

Policy Brief

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**Access to Justice and Legal Aid in Ghana;
Exploring the Role of Legal Aid Commission**

USAID Justice Sector Support Activity

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Executive Summary

Access to justice is a prerequisite for the full enjoyment of rights. However, the goal of ensuring that the Ghanaian justice system is structured and administered in a manner that equips people with the knowledge, resources, and services they require to address their legal problems has remained elusive. In Ghana, the Legal Aid Commission (LAC) is charged with the mandate to ensure that citizens especially the poor, vulnerable and marginalized, have equal access to justice and are treated equally by the law through the provision of legal aid services. To this effect, in 2012, member states of the United Nations acknowledged the importance of legal aid in terms of increasing access to justice. However, the operations of the Legal Aid Commission have been hampered, negatively affecting its efficient and smooth running. The challenges include unavailability of lawyers to provide legal services, infrastructure deficits, lower quality of service delivered to pro bono clients as compared to paying clients and the unwillingness of private legal practitioners to take on pro bono cases. As a result, the LAC has been unable to accommodate increase in cases due to inadequate staffing and administrative structures such as offices. For instance, in the year 2020, the Commission received 9,133 cases under the Alternative Dispute Resolution (ADR) mechanism, out of which 5,535 were resolved, while 3,598 were pending. It also received in the same year, 2,456 court cases, out of which 1,115 were resolved, with 1,341 pending. Currently, out of the 261 Metropolitan, Municipal and District Assemblies (MMDAs) in Ghana, the Commission has offices in only 42 MMDAs, representing only 16%.

A number of law offenders go to prison because there is no lawyer to represent them and/or they are unable to afford the services of a lawyer to defend them, no matter how minor or petty their offence. Hence, access to legal aid services is very pivotal to Ghana's efforts to promote the administration of justice and thus its democratic consolidation process. Available data as at 17th June, 2022 suggests that Ghana had a total of 4,199 lawyers in good standing. However, as at June 2021 the Legal Aid Commission had only 35 lawyers to render legal services to over 30 million Ghanaians. The implication of this gap is that the demand for legal aid services far outweighs supply, and this gravely undermines the fundamental principles of efficiency and equity - pillars for a strong legal aid. To enhance access to justice, affordability and efficiency in the delivery of legal aid services in Ghana, the Government should establish Legal Aid offices in all districts of Ghana. The Government should employ new lawyers for the Commission and make their conditions of service very attractive. It is recommended that at least every region of Ghana should have a minimum of 10 lawyers working for the Commission so as to meet the legal demands of Ghana's growing population. Additionally, the State should introduce regulations to ensure all lawyers provide pro bono services as a requirement to renewing their legal license. The State should also integrate paralegals in criminal justice delivery to enable the Legal Aid Commission use ADR to handle minor offences.

Introduction, Background and Context

Social vulnerability and exclusion include the elementary ingredients that deprive individuals of essential capabilities necessary to achieve minimum functioning within their society and to live the lives they value. One of such elementary capabilities is access to justice, a basic principle of the rule of law and a fundamental human and democratic right of every individual irrespective of their background. The concept of access to justice for all citizens has long been recognized as a cornerstone of democracy, good governance, effective and equitable development. This resonates with the United Nations' Sustainable Development Goal 16 (SDG16), which calls for all nations to "promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels" [1].

According to the 1992 Constitution of Ghana, access to justice is a basic human right. It is described broadly as the ability of citizens to “seek and obtain remedies” [2] and to “prevent the abuse of their rights and obtain remedies when such rights are abused” [3]. The provision of access to justice requires putting in place certain mechanisms, structures and frameworks necessary to ensure that appropriate structures are laid for the intended purpose. These include having a sound, accessible and comprehensible state and non-state legislative framework that protects citizens’ and is affordable to the ordinary citizen.

Further, access to justice requires that access to the court system and to legal counsel is available, less cumbersome, timely, easily accessible and affordable especially to ordinary citizens to facilitate confidence that the laws are fairly and effectively applied to ensure resolution of the cases.

These conditions are often evaluated through expert assessments. However, the perspectives of ordinary citizens, including the actual users of the legal system and the general public, can shed critical light on the extent to which people enjoy access to justice. Critical questions requiring answers include the following;

- Do ordinary citizens use the legal system to resolve disputes, or do they avoid it?
- Do they have confidence in court decisions, and in their own ability to secure just outcomes?
- Can they obtain the legal advice they need, and afford to pursue a case?
- And when they do go to court, what are their experiences?
- Are women, the poor, or marginalized groups treated differently than men or wealthy elites?
- Does the ordinary citizen have access to a legal counsel especially from the institutions of State including the Government sponsored Legal Aid Commission?

