

**TOWARDS THE REALISATION OF THE RIGHT OF ACCESS TO  
JUSTICE: A COMPARATIVE ANALYSIS OF THE LEGAL AID  
SCHEMES IN TANZANIA AND GHANA**

Dissertation submitted in partial fulfilment of the requirements of Degree LLM  
(Human Rights and Democratisation in Africa) of the University of Pretoria

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3 November 2008

## DECLARATION

I, **Charles Joseph Mmbando**, hereby declare that this dissertation is original and has never been presented in any other institution. I also declare that any secondary information used has been duly acknowledged in this dissertation. It is in this regard that I declare this work as originally mine. It is hereby presented in partial fulfilment of the requirements for the award of the LL.M Degree (Human Rights and Democratisation in Africa).

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## DEDICATION

This dissertation is dedicated to my family, to my parents Mr and Mrs Joseph Mmbando for setting the education standards in our family. To my brothers Robert and Benedict, my sisters Patricia and Elizabeth for their love, support and for believing in whatever I do even when I stopped believing in myself. To my fiancée Josephine, for being the source of my happiness, for your love, support and care. For all the support you have given me in pursuing a career in human rights I dedicate this work to you.

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## LIST OF ABBREVIATIONS

ACHPR	African Charter on Human and Peoples' Rights
Art	Article
CAT	Court of Appeal of Tanzania
CJ	Chief Justice
CAP	Chapter
CAP 21	Legal Aid (Criminal Proceedings) Act
CPA	Criminal Procedure Act
CMC	Community Mediation Centers
CEPIL	Center for Public Interest Litigation
E.g	Example
FIDA	International Federation of female Lawyers
GLAB	Ghana Legal Aid Board
GN	Government Notice
ICCPR	International Covenant on Civil and Political Rights
i.e	that is
LHRC	Legal and Human Rights Centre
LRC	Legal Resource Centre
LAS	Legal Aid Scheme
NGO	Non Governmental Organization
PNDC	Provisional National Defense Council
Sect	Section
TAMWA	Tanzania Media Women Association
TLS	Tanganyika Law Society

TAWLA	Tanzania Women Lawyers Association
URTZ	United Republic of Tanzania
USA	United States of America
WLAC	Women Legal Aid Centre

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# CHAPTER ONE

## INTRODUCTION

### 1.0 Background to the study

The right of access to justice has for a long time and in many jurisdictions been regarded as one of the most important rights a person is entitled to enjoy in a democratic society. It has been regarded as unlimited and it has been jealously guarded by the courts.<sup>1</sup> Without access to justice, it is impossible to enjoy and ensure the realization of any other right whether civil, political or economic.<sup>2</sup> As a fundamental right and part of rule of law, the right demands that judicial organs should be open to all whose rights have been abused, or who are in search of a form of justice.<sup>3</sup> The right entails the ability of aggrieved subjects to access such fora devoid of undue technicalities which tend to defeat the ends of justice. The right is also inseparably interlinked with the availability of meaningful and reasonable remedy and equal treatment.<sup>4</sup>

It is in recognition of the importance of access to justice that all human rights instruments at international, regional and domestic levels contain provisions guaranteeing access to justice. The Universal Declaration of Human Rights (Universal Declaration),<sup>5</sup> the International Covenant on Civil and Political Rights (ICCPR),<sup>6</sup> and the African Charter on Human and Peoples' Rights (ACHPR)<sup>7</sup> are very specific that the right of free access to courts should be enjoyed without any impediments. Likewise the Constitution of the United Republic of Tanzania,<sup>8</sup> and the Constitution of the Republic of Ghana,<sup>9</sup> recognises the right of an individual to have free access to the courts, be it formal or indigenous.

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<sup>1</sup> *Julius Ishengoma Francis Ndyababo v The Attorney General*, Civil Appeal No 64 of 2001, CAT (unreported) 22.

<sup>2</sup> NS Okogbule 'Access to justice and human rights protection in Nigeria: Problems and Prospects' (2005) *International Journal on Human Rights* No 3, 96.

<sup>3</sup> CM Peter *Human rights in Tanzania: Selected cases and materials* (1997) 306.

<sup>4</sup> n 3 above.

<sup>5</sup> Art 8 Universal Declaration.

<sup>6</sup> Art 14 ICCPR.

<sup>7</sup> Art 7(1) ACHPR.

<sup>8</sup> Art 13(3) of the Constitution of URTZ.

<sup>9</sup> Arts 17 & 19 of Constitution of Republic of Ghana.

Despite these guarantees, the right of access to justice is considered a rare commodity in many African countries due to numerous constraints or impediments<sup>10</sup>. In Tanzania and Ghana the situation is aggravated by the massive economic, educational and other social disparities among the people. Among the barriers impeding access to justice are high cost of court fees, expensive services from advocates and technicalities of court procedures, unfamiliarity with court language, unfriendly court environment and court being located far from the people.<sup>11</sup>

In realising that the right of access to justice is not enjoyed by people as they should, there has been the establishment of legal aid schemes in various countries, including Tanzania and Ghana. Legal aid is a social arrangement extending and providing special assistance or help to the poor and the weaker members of the society to enable them enforce their rights, facing on an equal platform the powerful and the rich members through legal process.<sup>12</sup>

In Tanzania, legal aid extends to criminal cases only which is governed by the Legal Aid (Criminal Proceedings) Act.<sup>13</sup> In Ghana, the Ghana Legal Aid Board (GLAB) plays an important role in providing representation to the poor in criminal and civil cases.<sup>14</sup>

However, in both countries, it has been difficult for government to extend such assistance to the whole society. Thus in acknowledging the fact that the state is not capable of providing legal assistance to all poor sections of the Tanzanian<sup>15</sup> and Ghanaian societies, organisations and institutions have come up with a variety of programmes to assist the poor.<sup>16</sup>

Inspired by the importance of the right of access to justice and recognising the barriers that limit the realisation of the right, this study perceives the need to eradicate these barriers through the provisions of legal aid in both civil and criminal cases. Thus, the study discusses the issues of the right of access to justice, factors that deny people right

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<sup>10</sup> JB Sakala 'The role of the judiciary in the enforcement of human rights in Zambia' unpublished PHD thesis, University of Pretoria 1999, 332.

