

## Removing the Barriers of Access to Justice-The Role of the Legal Aid Commission of Ghana

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### **Abstract**

*Equality before the law remains one of the unquestionable principles of law globally. This implies no discrimination and equal treatment of persons seeking justice at the law court and other extra-judicial bodies. These include the right to be represented by a lawyer of one's choice in seeking remedy. Although the courts exist to administer justice, not all persons can afford to hire the services of lawyers and other costs inherent in courtroom litigation. Several structural, institutional, and economic factors exist to make litigation expensive thereby creating unequal access to justice. These factors serve as a fetter on the right of persons to seek justice. Against this backdrop, this study seeks to critically analyze the role of the Legal Aid Scheme in promoting inclusion in the justice delivery system focusing on access to justice for indigents and the marginalized in society. In doing so, the study adopted a quantitative desktop research design to assess the performance of the Legal Aid Commission of Ghana and the extent of its impact on access to justice. The study found that just as with the courts, the jurisdiction of the Legal Aid Commission covers civil and criminal cases including the use of alternative dispute resolution mechanisms. The study again revealed that many persons especially the poor would have been excluded from the justice net but for the existence of legal aid schemes.*

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**Keywords:** legal aid, access to justice, civil justice, criminal justice, alternative dispute resolution.

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### **1.0 Introduction**

Rule of law and an effective justice system remains the fundamental concept of any democracy. As such, various national constitutions, international treaties, conventions, and protocols seek to promote the doctrine of equality before the law. Article 17 of the 1992 Constitution guarantees equality before the law in Ghana. The idea of equality before the law implies a condition in which every person should have equal access to justice in order to exercise their rights and seek redress and remedies through the jurisdiction of the courts and other extrajudicial authorities. The promotion of fundamental human rights to a fair trial and unrestricted access to justice is ingrained in the equality theory. According to Article 19(1) of

the 1992 Constitution of Ghana, a court must grant a fair hearing to everyone accused of a crime within a reasonable time. The courts typically uphold the constitutionally guaranteed right to a fair trial. These include the right to be represented by a lawyer of one's choice, open trials, and the presumption of innocence. However, the cost of litigation has become expensive considering the dynamics and nature of the legal processes and procedures with which people can assert their rights.

Access to justice is integral to achieving the Sustainable Development Goals (SDGs) and inclusive society. Cappelletti (1989) posits that the right to free legal assistance remains one of the pillars of enhancing fundamental human rights to fair trial. Although some countries have established legal aid schemes as an avenue for indigents to have access to justice, a study by the UN Taskforce on Justice (2019) shows that about 5.1 billion people around the world lack access to legal protection due to poverty, discrimination, and the marginalization of these persons within their societies. This is because access to legal services now requires huge financial commitments which have invariably rendered the doctrine of equality before the law dysfunctional. This justice gap has resulted in a situation where many people live in extreme conditions of injustice, without access to legal recourse to resolve their problems. Studies by the World Justice Project (2019) indicate that this justice gap undermines human development, reinforces the poverty trap, and imposes high societal costs.

Despite the international and constitutional requirements for fair trial, the ability to seek justice is seen as a costly public good in many African nations because of a variety of limitations. Access to justice is hampered by numerous African structural, economic, and institutional issues. These include the cost of legal processes, time, and geographical and physical impediments. Cost and trust in the justice system are also important factors in determining whether or not people would seek legal assistance to resolve their disputes. Access to justice, however, can be physical and financial. For example, access to justice has consistently been constrained by the geographical distribution of courts tilted to favour areas with higher economic activities rather than areas with high-density populations. Corruption in the justice system and unreasonable delays have also resulted in erosion of the people's confidence in the courts. Even in cases where the courts have been established, the lack of competent human resources to man the courts in rural areas coupled with the lack of capacity development hinders the administration of justice. Addressing these limiting factors is essential to enable the basic protection of human rights. The concomitant effect of the imbalanced geographical distribution of the courts in Ghana is that indigents and rural dwellers will have limited physical access to justice. While the courts are predominantly situated in areas of economic buoyance, places with high population density with limited economic resources, on the other hand, are often denied construction of court premises. This is demonstrated by the fact that although the land size of Accra, the capital city of Ghana, is smaller than other Regions, the capital city has more High Courts than other Regions with large land coverage. The impact of geographical distance to courts in Ghana, especially in rural areas, is that people are not able to access justice due to the costs of travel to court by parties with the associated high transport cost to lawyers. Apart from the foregoing, the cost of legal services remains a major obstruction to accessing justice in Ghana. The inability to access legal and justice services can be both a result and a cause of poverty. Tyler T. et al. (2011) posit that people who are more vulnerable to social exclusion typically report more justice problems than other groups. According to Okogbule (2005), an estimated 75% of pre-trial detainee cases in Nigeria

for instance are too poor to afford a private lawyer. This includes high legal fees charged by lawyers and the high cost of filing processes in court. These fees serve as impediments for the poor and the marginalized to have access to the court as an avenue to seek redress.

The question, therefore, is whether the existence of legal aid schemes around the continent serves the purpose of removing the barriers of inequality in the justice system to promote an inclusive society that seeks to advance justice for all programmes. In Ghana, Article 294(1) of the Constitution provides for legal aid to give citizens unrestricted access to justice. In exercising its function under Article 294(2) of the Constitution, the Parliament of Ghana in 2018, passed the Legal Aid Commission Act, 2018, Act 977 to elevate the Commission to independent status to regulate the grant of legal aid in Ghana. Although this is not enough to insulate the Commission from political alienation, it is nonetheless a positive recognition of the important role of the Commission in the justice delivery system. The Legal Aid Commission (LAC) plays an important role in providing representation to the poor in both criminal and civil cases. However, despite the important role of legal aid in the justice delivery system, the Legal Aid Commission is faced with inadequate central government funding leading to the exclusion of many poor and vulnerable people from the justice net. The objective of this study is to assess whether or not given the constraints of the Commission, its role in reducing the justice gap could be appreciated. To achieve the objective of this study, the study would use secondary data obtained from the Legal Commission and the Courts pertaining to all criminal and civil cases recorded in 2020 and 2021. The study used descriptive and exploratory methods of analysis.