In Ghana, state institutions including Ghana Police Service, National Commission for Civic Education, Commission on Human Rights and Administrative Justice, Legal Aid Commission, etc. are by legislation entrusted with the mandate to offer varied justice support services to the citizenry. Non-state institutions such as civil society organizations in the justice delivery chain including human rights non-governmental Organizations such as the Legal Resources Centre, Commonwealth Human Rights Initiative, Human Rights Advocacy Centre among others complement the afore-mentioned institutions of state in the provision of varied legal support services.

Legal aid is a free or minimum legal service provided for the socially and economically disadvantaged, who are unable to afford the full cost of legal service but require it to obtain equal access to justice. It is a medium through which people can claim their basic human rights within the justice system and get their legal matters resolved [4]. There are various legal aid service providers such as government, civil society organizations, international donors, universities, law clinics, legal professional associations, paralegals and other informal justice systems [5].

In Ghana, legal aid provisions are highlighted in Article 294 of the 1992 Constitution, the Courts Act 1993, (Act 459), and the Ghana Shared Growth Development Agenda. Article 294 (2) of the Constitution states that ‘Parliament shall regulate the grant of legal aid’ and clause (4) of the said article indicates that legal aid shall consist of representation by a lawyer, including all such assistance as shall be provided by a lawyer [6]. Section 114 (1) of the Courts Act states (1) The Supreme Court, the Court of Appeal, the High Court or Regional Tribunal may assign a lawyer by way of legal aid to any party, to any proceedings before the Court or Tribunal where the Court or Tribunal is of the opinion that it is desirable in the interest of justice that the party should have legal aid and that he is financially unable to obtain the services of a lawyer. (2) A Circuit Court, a District or Community Tribunal may also with the prior approval of the Chief Justice unless otherwise provided in this Act assign a lawyer by way of legal aid to any party in any proceedings before the Court or Tribunal where it appears to the Court or Tribunal desirable in the interest of justice that the party should have legal aid and that he has not

sufficient means to enable him to obtain the services of a lawyer. The Ghana Shared Growth Development Agenda 2014 – 2017, outlined policy interventions to enhance the legal aid system in making some services free through Alternative Dispute Resolution (ADR) and to promote access to rights and entitlements [7].

Despite the existence and mandate of these state institutions, they are faced with myriad of challenges militating against citizens' access to varied justice sector services. Access to legal counsel continues to be an expensive enterprise for the citizenry, especially the vulnerable and marginalized in society. It is worthy to note that recently the Ghana Bar Association (GBA), the umbrella body of lawyers in Ghana, increased by 100% legal fees charged by lawyers, via a circular issued to its members in April, 2022. Meanwhile, Legal Aid Commission, the state-sponsored institution charged with the mandate to ensure that all citizens have equal access to justice and equal treatment before the law have dearth of lawyers to fulfill its mandate effectively. A key function of Legal Aid Commission is to provide legal aid in fulfilment of Article 294 (2) of the 1992 Constitution.

The Legal Aid Commission has a three-pronged mandate to defend the public by (providing free legal services for those who require it); advise the citizenry on legal issues and provide ADR services for the public. This brief assesses access to justice and legal aid services in Ghana with the spotlight on the contribution of the Legal Aid Commission.

Description of the Problem

Over the years, access to justice has been a challenge for the poor and marginalized due to the cost involved in accessing varied legal services. According to the 2016 United Nations Development Programme report, this necessitates the recognition of the need for legal aid in improving access to justice for the poor, marginalized, excluded and impoverished groups in society [8]. That is, it is reasonable that legal aid schemes are established to aid the poor and vulnerable groups in society access legal services as a fundamental right especially in periods of rights abuse or violation thereby reducing social injustice [9].

In addition to the above, there are also state-sanctioned legal aid services such as legal advice and legal representation. Gaining its institutional autonomy in 2018, the National Legal Aid Commission was set up as a public service organization to offer legal aid to socially and financially disadvantaged persons. It offers access to both lawyer and non-lawyer solutions in civil and criminal matters. The Legal Aid Commission Act, 2018 (Act 977) is the statutory regime regulating its operation. The Legal Aid Commission also has a Legal Aid Board in place with the mandate of making policy decisions and supervising the implementation of interventions including mechanisms for delivering legal aid using public defenders, paralegals and lawyers. These services of the Commission are expected to be made available, affordable and accessible to the citizenry especially the poor and marginalized in society.

