

GIMPA LAW & ETHICS POLICY PAPER

COVID-19, LEGAL PRACTICE AND ITS IMPLICATIONS FOR JUDICIAL DECISION MAKING

Executive Summary

On Wednesday 6th May 2020, His Lordship Justice Dennis D. Adjei, Justice of the Court of Appeal of Ghana and Honorific Dean of the GIMPA Faculty of Law, delivered via Zoom, the first edition of the GIMPA Law and Ethics Web Series on the theme: *'COVID-19, Legal Practice and its Implications for Judicial Decision Making'*. This session was moderated by Ms. Diana Asonaba Dapaah, Lecturer at the GIMPA Faculty of Law.

The focus of the discussion was on the Coronavirus Pandemic that has thrust change upon all sectors of the economy, including the legal sector; with a resort to technology being the enabler of this change.

The main contention for legal practice and judicial decision making, according to the learned Court of Appeal Justice, is about how the courts can keep to its core mandate in the delivery of justice, whilst protecting the various stakeholders of the justice system.

The recommendation in this policy paper, based on the presentation of His Lordship Justice Dennis Adjei is that there needs to be a gradual and systematic shift to online adjudication of some cases using electronic platforms and internet-based applications (either foreign or locally developed, with appropriate security features).

This will however require the amendment of legislation, subsequent enactment of legislation, and judicial creativity. Online adjudication of cases will achieve the objective of physical distancing to prevent the spread of COVID-19. More importantly, it will allow the courts to continue its work of upholding law and order, even in this coronavirus climate.

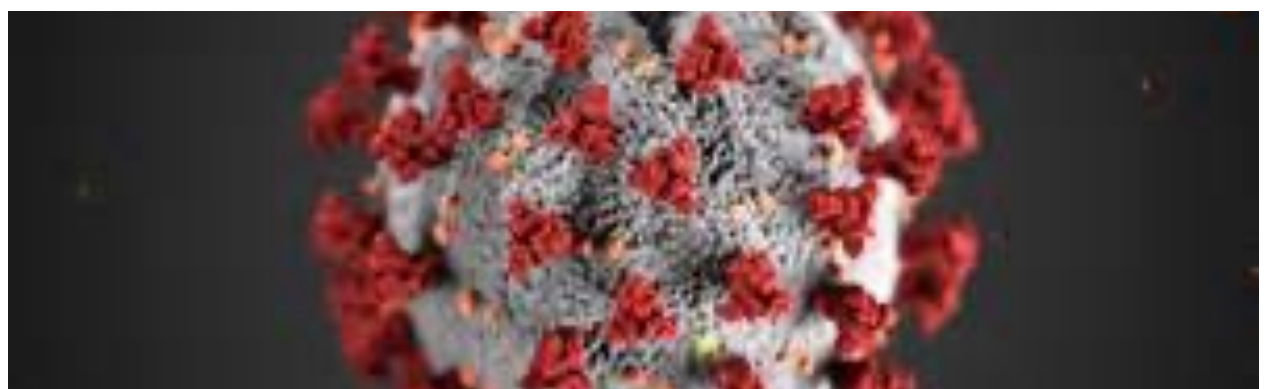
This recommendation is nonetheless beset with several challenges including: transitioning from the traditional methods we are accustomed to, to the new methods; the availability of resources (i.e. computers, secure, stable and fast internet connectivity) to effect this change; bridging the gap between the literate and illiterate population in the country; and maintaining the integrity of the profession in the bid to adapt to the times.



I. Introduction

In the wake of the Coronavirus Global Pandemic and the impact it has had on work requiring personal contact, many industries are adapting to the new realities and taking steps to smoothly transition to remote means of working. In Ghana, the legal profession and the practice of law is one such area that has been affected, with work coming to a standstill following the partial lockdown of parts of the country by the government. Most courts and judges were directed to adjourn all cases to May/June 2020. Some selected courts remained open in the areas of restrictions, with strict health and safety protocols in place, operating a skeletal staff to reduce the risk of transmission. With the lifting of lockdown, it has become necessary for the courts to review their mode of operation, by exploring means of achieving its core mandate of delivering justice, whilst protecting the various

stakeholders of the justice system from contracting or spreading COVID-19. This triggers a number of questions: how can the courts deploy technology for remote work and how sustainable is this; will any of the parties be prejudiced by the court's resort to technology; will this impact judicial decision-making and how? This policy paper recommends that some cases can be heard and adjudicated virtually, using electronic platforms and other means of modern communication. In order for this to happen, there should be amendment of legislation, enactment of subsequent legislation and judicial creativity. The policy paper highlights the challenges of transitioning from the traditional methods to the new methods. The intended outcome of this policy paper is that it generates further discussion on the topic.