## 2.0 Problem statement

The principles of rule of law require that all citizens are given equal protection of the law and its processes in an open society. Various international treaties and national constitutions have imposed obligations on countries to implement and expand justice for all programmes. Given this, access to justice has globally been recognized as one of the pillars of fundamental rights to be enjoyed by people in every democratic state. According to the Organisation for Economic Co-operation and Development (OECD) Report (2019), equal access to justice and the right to available justice remain an intrinsic public good and a fundamental component of building an inclusive society. Studies indicate that access to legal aid is central to ensuring access to justice, especially for the poorest and most vulnerable people (Singh, 1998). Gleeson (2018) opined that governments incur huge hidden economic and social costs by not investing in legal aid schemes. These costs according to the jurist include the cost of delayed litigation, disruption, and inefficiency which are occasioned by the absence and denial of legal representation. This underscores the fact that investment in legal aid can produce substantial savings through avoided costs of arrest, conviction, and imprisonment. But in Ghana, for example, studies indicate that about 78% of Ghanaians are oblivious to the existence of the legal aid service (J.S.G Baseline Survey, 2012). Various international declarations, treaties, and protocols together with domestic legislation have characterized access to justice as a guaranteed right in any functioning democracy. Atuguba et al. (2006) posit that lack of effective legal aid systems for the vulnerable and those in rural communities excludes majority of people from the justice net. However, in many countries in Africa, there exist many obstacles and constraints for the poor and vulnerable in society to access the justice delivery system. According to a report by the UN Taskforce of Justice (2019), it is estimated

that about 5.1 billion people globally lack access to justice leading to a widespread justice gap. This justice gap undermines fundamental human rights and imposes high societal costs. In Ghana, Article 14(2) of the 1992 Constitution provides that any person who is arrested, restricted, or detained shall be informed immediately, in a language that he understands, of the reasons for his arrest, restriction, or detention and of his right to a lawyer of his choice. This notwithstanding there exists a justice gap due to some procedural technicalities in courtroom litigation, poverty, illiteracy, and ignorance of the law by many people. While the fundamental principle of access to justice is constitutionally encapsulated, its practical impact on the life of the ordinary Ghanaian remains elusive.

Access to justice is integral to achieving the Sustainable Development Goals (SDGs) to promote an inclusive society. However, although, academics like Cappelletti (1978) have established a nexus between free legal assistance and the entrenchment of fundamental human rights to fair trial, there remain unequal opportunities for people to have access to justice due to some procedural, financial, institutional, and geographical, and physical barriers. The existence of these factors militates against equal justice treatment and opportunities in Africa. Traditionally, access to justice revolves around an effective judicial system. However, courtroom litigation suffers from inflexible rules, high costs, mystifying courtroom language, delays, lack of privacy, acrimony among parties, abuse of legal procedures by state prosecutors, and payment of high filing fees at the courts. The lapses in the judicial system have also contributed to the loss of confidence in the justice system thereby excluding most people from the justice net. As such, to reduce this justice gap in society, a legal avenue has been created for indigents to resort to legal aid schemes to seek justice. However, most of the people who are excluded by the court system in seeking remedy are sometimes handicapped in accessing the services of legal aid schemes due to inadequate infrastructure and the limited geographical spread of the Legal Aid Commission. It is based on these constraints that the study aims to assess the role of legal aid schemes on justice delivery. To achieve the objective of this paper, the study would use both qualitative and quantitative methods of analysis. The study adopted exploratory and descriptive methods of analysis. This stems from the fact that qualitative design is suitable for descriptive and explanatory studies (Babbie, 2004). The study obtained secondary data from the Legal Aid Commission and the Judicial Service of Ghana for impact analysis. The data collected were analyzed to determine the number of cases recorded and disposed of through courtroom litigations and the Alternative Dispute Resolution system. The descriptive nature of the study involves the systematic presentation and analysis of the data collected. The twin approaches of the study ensure that the process of obtaining data in a non-numerical and numerical form is content-rich and provides an in-depth insight into the research questions.

### **3.0 Significance of the Study**

The misleading but high tendency to equate the doctrine of equality before the law to access to justice in Africa underscores the crucial importance of this study. The idea of "justice for all" continues to be one of the most important and frequently debated principles of modern society. It has been deemed vital by academics and researchers to look into the practical framework of justice systems in Africa. As a result, a lot has been written and said about access to justice. Various national constitutions and international conventions have made provisions for fair trial and access to justice as prerequisites for the promotion of fundamental human

rights. However, the intention of these legal provisions to provide equal opportunities for citizens to have unrestricted access to justice remains theoretical more than practical. This provides a counterclaim to studies indicating that the right to free legal assistance is quintessential to enhancing fundamental human rights to fair trial (Capelleti, 1989). The World Justice Project (2019) estimates that about 5.1 billion people lack access to legal protection globally due to societal marginalization, discrimination, and the high cost of legal services. This has resulted in a huge justice gap where many people live in extreme conditions of injustice, without access to legal avenues to resolve their disputes. In Ghana, Article 125 of the 1992 Constitution vests judicial power in the judiciary. In giving practical meaning to this constitutional provision, the Courts Act, 1993 (Act459) as amended was enacted to provide for the hierarchy of Courts and their respective jurisdictions. However, to advance the course of justice and equality before the law, the 1992 Constitution made provisions for legal aid services. Article 294(1) states that: *“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”*. This means that citizens should always have unrestricted access to justice. The provision of legal aid is, therefore, an indispensable enabler of the “justice for all programmes” since it serves as a critical global facility to eradicate barriers that limit access to justice. The decision to undertake this study in Ghana is therefore expedient. This is because the study seeks to assess the justice gap and evaluate the importance of legal aid services on the constitutional imperative of fair trial and access to justice. The study provides recommendations to guide policymakers in the justice industry to formulate pragmatic policies to expand the justice net in Ghana. The limitation of the study is, however, that although data obtained from the Legal Aid Commission and Judicial Service for 2020 and 2021 provide a phenomenal basis for the conclusion of this study, it might however not form conclusive evidence about the findings of the study since the study fell short of identifying and interviewing the very clients who attempt to access other avenues of justice.

#### **4.0 Literature Review**

This segment discusses the concept of access to justice and assesses the impact of legal aid schemes on justice delivery with the aim of addressing the gaps or shortcomings in the current body of literature.

##### **4.1 The concept of access to justice defined**

There are various theoretical foundations on the subject of access to justice. However, understanding the inequalities that exist in the rights of persons to access justice in Africa and whether or not the existence of legal aid schemes has contributed to removing barriers to access to justice has traditionally been based on two competing theories namely: Nozick’s entitlement theory (1974) and Rawl’s Theory of Justice (1971). The main aim of the two theories is to define justice in society. Nozick argues about the respect of people’s natural rights, their rights to property, and self-ownership by asserting that people should be free to decide what they want to do as each individual has his own autonomy. Nozick, therefore, defines justice to mean respecting people's right to self-ownership and refraining from interfering with it, even when doing so is in their best interests. Although Nozick’s theory of entitlement seeks to support this research in defining justice as a way of removing oppression from society to give people free

will to make their own decisions while being protected by the law in doing so, the theory fails to appreciate the systemic inertia in public administration to make justice an accessible public good. This study sought to fill this theoretical gap. Contrary to Nozick's theory of entitlement, Rawl's Theory of Justice postulates that justice is the structural rules of society where the different sets of values of people can coexist, cooperate, and to some extent compete. John Rawls, therefore, describes his theory of justice to mean "justice as fairness". Rawl propounded the theory of original position as a new way to learn about principles of justice where he argues that people will prefer principles of justice that will fairly distribute what he terms as "primary social good" to the benefit of everyone. The central thesis of Rawl's theory of justice is that all persons must have equal rights to the systems to ensure equal basic liberties. This proposition of Rawls situates well with the objectives of this study that when it comes to the issue of access to justice, no one should be discriminated against regardless of their financial standing in society and thus it is the duty of the state to ensure that all citizens have equal access to justice when needed.

