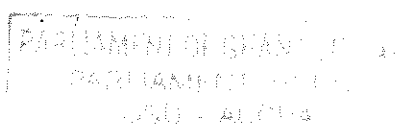


**IN THE SECOND SESSION OF THE SEVENTH PARLIAMENT**  
**OF THE FOURTH REPUBLIC OF GHANA**

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

**ON THE**



**LEGAL AID COMMISSION BILL, 2017**

ACC No: 1743 Co

Class No: BR/LAC/17

MAY, 2018

**REPORT OF THE COMMITTEE ON CONSTITUTIONAL, LEGAL AND  
PARLIAMENTARY AFFAIRS ON THE LEGAL AID COMMISSION BILL, 2017**

**1.0 INTRODUCTION**

1.1 The Legal Aid Commission Bill, 2017 was laid in Parliament on Friday, 15<sup>th</sup> December, 2017 by the Attorney-General and Minister for Justice, Hon. Gloria Akuffo for passage in accordance with Article 106 of the Constitution.

1.2 Pursuant to the Order 179 of the Standing Orders of the House, the Bill was referred to the Committee on Constitutional, Legal and Parliament Affairs by the Speaker for consideration and report.

**2.0 DELIBERATIONS**

The Committee met with the Attorney-General and Minister for Justice, Miss Gloria Akuffo to consider the Bill. In attendance were Officials of the Office of the Attorney-General and Ministry of Justice and the Legal Aid Scheme to assist in the deliberations.

The Committee is profoundly grateful to the Hon. Attorney-General and Minister for Justice and the Officials for attending upon the Committee and assisting in its deliberations.

**3.0 REFERENCE DOCUMENTS**

The Committee referred to the following documents during its deliberations:

- i. The 1992 Constitution;
- ii. The Standing Orders of Parliament;
- iii. The Legal Aid Scheme Act, 1997 (Act 542); and
- iv. The President's White Paper on the Report of the Constitution Review Commission of Inquiry, 2012.

**4.0 BACKGROUND INFORMATION**

4.1 Prior to the promulgation of the 1992 Constitution, legal aid in Ghana was being provided within the framework of the Legal Aid Scheme Law, 1987.

4.2 The legal regime was revised in 1997 through the passage of the Legal Aid Scheme Act, 1997 (Act 542) to bring the law into conformity with the provisions of the 1992 Constitution.

4.3 Act 542 was passed pursuant to Article 294 of the 1992 Constitution which provides as follows:

***"294 (1) For the purposes of enforcing any provision of this Constitution, a person is entitled to legal aid in connection with any proceedings relating to this Constitution if he has reasonable grounds for taking, defending, prosecuting or being a party to the proceedings.***

***(2) Subject to clause (1) of this article, Parliament shall, by or under an Act of Parliament, regulate the grant of legal aid.***

***(3) Without prejudice clause (2) of this article, Parliament may, under that clause provide for the granting of legal aid in such matters other than those referred to in clause (1) of this article as may be prescribed by or under that Act."***

4.5 However, since the passage of Act 542 over the past two decades ago, several changes have taken place in the area of access to justice and international legal aid practice. These changes have caused the need for institutional reforms and funding arrangements for legal aid institutions which have not been provided for under the existing law. The need for legislative reforms have also been acknowledged in the President's White Paper on the Report of the Constitution Review Commission of Enquiry published in June, 2012.

4.6 These matters necessitated the review of the existing law to reflect current international best practices on the subject and to engender the necessary improvements in the delivery of legal aid services in the country. Hence, the laying in Parliament of the Legal Aid Commission Bill, 2017 for its passage pursuant to the provisions of the 1992 Constitution.

## **5.0 PURPOSE OF THE BILL**

The purpose of the Bill is to repeal the Legal Aid Scheme Act, 1997 (Act 542) and to establish the Legal Aid Commission to provide legal aid and other legal services to certain category of individuals in Ghana.

