (If no, go to 11)  
1> Yes  
2> No
8. If yes, when \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_
9. If yes, which court \_\_\_\_\_
10. If yes, last action recorded by prior court \_\_\_\_\_ (If unknown, put unknown)

11. Last action recorded for case: \_\_\_\_\_

**Plaintiff's Claim:** *(If there is more than one Plaintiff and Claim, pick the first Plaintiff).*

12. Date writ of summons and statement of claim filed with court *(if there is no date or it is unclear, leave blank; if previously filed with another court, use date of most recent writ of summons):* \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

13. Type of case:  
1> Commercial; 2> Land; 3> Human Rights; 4> Industrial (Labour);  
5> Family Law; 6> Defamation and Libel; 7> Constitutional/Administrative;  
8> Other (mainly for Unautomated Court) \_\_\_\_\_

14. If Commercial, related to *(if several, check each; leave blank if not commercial and go to 15)*  
1> Formation or governance of business  
2> Bankruptcy  
3> Restructuring payments  
4> Business document or contract  
5> Import or export of goods  
6> Banking and financial services  
7> Tax matters  
8> Insurance and re-insurance  
9> Other (specify) \_\_\_\_\_

15. If Land, related to *(if several, check each; leave blank if not land and go to 16)*  
1> Family (inheritance or unauthorized disposition of land by family member)  
2> Trespass or boundary dispute  
3> Unauthorized disposition of rights to land by Chief/stranger  
4> Unauthorized disposition of land by Land Commission/Government or compulsory (purchase order) (can we replace with 'acquisition')  
5> Double sale  
6> Dispute over cultivation/crops  
7> Other \_\_\_\_\_

16. If Human Rights, related to *(leave blank if not human rights and go to 17)*  
17. If Industrial (Labour), related to *(leave blank if not industrial (labour) and go to 18)*  
18. If Family Law, related to *(leave blank if not family law and go to 19)*  
19. If Defamation/Libel, related to *(leave blank if not defamation/libel and go to 20)*  
20. If Constitutional/Administrative, related to *(leave blank if not constitutional/administrative)*

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21. Plaintiff
  - 1> Real person
  - 2> Legal person /Private
  - 3> Legal person/Public  
(NGO, University, government agency, parastatal, Local Government Agency)
  
22. Gender of Plaintiff (If not a real person tick, 3 (3 not 4)>)
  - 1> Male
  - 2> Female
  - 3> Not valid (Not a real person)
  
23. Plaintiff has an attorney
  - 1> Yes
  - 2> No
  
24. Main relief requested: (This part is to be filled out according to the main request of the Complaint. Do not write here litigation expenses and attorneys fees or preliminary injunction. Use as many spaces as necessary; **if claim has monetary value, please specify amount**).
  - a. \_\_\_\_\_
  - b. \_\_\_\_\_
  - c. \_\_\_\_\_
  - d. \_\_\_\_\_
  - e. \_\_\_\_\_
  - f. \_\_\_\_\_
  - g. \_\_\_\_\_
  
25. Number of Defendant(s)
  - 1> One
  - 2> Two
  - 3> More than two
  
26. Defendant: (If there is more than one Defendant, pick the first Defendant in the Complaint)
  - 1> Real person
  - 2> Legal person/Private
  - 3> Legal Person/ Public (NGO, University, government agency, parastatal, Local Government Agency)Specify \_\_\_\_\_

27. Gender of Defendant (*If not a real person tick, 4>*)

1> Male

2> Female

3> Not valid (Not a real person)

28. Defendant has an attorney

1> Yes

2> No

### ***Payment of Court Fees for Filing Claim***

29. Amount paid: \_\_\_\_\_

### ***Writ of Summons Served:***

30. Was service effected or carried out?

1> Yes

2> No

31. Service date: *Please write here fully the service date to the Defendant.*

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_ (*Leave blank if there is no date or unclear*):

32. If there was service, who was served? (*Fill out the below, according to the date of actual service*)

1> To defendant in person within jurisdiction

2> Substituted service to \_\_\_\_\_ (*indicate person or means*)

