

**IN THE FOURTH SESSION OF
THE SIXTH PARLIAMENT OF
THE FOURTH REPUBLIC OF GHANA**



**REPORT OF THE JOINT COMMITTEE ON
CONSTITUTIONAL, LEGAL AND
PARLIAMENTARY AFFAIRS & HEALTH
ON THE**

GHANA AIDS COMMISSION BILL, 2015

JUNE 2016

Acc No: 1594 C2

Class No: BR/GAC/15

PARLIAMENT OF GHANA LIBRARY

1.0 INTRODUCTION

- 1.1 The **Ghana AIDS Commission Bill, 2015** was presented to Parliament and read the first time on **Tuesday, 30th June, 2015**. In accordance with Article 106(4) and (5) of the Constitution and Order 178 and 179 of the Standing Orders of the House, the Rt. Hon. Speaker referred the Bill to the Joint Committee on Constitutional, Legal and Parliamentary Affairs & Health for consideration and report.
- 1.2 The Committee had in attendance at its Meetings, the Director-General of the Ghana AIDS Commission (GAC), Dr. Angela El-Adas and her Officials. Also in attendance were Officials from the Legislative Drafting Division of the Ministry of Justice and Attorney-General's Department.
- 1.3 The Committee also met with Officials of the National Insurance Commission and the Ghana Insurers Association.

2.0 REFERENCE

- 2.1 The Committee referred to the following Documents during its deliberations.
- i. The 1992 Constitution
 - ii. The Standing Orders of Parliament

- iii. The Ghana AIDS Commission Act, 2002 (Act 613)
- iv. The National HIV and AIDS, Sexually Transmitted Infections (STI) Policy (2013)

3.0 BACKGROUND

3.1 The Human Immuno Deficiency Virus (HIV)/Acquired Immune Deficiency Syndrome (AIDS) was first detected in Ghana in 1986 and later became an epidemic. In an attempt to curb the epidemic, the Government of Ghana established a sentinel surveillance team within the Ministry of Health to provide assistance in the area of awareness creation, preventive measures, treatment and the like. Despite the intervention, the epidemic went beyond a health concern and metamorphosed into a grave developmental issue. It therefore became necessary to establish a supra-ministerial and multi-sectoral body to deal with the situation. Hence, the enactment of the Ghana AIDS Commission Act, 2002 (Act 613).

3.2 The GAC was ultimately given the mandate to formulate a policy for the National response to HIV/AIDS; develop and manage programmes for the implementation of the policy; and monitor and evaluate the policy. The Commission was also mandated to mobilise and manage

resources and foster linkages among stakeholders such as the Ministries, Departments and Agencies, the private sector, civil society organisations and donor partners and coordinate all their activities towards the National response to HIV/AIDS. The GAC is therefore the highest policy-making body responsible for the provision of support, guidance and leadership in high level advocacy for HIV prevention and control.

- 3.3 The Ghana AIDS Commission Act, 2002 (Act 613) which has been a key Government intervention, has now become inadequate in dealing with the situation due to changing circumstances. It has therefore become imperative to review the Law in conformity with modern trends.

4.0 OBJECT OF THE BILL

- 4.1 The Bill seeks to repeal and replace the Ghana AIDS Commission Act, 2002 (Act 613) to address the inadequacy in the existing Law. For this purpose, new provisions have been introduced in the Bill to protect the rights of people living with HIV/AIDS, establish the National HIV/AIDS Fund and deal with related matters.

5.0 OBSERVATION

- 5.1 The object of the Bill as captured in the first paragraph of the Memorandum accompanying the Bill and indicated afore suggests that the Bill seeks to establish the Ghana AIDS Commission for the first time. On the contrary the Committee observed that, the purpose of the Bill is to repeal the existing Law, the Ghana AIDS Commission Act, 2002, Act 613 and replace it with a new one. The Bill therefore seeks to re-establish the Commission with additional provisions to make it more effective. However, no mention of the repeal of Act 613 is made in the explanatory Memorandum to the Bill than to directly mention the defects of the current Law in adherence to Article 106(2) of the 1992 Constitution and Order 116 of the Standing Orders of the House.
- 5.2 The Committee would like to entreat sponsors of Bills to ensure that explanatory Memoranda to Bills meet the requirements of the relevant provisions of the Constitution and Standing Orders of the House.
- 5.3 The Ghana AIDS Commission Act, 2002 (Act 613) provides for a forty-seven-member Commission. These include the President of the Republic as the Chairperson; the Vice-President of the Republic as the Vice-Chairperson; Ministers of State responsible for Finance,

Health, Education, Manpower Development and Employment, Local Government and Rural Development, Youth and Sports, Tourism, Roads and Transport, Food and Agriculture, Defence, Women and Children's Affairs, Interior, Justice, Trade and Industry and Information. The Director-General of the GAC explained that the membership of the Commission was composed in such a manner as to tap knowledge from different shades of opinions, skills and competencies from different backgrounds.