The concept of legal aid remains inseparable from its function as a vital means of access to justice. According to the United Nations Development Programme, Access to Justice Practice Note (2014), access to justice is people's ability to seek and obtain a remedy through formal or informal institutions of justice in conformity with human rights standards. Literature is abundant on the evolution of access to justice. Various studies have formulated theories about the evolution of access to justice (Cappelletti and Garth 1978; Parker 1999; Anderson 2003; Moorhead and Sherr 2003; Rhode 2004; Bhabha 2007). For instance, Cappelletti and Garth (1978) postulated the evolution theory of access to justice. Cappelletti and Garth contend that three stages of change can be used to explain the development of access to justice. The "first wave" was the establishment of legal aid schemes, which aimed to give those who were economically disadvantaged access to legal representation in courts. This wave adopted strategies where individualized legal assistance and legal advice in the form of pro bono, subsidized legal services, and public defender models were used to pave the way for access to justice. The "second wave" placed more focus on group and collective rights than it did on the assurance of right to legal representation obtained in the first wave. The focus of this stage was to ensure that advocacy of public interest litigation occupied the discourse of access to justice to address systemic problems of inequality that had plagued the justice system. This wave again sought to improve accessibility of individual or group procedures at courts and other forums for seeking alternative dispute resolution. The "third wave" of the access to justice movement focused on the development of a range of alternatives to litigation in court to resolve disputes including reforms that sought to simplify the justice system to facilitate greater accessibility. The agenda of this wave included strategies such as empowerment through legal needs, codification of legal processes and procedures, public legal education, negotiation, and conflict management skills. According to Cappelletti and Garth (1978), the third wave saw the appearance of a fully incubated access to justice strategy.

The concept of justice and access to justice are conflictual in different paradigms. However, whatever their scope and nature, the two concepts must promote rule of law. The concept of rule of law is a function of the doctrine of equality and freedom from discrimination which requires all persons to be equal before the law. In terms of democracy, Ghana is positioned as a democratic state committed to the fulfillment of freedom and justice under Article 35(1) of the 1992 Constitution. No one shall be subjected to discrimination on the basis

of gender, race, color, ethnic origin, religion, creed, or social or economic standing, according to Article 17(2) of the Constitution. According to Bissimba and Peter (2005), the rule of law must be applied equitably to all people in a democratic society.

In a democratically elected government, the right of access to justice remains a critical component of rule of law. According to Samata (2003), citizens' ability to access justice is a promotion of fundamental human rights. Cappelletti (1989) posits that the right to free legal assistance remains one of the pillars of enhancing fundamental human rights to fair trial. However, how to achieve access to justice in practical and material terms continues to be debated in literature. The standard idea of access to justice may sound easy in terms of its conceptualization but its precise definition presents some difficulties. Generally speaking, access to justice has been characterized historically as a collection of institutional measures put in place to guarantee that individuals without the means or capacity to assert their legal rights have access to the legal system to resolve their disputes. Cappelletti and Garth(1978) posit that access to justice in a legal system is defined to serve two main goals, namely, a system by which people may vindicate their rights and/or a system by which people resolve their disputes through state facilities. According to Fleming (1999), the court system has historically dominated the institutional framework for granting access to justice within the common law system. In this sense, having access to the courts allows people to exercise their legal rights within the framework of the current justice system. As a result, in order to exercise their right to seek justice, all parties whose rights have been violated must have access to judicial institutions where their claims can be heard by an independent tribunal. According to Bissimba & Peter (2005), an independent judiciary is necessary to ensure that all people and institutions are treated equally and without bias when applying the law in order for the rule of law to have any real meaning or impact.

Grey (2004) avers that the Court remains the only refuge for the protection of rights in democratic dispensations. This calls on countries to avoid exercising undue influence on the judicial system and its actors to guarantee the fundamental human rights of citizens. According to Sakala (1999), everyone has the right to be treated fairly in accordance with due process. According to him, the concept of access to justice in a strict sense refers to the right to have disputes resolved by courts of law, but in a broader sense, it refers to a variety of difficulties that arise before, during, and after the trial. In Sakala's view on access to justice, he opines that participants in civil lawsuits would need financial resources to invoke rule of law before the trial in order to pay for legal representation, court filing fees, and travel expenses to testify in person. The contesting parties are once more entitled to a public hearing before an impartial and independent judge during trial. To him, at this point, the idea of access to justice would remain illusory unless the procedural part of the trial is handled to avoid unnecessary delays.

Since the emergence of numerous cutting-edge methods, the idea of access to justice in civil litigation has undergone significant transformation. The modes of resolving civil disputes have progressively adopted a twin approach. This includes the traditional court system and the gradual migration from the courts to the various models of alternative dispute resolution. However, the pace of criminal justice reforms has not been that progressive. This is partly because the criminal justice process leaves little discretion for persons accused of crimes. Access to justice is defined by Mensa-Bonsu et al. (2007) as having access to a fair, effective, and democratic means of safeguarding human rights, preventing the abuse of power, and

resolving disputes. But the traditional court system is not the only place where people can access justice. Various institutional arrangements have been made to provide alternative mechanisms for accessing justice. Even though the courts in Ghana are given judicial authority by the constitution, organizations like the Commission for Human Rights and Administrative Justice (CHRAJ) and the Legal Aid Commission also exist to give citizens access to justice outside of the traditional court setting.