## **6.0 SUMMARY OF KEY PROVISIONS**

- 6.1 The Bill contains sixty-one provisions and has been arranged as follows:
- 6.2 Clause 1 of the Bill seeks to establish a Legal Aid Commission to replace the existing Legal Aid Scheme. This is followed by provisions for the governance of the Commission (Clauses 2 to 14).
- 6.3 Provisions regarding administration of the Commission are provided for under Clauses 15 to 25. Key provisions include the appointment of an Executive Director and other Staff of the Commission, and the establishment of regional and district offices of the Commission.
- 6.4 Financial arrangements for the Commission have been provided under Clauses 26 to 37 of the Bill. Among the key provisions are those relating to the funds of the Commission and the establishment of a Legal Aid Fund.
- 6.5 The procedure for application for legal aid and an appeal mechanism have been provided for under Clauses 38 to 48 of the Bill.
- 6.6 Provisions have also been made for the application of Alternative Dispute Resolution (ADR) mechanisms which are covered under Clauses 49 and 50.
- 6.7 Miscellaneous provisions are set out from Clauses 51 to 61 to deal with matters concerning privileged information, immunity of convenors, offences, guidelines and Regulations among others.

## **7.0 OBSERVATIONS**

### **7.1 Re-structuring of the Legal Aid Scheme**

The Committee noted that the passage of the Bill intends to restructure the Legal Aid Board which currently administers the Legal Aid Scheme. The Scheme is to be replaced with a Legal Aid Commission which shall be clothed with the requisite autonomy to improve upon the administration of legal aid in the country. To further strengthen the Commission to effectively perform its functions, the Bill makes provision to ensure its independence. In the performance of its functions, the Commission shall not be subjected to the direction or control of any person or authority. Further provisions have been made in the Bill for the establishment of regional and district offices of the Commission in the quest to decentralise the administration of legal aid in the country.

Officials of the Legal Aid Scheme stated that the creation of the new structure has been necessitated by the Government's White Paper on the Report of the Constitution Review Commission of Enquiry which was published in June, 2012. In the said Paper, the Government accepted the Recommendation of the Constitution Review Commission that the Legal Aid Scheme be established as an independent constitutional body and funded in the same manner as other independent constitutional bodies. It is strongly believed that the new institution as contemplated by the Bill would facilitate the attainment of the improvements in legal aid delivery in the country.

Further provisions have been made in the Bill to enable the Commission liaise with other institutions offering legal aid in the country. This is intended to allow the Commission obtain comprehensive information regarding delivery of legal aid in the country and to report on same to Parliament.

## **7.2 Funding of the Commission**

The Committee observed that, as part of the financial arrangements of the Commission, the Bill proposes to establish a Legal Aid Fund to enhance the financial capacity of the Commission to enable it perform its functions. Moneys for the Fund are to be sourced from moneys approved by Parliament, investments, donations and gifts. Also to be paid into the Fund would be contributions of applicants who would be assessed by the Commission to make contributions towards costs of filing or provision of legal services. The creation of the Fund is expected to address the acute financial condition in which the Scheme operates. It would also help to ensure timely payment of private legal practitioners who are engaged to assist in the delivery of legal aid.

## **7.3 Condition of Service of Lawyers of the Commission**

The Committee noted that the Bill has made provisions to address the poor conditions of service of legal personnel of the Commission to attract and retain the requisite number of legal personnel needed to administer legal aid in the country. The Bill makes provision to align the conditions of service of legal personnel of the Commission to analogous positions in the Office of the Attorney-General and the Judiciary. In this regard, a Schedule has been provided in the Bill to establish the equivalencies.

## **7.4 Introduction of ADR Mechanisms into Legal Aid Delivery**

The Committee further noted that the Bill seeks to introduce Alternative Dispute Resolution (ADR) mechanisms into the administration of legal aid in the country.

To give effect to this, a proposal has been made in the Bill to create a Division in the Commission to be known as the Alternative Dispute Resolution Division. It would be the function of the ADR Division to mainstream ADR mechanisms into the operations of the Commission, conduct ADR sessions, encourage the resolution of disputes through ADR and coordinate with relevant bodies in the performance of the functions of the Division. It is strongly believed that the inclusion of ADR in the delivery of legal aid in the country will ensure speedy disposal of cases, reduce litigation costs, reduce the workload in respect of litigation and increase effectiveness of the Commission.