- 5.4 However, after a decade of the existence of the Commission, it has become necessary to reduce the membership of the Commission from the forty-seven (47) to seventeen (17). This is because the membership now appears to be too large and unwieldy, making it extremely difficult for the Commission to operate effectively. Also HIV/AIDS response is now technically focused rather than multi-sectorial. The Committee strongly agrees with the reduction in that, adequate provisions have been made in the Bill for the setting-up of committees with representation from both members and non-members of the Board. This will afford the Commission the opportunity to select members of the committees from the other stakeholder groups to also make input into issues under consideration by the Board.

- 5.5 The Committee proposes further reduction in the membership of the Commission by doing away with *clause 4(i)* of the Bill which provides for inclusion of two (2) Members of Parliament on the Board. The reason is that, the oversight role of Parliament would be compromised. An amendment has therefore been proposed in that regard.
- 5.6 The Committee also noted that though the Bill seeks to change the membership of the Commission, the positions of the Chairman and the Vice-chairman are still that of the President and the Vice-president respectively. As explained by the Director-General of GAC, it is to ensure that HIV/AIDS continues to be an issue of high priority. The decision is also in line with the call by the international community for the highest level of political commitment to the response to the HIV epidemic.
- 5.7 The Committee again observed that, *clause 20* of the Bill is seeking to establish the National HIV and AIDS Fund to make resources available to the Commission for its activities. The Director-General of the Commission informed the Committee that, Government currently provides funds mainly for the operational aspects of the work of the Commission while funds for HIV/AIDS response are largely obtained from external sources.

However, the external contributors are now reluctant to provide funds to support the activities of the Commission since the Country has attained lower middle-income status. As a result, funds available to the Commission are not only inadequate but also unsustainable and continue to dwindle with time, making it very difficult for the Commission to implement its programmes.

5.8 The Fund is to provide financial resources for the National HIV/AIDS Response, to target, in particular, HIV prevention, including the reduction of mother-to-child transmission, stigma, treatment and care; and support to persons living with HIV. Whilst the Committee supports the establishment of the Fund, it urges the Commission to expand the donor base for the mobilisation of Funds from bilateral and multilateral sources alone. The Committee appeals to the private sector to assist in funding the programmes of the Commission.

5.9 The Committee further observed that the operations of the Commission is being enhanced at the regional and district levels by the establishment of Regional and District Committees to oversee the activities of the Commission at those levels. The Director-General informed the Committee that the establishment of the

committees will strengthen HIV/AIDS interventions at the local level as advocated by the National Partnership Forum held in 2011. The composition of the committees are spelt out in the Bill. The establishment of the committees is expected to facilitate the work of the Regional and District Offices in the education and sensitisation of people on issues relating to HIV/AIDS. The functions of the Regional and District Committees are to be determined by the Board. The Committee expects those who would be selected as members of the committees, to collaborate with the health facilities within their localities to facilitate their work.

5.10 The Committee also noted that unlike Act 613, the Bill contains elaborate provisions that protect and promote the rights and freedoms of People Living with HIV/AIDS (PLWHA) as well as those suspected of having HIV/AIDS. The rights include the right to health, education, insurance benefits, and the right to hold a public/political office. They also include the right to employment/work, privacy and confidentially or the non-disclosure of information as regards the HIV/AIDS status of such people to third parties without their consent. The purpose of granting such rights is to, as much as possible, eliminate stigmatisation and discrimination of

PLWHA. The rights are to be enforced in accordance with the Constitution.

5.11 The Committee whilst supporting the guarantee of rights of PLWHA, is of the view that, in certain circumstances, such rights should not be absolute, particularly the right of disclosure of information about ones HIV/AIDS status. For instance, where a person has HIV/AIDS and refuses to disclose such information to would-be spouse or spouse, a healthcare provider should have the right to disclose the information about the person's HIV/AIDS status, if the would-be spouse or spouse stand the risk of being infected. The Committee has therefore proposed an amendment to allow healthcare providers to disclose the HIV/AIDS status of persons who would refuse to give consent on disclosures where other persons stand the risk of being infected.