3> To Defendant outside jurisdiction

### ***Statement of Defence (to Plaintiff's Claim):***

33. The Defendant filed an Appearance

1> Yes

2> No (*if none, got to 36*)

34. Date: \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_ (*Leave blank if date is unclear*)

35. The defendant filed a defence/counterclaim

1> Yes

2> No (*if not, go to question 36*)

36. Date \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_ (*Leave blank if date is unclear*)

37. Content of defence/ counterclaim

- a. \_\_\_\_\_
- b. \_\_\_\_\_
- c. \_\_\_\_\_
- d. \_\_\_\_\_
- e. \_\_\_\_\_

38. Date of service on Plaintiff of defence/counterclaim“): \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
(Leave blank if there is no date or unclear)

39. Plaintiff files a reply/defence to counterclaim

- 1> Yes
- 2> No

40. Content of Plaintiff’s reply/defence to counterclaim

- a. \_\_\_\_\_
- b. \_\_\_\_\_
- c. \_\_\_\_\_
- d. \_\_\_\_\_
- e. \_\_\_\_\_

**Default of Appearance/Defence:**

41. In absence of appearance and/or defence, Plaintiff requests default judgment

- 1> Yes; default of appearance requested
- 2> Yes, default of defence requested
- 3> Neither requested

42. Date requested: \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
(Leave blank if there is no date or unclear):

43. Granted

1> Yes

2> No

44. If granted, outcome.

1> Plaintiff's request granted in full

2> Plaintiff's request denied in full

3> Partial granting (*describe*)

a. \_\_\_\_\_

b. \_\_\_\_\_

c. \_\_\_\_\_

d. \_\_\_\_\_

e. \_\_\_\_\_

45. Date of default or summary judgment: \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
(Leave blank if there is no date or unclear; go to section on appeals):

46. Plaintiff requests summary judgment on the basis of inadequate or no defence

1> Yes

2> No

47. If requested, reason for request: \_\_\_\_\_

48. Granted

1> Yes

2> No

49. Date: requested \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
(Leave blank if there is no date or unclear):

50. If granted, outcome.

1> Plaintiff's request granted in full

2> Plaintiff's request denied in full

3> Partial granting (*describe terms*)

a. \_\_\_\_\_

b. \_\_\_\_\_

c. \_\_\_\_\_

d. \_\_\_\_\_

e. \_\_\_\_\_

51. Date summary judgment delivered: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
 (Go to sections on appeals and enforcement)

**Pre-Trial (or Other) Settlement**

52. Was a pre-trial settlement conference called?

1> Yes

2> No (If no, go to 67)

53. If yes, date set for first conference \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

54. Was conference held on scheduled date?

1> Yes

2> No

55. If not, why?

Plaintiff's lawyer not present

Defendant's lawyer not present

Plaintiff not present

Defendant not present

Plaintiff requests extension

Defendant requests extension

Other (explain) \_\_\_\_\_

56. If not held, was it rescheduled?

1> Yes

2> No

57. How many times was it rescheduled? (number) \_\_\_\_\_

58. Date rescheduled conference held \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

(If not held, leave blank; if several conferences held, use last date)

59. Outcome of settlement conference(s)

1> Agreement reached

2> Agreement not reached and trial scheduled

3> Case struck out

4> Other \_\_\_\_\_

60. If agreement reached, describe terms

- a. \_\_\_\_\_
- b. \_\_\_\_\_
- c. \_\_\_\_\_
- d. \_\_\_\_\_
- e. \_\_\_\_\_

61. If agreement reached, was it effected

- 1> Yes
- 2> No
- 3> Partially (explain) \_\_\_\_\_
- 4> No information

62. "Were there Subsequent efforts to reach settlement?"