#### **7.5 Pro Bono Services by Lawyers**

The Committee further noted with concern that provision has been made in the Bill to require lawyers perform pro bono services as a condition of their Solicitor's Licence. This proposal was strongly rejected by the Committee. In the view of the Committee, since the General Legal Council is the statutory body responsible for the regulation of lawyers in Ghana, it is that body alone which has the power to make such a regulation. It accordingly recommended that Legal Aid Scheme should consult with the Council to see to the possibility of amending the Legal Profession Act, 1960 (Act 32) which is the specific legislation on the subject. The Committee accordingly proposes that Clause 59(b) of the Bill be expunged.

#### **7.6 The Role of the Executive Secretary**

Finally, the Committee noted with concern the onerous responsibilities that the Bill seeks to place on the Executive Secretary of the Commission. Of particular interest was the proposal to make the Executive Secretary the Board Secretary of the Commission. In the light of the enormity of responsibilities of the Executive Secretary as envisaged under the Bill, the Committee took the view that if such a provision is maintained, the office holder would be over-burdened. In this regard, the Committee proposes that another officer of the Commission be appointed as Secretary to the Board. In that respect, the Committee has proposed an amendment to Clause 15(4) of the Bill to achieve that effect.

### **8.0 PROPOSED AMENDMENTS**

The Committee has made a number of proposed amendments to further strengthen the provisions in the Bill. The proposed amendments are attached as an Annexure.

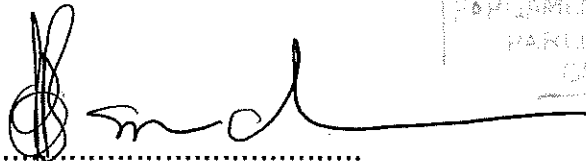
## 9.0 CONCLUSION AND RECOMMENDATION

The Committee has critically examined the Bill and is satisfied that the passage of the Bill into law would improve the delivery of legal aid in Ghana. Apart from restructuring the Scheme into a Commission with the requisite level of autonomy, it would further enhance access to legal aid services in the country through the establishment of regional and district offices of the Commission.

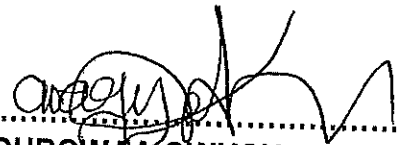
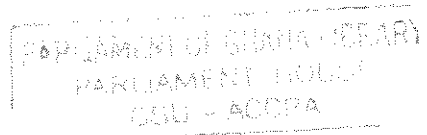
It is strongly believed that the above measures inure to the benefit of the poor and vulnerable in the Ghanaian society to ensure the achievement of liberty, equality before the law, freedom and justice as well as the protection of other fundamental human rights and freedoms.

In this regard, the Committee recommends to the House to adopt its Report and to pass the Legal Aid Commission Bill, 2017 in accordance with Article 11(7) of the 1992 Constitution.

Respectfully submitted.



.....  
HON. BEN ABDALLAH BANDA  
(CHAIRMAN)



.....  
AKUA DUROWAA OWUSU AGYEKUM (MRS.)  
(CLERK TO THE COMMITTEE)

