

## GHANA—ESTABLISHMENT OF THE COMMERCIAL COURT

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An often-repeated remark about George Kingsley Acquah, Ghana's Chief Justice from 2003 until 2007 and driver of his country's major judicial reforms, was that "it took a man like him for this to happen". I certainly subscribe to this view, having observed his impact from my position as Director of the Judicial Reform, Project Development and Implementation Unit at the Judicial Service of Ghana. Doubtless, his most prominent reform is the establishment of the commercial division at the High Court in Accra, the first commercial court in Ghana, and possibly the most significant addition to the judicial service since independence. After decades of political turmoil that had left behind a disrupted court system, the reform not only brought about shorter delays to commercial dispute resolution. It also instilled new spirit in Ghana's justice sector.



**Sandra Cofie in her office**

### **Reform need - Justice in shatters**

In light of Ghana's policy objective of becoming a middle income country by 2020, the state of legal affairs looked dire a mere 10 years ago. Military rule had given way to an emerging democracy only in the 1990s. In 1982, three judges had been murdered, and the following years witnessed a severe lack of judicial personnel and resources. More than half of posts in district courts were vacant, backlog and delays in adjudication persistent. The legal system was a slow, erratic, inconsistent and costly environment, hostile to the effective performance of the judicial function.

Ghanaian businesses suffered: diagnosis of the Commonwealth Secretariat and the World Bank described contract enforcement as generally inadequate. Long delays and corruption made uncertainty in contract enforcement pervasive and posed a major obstacle to doing business in Ghana.

### **Reform initiative – Outside funding**

While in 2002 Ghana had set an agenda for economic growth, centering on good governance and access to justice, the institution of a commercial court did not figure on the government's plan. How was this institution, that would subsequently become highly recognized, created? Acquah, a former lawyer and

judge, initiated the reform in 2003 immediately after being appointed Chief Justice. He knew the system well. Born in 1942, Acquah had received his legal education in Ghana and been practicing as a lawyer until September 1989, when he became a High Court judge, working in the Volta region. He rose to become an Appeal Court judge in June 1994 and a Supreme Court judge the following year.

Lacking government attention and funding, he explored opportunities outside the government's budget. Acquah obtained funding from the Danish government agency Danida, which had supported the Tanzanian Commercial Court in 1999. The Danish Government's good governance and human rights program was already providing 10 million DKK (US\$1.6 million) over a five-year period to a number of justice sector projects in Ghana. Acquah secured an additional grant over 4.7 million DKK from Danida's private sector development, for "the revision of legislation, structural reforms in service delivery and the establishment of a business law division in view of strengthening the responsiveness and efficiency of the legal and judicial environment for businesses in Ghana".

However, DANIDA's disbursement guidelines specified that the money could only be used for updating and equipping existing facilities, not for the construction of new ones. Two court rooms at the Accra High Court were to be computerized and committed to the administration of commercial justice. Yet the grant sum was large enough to build a proper court house, Acquah reckoned. A new building would convey the role model he wanted the commercial court to become. To argue his idea of a new structure, the chief justice traveled to the Danish Parliament, submitting special applications until the parliamentary committees were convinced to agree to his plan. By 2004, he had obtained donor approval to build a three storey, fully equipped, fully automated six-court room complex to house the court.

### Reform recipe – new house, new thinking

As the court house embodied the new beginning, a reform in court practice made for its success. Seeing how court rules functioned in practice and how commercial courts operated in Tanzania, Uganda as well as Denmark and the United Kingdom provided critical input for the regulatory structure. Both Tanzania and Uganda had adopted a commercial court in 1999, and commercial justice in Europe equally was of immediate interest to the delegation of judges and court administrators from Ghana who undertook a study tour of these



existing commercial courts. We were cherry-picking best practices, and doing so could take our own framework to a higher level. I'm proud to say that some of the courts visited now look to Accra for improvement.

With the exception of a number of special rules, the Accra Commercial Court still applies the general High

Court rules of procedures, with many provisions prone to unsanctioned abuse, and delay. Acquah realized that without improved professional standards, the new court would remain an empty shell. His call for legal professionalism was heard, including in the private sector and among expatriate Ghanaians successfully practicing law abroad. A number of talented lawyers were appointed to positions of responsibility. I had been a solicitor of the Supreme Court of England and Wales before becoming the director of the Reform Unit. Leaving behind private sector salaries and confronting the challenge of dilapidated buildings and frequent infrastructure failures is a measure of our dedication to public service. Luckily, I have many like-minded colleagues.