- 1> Yes
- 2> No

63. If yes, date of last attempt \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

64. If yes, outcomes

- 1> Agreement reached
- 2> No agreement

65. If agreement reached, describe terms

- a. \_\_\_\_\_
- b. \_\_\_\_\_
- c. \_\_\_\_\_
- d. \_\_\_\_\_
- e. \_\_\_\_\_

66. If agreement reached, was it effected?

- 1> Yes
- 2> No
- 3> Unclear

*(Note: for cases settled, abandoned, or struck out at this stage, data entry will end here—however, applications schedule should still be filled out if relevant.)*

***Application for Directions***

67. Request for pretrial directions

- 1> From plaintiff
- 2> From defendant
- 3> None

68. If requested, on what date: \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_ *(Leave blank if there is no date or unclear)*

69. If a hearing date was set, what was it? \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_ *(Leave blank if there is no date or unclear)*

70. Other issues covered in pretrial directions *(if none, leave blank)*

- a. \_\_\_\_\_
- b. \_\_\_\_\_
- c. \_\_\_\_\_
- d. \_\_\_\_\_
- e. \_\_\_\_\_

***Applications***

***Scheduled Hearings and Adjournments***

71. Number of hearings held (number) \_\_\_\_\_

72. Number of adjournments granted (number) \_\_\_\_\_

73. Adjournments requested by plaintiff and granted (number) \_\_\_\_\_

74. Adjournments requested by defendant and granted (number). \_\_\_\_\_

75. Number of adjournments resulting from other reasons (judge unable to attend, no interpreter, etc.) \_\_\_\_\_

76. Reasons for other adjournments

- a. \_\_\_\_\_
- b. \_\_\_\_\_
- c. \_\_\_\_\_
- d. \_\_\_\_\_
- e. \_\_\_\_\_

**Outcome of the trial:** (Questions 77–80 should be answered according to the hearing protocol of the last hearing. No interim decision form should be filled for the last hearing)

77. Date pleadings closed: \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

78. Date judgment delivered: \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

79. Final Judgment:

- 1> Plaintiff's Claim Denied
- 2> Plaintiff's Claim Granted
- 3> Plaintiff's Claim partially granted (*describe*) \_\_\_\_\_
- 4> Other (*describe*) \_\_\_\_\_

80. Award of costs?

- 1> Yes
- 2> No

81. Amount levied on

Plaintiff (amount) \_\_\_\_\_  
Defendant (amount) \_\_\_\_\_

### *Appeal*

82. Judgment was appealed

- 1> Yes
- 2> No (*if no, go to section on enforcement*)

83. Appeal requested by (Plaintiff and Defendant are those in initial case)

- 1> Plaintiff
- 2> Defendant
- 3> Both (*if both, enter information for each*)

84. There was an accompanying request to stay execution of judgment  
 1> Yes and it was granted  
 2> Yes, but it was denied  
 3> No

**Plaintiff’s appeal or cross-appeal** (if none, skip this section)

85. Date Notice of Appeal was filed: \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
 (Leave blank if unclear)

86. Plaintiff’s appeal/cross-appeal was  
 As of right (within 3 months of judgment)  
 By leave of Court of Appeal (within 3–6 months of judgment)  
 By leave of Appeals Court (following denial by Trial Judge)  
 Denied by Trial Judge w/o application to Appeals Court  
 Denied by Appeals Court on application

87. Appeal Costs (filing fee, processing fee, and bond, if any) \_\_\_\_\_  
 1> Court of Appeal decision  
 2> Reversed trial court judgment  
 3> Upheld trial court judgment  
 4> Partial Reversal – describe: \_\_\_\_\_

89. Date of Court of Appeals decision: \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
 (Leave blank if there is no date or unclear)

**Appeal or cross-appeal by Plaintiff/Defendant** (skip this section if there was not):

90. Date filed: \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
 (Leave blank if there is no date or unclear)

91. Defendant’s appeal was  
 As of right (within 3 months of judgment)  
 By leave of Court Appeal (within 3–6 months of judgment)  
 By leave of Appeals Court (on application)  
 Denied by Trial Judge w/o application to Appeals Court  
 Denied by Appeals Court on application