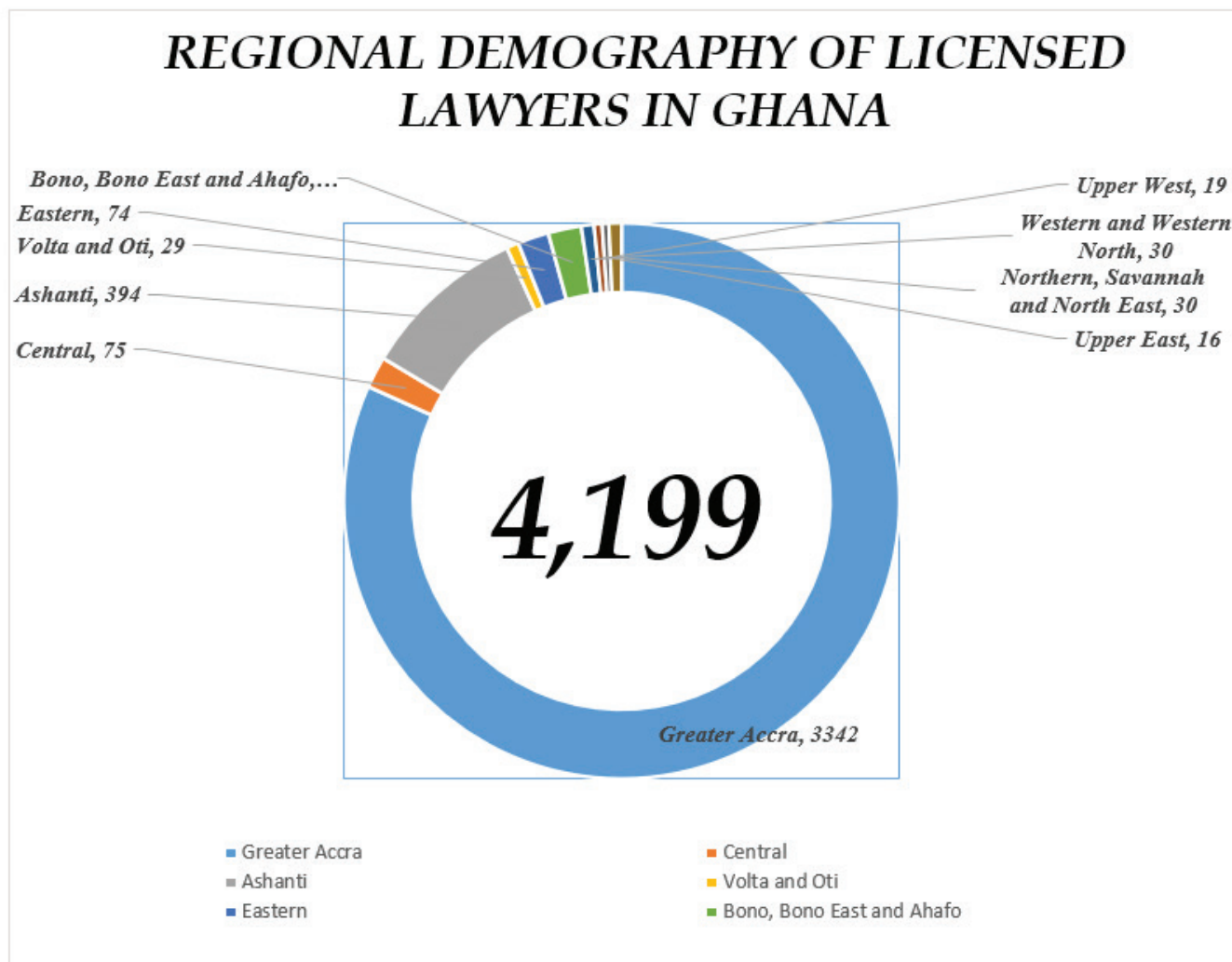
However, the Commission is fraught with challenges which affect its capacity in terms of human resource, infrastructure and logistical constraints. The challenges in providing legal aid in Ghana are mainly as a result of the general dearth of lawyers in Ghana and the state's lack of commitment to provide funding to attract and retain lawyers to provide legal aid services. Persons who are unable to afford legal services do not receive the same quality of service as paying clients would receive while private legal practitioners are unwilling to take on pro bono cases. Parliament has also not enacted the required Legislative Instrument (LI) to operationalise Section 114 of the Courts Act (Court-assisted legal aid scheme). The Commission is also unable to accommodate increase in cases due to inadequate staffing and administrative structures such as offices. For instance, in the year 2020, the Commission received 9,133 cases under the ADR mechanism, out of which 5,535 were resolved,

while 3,598 were pending. For court cases, it received 2,456, out of which 1,115 were resolved, with 1,341 representing 55% pending within the same year. At present, out of the 261 Metropolitan, Municipal and District Assemblies (MMDAs) in Ghana, the Commission has offices in only 42 MMDAs [10].