MAY, 2018

APPENDIX APROPOSED AMENDMENTS ON THE LEGAL AID COMMISSION BILL, 2017

- i. **Clause 1 - Amendment proposed** – Sub-clause (3), line 1, after “**of**” insert “**immovable**”.
- ii. **Clause 1 - Amendment proposed** - Sub-clause (3), line 3, delete “**a**” and insert “**the**”.
- iii. **Clause 2 - Amendment proposed**- paragraph (a), after “**indigent**”, insert “**who requires assistance in addressing a legal issue, or**”.
- iv. **Clause 3 - Amendment proposed** - Paragraph (a), subparagraph (ii), line 2, insert “**pursuant to paragraph (a) of section 2**” after “**granted**”.
- v. **Clause 3 - Amendment proposed** - Paragraph (a), subparagraph (i), line 2, after “**granted**” insert “**and**”.
- vi. **Clause 5 - Amendment proposed** – Sub-clause (1), paragraph (a), line 1, delete “**representative of the Chief**”; and after “**or**” delete “**a**”.
- vii. **Clause 5 - Amendment proposed** – Sub-clause (1), delete paragraph (f).
- viii. **Clause 5 - Amendment proposed** – Sub-clause (1), paragraph (i), delete “**one female lawyer**” and insert “**a representative of the Inspector General of Police, not below the rank of Assistant Commissioner of Police**”.
- ix. **Clause 5 - Amendment proposed** - Sub-clause (1), Insert a new paragraph after paragraph (k) to read as: “**(l) three persons nominated by the President, at least one of whom is a woman;**”
- x. **Clause 5 - Amendment proposed** – Sub-clause (1) (j), line 2 delete “**and**”
- xi. **Clause 5 - Amendment proposed** – Sub-clause (1) paragraph (k), line 2, after “**interest**” insert “**and**”
- xii. **Clause 5 - Amendment proposed** – Sub-clause (3), line 1, delete “**Commission**” and insert “**Board**”.



- xiii. **Clause 6 - Amendment proposed-** Sub-clause (1), line 1, delete "**Commission**" and insert "**Board**".
- xiv. **Clause 7 - Amendment proposed-** Sub-clause (3), delete "**six**" and insert "**seven**".
- xv. **Clause 7 - Amendment proposed -** Sub-clause (8), line 2, delete "**longer**" and insert "**later**".
- xvi. **Clause 9 - Amendment proposed -** Sub-clause (2), line 3 and 4, delete "**his representative**" and insert, '**an officer of the Commission designated by the Executive Director**".
- xvii. **Clause 12 - Amendment proposed -** Sub-clause (1), Paragraph (b), delete "**an association of lawyers**" and insert "**the Ghana Bar Association**".
- xviii. **Clause 15 - Amendment proposed -** Sub-clause (2), line 3, delete "**Judge**" and insert "**Justice**".
- xix. **Clause 15 - Amendment proposed -** Delete sub-clause (4) and replace with "**the Board shall appoint an officer from the Commission as Secretary to the Board**".
- xx. **Clause 17 - Amendment proposed -** Sub-clause (1), after paragraph "a" insert a new paragraph as follows:  
"**(b) Paralegals and Alternative Dispute Resolution officers appointed by the Commission**"
- xxi. **Clause 17 - Amendment proposed -** Sub-clause (1), paragraph (b), line 1, after Personnel, insert "**who are legal practitioners**".
- xxii. **Clause 17 - Amendment proposed -** Sub-clause (1), paragraph (c), lines 2 and 3, delete "**in court or in chambers as a service to the community**".
- xxiii. **Clause 17 - Amendment proposed -** Sub-clause (2) lines 2 and 3, delete "**Attorney-General's Department and the Judicial Service**" and insert "**Office of the Attorney-General**".
- xxiv. **Clause 18 - Amendment proposed -** insert a new sub-clause 2 as follows: "**Public Officers may be transferred or seconded to the Commission or may otherwise give assistance to the Commission.**"