92. Appeal Costs(filing fee, processing fee, and bond, if any) \_\_\_\_\_

93. Court of Appeal decision  
Reversed trial court judgment  
Upheld trial court judgment  
Partial Reversal – describe: \_\_\_\_\_

94. Date of Court of Appeals' decision: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
(Leave blank if there is no date or unclear)

**Appeal to Supreme Court** (if none, skip this section and go to 94)

95. Appeal by  
Plaintiff  
Defendant  
Both  
Neither (if neither go on to 100)

96. Date filed  
By Plaintiff \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
By Defendant \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

97. There was an accompanying request to stay execution of judgment  
Yes and it was granted  
Yes but it was denied  
No

98. Outcome  
Upholds appeals court and trial court decision  
Upholds appeals court in reversing trial court  
Reverses appeal court and upholds trial court decision  
Reverses both  
Other (explain) \_\_\_\_\_

99. Date of Supreme Court Decision \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

**Enforcement of judgment/Execution**

100. Record of enforcement  
Yes  
No

101. If record exists, was the decision carried out  
 Yes  
 No  
 Partially  
 On-going
102. If yes, date of enforcement \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
 (e.g. date on which winning party receives payment or assets claimed)
103. Did enforcement involve seizure of assets for payment  
 Yes  
 No  
 Unclear
104. Was seizure protested  
 Yes  
 No  
 Unclear
105. Was protest successful  
 Yes  
 No  
 Unclear  
 Still pending decision

## APPENDIX B: Questionnaire-Applications

Explanation: Information in the first section (questions 1–4 and 6–7) should match that for the principal case file questionnaire.

1. ID: \_\_\_\_\_ Data collector: \_\_\_\_\_
2. Date: \_\_\_\_\_/\_\_\_\_\_/2009
3. Court (to which assigned for trial or last pre-trial stage) \_\_\_\_\_
4. Judge: (to which assigned for trial or last pre-trial stage) \_\_\_\_\_
5. If different, list judge(s) handling applications \_\_\_\_\_
6. Docket no: \_\_\_\_\_

7. Number of applications filed. If none, mark zero (*and do not fill out the rest of the questionnaire*) \_\_\_\_\_

**Application 1 (in chronological order):**

a. Date: \_\_\_\_\_ / \_\_\_\_\_ / 2009

b. Court (to which assigned for trial or last pre-trial stage) \_\_\_\_\_

c. If different, list judge(s) handling applications \_\_\_\_\_

d. Docket no: \_\_\_\_\_

8. Content of Application: \_\_\_\_\_

9. Entered by:  
Plaintiff  
Defendant

10. Date of Application \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

11. Hearing scheduled,  
1> Yes  
2> No  
3> Not clear

If scheduled, date \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

Hearings held (Number held) \_\_\_\_\_

Final hearing date \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

No of adjournments \_\_\_\_\_

If adjournments granted, reason \_\_\_\_\_

Outcome of application  
Granted  
Denied  
Not decided

Appealed

- 1> By plaintiff (in main case)
- 2> By defendant
- 3> By both

Date of appellate decision \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

Outcome of decision

- 1> Upheld trial court decision
- 2> Reversed
- 3> Not decided

Application stays main proceedings

- 1> Yes
- 2> No

***Application 2***

- a. Date: \_\_\_\_\_/\_\_\_\_\_/2009
- b. Court (to which assigned for trial or last pre-trial stage) \_\_\_\_\_
- c. If different, list judge(s) handling applications \_\_\_\_\_
- d. Docket no: \_\_\_\_\_

Content of Application

- Entered by:
- 1> Plaintiff
  - 2> Defendant

Date of Application \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

Hearing scheduled

- 1> Yes
- 2> No
- 3> Not clear

If scheduled, date \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

Hearings held (Number held) \_\_\_\_\_

Final hearing date \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

No of adjournments \_\_\_\_\_

If adjournments granted, reason \_\_\_\_\_

Outcome of application

- 1> Granted
- 2> Denied
- 3> Not decided

Appealed

- 1> By plaintiff (in main case)
- 2> By defendant
- 3> By both

Date of appellate decision \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