In Ghana, Article 125 of the 1992 Constitution vests the judicial power in the courts. Although the right to access justice is a fundamental human right and has legal and international significance, there are a number of practical barriers that prevent many people from exercising this right. These may include poverty, delay in justice and limitation of time in filing cases, legal technicalities. Other factors include illiteracy, adversarial environment of the court system, and language limitations. According to Sakala (1999), these factors serve as a blockade or barrier to the right of access to justice. Poverty serves as an impediment to the right of access to justice due to the high cost of justice administration in Ghana. According to the World Bank, a person is poor if he or she lives on less than \$1.90 a day an equivalent of GH¢24 a today (World Bank Report, 2018). Data from the World Bank also puts the poverty rate of Ghana in 2020 at 25.5% (World Bank Report, 2020). Accordingly, 7.9 million of Ghana's estimated 30.8 million citizens live below the poverty line. This demonstrates that many people in Ghana are likely to be excluded from the justice net due to their inability to afford the services of legal representation, pay for filing processes at court, and other unavoidable expenses incidental to courtroom litigation. The net effect is that the desire of the poor to seek justice at the law court would be impeded. By reason of poverty, Anderson (2003) avers that access to justice has usually been seen as an avenue for the affluent in society. Policy and lawmakers must pervert this school of thought since denying the poor and vulnerable people access to justice can generate civil upheavals the consequences of which may be a breakdown of law and order in the country.

Again, the reality or perceptions about delays in court litigation is anathema to the administration of justice. Delay in justice administration is defined to mean the time between the filing and disposition of cases at the court (Kakalik et al., 1990). Cappelletti (1989) opines those unreasonable delays in justice delivery amount to poor justice and amount to denial of justice. Delays could also be so unreasonable that favourable judgment at the end may not serve its purpose. For example, Article 19(1) & (13) of the 1992 Constitution enjoins the court to give fair hearings within a reasonable time to persons charged with a criminal offence and persons engaged in civil litigation respectively. However, the operationalization of this constitutional imperative has remained impracticable over the years due to systemic delays that have become inherent in the judicial system. Storey (1986) apportions blame for the delays in justice administration on lawyers, the court, and the rules governing procedure and appeals at the court. Practically, these delays could also be attributed to the absence of lawyers in court, the absence of witnesses, ill health of parties, investigators, and witnesses, as well as various adjournments by the court. The major challenge is that delays in justice delivery have enormous repercussions on the entire administration of justice. According to Zeisel et al. (1959), delayed justice leads to erosion of public confidence in the court system, reduces the potency of evidence, and causes unbearable hardship and cost to the litigating parties. In support of this proposition, Barr (2005) avers that in civil litigation, delay in the administration of justice causes financial loss to the litigating parties since the cost incurred as a result of the delays may



far outweigh the actual remedy at the end of the trial. Tobi (1997) also argues that in a criminal trial, delays do not only affect the liberty of the accused person in custody but also serve as a violation of the accused person's right to fair trial. The Lack of administrative and legal reforms in the justice delivery chain, therefore, continues to impede the concept of access to justice.

Again, in the sphere of justice administration, rules and laws should intend to facilitate rather than obstruct access to justice. Studies indicate that complex judicial language and legal technicalities serve as a fetter on the right of access to justice (Okogbule, 2005). This may be due to the inherent legal technicalities and procedural complexities associated with the legal system. As such, litigating parties lack an ordinary understanding of courtroom procedures and legal jargon, and they choose not to exercise their right to go to court. Sakala (1999) posits that litigants' right of access to justice is curtailed when they are ignorant of the procedural rules of court, especially when they cannot afford the services of legal fees of lawyers. D'Amato (2011) wanted to understand what it meant when people said that judges should resolve matters in accordance with justice rather than the law. In resolving this issue, he concluded that justice is an inherent component of the law and not separate or distinct from it. On the other hand, Niki Tobi, JSC a Nigerian Judge, dissenting in the case of **Akaninwo v. Nsirim [2008] 1 SC 151** postulated that some people intimate that the court does not necessarily exist to do justice but to operate in accordance with legal technicalities. In such instances, justice is not seen to be done. According to Bissimba & Peter (2005), parties should have access to legal representation for justice to be done and to be seen to be done. This underscores the fact that although duty has been imposed on the court to administer justice in accordance with law, the court must not allow legal technicalities to override the substance of cases submitted to them for impartial determination.

#### 4.2 The Concept of Legal Aid

Access to legal aid is a global mechanism for ensuring access to justice, especially for the poorest and most vulnerable people. However, the inherent limitations and impediments to access to justice have escalated global and national orientation and advocacy toward the setting up of legal aid schemes. Legal aid, according to Brownell (1951), is the provision of free or low-cost legal services to individuals who, due to financial constraints, cannot afford to hire a lawyer. World Bank Group (2019) defines legal aid to mean the provision of legal advice, assistance, and representation to people or groups who cannot afford to pay privately for that legal help. Singh (1996) posits that legal aid constitutes legal assistance provided to weaker members of society to protect their legal rights and liberties. Shivji (1984) argues that legal aid is a product of a legal that seeks to expand the frontiers of justice to all persons to achieve the universal doctrine of equality before the law. Studies show that the primary arguments for supporting legal aid rest on the inherent value to society of protecting the most vulnerable in society and ensuring access to justice for those who cannot afford the service of a lawyer (Regan et al., 1999).

In the layman's understanding, legal aid is assistance given to persons in need and who deserve legal services. Legal aid serves as a mechanism to provide oxygen to the "justice for all" programme. This is because studies indicate that the concept of justice would not achieve the desired impact if legal aid were not made available to persons who cannot afford to pay for the service of lawyers to litigate their cases in court (Samata, 2003). Bissimba & Peter (2005)

posit that the policy rationale for creating legal schemes is predicated on the doctrine of rule of law which requires equal protection of every person before the law. Sigh (1996) posits that the essence of law is to do justice to all manner of persons irrespective of status. Van (2005) believes that the fundamental objective of legal aid is to remove obstacles that exist to impede equal access to legal protection. In this way, all forms of discrimination that exist to restrict the right of access to justice shall cease to exist. The provision of legal aid, therefore, remains an essential requirement for maintaining an equilibrium of justice as it exists to embrace all persons into the justice net and guarantee individual rights to fair trial.

The significance of legal aid in the administration of justice has not gone unnoticed throughout the world. Numerous international conventions and protocols have given literature on the concept a great deal of recognition. The Universal Declaration of Human Rights (1948) states in Article 7 that everyone has a right to equal legal protection. This aims to stop the treatment of people unfairly. Every person has the right to seek redress before a competent tribunal, according to Article 8, which enshrines the right to a fair trial. Article 16 of the International Covenant on Civil and Political Rights (1966) promotes the idea of equality before the law and states that everyone accused of a crime has the right to self-defense or the right to consult a lawyer of his choice. According to Article 6(3) of the European Convention on Human Rights, anyone accused of a crime has the right to defend themselves or seek the services of a lawyer of their choice, and if they lack the financial means to do so, they should be provided with free legal representation when the interests of justice so demand. The African Commission on Human and Peoples' Rights (1987) provided under Article 7(1) that everyone has the right to be heard, the right to a defence, and the right to be represented by a lawyer of their choice in support of the notion of a fair trial in Africa.

