

**SPEECH BY THE DEPUTY ATTORNEY GENERAL AT THE 2015 ANNUAL
CONFERENCE OF THE GHANA BAR ASSOCIATION- KUMASI**

Protocols:

- **The Asantehene, Otumfuo Osei Tutu II**
- **His Excellency President John Agyekum Kuffour**
- **Her Ladyship the Chief Justice of the Republic**
- **My Lords Temporal and Spiritual**
- **The President of the Ghana Bar Association**
- **The Honourable Regional Minister**
- **Honourable Ministers and Deputy Ministers of State present**
- **Honourable Members of Parliament**
- **My Learned Friends**
- **Distinguished Ladies and Gentlemen:**

It is with great pleasure that I take the opportunity to address you this morning on the occasion of the Annual Conference of the Bar. I am under instruction to send you fraternal greetings from the Honourable Attorney General who is on an important state assignment out of the country and has graciously asked me to deputize for her.

Even though the Honourable Attorney General asked me to speak on her behalf, she was again gracious enough to grant me the license to speak my mind on the theme of this Conference, which is “The Rule of Law, Access to Justice and Sustainable Development- the Panacea to Political and Economic Progress of a Nation State.” I am grateful to her and to God for the opportunity. And God knows I am about to speak my mind.

Distinguished Ladies and Gentlemen:

I will first attempt to deconstruct the three components of the theme of this Conference and then proceed to deal with the

practical implications of the interconnection between them in three areas of the life of the Bar. These are judicial independence and integrity, professional integrity and ethics at the Bar and professional legal education and its role in promoting the realization of the ideals of the rule of law and access to justice.

We are a country of laws and not of men (or women). So when we choose to discuss the concept of the rule of law at a Conference like this one, it is not simply to remind ourselves of this obvious truth but also to take stock of how far we are from the ideal state. And what I have said is true of all constitutional democracies in the world, including the ones that we see as model political societies. In each constitutional democracy, the distance between theory and practice continues to widen. But that should not be too much of a source of concern because it only shows that as human societies, our quest for the ideal state is a continual one.

Distinguished Ladies and Gentlemen:

The intellectual pedigree of the concept of the rule of law dates back to ancient Greek political thought. Plato once said that:

“Where the law is subject to some other authority and has none of its own, the collapse of the state, in my view, is not far off; but if the law is the master of the government and the government is its slave, then the situation is full of promise and men enjoy all the blessings the gods shower on a state.”

In *Politics*, Book III, circa 1289, at page 78, Aristotle opines as follows on the rule of law:

“Now, absolute monarchy, or the arbitrary rule of a sovereign over all citizens, in a city which consists of equals, is thought by some to be quite contrary to

nature;...That is why it is thought to be just that among equals everyone be ruled as well as rule, and therefore that all should have their turn. And the rule of law, it is argued, is preferable to that of any individual. On the same principle, even if it be better for certain individuals to govern, they should be made only guardians and ministers of the law....Therefore he who bids the law rule may be deemed to bid God and Reason alone rule, but he who bids man rule adds an element of the beast; for desire is a wild beast, and passion perverts the minds of rulers, even when they are the best of men. The law is reason unaffected by desire."

So even from its rudimentary origins in ancient Greek philosophy, the important elements of the concept of the rule of law begun to take shape. One such key element is the supremacy of law, a concept that we are all too familiar with given our current propensity to engage in constitutional litigation with a view to asserting the supremacy of our Constitution.

Distinguished Ladies and Gentlemen:

In modern theoretical thought, the rule of law may be said to exist in a society which has an independent judiciary with the power of judicial review of executive, legislative and administrative action; where citizens enjoy equality before the law and have access to the justice system for the vindication of their rights.

Thus, access to justice, one of the subthemes of this Conference, is considered to be an essential component of the rule of law. In broad terms, access to justice entails the provision of institutionalized mechanisms for the vindication and protection of rights and the enforcement of legal obligations, private and public. These include courts, administrative tribunals and professional legal services. The services of these institutions may

be provided free of charge or at a non-prohibitive fee. Poverty and economic want generally can serve as barriers to access to justice even in a society governed by laws. So state or public intervention is often called for in order to make the justice system generally accessible. Indeed, article 37(1) of the Constitution places a duty on the state to ensure that every citizen has equality of rights, obligations and opportunities before the law.

Sustainable development, on the other hand, is not necessarily a component of the concept of the rule of law. In other words, a society can have the rule of law without sustainable development and vice versa. Just think of China, for example and one can appreciate the empirical disconnect between the rule of law as understood in a liberal democracy such as ours and sustainable development. I am sure some would argue that China's development is not sustainable because it does not fit the classical definition of sustainable development as "development which meets the needs of the present without compromising the ability of future generations to meet their own needs." This is known as the problem of intergenerational equity.