Outcome of decision

- 1> Upheld trial court decision
- 2> Reversed
- 3> Not decided

Application stays main proceedings

- 1> Yes
- 2> No

### *Application 3*

- a. Date: \_\_\_\_\_/\_\_\_\_\_/2009
- b. Court (to which assigned for trial or last pre-trial stage) \_\_\_\_\_
- c. If different, list judge(s) handling applications \_\_\_\_\_
- d. Docket no: \_\_\_\_\_

Content of Application

- Entered by:
- 1> Plaintiff
  - 2> Defendant

Date of Application \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

Hearing scheduled

- 1> Yes
- 2> No
- 3> Not clear

If scheduled, date \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

Hearings held (Number held) \_\_\_\_\_

Final hearing date \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

No of adjournments \_\_\_\_\_

If adjournments granted, reason \_\_\_\_\_

Outcome of application

- 1> Granted
- 2> Denied
- 3> Not decided

Appealed

- 1> By plaintiff (in main case)
- 2> By defendant
- 3> By both

Date of appellate decision \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

Outcome of decision

- 1> Upheld trial court decision
- 2> Reversed
- 3> Not decided

Application stays main proceedings

- 1> Yes
- 2> No

**Application 4:**

- a. Date: \_\_\_\_\_/\_\_\_\_\_/2009
- b. Court (to which assigned for trial or last pre-trial stage) \_\_\_\_\_
- c. If different, list judge(s) handling applications \_\_\_\_\_
- d. Docket no: \_\_\_\_\_

Content of Application

Entered by:

1> Plaintiff

2> Defendant

Date of Application \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

Hearing scheduled,

1> Yes

2> No

3> Not clear

If scheduled, date \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

Hearings held (Number held) \_\_\_\_\_

Final hearing date \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

No of adjournments \_\_\_\_\_

If adjournments granted, reason \_\_\_\_\_

Outcome of application

1> Granted

2> Denied

3> Not decided

Appealed

1> By plaintiff (in main case)

2> By defendant

3> By both

Date of appellate decision \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

Outcome of decision

- 1> Upheld trial court decision
- 2> Reversed
- 3> Not decided

Application stays main proceedings

- 1> Yes
- 2> No

***Application 5:***

- a. Date: \_\_\_\_\_/\_\_\_\_\_/2009
- b. Court (to which assigned for trial or last pre-trial stage) \_\_\_\_\_
- c. If different, list judge(s) handling applications \_\_\_\_\_
- d. Docket no: \_\_\_\_\_

Content of Application

Entered by:

- 1> Plaintiff
- 2> Defendant

Date of Application \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

Hearing scheduled,

- 1> Yes
- 2> No
- 3> Not clear

If scheduled, date \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

Hearings held (Number held) \_\_\_\_\_

Final hearing date \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

No of adjournments \_\_\_\_\_

If adjournments granted, reason \_\_\_\_\_

Outcome of application

- 1> Granted
- 2> Denied
- 3> Not decided

Appealed

- 1> By plaintiff (in main case)
- 2> By defendant
- 3> By both

Date of appellate decision \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

Outcome of decision

- 1> Upheld trial court decision
- 2> Reversed
- 3> Not decided

Application stays main proceedings

- 1> Yes
- 2> No

**Application 6:**

- a. Date: \_\_\_\_\_/\_\_\_\_\_/2009
- b. Court (to which assigned for trial or last pre-trial stage) \_\_\_\_\_
- c. If different, list judge(s) handling applications \_\_\_\_\_
- d. Docket no: \_\_\_\_\_

Content of Application

- Entered by:
- 1> Plaintiff
  - 2> Defendant

Date of Application \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

Hearing scheduled,

- 1> Yes
- 2> No
- 3> Not clear

If scheduled, date \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

Hearings held (Number held) \_\_\_\_\_

Final hearing date \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

No of adjournments \_\_\_\_\_

If adjournments granted, reason \_\_\_\_\_

Outcome of application

- 1> Granted
- 2> Denied
- 3> Not decided

Appealed

- 1> By plaintiff (in main case)
- 2> By defendant
- 3> By both

Date of appellate decision \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