Jurisprudence on legal aid has manifested in various international and national legislations. At the national level, Article 17 of the 1992 Constitution of Ghana guarantees equality before the law. This means that every person should have equal access to the courts anytime that person's rights have been violated and needs to seek the assistance of the courts to obtain remedies. However, in reality, this constitutional imperative seems impractical given the high cost associated with courtroom litigation in addition to the huge financial commitments required for people to initiate legal processes and procedures to assert their rights. In Ghana, article 294 of the constitution makes legal aid a constitutional right for all citizens. Article 294(1) of the 1992 constitution provides that 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.

In 1980, Justice Taylor in the case of *Kpekoro v the Republic* [1980] GLR 580 invoked the power of the court to grant legal aid to the appellant by stating that *"It seems to me that in order to safeguard the liberty of the citizens in whose interest the laws of the Republic are promulgated, it is essential that those indigent and illiterate persons ignorant of the legal process and accused of serious crimes carrying harsh penalties, are not left to their own devices but are assigned learned counsel by way of legal aid"*. In taking into consideration the importance of legal in the justice delivery system, the Courts Act 1993, Act 459 as amended also provides for legal aid. According to the Act, the court has the authority to, after taking into account certain factors, assign briefs (cases) to attorneys so they can represent parties in court.

This means that the Supreme Court, the Court of Appeal, the High Court, or the Regional Tribunal may assign a lawyer by way of legal aid to any party to any proceedings before the Court or Tribunal if 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 retain the services of a lawyer, as stated in Section 114(1) of the Courts Act. Article 294(1) of the Constitution is once more reaffirmed in Section 114(3) of Act 459, which states that anybody who has reasonable grounds for initiating, defending, prosecuting, or participating in any constitutional litigation shall be entitled to legal aid in connection therewith. This supports Ghana's constitutional supremacy doctrine. Every Ghanaian has the legal authority to file a lawsuit seeking a determination that a person's behavior or inaction or a piece of legislation violates a provision of the Constitution under Article 2(1) of the 1992 Constitution. As a result, the legal aid programme has been expanded to include persons who want to uphold the constitution but may be in financial difficulty.

However, before the 1992 Constitution was adopted, the law on legal aid was governed by the Legal Aid Scheme Law of 1987 (PNDCL 184). To comply with the restrictions of the Constitution, this statute was later abolished with the adoption of the Legal Aid Scheme Act 1997 (Act 542). The Constitution also gives power to Parliament of Ghana to regulate the grant of legal aid by an Act of Parliament. In pursuit of its mandate under article 294(2) of the constitution, the Parliament of Ghana in 2018, passed the Legal Aid Commission Act, 2018, Act 977 to elevate the Commission to independent status to regulate the grant of legal aid. Accordingly, the Legal Aid Scheme Act 1997 (Act 542) was repealed and replaced by the Legal Aid Commission Act, 2018, Act 977. The policy objective of the Commission is to ensure equal access to justice and equal treatment before the law by serving as a Public Defender for the poor in need of cost-effective justice.

The concept of legal aid in Ghana has been constitutionally defined. According to article 294(4) of the Constitution, legal aid shall consist of representation by a lawyer, including such assistance as is given by a lawyer, in the steps preliminary or incidental to any proceedings or arriving at or giving effect to a compromise to avoid or to bring to an end any proceedings. This includes the provision of legal advisory services, legal representation in all civil and criminal matters, legal representation for juveniles, and legal representation in connection with matters relating to the enforcement of the constitution. A more recent initiative by the Alternative Dispute Resolution Act, 2010, Act 798, and the Legal Aid Commission Act, 2018, Act 977 to increase access to justice has been the promotion of alternative dispute resolution (ADR) mechanisms to divert cases from the courts. These laws have now made mediation one of the important functions of the Legal Aid Commission to resolve cases outside the traditional court system. Section 2 of Act 977 epitomizes the constitutional provision by expanding the scope of legal aid services not only to indigents but also persons who have reasonable grounds to take, defend, prosecute, or be a party to proceedings related to the enforcement of the constitution of Ghana. This means that now legal aid is not only limited to civil and criminal matters but also includes matters of constitutional litigation. Section 5 of Act 977 also establishes the Governing Board of the Legal Aid Commission (LAC). Among the functions of the Board under section 6 of the Act is the development of comprehensive legal aid policy and programmes to be implemented nationwide and the provision of oversight duties over the general administration of legal aid services in the country. The administration of legal aid services shall cover the entire spectrum of the country. As such, sections 24 and 25 of Act 977

enjoin the Commission to establish offices in all regional and district capitals respectively to provide legal advice and services to the poor and the vulnerable in society. The aim of these provisions is to expand the frontiers of access to justice to cover all qualified persons irrespectively of geographical location.

However, in the performance of its functions, the Commission is faced with myriad of operational and administrative challenges. This includes inadequate human capital, inadequate and poor state of infrastructures, lack of effective publicity and outreach programmes, lack of capacity building for staff, and low remunerations for staff. Reports indicate that not only are some of the regional and district offices of the Commission unsuitable, but other districts in the country do not even have offices at all (AfriMAP, 2007). In 2020, for example, the Annual Report of the Legal Aid Commission shows that the Commission is present in 32 districts nationwide. In the same year, the Commission carried out over 500 sensitization programmes nationwide. This took the form of radio and TV programmes and community outreach programmes. This notwithstanding, available records show that many citizens of Ghana are unaware of the existence of the Commission and its mandate due to lack of publicity (LAS Report, 2009). In addition to lack of budgetary support and funding, the Commission is also bedeviled with inadequate manpower with limited number of lawyers due to poor remuneration and incentives for attraction. These challenges operate as barriers to the Commission's attempt to provide access to justice for the poor, less privileged, and vulnerable in society. However, despite these challenges, the Commission served as a 'life-saving avenue' for justice to people who sought their service in 2020 and 2021.

While the aforementioned theories and legislative review focused on the broad analysis of the concept of access to justice, this study sought to close the gap in the body of literature by focusing on the disparities in access to justice and whether or not the existence of legal aid programmes and alternative dispute resolution mechanisms have helped to reduce the justice gap. Again, despite the fact that existing literature examines the theoretical underpinnings of people's rights to a fair trial and access to justice, these scholars do not establish a proper linkage between access to justice and the provision of legal aid services. Existing literature also fails to demonstrate how legal aid programmes can be used to effectively increase access to justice. Once more, the literature ignores alternatives to the established court system for seeking justice. While the above theories dwelt on the general analysis of the concept of access to justice, this study seeks to fill the gap in the existing literature by concentrating on the practical factors that create inequalities in access to justice and whether or not the existence of legal aid schemes and alternative dispute resolution mechanisms have contributed to removing barriers to access to justice.