- xxv. **Clause 19 - Amendment proposed** – After paragraph (c), insert a new sub-clause as follows “**(d) any other Division that the Board considers appropriate.**”
- xxvi. **Clause 19 - Amendment proposed** – Paragraph (b), delete “**and**”
- xxvii. **Clause 19 - Amendment proposed** – Paragraph (c) after Division insert “**and**”.
- xxviii. **Clause 21 - Amendment proposed** – Paragraph (f), line 1, insert “**a**” after “**of**”
- xxix. **Clause 21 - Amendment proposed** –Paragraph (f), sub-paragraph (i), delete and insert “**for which the punishment is death or imprisonment for life and who has not engaged the services of a lawyer; or**”.
- xxx. **Clause 22 - Amendment proposed** – Paragraph (c), lines 1 and 2, delete all words after “**encourage**” and insert “**customary arbitration**”.
- xxxi. **Clause 23 - Amendment proposed** – Sub-clause 2, *delete.*
- xxxii. **Clause 24 - Amendment proposed** – Sub-clause 2, *delete.*
- xxxiii. **Clause 26 - Amendment proposed** – In the headnote, delete “**Funds of**” and insert “**Sources of moneys for**”.
- xxxiv. **Clause 26 - Amendment proposed** – Sub-clause 1, delete paragraph (a) and insert “**(a) moneys approved by Parliament;**”
- xxxv. **Clause 26 - Amendment proposed** – Sub-clause 1, paragraph (b) line 2, after Commission insert “**and**”
- xxxvi. **Clause 26 - Amendment proposed** – Sub-clause 1, paragraph (c), *delete.*
- xxxvii. **Clause 26 - Amendment proposed** – Sub-clause 2, *delete.*
- xxxviii. **Clause 26 -Amendment proposed** – Sub-clause 2, paragraph (a), delete and insert “**(a) receive by a private legal practitioner on behalf of a legally assisted person when the legal practitioner is acting as a lawyer for the person**”.
- xxxix. **Clause 28 - Amendment proposed** – Sub-clause 1, line 2, delete “**in relation to them**”.

- xl. **Clause 28 - Amendment proposed** – Sub-clause 3, line 3, after “Minister” insert “**and the Commission**”.
- xli. **Clause 31 - Amendment proposed** – line 3, delete “**the**” and insert “**this**”.
- xlii. **Clause 38 - Amendment proposed** – insert a new sub-clause as follows “**(2) Subsection (1) shall not apply to paragraph (b) of section 2 and paragraph (f) of section 21**”.
- xliii. **Clause 39 - Amendment proposed** – *Delete*
- xliv. **Clause 41 - Amendment proposed** – Sub-clause (1), paragraph (a), line 1, delete “**impose a condition that, requires**” and insert “**require**” and in lines 1 and 2, delete “**pay an amount to the Commission by way of contribution**” and insert “**contribute**”.
- xlv. **Clause 41 - Amendment proposed** – Sub-clause (1), delete paragraph (b) and insert; “**(b) prior to the grant of an application for legal aid, determine the amount the applicant shall pay towards costs incurred in respect of the proceedings where an order for payment of cost has been made against the applicant**”.
- xlvi. **Clause 41 - Amendment proposed** – Sub-clause (2), line 1, delete “**Board**” and insert “**Commission**”.
- xlvii. **Clause 42 - Amendment proposed** – Sub-clause (2), line 1, delete “**solicitor**” and insert “**private legal practitioner**”.
- xlviii. **Clause 43 - Amendment proposed** – Paragraph (d), line 2, delete “**after granting legal aid to a person**”.
- xlix. **Clause 44 - Amendment proposed** – Sub-clause (2), line 2, delete “**solicitor**” and insert “**private legal practitioner**” and in line 3, delete, “**solicitor’s own client**” and insert, “**client of the private legal practitioner**”.
- l. **Clause 49 - Amendment proposed** – Insert a new sub-clause as follows: “**(2) The Commission may:**
  - (a) **pay for expenses incidental to alternative dispute resolution from the Fund; or**
  - (b) **request a legally-assisted person to pay for expenses incidental to alternative dispute resolution.**”
- li. **Clause 50 - Amendment proposed** – *Delete*