Outcome of decision

- 1> Upheld trial court decision
- 2> Reversed
- 3> Not decided

Application stays main proceedings

- 1> Yes
- 2> No

**Application 7:**

- a. Date: \_\_\_\_\_/\_\_\_\_\_/2009
- b. Court (to which assigned for trial or last pre-trial stage) \_\_\_\_\_
- c. If different, list judge(s) handling applications \_\_\_\_\_
- d. Docket no: \_\_\_\_\_

Content of Application

Entered by:

1> Plaintiff

2> Defendant

Date of Application \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

Hearing scheduled,

1> Yes

2> No

3> Not clear

If scheduled, date \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

Hearings held (Number held) \_\_\_\_\_

Final hearing date \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

No of adjournments \_\_\_\_\_

If adjournments granted, reason \_\_\_\_\_

Outcome of application

1> Granted

2> Denied

3> Not decided

Appealed

1> By plaintiff (in main case)

2> By defendant

3> By both

Date of appellate decision \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

Outcome of decision

- 1> Upheld trial court decision
- 2> Reversed
- 3> Not decided

Application stays main proceedings

- 1> Yes
- 2> No

***Application 8:***

- a. Date: \_\_\_\_\_/\_\_\_\_\_/2009
- b. Court (to which assigned for trial or last pre-trial stage) \_\_\_\_\_
- c. If different, list judge(s) handling applications \_\_\_\_\_
- d. Docket no: \_\_\_\_\_

Content of Application

Entered by:

- 1> Plaintiff
- 2> Defendant

Date of Application \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

Hearing scheduled,

- 1> Yes
- 2> No
- 3> Not clear

If scheduled, date \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

Hearings held (Number held) \_\_\_\_\_

Final hearing date \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

No of adjournments \_\_\_\_\_

If adjournments granted, reason \_\_\_\_\_

Outcome of application

- 1> Granted
- 2> Denied
- 3> Not decided

Appealed

- 1> By plaintiff (in main case)
- 2> By defendant
- 3> By both

Date of appellate decision \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

Outcome of decision

- 1> Upheld trial court decision
- 2> Reversed
- 3> Not decided

Application stays main proceedings

- 1> Yes
- 2> No

***Application 9:***

- a. Date: \_\_\_\_\_/\_\_\_\_\_/2009
- b. Court (to which assigned for trial or last pre-trial stage) \_\_\_\_\_
- c. If different, list judge(s) handling applications \_\_\_\_\_
- d. Docket no: \_\_\_\_\_

Content of Application

- Entered by:
- 1> Plaintiff
  - 2> Defendant

Date of Application \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

Hearing scheduled,

- 1> Yes
- 2> No
- 3> Not clear

If scheduled, date \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

Hearings held (Number held) \_\_\_\_\_

Final hearing date \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

No of adjournments \_\_\_\_\_

If adjournments granted, reason \_\_\_\_\_

Outcome of application

- 1> Granted
- 2> Denied
- 3> Not decided

Appealed

- 1> By plaintiff (in main case)
- 2> By defendant
- 3> By both

Date of appellate decision \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

Outcome of decision

- 1> Upheld trial court decision
- 2> Reversed
- 3> Not decided

Application stays main proceedings

- 1> Yes
- 2> No

***Application 10:***

- a. Date: \_\_\_\_\_/\_\_\_\_\_/2009
- b. Court (to which assigned for trial or last pre-trial stage) \_\_\_\_\_
- c. If different, list judge(s) handling applications \_\_\_\_\_
- d. Docket no: \_\_\_\_\_

Content of Application

Entered by:

1> Plaintiff

2> Defendant

Date of Application \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

Hearing scheduled,

1> Yes

2> No

3> Not clear

If scheduled, date \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

Hearings held (Number held) \_\_\_\_\_

Final hearing date \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

No of adjournments \_\_\_\_\_

If adjournments granted, reason \_\_\_\_\_

Outcome of application

1> Granted

2> Denied

3> Not decided

Appealed

1> By plaintiff (in main case)

2> By defendant

3> By both

Date of appellate decision \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

Outcome of decision

1> Upheld trial court decision

2> Reversed

3> Not decided

Application stays main proceedings

1> Yes

2> No

## Appendix C: Specific Project Activities

The project involved a series of activities. The keys ones are detailed below.