<sup>11</sup> BA Samata 'Access to courts for the poor' (2003) *Judicial Journal of the Commonwealth Magistrates and Judges Association* 29 Vol 15 No 2.

<sup>12</sup> S Singh *Legal aid human right to equality* (1998) 2.

<sup>13</sup> CAP 21 [R.E 2002].

<sup>14</sup> Through art 294(1) of the Constitution and Legal Aid Scheme Act 542 of 1997.

<sup>15</sup> Peter (n 3 above).

<sup>16</sup> [http://www.afriMAP.org/english/images/report/AfriMAP\\_Ghana%20justiceDD.pdf](http://www.afriMAP.org/english/images/report/AfriMAP_Ghana%20justiceDD.pdf) (accessed on 19/9/2008).

to access justice, attempts to find solutions to them, whether solutions are adequate and what can be done to fill the gaps. It also discusses the concept of legal aid, the state and NGO legal aid schemes established in Tanzania and Ghana and making their comparative analysis.

## **1.2 Statement of the problem**

The importance of access to justice cannot be disputed. In practice, however, there are several impediments to the enjoyment of this crucial human right in Tanzania<sup>17</sup> and Ghana<sup>18</sup>. This situation has created the need for the provision of legal aid to the poor, disadvantaged, and the less privileged members of the society. It is from this fact that this study seeks to address the following questions:

- (a) What is access to justice and which factors impede the realisation of access to justice in Tanzania and Ghana?
- (b) What is legal aid and which legal aid schemes have been established and how do they help in realising the right of access to justice in Tanzania and Ghana?
- (c) What are the similarities and differences in the legal aid schemes of Tanzania and Ghana?
- (d) How can the legal aid schemes be improved in Ghana and Tanzania in order to facilitate access to justice?

## **1.3 Objective of the study**

At the core of this study is the importance of the rights of access to justice and the role of legal aid in eradicating the barriers to the enjoyment of the right. This study will first discuss the right of access to justice and the factors that limit the realisation of the right. Second, it will focus on the concept of legal aid, its importance and the legal aid schemes that have been put in place in Tanzania and Ghana and how do they promote the right of access to justice. Third, the study will make the comparison of the legal aid schemes of Tanzania and Ghana and how the legal aid schemes could be improved to further promote the right of access to justice.

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<sup>17</sup> Samatta (n 11 above).

<sup>18</sup> Geographical imbalance in court distribution, corruptions, unreasonable delays, cost of legal advice and a highly formalized court system hinder access to justice [http://www.afriMAP.org/english/images/report/AfriMAP\\_Ghana%20justiceDD.pdf](http://www.afriMAP.org/english/images/report/AfriMAP_Ghana%20justiceDD.pdf) (accessed on 19/9/2008).

### 1.3 Significance of the study

Access to justice has become difficult to access in many African countries due to many constraints and impediments<sup>19</sup> that lie in its way. The provision of legal aid is important in enabling people to access justice. This study is important in bringing the understanding of the importance of access to justice and the provision of legal aid to people in an attempt to eradicate barriers that limit access to justice in Tanzania, Ghana and elsewhere in the world. The recommendations to be given will help improve access to justice generally, particularly in developing countries. The realisation of this goal will make the enjoyment of the plethora of rights recognised in the constitutions of developing countries or emerging democracies a reality for both rich and poor.

### 1.4 Literature review

Rhode in her book on access to justice focuses on legal aid from the American perspective. However, she does not focus in detail on the concept of access to justice, its importance and how people are denied access to justice.<sup>20</sup> Peter's work on access to justice in Tanzania has focused on how the right to access justice has been denied to Tanzanians in their attempt to sue the government. He views access to justice as a fundamental right and part of the rule of law. He argues that, to have access to justice all judicial organs should be open to enable people to challenge the violations of their rights. Peter also focuses on the right to legal representation, and how technicalities of the law deny people access to justice. He further discusses legal aid schemes provided for by various NGOs in Tanzania.<sup>21</sup> However, he does not discuss other factors that deny access to justice and the state provision of legal aid in Tanzania which this study intend to discuss.

Cappelletti, in his work argues that courts must embrace the entire society and the modern system of administration of justice must be its effective and not merely theoretical accessibility to all. To bring such a dimension he discusses various barriers to effective access to courts and shows how different countries have dealt with them.<sup>22</sup>

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<sup>19</sup> Sakala (n 10 above) 342.

<sup>20</sup> DL Rhode *Access to justice* (2004).

<sup>21</sup> Peter (n 3 above).

<sup>22</sup> M Cappelletti *The judicial process: A comparative perspective* (1989).