5.12 Again, the Committee is of the opinion that, the rights granted under Clause 31(3) in respect of non-disclosure of the HIV status of the insured or a person seeking for life insurance, would be a serious breach of one of the fundamental principles of insurance policy, that is, the need to know the health status of anybody applying for life insurance. Clause 31(3) states:

“A person shall not be compelled to undergo a test to ascertain the HIV status of the person or to disclose the HIV status or AIDS status of the person to gain access to

- (a) Credit or loan services;
- (b) Medical, accident or life insurance; or
- (c) The extension or continuation of the services specified in paragraph (a) or (b).”

5.13 The Committee observed that the sub-clause will impact adversely on the operations of the financial sector including the insurance industry. The reason is that, the medical condition of a client is very critical when it comes to life insurance and the issue of loans since it goes into the determination of risk levels, and hence, premiums and the ability to repay the credit granted.

5.14 For life insurance contract to be valid, the insured is obliged to disclose at the pre-contract stage and throughout the period of the contract, every known material circumstance which the insurer ought to know and which can potentially influence the judgement of the insurer in fixing the premium or in deciding whether or not to accept the risk. HIV/AIDS is one such circumstance and therefore precluding its disclosure will not only be injurious to the operations of life insurance

policy, but would also be a serious breach of one of the very important fundamental principles of life insurance contract.

5.15 The Committee is fully aware the provision seeks to reduce stigmatisation and discrimination against HIV/AIDS victims. However, non-disclosure of the health conditions of prospective life insurance seekers has the tendency of crippling the insurance industry. It must also be noted that the demand for the health status or medical records in insurance is not only restricted to HIV/AIDS victims, but it is a key requirement in life insurance policy. For this reason, the Committee has proposed an amendment to delete sub-clause 3 of clause 31 of the Bill.


6.0 CONCLUSION

6.1 The Ghana AIDS Commission was established under the Ghana AIDS Commission Act, 2002 (Act 613) to provide a National response to the HIV/AIDS epidemic because of its devastating nature. After more than a decade of its operationalisation, it has become necessary to enhance the legal regime of the Commission to accommodate changing circumstances and modern trends. The Committee believes that the passage of the Bill will enable the Commission to execute its functions

effectively in the National response to the HIV/AIDS menace.

6.2 The Committee therefore recommends to the House to adopt its Report and pass the Bill subject to the amendments proposed in the Attachment.

Respectfully submitted.



ERIC OWUSU-MENSAH
Clerk, Committee on
Constitutional, Legal and
Parliamentary Affairs



HON. MAGNUS K. AMOATEY
Chairman, Committee on
Constitutional, Legal and
Parliamentary Affairs



ASANTE AMOAKO-ATTA
Clerk, Committee on Health



HON. JOSEPH YIELEH CHIREH
Chairman, Committee on Health

APPENDIX

AMENDMENTS PROPOSED TO THE GHANA AIDS COMMISSION BILL, 2015

- i. **Clause 2** – Amendment proposed – Lines (2) and (3), *delete* “the fight against” and *insert* “response to”.
- ii. **Clause 3** – Amendment proposed – Paragraph (a), line (1), *delete* “comprehensive”.
- iii. **Clause 3** – Amendment proposed – Paragraph (a), line (2), *delete* “establish” and *insert* “determine”.
- iv. **Clause 3** – Amendment proposed – Paragraph (c), line (1), *delete* “effective”
- v. **Clause 4** – Amendment proposed – Sub-clause (1), paragraph (i), *delete*.
- vi. **Clause 4** – Amendment proposed – Sub-clause (1), paragraph (j), sub-paragraph (i), *delete* “a Christian Group” and *insert* “Christian Groups”.
- vii. **Clause 4** – Amendment proposed – Sub-clause (1), paragraph (m), *delete* “a labour organisation” and *substitute* “organised labour”.
- viii. **Clause 5** – Amendment proposed – Sub-clause (1), *delete* and *insert* the following:

“(1) A member of the Board shall hold office for a term of not more than four years and is eligible for re-appointment for another term only.

(2) Subsection (1) does not apply to the Director-General of the Commission or any other person who is a member of the Board by virtue of office.”