## **5.0 Research Methodology**

This segment of the study describes the appropriateness of the chosen methodology. According to Rajasekar et. al., (2006), research is a logical and systematic search for new and useful information on a particular subject matter. Polit and Hungler (2004) define methodology as the process of gathering, compiling, and evaluating data. A quantitative desktop research approach was employed in this study. This method allowed the researcher to collect secondary data from the Legal Aid Commission and the Judicial Service of Ghana. The purpose of a desk study is to save time and resources directed toward the collection of primary data on the field.

According to Zhou & Nunes (2016), desktop research depends on existing data that have been published for another purpose other than for the current study. The purpose of the study is to determine how legal aid schemes can be used to increase access to justice. The selection of this methodology is guided by the objectives the study seeks to address (Leppink, 2017). The research objectives represent the motives for why the study is being conducted. Hence, the primary aim of the research objectives is to guide and direct the study in a specific direction. The study focused mainly on data on the number and categories of cases recorded by the Legal Aid Commission and the Judicial Service within the year range of 2020-2021 which is a two-year range, making the study to be considered recent and thus bringing relevance and fresh perspective to the study. This data was analyzed into the number of cases recorded, the number of cases resolved, and pending cases registered by the two agencies. In assessing the performance of the Legal Aid Commission and the extent of its impact on access to justice, the study measured the performance of mediated ADR cases on the basis of the ratio of the number of cases resolved to the total number of cases received by the Commission expressed in percentages. Again, the representation of indigents in courtroom litigations was measured as a percentage of litigations resolved as against the number of total cases received. The study also compared data from the Legal Aid Commission to that of the Judicial Service (Court) to ascertain the number of citizens who would have been excluded from the justice net but for the existence of legal aid. The data collected was organized for purposes of quantitative analysis. The quantitative analysis took the form of descriptive statistics such as frequency tables, graphs, and percentages with the aid of Microsoft Tools. This enabled the researcher to make deductions, draw inferences, and relevant conclusions about the effect of legal aid on the constitutional right to access justice in Ghana. The limitation of the study, however, is that the choice to opt for 2020 and 2021 data alone might provide microscopic insight into the objective of the study although the data obtained could be used to make logical and reasonable inferences and conclusions.

## 6.0 Results and Discussion

The study ascertained gender in terms of the sex of the indigents who accessed the service of the Legal Aid Commission within the year range 2020-2021. This demographic trait was analyzed for purposes of ascertaining the category of persons who patronize the services of Legal Aid. Table 1 below shows that out of the 11,589 persons who were offered legal aid services for the year 2020, 55% were females while 45% were males. Again, in 2021 out of the 13,078 who accessed the services of Legal Aid, 57% were females compared to 43% of males. This indicates that more females patronized legal aid services to access their right to justice than males.

Table 1  
 Sex Distribution of Cases

Year	2020		2021	
	Frequenc y	Percentage(%) )	Frequenc y	Percentage(%)
Female	6,374	55	7,454	57
Male	5,215	45	5,624	43
<b>Total</b>	<b>11,589</b>	<b>100</b>	<b>13,078</b>	<b>100</b>

Source: Legal Aid Commission

Table 1 shows that the total number of cases recorded in 2020 and 2021 were 11,589 and 13,078 respectively. On the issue of gender, most cases recorded at the office of Legal Aid were complaints from females. The results reveal that in 2020, 55% of females accessed the service of legal aid compared to 45% of their male counterparts. Again, 57% of females accessed legal aid services in 2021 compared to 43% of males. The 2021 cases compared to 2020, the results show that while the number of complaints filed by females in 2021 increased by 2%, that of their male counterparts declined by 2%. This indicates that more females used legal aid services to assert their legal right to justice than males. Everyone is equal before the law in accordance with the equality principle, which is one of the tenets of contemporary law. The equality principle can occasionally lead to inequality in daily life, such as gender-based inequity. Of particular significance is the discussion on gender inequality in access to justice. On the relevance of access to justice on gender sensitivity, the United Nations Women's Progress Report (2012) reveals that gender equality guarantees are recognized in 139 national constitutions and as many as 125 countries in the world have outlawed domestic violence. One of the conditions of rule of law is equality before the law. The essence of this legal principle is to avoid discriminatory laws based on gender and status. Edgeworth (2003) asserts that, particularly in liberal countries, inequalities are the very foundation of access to formal justice and formal equality. Berkes (2003) posits that practically, the principle of equality fails to solve problems and disputes arising from gender inequality. However, globally, the formal justice system's capacity is very limited. For example, in Ghana, the ratio of judges and magistrates to the population in one of the poorest regions, the Upper East Region is 1:171,913, compared to 1:33,416 in the capital city, Accra (Ghana Judicial Service, 2012). Poverty remains one of the obstacles to access to justice. In Ghana, gender distribution constitutes one of the vital statistics for population analysis. Ghana's current population is 30.8 million. Out of this, 15.7 million are females representing 50.97% and the males are 15.1 million representing 49.03% (GSS Report, 2020). This shows that females outnumber males by almost 600,000. This population demographic reflects reported cases of crime and access to legal services through legal aid. Report estimates that 31.9% of women compared to 20% of men experience domestic violence in Ghana (DOVVSU, 2020). This may indicate that more women accessed the justice system by reporting domestic violence cases compared to their male counterparts. This orientation is also supported by the findings from this study that more females accessed the services of legal aid than males. Due to the high expense of administering justice in Ghana, poverty serves as a barrier to the right to seek justice. Studies indicate that majority of the world's poorest women tend to rely on informal customary and religious dispute mechanisms which tend to resolve disputes more expeditiously but with less reliance and reference to the principles of gender equality (Pearce, 1978). Results from the study reveal a contrasting observation about the relationship between poverty and lack of access to justice due to the existence of legal aid services. The World Bank's data puts the poverty rate of Ghana in 2020 at 25.5% of which women are the majority (World Bank Report, 2020). This is consistent with the outcome of this study that more female indigents patronized the services of legal aid to access their right to justice than males. This supports the averment that the right of these female indigents to access justice would be impeded but for the availability of legal aid services.