Singh deals with legal aid with a particular focus on India. He views legal aid as the assistance provided by the society to its weaker members in their efforts to protect their rights and liberties, bestowed upon them by the law or muscled members of the society. To him provision of legal aid is essential for the safe walk of democracies on the track of rule of law and equal protection of the laws.<sup>23</sup>

Shivji discusses voluntary legal aid in Tanzania with focus on the legal aid provided by the Tanganyika Law Society and the Faculty of Law of University of Dar es salaam and the problems they face. He views legal aid as a brainchild of a system that proclaims justice for all and equality before the law and that the aim of legal aid is the assertion of democratic rights on the part of dominated classes and social groups. He concludes that, there are stronger reasons for expanding free voluntary legal aid because the statutory system is limited to few people. He makes a strong case for the expansion of voluntary legal aid.<sup>24</sup>

Reyntjens has written about the rationale for provision of legal aid system in Africa. His work also deals briefly on the existing legal aid provision in Africa where he discusses, among others, Ghana and Tanzania's statutory legal aid schemes. He sees a high number of indigents, limited financial means of African states and small number of lawyers as among the circumstances that affect the provision of legal aid. He concludes his work by proposing on the future of legal aid in Africa. Although he discusses the legal aid schemes of Tanzania and Ghana, he does not discuss the voluntary legal aid schemes provided by NGOs in these countries.<sup>25</sup>

Atuguba, in his work distinguishes the legal aid in Africa with that of Euro-Americas. He argues that, legal aid in Africa is different because of the high percentage of people in need of legal aid and that in countries such as Ghana with 50% of her people classified as poor, legal aid is highly needed. He further argues a need to clarify what really legal

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<sup>23</sup> Singh (n 12 above).

<sup>24</sup> I G Shivji 'Voluntary Legal aid in Tanzania: retrospect and prospect', Tanzania notes & records (1984) NOs 90&91.

<sup>25</sup> F Reyntjens 'Africa South of Sahara' in FH Zemans (Ed) *Perspectives on legal aid: an international survey* (1979).

aid is. He concludes that legal aid involves more processes than litigation and many other persons than lawyers.<sup>26</sup>

Although these works are important, they do not touch in detail on the focus of this study. The works have not dealt adequately with the concept of access to justice and the factors that limit the realisation of the right of access to justice. Additionally, they do not draw proper linkages between access to justice and legal aid, i.e. how legal aid can be more effectively utilised to promote access to justice. The literature also does not deal with other means of accessing justice apart from the formal court system.

This study therefore aims at addressing both issue of access to justice and legal aid that have not adequately dealt with in the literature.

## **1.5 Research methodology**

This study will combine information obtained from library sources with those collected through conducting interviews in Ghana and Tanzania. They will cover the Ghana Legal aid Board, the judiciary in Tanzania, AG's Office in Tanzania, the Bar, citizens and NGOs in both countries. The aim of the interviews is to get information about factors that deny people access to justice, the legal aid schemes in place both governmental and non governmental and how they help in realising the right of access to justice.

## **1.6 Limitations of the study**

This study provides an overview of the right of access to justice and how legal aid schemes can be used to improve access to justice where there are barriers. Two case studies are chosen, but the selected studies are for the purpose of the analysis, and may not adequately represent the varied national approaches to access to justice and legal aid. The study does not provide in-depth historical approach of the two aspects.

## **1.7 Overview of chapters**

This work is divided into 5 chapters.

Chapter One relates to the background of the study and its justification. It will also focus on the objective of the study, methodology and its limitation.

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<sup>26</sup> R Atuguba `Legal Aid in Africa: Conceptual and Practical peculiarities of legal aid in Africa and where should we be going' Paper Presented at the Regional Conference on Legal Aid and Access to Justice in West Africa (2<sup>nd</sup> April 2007).

Chapter Two will deal with the concept of access to justice and the informal way of accessing justice. It will also set out the legal provisions that guarantee access to justice in international, regional and national settings and factors that deny people access to justice in Tanzania and Ghana.

Chapter Three will focus on the concept of legal aid, legal guarantees of legal aid and the rationale for the provision of legal aid.

Chapter Four will focus on the legal aid schemes of Tanzania and Ghana, the state scheme and NGO provision of legal aid will be discussed and then making comparative analysis of the two and how they help in realising the right and how can they be improved.

Chapter Five will comprise conclusions and recommendations



## CHAPTER TWO

# THE CONCEPT OF ACCESS TO JUSTICE, ITS LEGAL GUARANTEES AT INTERNATIONAL, REGIONAL, NATIONAL SETTINGS AND FACTORS AFFECTING ITS REALISATION

### 2.0 Introduction

This chapter aims at analysing the concept of access to justice, legal guarantees of the right to access to justice at the international, regional, national settings; and the factors that affect its realisation.

### 2.1 The concept of access to justice

In a democratic society which is governed by the rule of law it is required that all people, regardless of their political stand, religion affiliations, status, colour or gender, be treated equally before the law. The same principle applies in cases of a dispute between individuals or a collectivity within a state.<sup>27</sup>

The right of access to justice becomes crucial in any state which is democratically governed by the rule of law. It is one of the most basic human rights, without which, the enjoyment of many other rights cannot be assured.<sup>28</sup> The right of access to justice demands that judicial organs should be open to all whose rights have been affected.<sup>29</sup>

It has been argued that, for rule of law to have any meaning at all, there should be an independent judiciary to guarantee that each and every person or institution is treated equally before the law and without any discrimination.<sup>30</sup> It is expected that when conflicts between citizens or between the state and citizens arise, there is a place that is independent from undue influence, that is trustworthy and that has the authority over all

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<sup>27</sup> HK Bissimba & CM Peter *Justice and rule of law in Tanzania: Selected judgments and writings of Justice James L. Mwalusanya and commentaries* (2005) 316.

<sup>28</sup> BA Samatta, 'The right to legal aid' in H Othman & CM Peter (eds) *Perspectives on legal aid and access to justice in Zanzibar* (2003) 2.

<sup>29</sup> Peter (n 3 above).