Some people go to prison because they have nobody to defend them and or, because they cannot afford legal services. Hence, access to legal aid services is very pivotal in Ghana’s human rights set up and democratic consolidation. However, the Courts are situated far from the people and the high cost of accessing justice, legal aid services and lawyer unavailability have made legal processes very cumbersome and discouraging to the ordinary Ghanaian, especially the poor [11]. The Legal Aid Commission has a dearth of lawyers working for it. [12].

The Government has made pledges to resource the Commission. However, very little has been done to redeem such pledges [13] despite the myriad of challenges including the dearth of lawyers working for the Commission. This negatively affects the efficient and smooth operation of the Commission as reflected in the charts below showing breakdown of regional demography of licensed lawyers and lawyers working for the Legal Aid Commission in Ghana.

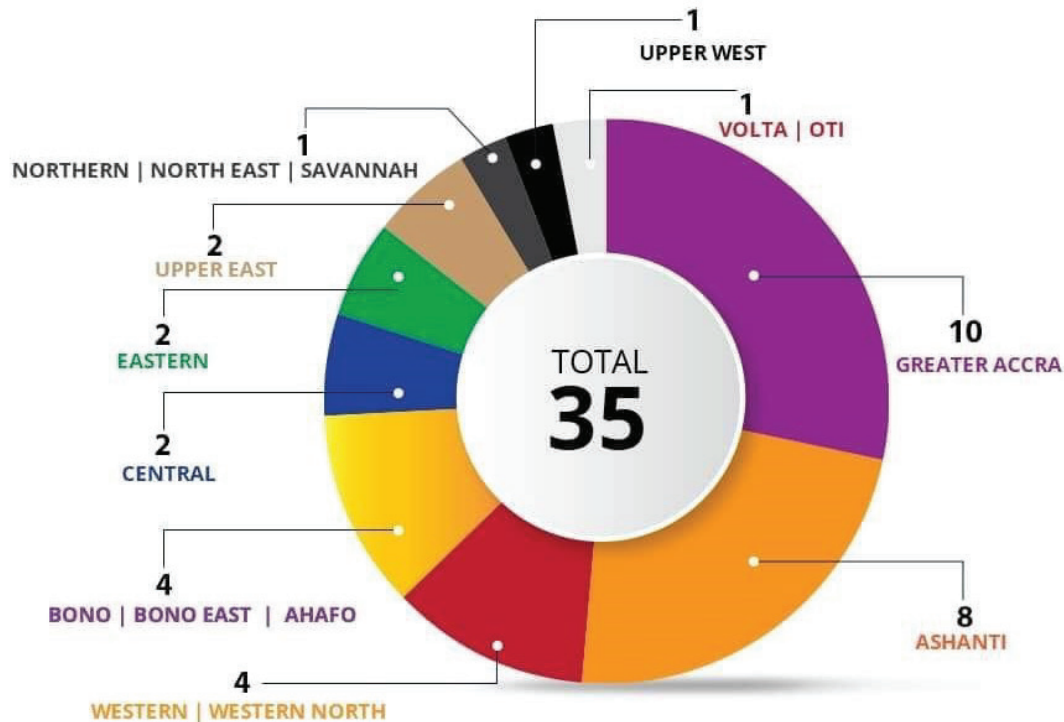
Figure 1: Regional Demography Of Licensed Lawyers In Ghana As At June 2022



Source: DENNISLAW AS AT 17TH JUNE, 2022

Figure 2: Regional Demography Of Lawyers Working for Legal Aid Commission In Ghana As At June 2021

REGIONAL DEMOGRAPHY OF LAWYERS WORKING FOR LEGAL AID COMMISSION IN GHANA



SOURCE: LEGAL AID COMMISSION AS AT 19TH JUNE 2021



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Given that Ghana had a total of 4,199 lawyers in good standing as at 17th June, 2022 as figure 1 shows, the Commission had only 35 lawyers (as at 19th June, 2021) working for it across the country, while its services are expected to serve Ghana’s population of over 30 million [14] [15]. This means that the demand for legal aid services far outweighs supply, and this challenge gravely inhibits the fundamental principles of efficiency and equity on which every legal aid scheme draws its strength from.