**Table 2: Number of cases handled by Legal Aid Commission and the Court for the year 2020**

Cases recorded by Legal Aid Commission					
Case Category	Total Recorded Cases	Pending Cases	Resolved Cases	% of Cases Pending	% of Cases Resolved
ADR	9,133	3,598	5,535	39.40	60.60
<b>Case Type:</b>					
Civil Cases	1,597	872	725	53.75	46.26
Criminal Cases	859	469	390	53.60	46.60
<b>Total</b>	<b>11,589</b>	<b>4,939</b>	<b>6,650</b>		
		<b>42.62</b>	<b>57.38</b>		
Source: Legal Aid Commission 2020 Programmed Based Budget Report					
Cases recorded by the Courts					
Case Category	Total Recorded Cases	Pending Cases	Resolved Cases	% of Cases Pending	% of Cases Resolved
ADR	3,439	1,127	2,312	32.77	67.23
<b>Case Type:</b>					
Civil Cases	57,246	7,387	49,859	12.90	87.10
Criminal Cases	51,133	3,394	47,739	6.64	93.36
<b>Total</b>	<b>111,818</b>	<b>11,908</b>	<b>99,910</b>		
		<b>10.65</b>	<b>89.35</b>		
Source: Judicial Service 2020 Annual Report					

**Table 3: Number of cases handled by Legal Aid Commission and the Court for the year 2021**

Cases recorded by Legal Aid Commission					
Case Category	Total Recorded Cases	Pending Cases	Resolved Cases	% of Cases Pending	% of Cases Resolved
ADR	11,420	4,830	6,590	42.29	57.71
<b>Case Type:</b>					
Civil Litigation	995	437	558	43.92	56.08
Criminal Cases	663	291	372	43.89	56.11
<b>Total</b>	<b>13,078</b>	<b>5,558</b>	<b>7,520</b>		
		<b>42.50</b>	<b>57.50</b>		
Source: Legal Aid Commission 2021 Programmed Based Budget Report					
Cases recorded by the Courts					
Case Category	Total Recorded Cases	Pending Cases	Resolved Cases	% of Cases Pending	% of Cases Resolved
ADR	4,189	2,426	1,763	57.91	42.09
<b>Case Type:</b>					
Civil Litigation	55,990	5,581	50,409	9.97	90.03
Criminal Cases	50,222	2,161	48,061	4.30	95.70
<b>Total</b>	<b>110,401</b>	<b>10,168</b>	<b>100,233</b>		
		<b>9.21</b>	<b>90.79</b>		
Source: Judicial Service 2021 Annual Report					

Table 2 and 3 demonstrates the number of cases recorded by the Legal Aid Commission and the mainstream court for the 2020 and 2021 fiscal years. With respect to the Medium-Term Expenditure Framework (MTEF), the Legal Aid Commission prepares its Programme Based Budget (PBB) on two main programmes. One of the programmes is to provide legal aid services. The policy objective of this programme is to improve legal aid delivery, improve access to justice for all, expand legal aid services to all districts, and promote access and efficiency in the delivery of justice. The programme covers two main activities. These are legal and citizenry advisory and alternative dispute resolution. The legal and citizenry advisory

programme is responsible for the provision of free legal advice and representation to the indigents. Alternative Dispute Resolution assists persons in disputes to arrive at a compromise through mediation. These functions position the Commission as a Public Defender charged with the duty to assist persons in need of legal assistance for the realization of the right of equality before the law and fair trial as well as defending the public for the realization of articles 14, 17 and 19 of the 1992 Constitution. Table 2 shows that the cases handled by the two institutions were categorized into Alternative Dispute Resolution cases, Civil cases, and Criminal cases. Some of the cases included matrimonial disputes, child maintenance allowance, divorce, manslaughter, murder, rape, and defilement, among others. The cases were further categorized into resolved cases and pending cases. Table 2 shows that a total of 11,589 cases were lodged by indigents at the Legal Aid Commission in 2020. Of these cases, 9,133 of them representing 78.8% were ADR cases, 13.8% were civil cases and 7.4% constituted criminal cases. The study also reveals that 60.6% of the ADR cases handled by the Commission were resolved and 39.4% of them were pending. Again, in the same year, 2,456 court cases were received, out of which 1,597 representing 13.8% of the court cases constituted civil litigation while 859 of the cases representing 7.4% were criminal in nature. Out of these court cases, 1,115 representing 45.4% were resolved, with 1,341 constituting 54.6% pending. Of the civil cases, 46.26% were resolved while 53.75% were pending. Again, of the criminal cases, 46.6% of them were resolved and 53.6% of them were pending. This means that majority of indigents constituting 78.8% prefer the Commission to settle disputes through the Alternative Dispute Resolution mechanism as against going to court. These cases were handled by the various regional and district offices of the Legal Aid Commission in the country. Studies show that legal needs are predominately civil in nature and the most common types of problems for which legal aid services are sought relate to breach of individual contractual rights, rent and tenancy, employment issues, land and property disputes, family issues, conflicts with neighbors, and debt recovery (Pascoe et al., 2013). The reason for this could be that the idea of civil justice has undergone significant transformation over the past decades. The use of various types of alternative dispute resolution has supplemented courtroom litigation as the primary method of dispute resolution. However, there have not been as many changes in access to criminal justice recently although restorative justice seems to be steadily expanding the criminal justice system. This is undeniably due to the fact that the criminal justice system gives those accused of crimes little leeway, but civil law cases frequently allow people to choose from a greater choice of options for resolving their issues.

In comparing legal aid cases to court cases, Tables 2 and 3 demonstrate that in the years 2020 and 2021, a total of 111,818 and 110,400 cases respectively went to the traditional courts nationwide. Table 2 shows that 57,246 of the cases recorded at the court representing 51.2% were civil cases while 45.7% constituted criminal cases with 3.1% representing cases to be determined through alternative dispute resolution. Table 3 also demonstrates that 55,990 of the court cases representing 50.7% were in respect of civil litigation while 45.5% of the cases were on criminal prosecution with 3.8% of them constituting ADR cases. The study shows in Table 2 that 87.1% and 93.36% of the civil and criminal cases respectively sent to court were resolved. It further shows that 67.23% of the cases sent to the court-connected ADR were resolved. Table 3 also demonstrates that 90.3% of civil cases in court were resolved. Again, 95.7% of the criminal cases were adjudicated upon while 42.09% of the ADR cases were settled. The study reveals that although the performance rates of the court in 2020 (89.35%) and 2021(90.79%) were higher than that of the Legal Aid Commission in 2020 (57.38%) and



2021 (57.5%), people surprisingly preferred to use the ADR mechanism at Legal Aid Commission over the mainstream court in both years. This is demonstrated by the fact that of the 11,589 and 13,078 cases filed by indigents in 2020 and 2021 respectively at Legal Aid, 9,133 of them in 2020 representing 78.8% and 11,420 of them in 2021 representing 87.3% were ADR cases compared to the 3,439 (3.1%) and 4,189 (3.8%) of the cases in 2020 and 2021 respectively that were sent to court for adjudication. This means that while majority of the disputing parties prefer to use the court to settle civil litigation and criminal prosecution in court, few parties prefer to use the court-connected ADR facility. On the contrary, while majority of indigents prefer to use the ADR mechanism to settle disputes at the Legal Aid Commission, a minority of the cases lodged at the Commission were escalated to courtroom litigation. This may be due to the liberal and seemingly informal environment adopted by the Legal Aid Commission at its mediation sessions in resolving disputes. Section 135 of the Alternative Dispute Resolution Act 2010, Act 798, provides a collective description of methods of resolving disputes otherwise than through the normal trial process. It is a resolution of disputes based on reconciling interests rather than a determination based on rights. Section 63 to 88 cover mediation as means of speedy resolution of disputes. The recent emerging trends and adoption of ADR over the conventional litigation at the Commission could be due to the appetite of indigents to protect their privacy, seek voluntary agreements, avoid systemic delays in litigation, and save cost. The popularity of mediation has grown tremendously and Tables 2 and 3 show a phenomenal success rate in creating settlements through the use of mediation.