<sup>30</sup> Bissimba & Peter (n 27 above).

the parties to solve the disputes peacefully. The courts in any democratic system are that place of refuge.<sup>31</sup>

Sakala argues that, access to justice is the right of everyone to use the due process of law. For him, the due process of law requires the observance of the rules of natural justice. He argues further that, in the narrow perspective, the concept of access to justice entails the right to have a matter determined by the court of law and in a wider sense it involves a number of issues before, during and after the trial.<sup>32</sup>

In showing what access to justice involves, Sakala argues further that, before the trial begins a litigant in civil cases would require money to invoke the due process of law, such as obtaining the services of a lawyer and travelling to court to gather evidence. If at this preliminary stage a litigant has no adequate resources then access to justice is denied. During trial litigants are entitled to a public hearing before an independent and impartial court or tribunal. At this stage the procedural aspects of a trial are important in that unless these are simplified and undertaken without unnecessary delay, access to justice would become illusory. Yet, adequate financial or other resources and a fair trial before an impartial tribunal alone are not a panacea to the right of access to justice. In addition, the court's judgement must be enforceable within a reasonable time if the enjoyment of access to justice is to be guaranteed.<sup>33</sup>

The importance of this right in the protection of human rights is in general underscored by the fact that the implementation of all other rights depends upon the proper administration of justice.<sup>34</sup> Many prominent judges have explained the importance of the right of access to justice. In *Chief Direko Lesapo V. North West Agricultural Bank*, Makgoro J expressed the importance in the following words:-

"The right of access to court is indeed a foundation to the stability of an orderly society. It ensures the peaceful, regulated and institutionalized mechanism to resolve disputes, without resorting to self

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<sup>31</sup> RJ Grey Jr 'Access to the courts: Equal justice for all' (2004) *Issues of democracy, IIP Electronic Journals* Vol 9, No 2 August 2004, 6.

<sup>32</sup> Sakala, (n 10 above) 342.

<sup>33</sup> Sakala (n 10 above) 343.

<sup>34</sup> N Jayawickrama *The judicial application of human rights law: national, regional and international jurisprudence* (2002)480.

help. The right to access to court is a bulwark against vigilantism, the chaos and anarchy which it causes. Construed in this context access to courts is indeed of cardinal importance.”<sup>35</sup>.

Likewise, Rahman J, said the following in *Faroque V. Secretary of the Ministry of Irrigation Water Resources and Food Control (Bangladesh) and others*

“If justice is not easily and equally accessible to every citizen there can hardly be the rule of law. If access to justice is limited to the rich, the more advantaged and powerful section of society, then the poor and the deprived will have no stake in the rule of law and they will be more readily available to turn against it. Ready and equal access to justice is a sine quo non for the maintenance of rule of law”.<sup>36</sup>

From these remarks, it is evident that, the right of access to justice is of high importance in the realization of other rights and in making sure that the society lives in an orderly and peaceful manner. It has been argued that, access to justice should adopt a definition akin to affirmative action, which does not focus on formal but substantive equality, not on the equality of opportunity but on equality of results.<sup>37</sup> Access to justice can also mean access to a fair, effective, democratic and accountable mechanism for the protection of rights, control of abuse of power and resolution of conflicts.<sup>38</sup>

This study is aware of the fact that, access to justice is not limited to getting redress through the formal court system; there are other informal ways of accessing justice. They include community-based dispute resolution mechanism that resolve inter-personal disputes and chieftaincy system.<sup>39</sup> Several institutions exist that also provide alternative avenues of accessing justice. In Ghana, the Commission for Human Rights and Administrative Justice (CHRAJ), the National Media Commission (NMC), the National Commission for Civic Education (NCCE)<sup>40</sup> and in Tanzania, the Commission for Human Rights and Good Governance (CHRGG)<sup>41</sup> are the avenues that are being used to access justice in an informal manner. Traditional justice systems such as chieftaincy are

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<sup>35</sup> Case, CCT 23/99 Para 22.

<sup>36</sup> [2000] 1 LRC at p 28.

<sup>37</sup> K A Atua `Promoting Alternative dispute resolution in Ghana: Implications for Women's access to justice' paper presented at University of Ghana, Legon April 2008, 1.

<sup>38</sup> n 37above.

<sup>39</sup> R Atuguba ` Access to justice, formal and informal: definitions, experiences, ideas, convergences and non-convergences" Paper presented at a Cuso international seminar (March 2007)13.

<sup>40</sup> CHRAJ established under article 216 of Constitution of Ghana and Act 456 of 1993, NMC under articles 162-173 and NCCE under articles 231-239 of the Constitution of Ghana.

<sup>41</sup> Established under article 129 of the Constitution of URTZ and Commission for Human Rights and Good Governance Act No 7 of 2001.

also used for accessing justice. Unlike Tanzania, article 270 of the Constitution of Ghana and the Chieftaincy Act<sup>42</sup> regulates chieftaincy in Ghana. These avenues provide an alternative to the formal court system.

### 2.1.1 Access to a court

In Tanzania<sup>43</sup> and Ghana<sup>44</sup> courts are the main institutions that have the power to administer justice. In these countries and elsewhere in the world, laws create a number of procedures that have to be adhered to for a person to have access to the court. A number of procedural requirements have posed as stumbling blocks towards the realization of the right of access to justice. The work will identify the following for detailed discussion: limitation of time in filing cases, the requirement of depositing security before filling a case and requirement of consent before suing the government. But any limitations that are applied must not restrict or reduce the right of access in such a way or to such an extent that the very essence of the right is impaired.<sup>45</sup> A limitation will, therefore be compatible with this right only if, it pursues a legitimate aim and there is a reasonable relationship of proportionality between the means employed and the aim sought to be achieved.<sup>46</sup>

For instance, the rules that limit the time during which litigation may be launched are common in many legal systems.<sup>47</sup> They serve several important purposes, e.g. to ensure legal certainty and finality.<sup>48</sup> However, in some cases such limitations have been held to violate the right to access the court. For instance, the requirement that the plaintiff should deposit security while filling the case was held to infringe the right of access to the court.<sup>49</sup>

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<sup>42</sup> Act 370 of 1970, although Chieftaincy do not have judicial powers they still settle various disputes relating to family, property matters, including divorce, child custody and land disputes.

<sup>43</sup> Art 107A (1) of the Constitution of URTZ.