- ix. **Clause 5** – Amendment proposed – Sub-clause (3), line 1, after “Board” *insert* the following:
“other than a person who is a member of the Board by virtue of office.”
- x. **Clause 6** – Amendment proposed – Sub-clause (9), line 1, *delete* “Subject to this section”.
- xi. **Clause 7** – Amendment proposed – Sub-clause (1), paragraph (b), *delete*.
- xii. **Clause 7** – Amendment proposed – Sub-clause (2), paragraph (b), line 1, *delete* “fails to request to be recused and”.
- xiii. **Clause 8** – Amendment proposed – Sub-clause (4), line 1, *delete* “Board shall establish” and *substitute* “Commission shall have”.
- xiv. **Clause 9** – Amendment proposed – Sub-clause (2), paragraph (b), after Health *add* “service”.
- xv. **Clause 9** – Amendment proposed – Sub-clause (2), paragraph (d), after “organisation” *add* “that deals with HIV and AIDS”.
- xvi. **Clause 9** – Amendment proposed – Sub-clause (2), paragraph (h), *delete* and *insert* the following:
“the Regional Director of Education; and”.
- xvii. **Clause 9** – Amendment proposed – Sub-clause (3), paragraph (d), after “organisation” *insert* “that deals with HIV and AIDS”.
- xviii. **Clause 9** – Amendment proposed – Sub-clause (3), paragraph, (h), *delete* and *substitute* the following:
“the District Director of Education: and”
- xix. **Clause 9** – Amendment proposed – Sub-clause (4), lines 1 and 2, *delete* and *substitute* the following:
“The Board shall appoint members of”
- xx. **Clause 10** – Amendment proposed – line 1, *delete* “Commission” and *substitute* “Board”.

- xxi. **Clause 11** – Amendment proposed – Sub-clause (2), line 1, *delete* “may” and *substitute* “shall”.
- xxii. **Clause 11**– Amendment proposed – Sub-clause (3), line (3) *delete* “two months” and *insert* “three months”.
- xxiii. **Clause 13**– Amendment proposed – Sub-clause (1), paragraph (c), *delete* “the President or”.
- xxiv. **Clause 15**– Amendment proposed – Sub-clause (3), line (2), *delete* “to perform its functions” and *substitute* “as the Board considers necessary”.
- xxv. **Clause 17**– Amendment proposed – Paragraph (c), *delete* and *substitute* the following:
“(c) loans contracted by the Commission and guaranteed by Government; and”.
- xxvi. **Clause 17**– Amendment proposed – Add a new paragraph (d) as follows:
“(d) donations and grants.”
- xxvii. **Clause 18** – Amendment proposed – Sub-clause (3), line 3, *delete* “Minister” and *substitute* “Board”.
- xxviii. **Clause 19** – Amendment proposed – Sub-clause (2), *delete* “report of the Auditor-General” and *substitute* “audited accounts of the Commission”.
- xxix. **Clause 26** – Amendment proposed – *Delete* and *substitute* the following:
“26. The Secretariat of the Commission shall provide administrative support for the Fund”.
- xxx. **Clause 28** – Amendment proposed – Sub-clause (2), line 3, after “HIV status” *delete* “or AIDS status”.

- xxxvi. **Clause 28** – Amendment proposed – Sub-clause (6), *delete and substitute* the following:
“(6) Any report of the proceedings shall be made anonymously and facts identifying persons related to the case shall not be revealed”.
- xxxvii. **Clause 28** – Amendment proposed – Sub-clause (7), line 4, after “status” *delete* “or AIDS status”.
- xxxviii. **Clause 29** – Amendment proposed – Sub-clause (1), line 2, *before* “services” *insert* “care”.
- xxxix. **Clause 29**– Amendment proposed – Sub-clause (2), *delete* and *insert* the following:
“(2) A person shall not give medical treatment or carry out a medical research on a person living with HIV or AIDS without the consent of the person living with HIV or AIDS except where the person with HIV and AIDS is unable to give consent.”
- xl. **Clause 29** – Amendment proposed – Sub-clause (4), line 4, *delete* “education or any other social or economic benefit”.
- xli. **Clause 30** – Amendment proposed – Sub-clause (1), line 2, after “HIV status” *delete* “or AIDS status”.
- xlii. **Clause 30** – Amendment proposed – Sub-clause (2), line 2, after “HIV status” *delete* “or AIDS status”.
- xliiii. **Clause 30** – Amendment proposed – Sub-clause (3), paragraph (b), line 3, after “status” *delete* or “AIDS status”.
- xliv. **Clause 30** – Amendment proposed – Sub-clause (4), line 2, after “HIV status” *delete* “or AIDS status”.
- xlv. **Clause 30** – Amendment proposed – *Insert* new sub-clause (5) and (6) after sub-clause (4) as follows:
“(5) Despite sub-section (4), a healthcare provider who has information on the HIV status of another person due to a

privileged relationship with that other person, may disclose the information to the spouse or prospective spouse of that person if

(a) that person refuses to give consent for the information to be disclosed to the spouse or prospective spouse of that person; and

(b) that spouse or prospective spouse is at risk of being infected.