However, I can assert without fear of contradiction that a rule-based society is more likely to be in a position to constrain unsustainable economic and social activities conducted in the name of development than the other way round. In other words, sound legal policy that is strictly enforced can ensure the realization of the goal of intergenerational equity.

Distinguished Ladies and Gentlemen:

What does this all mean in practical terms and, in particular, in relation to the theme of our Conference? As stated above, I would want to share my thoughts on the theme by focusing on three practical areas of the life of the Bar- judicial independence and integrity, professional integrity and ethics at the Bar and the role of professional legal education in promoting the rule of law and access to justice.

Judicial Independence and Integrity

An independent judiciary is an inevitable part of the rule of law. Amongst the three coequal branches of government, it is the distinct and sacrosanct constitutional duty of the judicial branch to say what the law is and to ensure adherence to the law by the political branches. This cannot happen unless the judiciary has integrity. My sense of judicial integrity is a very simple one and it is taken from article 45 of Magna Carta, which states as follows:

“We will appoint as justices, constables, sheriffs, or bailiffs only such as know the law of the realm and mean to observe it well.”

Consequently, it is not sufficient to know the law of the realm; a person appointed to administer the law must also commit to observing the law. Observing the law well is what I mean by judicial integrity. A judge who means to observe the law well will appreciate an excellent brief written and filed by counsel and will not look the other way and give a ruling unsupported by sound legal reasoning. Unfortunately, and at the risk of generalizing too much, it appears to me that with the exception of the Supreme Court and, to some extent, the Court of Appeal, good legal arguments no longer count before our courts. So what explains this development? Well, your guess is as good as mine- it is either that the judges are lazy or they are corrupted by influences other than the law.

Your Ladyship, the Chief Justice, in order to restore judicial integrity, where it is lacking, in this simplistic or rudimentary form, I have a proposition. And it is this: I propose that you make it compulsory that every morning, before your judges and court staff begin work, they recite article 40 of the Magna Carta which reads as follows:

“To no one will we sell, to no one will we refuse or delay right or justice.”

If any judge, registrar, court clerk or bailiff does not agree to abide by this principle, then they should either resign or apply the proper rules of auction so that the market would determine the most efficient price to pay.

The rule of law and access to justice cannot flourish in our society if those who man our judicial system lack moral and ethical integrity. As Chaucer put it in the famous Canterbury Tales: “If gold rust what shall the iron do?” The rule of law in the hands of a perverse judiciary is a dangerous weapon. As Tamanaha has pointed out in his book *On the Rule of Law: History, Politics, Theory* (2004):

“Like the knife, which is neither good nor bad in itself, but can be used to kill a man or to slice vegetables, the morality of law is a function of the uses to which it is put. The rule of law in the service of an immoral legal regime would be immoral.”

My proposition is made in good faith and should never be construed as an attack on the integrity of the judiciary. Indeed, the Attorney General has the constitutional role of defending state institutions, including the judiciary and should be the last person to be perceived to be attacking the judiciary. But, as a nation, we need to engage in regular self-introspection and occasions such as this Conference provide us the opportunity to do so.

Professional Integrity and Ethics at the Bar

Distinguished Ladies and Gentlemen: what about the lawyers?

In Shakespeare's Henry IV, Part 2, a character called Dick declares and I quote: "The first thing we do, let's kill all the lawyers." This is set against the background of a revolution. Whilst some commentators interpret this statement as a recognition of the role that lawyers can play in restoring constitutional rule after a revolution, others see it as a statement of the revulsion of ordinary people against the conduct of lawyers in the society.

My conception of judicial integrity applies with equal force to integrity in professional lawyering. A lawyer with integrity must play by the rules of the game because that is what promotes the rule of law and access to justice. Obedience to law must come as second nature to a person nurtured in the law. And lawyers undoubtedly have a critical role to play in promoting the rule of law and ensuring equal access to justice by ordinary citizens.

Judges, human as they are, cannot be faulted for not obeying the law when lawyers behave unethically by approaching judges in their houses and in chambers rather than in open court and with influences other than excellent legal briefs. Judges cannot be faulted for not appreciating excellent legal briefs if the lawyers on both are themselves not interested in competing to put forward sound legal arguments before the court but are rather keen on using other means to achieve their end of serving the best interest of their clients.

Mr. President, the anecdotal evidence abound of lack of integrity at the Bar. Just as in the case of judges, there are good lawyers amongst us who would not bend the rules in order to attain their ends. But we rarely hear of punishment for those who behave unethically.

Ethical lawyering has propitious effects on the society as a whole. First of all, it deepens trust in the judicial system and citizens engaged in economic and social activities can rest assured that when disputes arise from their engagements, they can obtain fair treatment before the justice system through

lawyers who play by the rules. Secondly, it promotes judicial integrity because when the lawyers on both sides stick to the rules, judges cannot engage in corrupt practices unless they decide to deal with clients directly (which I am told sometimes happen).