<sup>44</sup> Art 125 of the Constitution of the Republic of Ghana.

<sup>45</sup> Jayawickrama (n 34 above) 482.

<sup>46</sup> *Ashingdane v United Kingdom*, European court, (1985)7 EHRR 528; *Fayed V United Kingdom*, European court, (1994) 18 EHRR.

<sup>47</sup> In Tanzania, The Law of Limitation Act NO 10 of 1971 governs the limitation of time in civil cases, the time limit depend on each type of case.

<sup>48</sup> Jayawickrama (n 34 above) 482.

<sup>49</sup> (n 1 above) a provision of the Elections Act 1985 which required an election petitioner to deposit five million Tanzania shillings as security of costs before the case could be heard was declared unconstitutional because it was contrary to the right of accessibility to courts.

A provision in the Government Proceedings Act<sup>50</sup> that no civil proceedings may be instituted against the government without the previous consent of the minister was held to violate the right to unimpeded access to the court to have one's grievance heard and determined.<sup>51</sup> A right of access to the court is infringed not only when the individual is denied the right to file a suit, but also when the restrictions are imposed such as the right to file a suit is rendered illusory or cumbersome.<sup>52</sup>

Because it is through the court that the rights and liabilities of parties are determined and enforced, it is wise to say that, access to the courts should be without any impediments, where the law puts some limitations on ones' right to access the courts the limitations should save the legitimate aim and should not make the right illusory.

### 2.1.2 Fair trial

The right to a fair trial is designed to protect individuals from undue interference or compromising of the legal process in court which may result in the unlawful and arbitrary curtailment or deprivation of other basic rights and freedoms.<sup>53</sup> This right is part of the right of access to justice which does not end when a person is given full access to file his/her claim in court without any impediment. It extends to the conduct of the proceedings in court. Fair trial brings procedural and other guarantees that protect the rights of a litigant in a case for the full realization of the right of access to justice. In *Julius Ishengoma Francis Ndyanabo v Attorney General*, the CAT held that,

“We cannot agree that access to justice constitutes mere filing of pleadings and paying the required court-fees. The right to have recourse or access to courts means more than that. It includes the right to present one's case or defence before the courts. Access to justice is not merely knocking on the door of a court. It is more than that.”<sup>54</sup>

The courts as the guardian of every person's individual right have a special responsibility to provide and enforce the right to equal access to the judicial system.<sup>55</sup> The standards against which a trial is to be assessed in terms of fairness are numerous, complex, and

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<sup>50</sup> Act No 16 of 1967.

<sup>51</sup> *Kukutia Ole Pumbuni and Another v Attorney General and Another*, Civil Appeal No 32 of 1992, CAT (unreported) 317.

<sup>52</sup> *Wright v. Madagascar* (1985)2 Selected Decisions of the Human Rights Committee 151.

<sup>53</sup> [http://www.humanrightsfirst.org/pubs/descriptions/fair\\_trial.pdf](http://www.humanrightsfirst.org/pubs/descriptions/fair_trial.pdf) (accessed on 3/9/2008).

<sup>54</sup> Ndyanabo (n 1 above).

<sup>55</sup> Art 8 of Dakar Declaration and Recommendations on the Right to Fair Trial (1999) provides that, the right to a fair trial would be meaningless unless victims of crimes and abuse of power have access to the courts and to an effective remedy.

constantly evolving. There are a number of fair trial guarantees enshrined in international<sup>56</sup> and regional instruments<sup>57</sup> and the Constitutions of Ghana and Tanzania.<sup>58</sup>

Among the fair trial guarantees is equality before the law, which implies equality of access before the courts.<sup>59</sup> Secondly, that any person appearing before a court has the right not to be discriminated against, either in the course of the proceedings or in the way the law is applied to the person concerned. Further, whether individuals are suspected of a minor offence or a serious crime, the rights to a fair trial have to be equally secured to everyone. As noted by the late Lord Chief Justice of Ghana, Hon Justice George Kingsley Acquah, 'we have to live in a society where justice permeates through all facets of human endeavour and where justice reigns supreme regardless of the personalities involved in a case, taking into account of his or her social standing, religious or political persuasion.'<sup>60</sup>

Yet in practice, there is no "equality before the law" in criminal proceedings where an experienced and skilful prosecuting attorney, backed by the power of the state and having at his command the entire resource of the police for investigation, is matched against a poor and often friendless defendant, confined in jail, unable to understand even the simplest implication of the charge against him and powerless to marshal any fact to controvert them if he did.<sup>61</sup> In these situations, for there to be access to justice, a disadvantaged litigant or accused person must be given legal aid and be represented by a lawyer who will be able to pursue his rights effectively, short of which the rights of access to justice will be a mere dream.<sup>62</sup>

The right to be presumed innocent until proved guilty is another principle that conditions the treatment to which an accused person is subjected throughout the period of criminal investigation and trial proceedings up to and including the end of the final appeal. The principle of presumption of innocence means that "the burden of proof of the charge is on the prosecution and the accused has the benefit of doubt. No guilt

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<sup>56</sup> Art 14 of ICCPR.

<sup>57</sup> Art 7 of ACHPR, Art 8 of IACHR and art 6 of ECHR to be discussed in the next part of this work.

<sup>58</sup> The content of these provisions will be set out in the next part of this work.

<sup>59</sup> <http://www1.umn.edu/humanrts/monitoring/adminchap6.html> (accessed on 3/9/2008).

<sup>60</sup> [http://www.judicial.gov.gh/archives/madina%20court/mc\\_3.htm](http://www.judicial.gov.gh/archives/madina%20court/mc_3.htm) (accessed on 5/9/2008).

<sup>61</sup> EA Brownell *Legal Aid in United States* (1951) 62.