In terms of evaluating the impact of legal aid on access to justice, Table 2 demonstrates that but for the existence of the Legal Aid Commission, a total of 11,589 poor and vulnerable people would have been excluded from the justice net thereby denying them their fundamental human right to fair trial. Access to justice is integral to achieving the Sustainable Development Goals (SDGs) and inclusive growth. Studies show that an estimated 5.1 billion people around the world live outside the protection of the law, mostly because they are poor or marginalized within their societies (World Justice Project, 2019). As such, the impact of legal aid schemes in promoting social inclusion and a non-discriminatory justice system is a sine qua non in achieving the UN Sustainable Development Goals (SDGs). The SDGs present a fantastic opportunity to improve the lives of millions of people while tackling the existential problem of injustice in the justice system. The purpose of Sustainable Development Goal 16 is to support inclusive and peaceful societies that foster sustainable development, to ensure that everyone has access to justice, and to create inclusive, effective, and accountable institutions at all levels.

The joint United Nations-World Bank flagship report (2018) indicates that improving access to justice helps to prevent and mitigate the risk of fragility, conflict, and violence. In support of this report, Persida Acosta, the Chief at the Public Attorney's Office in the Philippines said that "*Whenever someone is deprived of his right to counsel and feels that he is a victim of injustice, that person may run to the mountains or turn into a rebel*". For this reason, nations must support everyone who wants to use peaceful and legal measures to seek redress for their complaints through the provision of legal aid services. The existence of legal aid schemes seeks to bridge the justice gap between the wealthy and the poor who otherwise would have been handicapped to obtain justice. In Ghana, a plethora of cases exists to demonstrate the role of legal aid on access to justice. In pursuit of its legal mandate, the Legal Aid Commission in 2020 provided access to justice to many persons whose constitutional right to fair trial would have been impeded. For example, in the case of **Kwame Ameyome v the**

**Republic, a Criminal Appeal Suit No. H2/04/20 dated 26<sup>th</sup> February 2021**, the accused, a taxi driver was legally assisted by the Legal Aid Commission to gain his freedom after serving 12 years in the maximum-security prison at Nsawam for a wrongful charge of robbery. Again, in the case of the **Charles Twumasi vs Republic [2020] DLCA8568**, the accused, an Accounts Clerk was assisted to gain his freedom after being sentenced to 15 years imprisonment for allegedly defiling a 12-year pupil and impregnating her. In the opinion of the Commission, the evidence adduced at the trial court did support the charge and the prosecution failed to discharge the burden of proof as required by the Evidence Act, (NRCD 323) 1975. The accused was accordingly acquitted and discharged. In addition, in the case of the **Republic vs Kwame Dorleagbenu**, Mr. Dorleagbenu, a 39-year-old farmer and Rastafarian was accused of being part of a gang that raped a 17-year-old girl was acquitted and discharged by an Accra High Court through the intervention of Legal Aid Commission. Evidence of these cases can be demonstrated below:



Figure 1: Taxi driver freed by Legal Aid by Legal Aid



Figure 2: Bursar freed

## 7.0 Conclusion

Access to justice is integral to achieving the Sustainable Development Goals (SDGs) and inclusive growth. The right of access to justice is an important right whose enjoyment is necessary to ensure better protection of fundamental human rights and freedom under domestic and international law. However, many social, economic, and legal factors exist to impede the enjoyment of the right to fair trial and access to justice. This paper, therefore, sought to examine the impact of legal aid schemes on the concept of access to justice in Ghana. In examining the concept of access to justice, the study identified poverty, legal technicalities systemic delays in the administration of justice, illiteracy, and unequal geographical distribution of courts as factors responsible for limiting the right of persons to access justice. These factors make it difficult for indigents to exercise their right of access to justice. The paper then sought to examine the effect of the existence of legal aid schemes on the right of indigents to access

justice. As a result, secondary data was obtained from the Legal Aid Commission and the Judicial Service (courts) for comparative studies. The study found that just as with the courts, the jurisdiction of the Legal Aid Commission covers civil and criminal cases including the use of alternative dispute resolution mechanisms. In comparing the performance of the Legal Aid Commission and the Courts in terms of cases loads and case disposal rate, the study revealed that although the performance rates of the courts are higher than that of the Legal Aid Commission in terms of civil and criminal justice people surprisingly preferred to use the ADR mechanism at Legal Aid Commission over the mainstream court. Subsequent studies would therefore be required to ascertain the indigents' preference of ADR to the traditional form of civil litigation. The study again showed that many people especially women who could not have afforded the cost of legal representation to go to court would have been denied their right to civil and criminal justice but for the existence of legal aid.

Access to justice and legal empowerment help translate legal guarantees of gender equality into real improvements in the daily lives of women (SDG 5) by supporting women in protecting themselves from invasion of their fundamental human rights. This underscores the importance of the institutional structures put in place to promote access to justice through legal aid. However, various empirical data show that although Ghana has a well-established institutional structure for the legal aid system, the current institutional framework responsible for the expansion of the justice net is underfunded. As such, the intendment of constitutional creation of legal aid service would be counter-productive if adequate funding is not provided for the effective discharge of the functions of the Legal Aid Commission. This means that the effectiveness of legal aid schemes depends on the availability of adequate financial, human, and material resources to the very institution put in place to mitigate the justice gap. This paper, therefore, recommends a constitutional amendment to convert the current Legal Aid Commission from a legal body to a constitutionally independent body. This will annex the institution as an agency under the supervision of the Ministry of Justice and Attorney General into a constitutionally autonomous body with the mandate to prepare its own national budget. This would enable the Commission to make adequate budgetary provisions to improve the condition of services for staff, provide capacity building for staff, build office accommodations, and provide other logistics support. In terms of its manpower gap, the study also recommends an amendment to the current Legal Professional Act, 1960 (Act 32) to make room for the recognition of paralegals as persons capable of performing legal services akin to lawyers. This would enable the Legal Aid Commission to recruit paralegals to complement their work due to the scarcity of lawyers.

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