Professional Legal Education

Distinguished Ladies and Gentlemen:

Every generation reproduces itself and we the current generation of lawyers must reproduce ourselves so that the legal profession can continue to exist and flourish in Ghana in aid of the rule of law. And we can only do so through legal education and particularly professional legal education.

Professional legal education in Ghana is at the cross roads after several decades since the establishment of the Ghana School of Law. The model of professional certification that that institution represents is out of tune with the realities of modern Ghana, especially the demands of the market for legal services. Yet the model continues to be operated despite the writings on the wall. With all due respect, this is leading us as a country and as a profession down the wrong path. We have, in simple terms, taken the wrong turn at the cross roads just like we have done several times in our life as a country. But there is still time for us to get it right. My hope is that what I am going to say here today would generate some discourse in the public sphere and within professional circles as well as the academia and prompt decision-makers to start thinking about reforms that could avert an immanent crisis.

The Ghana School of Law was established by an act of Parliament as a public institution to provide professional legal education to aspiring lawyers. Its mandate, the basis for admitting students and the criteria for certifying students who have duly qualified to be called to the Bar are clearly stated in

the Legal Profession Act. The governance of the School is entrusted into the hands of the General Legal Council and its subsidiary body, the Board of Legal Education. These two bodies comprise eminent fellows of the professional and academic legal establishment- judges, lawyers and deans of law faculties. To say these fellows, including my good self, can get it wrong is almost like committing apostasy; but that is precisely what I intend to do. I intend to commit apostasy, hopefully, for the public good.

Distinguished Ladies and Gentlemen:

The Ghana Law School is today faced with a myriad of problems that cannot be adequately covered both in terms of scope and depth in a Conference address. I will therefore attempt to deal with the one problem that I consider as deserving of priority in order to avert an implosion. The most significant problem facing the School today is its inability to absorb the growing number of students who otherwise qualify for admission in accordance with the criteria set out in the Legal Profession Act. Under the Act (and its regulations), a student qualifies for admission to the professional program once that student has obtained a Bachelor of Laws (LLB) degree and passed in a number of subjects considered as core (constitutional law, legal systems and methods, land law etc). No other criterion is required for admission. In the past, most or all of the students came from the Faculty of Law, University of Ghana which had made it a point to graduate only sixty odd students annually, increasing the number to about eighty odd students from the year 2000. Over time a number of feeder institutions have been created, the most significant one being the Faculty of Law of the Kwame Nkrumah University of Science and Technology.

Besides the University of Ghana and KNUST Law Faculty, we now have Mountcrest College, the University of Cape Coast and Central University College. There is also a growing number of students seeking admission to the Law School having obtained

their LLB degrees from other common law jurisdictions including the United Kingdom, the United States of America, South Africa, Australia, India and Nigeria, to name but a few. To say the least, the influx from all the feeder institutions is literally a torrent, threatening to overflow the banks of the Law School whose infrastructural capacity has remained almost at its 1957 levels. In short, the Law School does not currently have the capacity to absorb and train all the students who otherwise qualify for admission.

The problem of capacity has been caused by the inability of the General Legal Council, the Board of Legal Education and the Ghana Bar Association to anticipate and plan for the growing demand for professional legal education; that demand, it may be argued, mirrors the demand for legal services in the country (whether real or nominal). To take but one example, in 2007 the number of candidates that sat the post-graduate LLB entrance examination at the Law Faculty, University of Ghana, stood at 450; in 2008 that number jumped to over 700, almost a 100% increase. The factors that fuel the demand for legal education (and for legal services) are beyond the scope of this speech. Suffice it to say that growth of the middle class (or even the desire to be part of the middle class), the rising prestige of lawyering in a democratic environment with almost every political issue becoming a legal issue as well as the job opportunities open to lawyers in the private and public sectors are among the most obvious reasons for the rising demand for legal education.

Distinguished Ladies and Gentlemen:

To repeat what I said earlier, strong adherence to the principles of the rule of law and the expansion of access to justice cannot thrive without literally having an army of legal professionals. We can expand capacity without compromising on quality. And tell me this: how can a student with a Second Class Degree from the

Faculty of Law, University of Ghana, be roaming the streets of this country without professional legal education so she can be called to the Bar? The professors who taught me are the same professors who continue to teach these students and if I didn't need to write an examination and attend an interview to enter the Law School, why are we inflicting this burden on the younger generation? Why are we introducing extra-statutory criteria for access to professional legal education because of the problem of capacity?

My fellow Countrymen and women:

Most Common Law jurisdictions, such as the United States of America, do not have law schools modeled like our own for Bar examinations, yet they have some of the smartest lawyers on earth. Here in Ghana, the accountants do not have a Ghana School of Accountancy and yet they have a national professional accountancy examination to produce accountants. So why not the law? Why keep our young people away from aspiring to be like us?

My proposed solution lies in the question just posed about the accountants. Let us think out of the box before implosion takes place.

God bless you all.

God bless our homeland Ghana.

And may He make our nation great and strong.

Thank you.