<sup>62</sup> Interview with Mr. Ayoub Mwenda, State Attorney In charge Mbeya Zone (28/7/2008).

can be presumed until the charge has been proved beyond reasonable doubt. It is therefore, a duty for all public authorities to refrain from prejudging the outcome of a trial".<sup>63</sup> This guarantee is so essential because, an accused person can not obtain justice if the court and all public authorities have already pre judged the case. Such an act will result in unfair treatment of the accused person.

The right to a court and to a fair trial will also be illusory if the legal system allowed a final, binding judicial decision to remain inoperative to the detriment of the winning party. The execution of the judgment rendered has to be regarded as an integral part of the 'trial'.<sup>64</sup> The right to the effective enforcement of the judgment of a court means that, however complex the case and whatever the difficulties in resolving it, the court must use all objectively feasible and appropriate means to ensure its enjoyment.<sup>65</sup> The African Commission in *Bissangou v Republic of Congo* held that, the right to be heard guaranteed under article 7 of ACHPR includes the right to execution of a judgment.<sup>66</sup>

## **2.2 Legal guarantees of access to justice**

The right of access to justice as discussed in this part of the work has been guaranteed by various international and regional instruments. The legal guarantees of the right of access to justice by these international and regional instruments form part of the broad standard that are to be followed by member states to these instruments. The provisions are usually couched as, 'equality before the law' and 'fair trial'.

### **2.2.1 International Instruments**

The Universal Declaration and the ICCPR form the international standards that guarantee access to justice. The provisions are discussed below.

#### **2.2.1.1 The Universal Declaration**

Article 7 of the Universal Declaration provides that, all are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination. Moreover article 8 provides that, everyone has

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<sup>63</sup> General Comment No. 13 Para 7.

<sup>64</sup> *Hornsby v Greece*, European Court, (1997) 24 EHRR 250.

<sup>65</sup> Jayawickrama (n 34 above) 492.

<sup>66</sup> [Communication 253/2002- 21<sup>st</sup> Activity Report92006)] Para 75.

the right to effective remedy by the competent national tribunals for acts violating the fundamental rights granted to him by the constitution or by law. Likewise, everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.<sup>67</sup>

It is clear that, the Universal Declaration is not a treaty, and as such it is not *per se*, a legally binding instrument for those states which are parties to it.<sup>68</sup> However, its impact in the development of human rights has been immense. It has inspired the ICCPR, ICESCR and several regional human rights conventions. Therefore its relevance cannot be diminished.

### 2.2.1.2 The ICCPR

Article 14(1) of the ICCPR provides that ‘‘all persons shall be equal before the courts and tribunals, in the determination of any criminal charge against him, or his rights and obligations in a suit of law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.’’. While article 14(2) provides for presumption of innocence in criminal charges, article 14(3) (a) to (g) provides the minimum guarantees in full equality.<sup>69</sup>

The ICCPR lays the standard of access to justice for the international community. It does create an obligation to the state to ensure to all persons equal access to courts and tribunals.<sup>70</sup> All of these provisions are aimed at ensuring the proper administration of justice and to this end uphold a series of individual rights such as equality before the courts and tribunals and the right to a fair and public hearing by a competent, independent and impartial tribunal established by law.<sup>71</sup> The provisions of article 14 of ICCPR apply not only to procedures for the determination of a criminal charge against individuals but also to procedures to determine their rights and obligations in a law suit.<sup>72</sup> The requirements of paragraph 3 of article 14 of the ICCPR are minimum guarantees,

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<sup>67</sup> Art 10 of Universal Declaration.

<sup>68</sup> JO Oraá ‘The Universal Declaration of Human Rights’ in FG Isa & K de Feyter (Eds) *International Protection of human rights: achievements and challenges* (2006) 117.

<sup>69</sup> These involve, to be tried without undue delay, in his presence and to defend himself or through legal assistance, also to have adequate time to prepare his defence and examine witnesses.

<sup>70</sup> Jayawickrama (n 34 above) 488.

<sup>71</sup> Human Right Committee, General Comment 13 Para 1.

<sup>72</sup> General Comment 13, Para 2.



the observance of which is not always sufficient to ensure a fairness of hearing as required by paragraph 1.<sup>73</sup>

With the standard set by the ICCPR on the right of access to justice, it is expected that, states will take steps to ensure that equality before the courts, including equal access to courts, fair and public hearings and competent, impartiality and independence of the judiciary are established by law and guaranteed in practice.<sup>74</sup>

## **2.2.2 Regional Instruments**

Africa, Europe and Americas have adopted regional human rights conventions which complement and reinforce universal human rights conventions.<sup>75</sup> These regional conventions are geographically accepted and developed because of the will to implement them.

### **2.2.2.1 The Inter-American Convention on Human Rights (IACHR)**

Article 8 (1) of IACHR provides that every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature. Article 8 (2) provides for the guarantees of the accused person in a criminal proceedings.<sup>76</sup>

Article 24 provides for equality before the law and without discrimination. It gives all persons equal protection of the law. Moreover, article 25 provides a right to recourse to a court/tribunal for the protection of rights and states are under obligation to ensure the availability and enforcement of remedies obtained.

### **2.2.2.2 European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)**

Article 6(1) provides that, "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a

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<sup>73</sup> General Comment 13 Para 5.

<sup>74</sup> General Comment 13 Para 3.

<sup>75</sup> J Dugard *International law: South African perspective* (2005) 330.