The first was a review and finalization of the instruments that were used to gather the data from the case files. Two questionnaires were developed. The first questionnaire, attached as Appendix A to this report contained questions related to the parties to the case and the various stages a case in court usually goes through. These include the issue of a writ of summons with a statement of claim; entry of appearance by the defendant; the filing of a defence (with or without a counterclaim); the reply by the plaintiff, if any; application for directions; the process of trial; judgment; enforcement of judgment and appeal, if any. The second questionnaire, attached as appendix B to this report contained questions about applications made by parties to the suit in the course of the case, including applications made after trial. The decision to use a separate instrument for applications was meant to isolate them for analysis since they are generally thought to be the main cause of delays in court processes. The review process was led by the Principal Investigator, and included the two supervisors and the two statisticians. The team read the instruments in light of the Ghanaian rules of court on civil procedure and adapted the instruments to fit the Ghanaian context. The statisticians ensured that the questions were posed in such a way as to capture data that could easily be processed to produce the answers to the main lines of inquiry of the project.

The next major activity was the orientation for the case file analysts, all of them law students. First, they underwent a half-day refresher course in Ghanaian civil procedure. Next, the team that reviewed and finalized the questionnaires engaged in a methodical analysis of each question in the questionnaires for the benefit of the case file analysts, followed by a discussion of the various scenarios that could arise in the case files in respect of each question. The data collectors were also oriented about the contents of a typical docket or case file. All in all, grey areas in the instruments were clarified and the leadership of the team made sure that there was a common understanding of defined concepts and variables amongst the team.

The statisticians used the questionnaires to design a computer software program that was installed on the laptops of the case file analysts. They then held a half day orientation on how to navigate the software for all the analysts.

The instruments were then tested in the courts. A number of issues with the design and functioning of the software program came up during the process. For example, the software did not have sufficient space for recording descriptive answers. To cure these problems, the Supervisors and the Statisticians diligently examined each question in the questionnaire in terms of the civil procedural rules to determine those questions that required the creation of additional space in the software. This process yielded very positive results as the software was modified accordingly. After the pilot exercise, the enormity of the many challenges that were anticipated for

the project became clear. It was difficult locating the list of cases for the courts and those that existed were often incomplete. Many files that were randomly sampled from the list of cases could not also be located and many substitutions had to be made.

The next major activity was the collection of data. Various meetings were held with the Director of Judicial Reforms and the Registrars and Clerks of the five courts (including the Court of Appeal) from which data was collected. They all agreed to assist the team in the project. Many times, the clerks sat with the case file analysts through the process of completing the questionnaires and provided critical information without which the project would not have been successful.

The period from which the samples were drawn is 1<sup>st</sup> January, 2000 to 31<sup>st</sup> July, 2008. This period was chosen to cover the period beginning with the establishment of the first of the automated courts, the Fast Track Court, ending a year before the start of the project. This end date was chosen in order to capture only cases that have been in the courts for at least a year and would, therefore, be worth tracking.

The cases were randomly sampled using a simple sampling procedure. The docket numbers of the various cases covering the sample period were written out on small pieces of paper, folded up, put together in a bag and cases randomly drawn from the bag. The court clerks located the selected case files from the rooms where they are all kept. Case files that could not be located were substituted for other files through the same random sampling procedure. The case file analysts then extracted the necessary data from the case files and into the software.