Meanwhile, only about half of the people who apply for legal aid services offered by the Commission are able to access it due to inadequate staffing at the Commission. It requires about 100 lawyers in the medium term to augment its operational staff to handle cases brought to it, a major challenge to the work of the Commission [16]. As figure 2 indicates, the whole of the Northern, North East and Savannah regions have only one Legal Aid lawyer to offer varied legal support services to persons who require legal aid services in these regions. Similarly, Upper West and Volta/Oti regions each has one Legal Aid lawyer expected to provide legal services to these regions. This overtly highlights the “denial” of citizens’ constitutional right to access legal aid services, given that these lawyers are overwhelmed with numerous cases that their strength, might and capacity could accommodate.

Even though the new Legal Aid Commission Act, 2018 (Act 977) provides for the set-up of new divisions being Citizens Advisory Division, Public Defenders Division and Alternative Dispute Resolution Division intended to provide a steady mechanism of a comprehensive legal assistance to citizens in all cases, it further provides a framework for the Commission to enter into agreement with persons who perform services similar to the Commission outside the country for the provision of legal aid to Ghanaian citizens abroad. To achieve this feat, it is argued that critical attention and focus must first be geared towards the provision of legal aid and access to justice to especially persons who require such services within this jurisdiction.

Policy Recommendations

To enhance access to justice, affordability and efficiency in the delivery of legal aid services in Ghana, the following recommendations are proffered to enhance effective justice delivery;

1. There is the need for the Government to establish Legal Aid offices in all districts of Ghana. In the short to medium term, the districts where there are no Legal Aid Commission offices, the District Assemblies should make available office space conducive for use by the Legal Aid Commission. This will make the services of the Legal Aid Commission much more accessible, affordable and available to the poor and vulnerable especially in the hard-to-reach communities.
2. To minimize the myriad of challenges confronting the Commission, the Government through the Ministry of Finance should resource the Commission by providing infrastructure, logistical and human resource to make LAC's services accessible, available and affordable to persons who require same as constitutionally mandated.
3. As the Commission has very few lawyers working for it, the Government through the Ministry of Justice and Attorney-General's Department and the Ministry of Finance are entreated to employ new lawyers and to make their working environment and conditions of service attractive to enable them render the required varied legal aid services in fulfilment of the constitutional injunction. It is recommended that at least every region of Ghana should have a minimum of 10 lawyers working for the Commission so as to meet the legal demands of Ghana's growing population.
4. There is the need to create legal aid zones and mobile legal aid clinics to interface with the public to solve their legal needs. The Legal Aid Commission Board, Ministry of Justice and Attorney-General's Department should liaise with the Ministry of Finance and development partners to make funds available to initiate the creation of several zones and mobile legal aid clinics in all the 16 regions of Ghana. These zones and clinics should be sited strategically to ensure that persons who require the services of the Commission are not left out of the justice process.
5. The Legal Aid Commission should make good use of the Ghana Case Tracking System, an electronic tracking system in enhancing justice delivery. This will ensure effective tracking of both criminal and civil cases at all its offices across the country to ensure clients achieve meaningful justice.
6. In ensuring that the poor, vulnerable and socially excluded in society access justice without recourse to militating factors like cost, it is proposed that regulations be enacted urging legal practitioners to offer pro-bono legal services by handling at least a minimum of five cases annually. To this end, the Ghana Bar Association

should develop a software system to track how pro-bono services are being rendered by lawyers before renewal of the yearly solicitors' license.

7. Paralegal concepts should also be institutionalised and formalized. This will complement the work of the ADR officers to enable extensive reach. This should have nation-wide coverage and personnel should be existing staff in District, Municipal and Metropolitan Assemblies.

8. The Government through the Ministry of Justice and Attorney General's Department and the Legal Aid Commission Board should ensure the immediate establishment of the Legal Aid Fund (LAF) to support indigent persons in the society. Once established, the Board should develop innovative ways of ensuring that sufficient contributions, donations, and grants including seed money from the Government are made to the fund for the smooth discharge of the object of the Commission in ensuring its financial capacity in fulfilment of sections 31-32 of Act 977.

9. The Ministry of Justice and Attorney-General's Department should liaise with Parliament for the legislative body to enact Regulations to operationalize the Court-assisted legal aid scheme as provided by statutes in Section 114 of the Courts Act.

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