<sup>76</sup> These includes among others, presumption of innocence, right to defend himself or through a legal counsel, right of appeal.

reasonable time by an independent and impartial tribunal established by law...’ Moreover, the article has guarantees to be followed in a criminal proceeding. These include among others, presumption of innocence, right to defend oneself and examine witnesses and the right to have adequate time to prepare his defence.<sup>77</sup>

In *Delcourt v Belgium*, the European Court of Human Rights was of the view that ‘In a democratic society within the meaning of the Convention, the right to a fair administration of justice holds such a prominent place that a restrictive interpretation of Article 6 (1) would not correspond to the aim and the purpose of that provision.’<sup>78</sup>

### 2.2.2.3 The ACHPR

The ACHPR provides that, every individual shall be equal before the law and that every individual shall be entitled to equal protection of the law.<sup>79</sup> Article 7 of the ACHPR goes further that, every individual shall have the right to have his cause heard.<sup>80</sup> In making the right of access to justice a reality, states parties to the ACHPR are under a duty to guarantee the independence of the courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of rights and freedoms guarantees by the present Charter.<sup>81</sup>

In *Social and Economic Rights Action Centre (SERAC) and another v. Nigeria*, the African Commission held that:

“ ... obligations engendered by human rights indicate that all rights, both civil and political rights and social and economic generate at least four levels of duties for a state that undertake to adhere to rights regime, namely the duty to respect, protect, promote and fulfil these rights ... As a human right instrument, the African Charter is not alien to these concepts.<sup>82</sup>

States parties to the ACHPR have an obligation to respect, protect, promote and fulfil the rights provided for under articles 3, 7 and 26, for the purpose of making the right of access to justice a reality to Africans. States have to guarantee independence,

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<sup>77</sup> Arts 6(2) & (3) of ECHR.

<sup>78</sup> ( 2689/65) [1970] ECHR 1 (17 January 1970).

<sup>79</sup> Art 3 of ACHPR.

<sup>80</sup> This comprises of the right of appeal, right to be presumed innocent, right to defend, including the right to be defended by a counsel of ones’ choice and the right to be tried within reasonable time.

<sup>81</sup> Art 26 of the ACHPR.

<sup>82</sup> (2001) AHRLR 60 (ACHPR 2001).

accessibility and affordability of its justice system.<sup>83</sup> The African Commission in 2003 adopted Principles and Guidelines on the Right to a Fair Trial and Legal Assistance, which lays down in depth most of the guarantees of access to justice. The adherence to these principles by states parties to the African Charter will improve to a greater extent the present situation facing the right of access to justice in Africa.

#### **2.2.2.4 Other Instruments in Africa**

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa guarantees the right of access to justice for women in Africa. Article 8 provides for equality before the law between men and women. It also gives obligations to states to take all appropriate measures to ensure effective access by women to judicial and legal services, including legal aid.

Article 17 (2) (b) of the African Charter on the Rights and Welfare of the Child provides for the presumption of innocence to children accused of infringing a penal law. It imposes a duty to states to provide an accused child with legal and other appropriate assistance in the preparation and presentation of his defence and to have his matter determined as speedily as possible by an impartial tribunal and have the right of appeal in case of conviction.<sup>84</sup>

Tanzania and Ghana have ratified the major human rights treaties.<sup>85</sup> Being dualist states, they are required to incorporate international treaties to which they are signatories into the domestic laws.<sup>86</sup> Tanzania has bound itself to make the Universal Declaration applicable and enforceable in the country through conventions, treaties and domestic law commitments.<sup>87</sup> Universal Declaration is considered to be part of the laws in Ghana because of its status as customary international law.<sup>88</sup> Being signatories of these instruments, Tanzania and Ghana are bound to adhere to its obligation under these treaties

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<sup>83</sup> Art 5 Kigali Declaration 2003.

<sup>84</sup> Art 17(2) (c) (i) to (iv) of the Children's' Charter.

<sup>85</sup> Universal Declaration, ICCPR and ACHPR.

<sup>86</sup> Article 75 of Constitution of Ghana and article 63 (3) (e) of Constitution of URTZ.

<sup>87</sup> Through article 9 (f) of the Constitution of URTZ.

<sup>88</sup> KA Atua `Ghana at 50: The place of international human rights norms in the courts' in HJAN Mensa-Bonsu (et al) (Eds) *Ghana Law since independence: History, development and prospects* (2007) 196.

### 2.2.3 Constitutions of Tanzania and Ghana

At the national level, access to justice has been guaranteed by the Constitutions of Ghana and Tanzania. These guarantees form the standard by which these all institutions that administer justice have to adhere to.

#### 2.2.3.1 The Constitution of the United Republic of Tanzania (1977)

The Constitution was adopted in 1977; it contains the provisions of the Bill of rights and duties. Since its passing in 1977, the Constitution has until July 2004 been amended thirteen times.<sup>89</sup> The provisions that guarantee the right of access to justice in the Constitution will be examined in this part of the work.

Article 13(3) of the Constitution provides that, 'the civil rights, obligations and interests of every person shall be protected and determined by competent courts of law'. Moreover, article 13(1) of the Constitution provides that all persons are entitled to the protection of the law which envisages that any person will have free access to the court for a remedy. Likewise, article 13(6) of the Constitution provides for guarantees of the right to a fair hearing by the court of law, when ones rights and obligations are being determined.<sup>90</sup> Finally, article 30(3) of the Constitution provides that, if one feels that his constitutional rights have been violated, he has the right to 'institute proceedings for relief in the high court'. The Constitution also provides a right to a remedy by the court when rights have been violated.<sup>91</sup>

#### 2.2.3.2 Constitution of the Republic of Ghana

Since independence three military coups d'état have overthrown the constitutions in Ghana. Constitutional rule returned in 1992 after the referendum approved the constitution which came into force on 7<sup>th</sup> January 1993.<sup>92</sup> Access to justice is guaranteed in the Constitution. Article 125(1) gives the judiciary of Ghana power to administer justice in the Republic and requires its independence in so doing. Every person in Ghana is entitled to rights and freedoms without any form of distinction.<sup>93</sup> The

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<sup>89</sup> IG Shivji et al (Eds) *Constitution and legal systems of Tanzania* (2004)56.