The court clerks, and sometimes the registrars, were available to assist with the location of case files and missing information from some files. The supervisors were also available to the case file analysts to answer any questions they had on the particular progression of a case they were handling. One of the statisticians was present to deal with any issues that arose during the process of entering the data into the software. Debriefing sessions were held at the close of each day to clarify many issues that were common to all the courts and to take a unitary decision on each of them in order to ensure consistency in the data gathered.

After the data was gathered, the supervisors and the statisticians reviewed the data set and worked with the case file analysts to fill the gaps that they detected. The analysts also submitted written reports on the challenges they faced in the data gathering exercise.

The data collected was then analyzed according to an extended checklist drawn up from the questionnaires by the Principal Investigator with the assistance of the World Bank Team.

This data, together with existing data from the Judicial Service formed the basis of this report. However, before we examine the main findings drawn from the data, it is apposite to put that information in context by providing a brief background to Ghana and her courts.

## Appendix D: Research Team and Assistants

No.	Name	Position
1.	Dr. Raymond A. Atuguba	Principal Investigator and Project Director
2.	Ms. Baaba Amoah	Project Coordinator
3.	Mr. Abdul Baasit Abdul Aziz	Project Supervisor
4.	Mr. Rowland Atta Kesson	Project Supervisor
5.	Mr. Julius Fobil	Statistician
6.	Mr. Emmanuel Ofori Abosi	Assistant Statistician
7.	Mr. Kwabena Oteng Acheampong	Researcher
8.	Ms. Sharon Baddoo	Research Assistant
9.	Mr. Justice Srem-Sai	Research Assistant
10.	Mr. Kofi Adinkrah	Research Assistant
11.	Ms. Selma Awumbila	Research Assistant
12.	Ms. Janetta Amewuga	Research Assistant
13.	Ms. Zeinab Ayariga	Research Assistant
14.	Ms. Ramona Patience Abugabe	Research Assistant
15.	Ms. Mercy Dellor	Research Assistant
16.	Mr. Alfa Nasir Mohammed	Research Assistant
17.	Mr. Kizito Akudago	Research Assistant
18.	Mr. Harold Atuguba	Research Assistant
19.	Ms. Noreen Nortey	Secretary

## Appendix E: Judicial Service Staff Involved in the Project

No.	Name	Position
<b>Judicial Service Administration</b>		
1.	Her Ladyship Georgina Theodora Wood	Chief Justice of the Republic of Ghana
2.	Ms. Sandra Thompson	Director of Judicial Reforms and Projects
3.	Ms. Gifty Yeboah Preko	Project Officer
4.	Mr. Simon Quano	Project Officer
5.	Mr. Felix Atsuvia	Judicial Service Statistician
<b>Land Court</b>		
1.	Mr. Steve Dzutorgbey	Registrar
2.	Mr. Charles Acheampong	Senior High court Registrar
3.	Mr. Oppong Yaw Mensah	Clerk
4.	Mr. James Mensah	Clerk
5.	Mr. John Djeha	Clerk
<b>Commercial Court</b>		
No.	Name	Position
1.	Mrs. Philomena Brown-Acquaye	Registrar
2.	Mrs. Roberta Orleans Lindsay	High Court Registrar
<b>Fast Track High Court</b>		
No.	Name	Position
1.	Mr. Rexford Gyimah	Deputy Chief Registrar
2.	Mr. George Taylor	Clerk
3.	Mr. Henry Oppong	Clerk
4.	Mr. Prosper Dabanka	Clerk
5.	Nathaniel Nii Quarcoopome Sackey	High Court Registrar
<b>Ordinary High Court</b>		
No.	Name	Position
1.	Mr. John Bannerman	Chief Registrar General
2.	Mr. Kofi Affah	Clerk
3.	Mr. Adom Andrew K.B	Registrar DCR
4.	Mr. Solomon N.A Botchway	Senior High Court Registrar
<b>Court of Appeal</b>		
No.	Name	Position
1.	Ms. Rahmatu Ammah	Registrar DCR
2.	Mr. Emmanuel Plange	Assistant Registrar