Training of legal personnel was equally important. The Canadian National Judicial Council—one of more than 10 donor organizations supporting public sector reform in Ghana—supported the judicial training facility. Acquah adopted the requirement of continuous professional training and a curriculum of specialized legal and administrative coursework for all judicial personnel. Participation is not mandatory, but we ensure the learning program fits into the judges' working schedules so that no one misses class. A judicial training institute ensures that a rigorous schedule of training for judges and staff is sustained.

### **Reform recipe – court rules and court organization**

The Commercial Division of the High Court, the official name of the commercial court, started operating immediately after President Kufour inaugurated the court in March 2005. Six judges hear disputes of a commercial nature, including banking and finance issues, the restructuring of commercial debt, and intellectual property. The presiding judge acts as the executive and judicial head of the court. In addition to secretaries, a court administrator, a registrar and an accountant, a total of 57 staff assure the daily operations of the court. Six court rooms in Accra are fully computerized, and routinely provide parties with transcripts of proceedings within 72 hours. Its jurisdiction is not restricted territorially, i.e. cases from all over Ghana can be brought before it.

To assure expeditious proceedings, the court introduced a number of special rules. With the aim of having the judge, rather than the parties, conduct the case, these rules encourage active case management. Strict deadlines exist for the trial. From the first hearing, it must be conducted on a day-to-day basis. Adjournments can only be granted for good cause and cannot exceed 72 hours.

Order 58 proved particularly successful: it requires the court to conduct mandatory pre-trial conferences within 30 days of written arguments. Mediation is handled by judges who are trained mediators, who recuse themselves if mediation fails and the case is referred to trial. Mandatory mediation has proven successful in keeping the caseload low: between March 1, 2005 and July 31, 2006, of 403 cases referred to pre-trial conference, more than one in five (86) was resolved there, with 126 still pending. With more than 200 cases being disposed of at trial or with default judgment, this amounts to a clearance rate of more than 40% for the total 665 cases filed within 17 months. The average time to dissolve a commercial dispute, from filing to enforcement of the decision as measured by Doing Business, fell from 552 to 487 days. Factoring in the cases settled at the mediation level, by our assessment, we are able to complete a case at the trial level in about three to six months.

As part of the reforms, the chief justice approved private firms for process service. They are available to the users of the Commercial Court, in addition to serving the Fast Track Court, the Court of Appeals and the Supreme Court, and help assure that the court's effectiveness is not undermined by inefficient bailiff service. Initially a pilot project, private process service is being expanded to other region's high courts. More innovations include quality management through the court administrator, as well as two oversight

bodies. These are called *management* and *users' committee*, and are responsible for maintaining the court's efficient and transparent operations. An industry association represented in the *users' committee* granted the initially scarcely equipped court library law reviews software.

### Reform lesson – an independent chief justice achieves his goal

Success may start with small steps, but Professor Brettel Dawson of the Canadian National Judicial Council says Acquah took the ball and ran, describing how the Chief Justice saw and seized the opportunity of re-building his country's justice system - at a time when commercial justice certainly was no priority for the government. When the rule on mandatory pre-trial conferences was added to the commercial court rules, nobody could predict its success; yet it proved most significant in managing the commercial caseload. The judicial training institute, initially built for the Accra commercial court, now provides training to the entire justice personnel in Ghana.

A key to reform success was adapting foreign models to local circumstances. The Ghanaian legal tradition did not allow laymen to overrule the judge. The current rules allow each commercial judge to be assisted by assessors, who are lay persons, to assist the professional judge, as is the practice in the Tanzanian commercial court. Ghana retained the composition of the bench-one judge and two assessors when the need arises, as in technically complex cases-thus keeping the desired input of business professionals. But it modified the rule to allow the professional judge to overrule the laymen.

In 2005 the judicial service of Ghana under the then newly appointed chief justice established a specialized judicial reform unit. The good work of Chief Justice Acquah, who passed in early 2007, will thus be continued. In June 2006 Acquah had received the Order of the Star of Ghana-his country's highest honor; one year later, his commercial court was bestowed the President's Excellence Award for Public Service. The Commercial Court of Ghana has become a standard for emulation, certainly in the West African sub region.

#### About the Author

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