- iii. **Clause 51 - Amendment proposed** – Sub-clause (1), line 1, delete “A member” and insert “**An officer**” and also delete “**of a Committee**” and in line 3, delete “**or the Committee**”.
- liii. **Clause 51 - Amendment proposed** – Sub-clause (2), line 1, delete “**Commission**” and insert “**Board**” and also delete “**a member**” and insert “**an officer**” and in line 2, delete “**or of a Committee established under the Act**”.
- liv. **Clause 51 - Amendment proposed** – Insert a new sub-clause (3) as follows “**(3) For the purposes of this section, a private legal practitioner or a national service personnel engaged by the Commission to provide legal aid service is deemed to be an officer of the Commission**”.
- lv. **Clause 52 - Amendment proposed** – Paragraph (c), line 2, delete “**the information is privileged**” and insert “**the information is privileged**” after paragraph (c).
- lvi. **Clause 55- Amendment proposed** – Sub-clause (1), lines 3 and 4, delete “**two hundred and fifty**” and insert “**five thousand**” and in line 5, delete “**two**” and insert “**ten**”.
- lvii. **Clause 56 - Amendment proposed** – line 1, delete “**Minister**” and insert “**Commission**” and also delete “**Commission**” and insert “**Board**”.
- lviii. **Clause 56 - Amendment proposed** – line 2, delete “**in the form of a Legal Aid Guide**”
- lix. **Clause 57 - Amendment proposed** – Sub-clause (1), line 1, delete “**Commission**” and insert “**Minister**” and also delete “**Constitutional**” and insert “**Legislative**”.
- lx. **Clause 57 - Amendment proposed** – Delete sub-clause (2)
- lxi. **Clause 58 - Amendment proposed** – Interpretation, after “convener of a conferencing session” insert “**Fund means the Legal Aid Fund established under section 31;**”
- lxii. **Clause 58 - Amendment proposed** – After interpretation of ‘Minister’ insert “**paralegal means a person who is not a lawyer but has attained a certain level of legal training and is employed by the Commission to provide specific legal services including having audience before the lower courts;**”

- lxiii. **Clause 58** - **Amendment proposed** – Interpretation, insert “**officer of the legal Aid Commission**” means personnel under section 17 (1)(a) and (d) of the Act;
- lxiv. **Clause 59** - **Amendment proposed** – Consequential Amendments, Paragraph (a), delete line 6 and insert “(c) **legal practitioner appointed by the Commission under paragraph (a) of subsection (1) of section 17**”.
- lxv. **Clause 59** - **Amendment proposed** – Consequential Amendments, delete paragraph (b).
- lxvi. **Clause 61** - **Amendment proposed** – Transitional Provisions, sub-clause (1), line 2, insert “**Legal Aid**” after “the”
- lxvii. **Clause 61** - **Amendment proposed** – Transitional Provisions, sub-clause (2), line 1, insert “**Legal Aid**” after “the”
- lxviii. **Schedule** - **Amendment Proposed** – Delete and insert a new Schedule as follows:

**Legal Aid Commission positions and their equivalent positions in the Office of the Attorney-General and the Judiciary.**

<b>Category</b>	<b>Legal Aid Commission</b>	<b>Office of the Attorney-General</b>	<b>Judiciary</b>
A	<ul style="list-style-type: none"> <li>• Executive Director</li> <li>• Director of Public Defenders</li> <li>• Director of Citizens’ Advisory Division</li> <li>• Director of Alternative Dispute Resolution</li> </ul>	<ul style="list-style-type: none"> <li>• Solicitor General</li> <li>• Director of Public Prosecution</li> <li>• Director of Legislative Drafting</li> </ul>	<ul style="list-style-type: none"> <li>• Justice of Court of Appeal</li> </ul>
B	<ul style="list-style-type: none"> <li>• Chief Legal Aid Officers</li> </ul>	<ul style="list-style-type: none"> <li>• Chief State Attorney</li> </ul>	<ul style="list-style-type: none"> <li>• High Court Judge</li> </ul>
C	<ul style="list-style-type: none"> <li>• Principal Legal Aid Officer</li> <li>• Senior Legal Aid Officers</li> </ul>	<ul style="list-style-type: none"> <li>• Principal State Attorney</li> <li>• Senior State Attorney</li> </ul>	<ul style="list-style-type: none"> <li>• Circuit Court Judge</li> </ul>
D	<ul style="list-style-type: none"> <li>• Legal Aid Officers</li> <li>• Assistant Legal Aid Officers</li> </ul>	<ul style="list-style-type: none"> <li>• State Attorney</li> <li>• Assistant State Attorney</li> </ul>	<ul style="list-style-type: none"> <li>• District Magistrate</li> </ul>
E	<ul style="list-style-type: none"> <li>• Paralegals</li> <li>• Alternative Dispute Resolution Officers</li> </ul>		<ul style="list-style-type: none"> <li>• Career Magistrates</li> </ul>