GLEPP Editorial Committee

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II. Approach and Results

To reduce human contact in the court room, the following actions should be taken:

- Mode of service should be amended to include service effected via WhatsApp and other e-justice modes of service (*CI currently pending*);
- Proper implementation of several case management interventions introduced by the *High Court (Civil Procedure) (Amendment) Rules 2014, CI 87*;
- Ensure that courts in Ghana are furnished with internet facilities to promote effective case management;
- The courts may give directions for the management of cases, set timetables for directions, trial and case management online;
- Application for directions can be taken online and all other subsequent processes including pre-trial checklist should be deposited with the courts online (Order 32, rule 7A 1(a) & (b)), apart from equipment or metals which should be submitted physically to the courts;
- Internet based video conferencing applications (foreign or locally developed) can be used to hear cases as Order 38, rule 3A of CI 47 now permit the High Court and Circuit Courts to receive evidence through “a video link or by any other means;”
- Where internet facilities can be extended to prisons, cases may be heard through video conferencing applications or any other electronic means; and
- Appeals can also be heard by video conferencing when written permissions and statements of cases have been duly filed. The judge can fix a date for judgment and deliver it online.

III. Challenges

- Jury trials cannot be held online; they may require physical hearings because of issues of credibility;
- Bridging the gap between the rural and urban courts and/or the literate and illiterate population in Ghana regarding access to internet connectivity;
- Financing of e-justice systems (computers, internet facilities, electronic software, judicial training et cetera);
- Enforcement of court orders may be against social distancing policies;
- Cyber security issues; risk of court procedures being accessible to third parties; and
- Implications of COVID-19 for prison sentencing reform i.e. custodial and non-custodial sentences.



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IV. Recommendations

Further amendments ought to be made and other measures taken to facilitate the hearing of cases online:

- Order 36, rule 1 of the High Court (Civil Procedure) Rules, CI 47 which requires parties to attend trial, failure of which will attract a sanction, should be amended to include “*attendance by internet-based video conferencing applications or any other means.*”
 - Order 33 of CI 47 which requires the court to provide a place and mode of trial, should be amended to include any other electronic mode as that court may determine, and not solely a physical place as the court room.
 - Witness statements in both Criminal and Civil cases should be properly regulated to allow all objections to be raised at the case management or pre-trial review stages. (Section 6 of the Evidence Act, 1975 (NRCD 323) should therefore be amended as it defeats the case management practice in both Civil and Criminal trials).
 - Court rooms should be fitted with internet facilities to effect electronic justice (e-justice)
 - The e-justice system adopted by the courts should be practice friendly, so that they can deliver their core mandate, and protect their staff.
 - Amendments should be made to CI 47 to require that a statement of case is added to every application on the hearing date. The matter can subsequently be determined online by a judge and the ruling delivered likewise.
 - *Section 69 of the Courts Act 1993, (Act 459)* could either be amended or interpreted to include modes of recording by internet-based video conferencing applications and any other means – which could serve as recorded evidence to be transcribed by the Courts;
 - Section 70 of the Courts Act ought to be amended – access to court records by persons affected by a judgment or court order should be made available online.
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V. Conclusion

The Coronavirus Pandemic has exposed the underlying problems of the legal system in Ghana.

There is therefore the need for the legal system to rise to the challenges posed by the pandemic and provide innovative solutions by deploying technology in its normal endeavours. Some of these innovative solutions include dealing with cases virtually.

In transitioning from the traditional methods to the new methods, sight must not be lost of the ethics of the profession. Stakeholders of the justice system should hold honesty and integrity in high esteem so that the technology will develop. Despite the impact of COVID-19, every institution must continue to work. Therefore, where institutions can observe physical distance to achieve the purpose of their work, they should do so.

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