(6) A healthcare provider shall not disclose information under subsection (5) unless the healthcare provider has recorded the refusal to give consent in writing agreed to by the person living with HIV or AIDS.”

- xli. **Clause 31** – Amendment proposed – Sub-clause (1), line 1, after “HIV status” *delete* “or AIDS status”.
- xlii. **Clause 31** – Amendment proposed – Sub-clause (3), *delete*.
- xlili. **Clause 32** – Amendment proposed – Sub-clause (1), line 3, after “HIV status” *delete* “or AIDS status”.
- xliv. **Clause 32** – Amendment proposed – Sub-clause (2), line 3, after “HIV status” *delete* “or AIDS status”.
- xlv. **Clause 32** – Amendment proposed – Sub-clause (4), line 1, after “HIV status” *delete* “or AIDS status”.
- xlvi. **Clause 33** – Amendment proposed – Sub-clause (1), line 1, after “HIV status” *delete* “or AIDS status”.
- xlvii. **Clause 33**– Amendment proposed – Sub-clause (1), line (3), *delete* “the enjoyment of”.
- xlviii. **Clause 33** – Amendment proposed – Sub-clause (2), line 2, after “status” *delete* “or AIDS status”.

- xlix. **Clause 34** – Amendment proposed – lines 5 and 6, *delete* “or AIDS status”.
- l. **Clause 35**– Amendment proposed – Sub-clause (1), line (2), *delete* “within or outside this country”.
- li. **Clause 35** – Amendment proposed – Sub-clause (1), lines 3 and 4, *delete* “or AIDS status”.
- lii. **Clause 35** – Amendment proposed – Sub-clause (2), line 3, after “HIV status” *delete* “or AIDS status”.
- liii. **Clause 36** – Amendment proposed – Sub-clause (2), line 1, after “HIV status” *delete* “or AIDS status”.
- liv. **Clause 39** – Amendment proposed – Sub-clause (1), paragraph (b), line 2, before “positive” *delete* “or AIDS”.
- lv. **Clause 39**– Amendment proposed – Sub-clause (1), paragraph (c), line (1) insert “unlawfully” before “discloses”.
- lvi. **Clause 39** – Amendment proposed – Sub-clause (1), paragraph (c), lines 1 and 2, *delete* “or AIDS status”.
- lvii. **Clause 39** – Amendment proposed – Sub-clause (1), paragraph (c), line 2, after “section 30” *delete* “(2)”.
- lviii. **Clause 39** – Amendment proposed – Sub-clause (1), paragraph (d), line 2, after “HIV status” *delete* “or AIDS status”.
- lix. **Clause 39** – Amendment proposed – Sub-clause (1), paragraph (f), line 2, after “HIV status” *delete* “or AIDS status”.
- lx. **Clause 39** – Amendment proposed – Sub-clause (1), paragraph (h), line 2, after “HIV status” *delete* “or AIDS status”.
- lxi. **Clause 39** – Amendment proposed – Sub-clause (1), paragraph (i), lines 2 and 3, *delete* “or AIDS status”.

- lxii. **Clause 40** – Amendment proposed – Sub-clause (2), paragraph (d), *delete*.
- lxiii. **Clause 41**– Amendment proposed –*delete* the definition for “Christian Group” and substitute the following:
““Christian Group” means the Christian Council, the Catholic Bishops Conference, the Ghana Pentecostal and Charismatic Council, the National Association of Charismatic Christian Churches and the Council of Independent Churches”.
- lxiv. **Clause 41** – Amendment proposed – *Insert* a definition for “healthcare provider” as follows:
““healthcare provider” includes a healthcare professional, a healthcare practitioner licensed to practice in Ghana in accordance with an enactment in force, a Social Welfare Practitioner or a Professional Counsellor.”
- lxv. **Clause 41** – Amendment proposed – *Insert* a definition for “healthcare provider” as follows:
“ “healthcare provider” includes a healthcare professional, a healthcare practitioner licensed to practice in Ghana, a Social Welfare Practitioner, a psychologist or a Professional Counsellor.”
- lxvi. **Clause 42**– Amendment proposed – Sub-clause (1), *delete* “Aids” and *insert* “AIDS”.
- lxvii. **Clause 43**– Amendment proposed – Sub-clause (1), line 1, *delete* “Aids” and *insert* “AIDS”.
- lxviii. **Clause 43**– Amendment proposed – Sub-clause (1), line 2, *delete* “Aids” and *insert* “AIDS”.
- lxix. **Clause 43**– Amendment proposed – Sub-clause (2), line 1, *delete* “Aids” and *insert* “AIDS”.