<sup>90</sup> They include among others, right to a fair hearing, right of appeal and presumption of innocence

<sup>91</sup> Article 107A (2) (C) of Constitution of URTZ.

<sup>92</sup> Ghana Justice Sector and Rule of Law: A review by AfriMAP and Open Society Initiative for West Africa (2007)24.

<sup>93</sup> Art 12 (2) of Constitution of the Republic of Ghana.

Constitution, under article 19 lays down the elements of the right to a fair trial in criminal proceedings. These include the right to be tried within reasonable time, presumption of innocence, right of defence and right to examine witnesses. Likewise, in civil suits the adjudicating authority shall be independent and impartial and where a person institutes proceedings, they shall be given a fair hearing within reasonable time.<sup>94</sup> When a person alleges his rights have been or is being or is likely to be violated he may apply to the court for redress.<sup>95</sup>

#### **2.2.4 Factors that affect the realization of the right of access to justice.**

Despite the importance attached to the right of access to justice and their recognition in various international instruments, in practice there are several impediments to the enjoyment of this crucial human right.<sup>96</sup> In Tanzania and Ghana, the situation is not different from other African countries where access to justice faces many obstacles.

This part of the work aims at discussing the factors that deny the people of Ghana and Tanzania and else where in the world access to justice. The factors identified by this work are poverty; delay in the administration of justice, technicalities of the law and other factors that act as contributory factors and which relate to the mentioned factors. In some situations one factor can deny access to justice, while in other situations a combination of factors can deny access to justice. Thus, the factors discussed should not be taken in isolation of each other.

##### **2.2.4.1 Poverty**

Poverty poses as a factor that denies people access to justice in Tanzania and Ghana because of the costs that are involved in the system of administration of justice. Tanzania and Ghana have adopted the adversarial system of justice which is expensive for one to defend or prosecute a case. Consequently a penniless litigant may lose his day in court because he cannot afford a lawyer or pay the court fees and other expenses incidental to litigation.<sup>97</sup>

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<sup>94</sup> Art 19(13).

<sup>95</sup> Art 33.

<sup>96</sup> Sakala (n 10 above) 344.

<sup>97</sup> D Tindamanyire 'Access to justice in Tanzania: a case study of legal aid to the poor' 3<sup>rd</sup> year compulsory research submitted in the partial fulfillment of the requirement of the LLB course (2002) 10.

In Tanzania and Ghana, a litigant is required to file a case and pay the required fees.<sup>98</sup> Likewise, during the trial, a litigant or an accused person needs to pay for the services of a lawyer for the conduct of the case.<sup>99</sup> Moreover, during trial, both the accused and a litigant will need to incur costs to travel and attend the court proceedings, to pay for the witnesses etc.<sup>100</sup>

Looking at the poverty level of the people of Ghana and Tanzania, it is noted that between 15 million and 18 million Tanzanians, half of the population, live below the poverty line of \$0.65 a day. Of these, nearly 12.5 million live in abject poverty, spending less than \$0.50 on consumption a day.<sup>101</sup> In Ghana about 40% of the estimated 20.7million Ghanaians live below the poverty line.<sup>102</sup> Its effect is that, access to justice is denied to a litigant who has no financial capacity to pay for the costs involved in legal proceedings.

For the most part, the poor 'see the law as a tool which the wealthy and well-connected can use against them'.<sup>103</sup> By reason of poverty, access to justice is seen to be enjoyed by the rich people only.<sup>104</sup> It was argued that, it is salutary to remember that, the poor need the law more than the rich. The effect of denying the poor access to justice was explained by Samatta J (as he then was) that,

"if access to justice is limited to the rich, the poor are likely to resort to vigilantism, the consequences of it are bound to have a disastrous effect on the maintenance of law and order, if the poor see the legal and judicial system in the existence in their country as mainly serving the interest of the rich and the powerful, that will result into the end of rule of law and democracy in the country."<sup>105</sup>

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<sup>98</sup> In Tanzania, Court Fees (Amendment) Rules 1997 fees for filing cases ranges from 3000-100000Tsh depending on the nature of the case. While in Ghana, the Civil Proceedings (Fees and Allowances Rules (Amendment) Rules, 2004 C1 45. The average cost of filling a writ in the High Court where the Claim does not exceed ₵100million is ₵ 200 000(\$20), filling a writ of summons at the district court where the claim is below ₵1million is ₵ 10 000(\$1).

<sup>99</sup> In Tanzania, the fees for legal advice ranges from 5000-20000Tsh depending on the law firm, while fees for engaging a lawyer depend on the case.

<sup>100</sup> Interview with Hon Sekela Mwiseje, Resident Magistrate in charge, Coast Region (21/7/2008).

<sup>101</sup> <http://www.imf.org/external/np/prsp/2000/tza/01/index.htm> (accessed on 29/08/2008).

<sup>102</sup> <http://allafrica.com/stories/200808111233.html> (accessed on 28/9/2008).

<sup>103</sup> MA Anderson `Access to justice & Legal process: Making legal institutions responsive to poor people in LDCs, IDS working paper (February 2005) <http://www.ids.ac.uk/ids/bookshop/wp/wp178.pdf> (accessed on 18/8/2008).

<sup>104</sup> Interview with Mr. Fredrick Mkatambo, Head of Magomeni Legal Aid Clinic run by LHRC (16/7/2008).

<sup>105</sup> Samatta (n 28 above) 3.

Acknowledging the inability of people to pay costs involved in accessing justice it was advised that, access to justice will not be a meaningful right to a poor person if legal aid is not made available to this individual in serious court proceedings and he/she is not exempt from paying court-fees or deposit some money as security for costs.<sup>106</sup>

#### 2.2.4.2 Delay in the administration of justice

Late justice is bad justice; unreasonable court delays may be tantamount to denial of justice.<sup>107</sup> Delay in the administration of justice is used in a general sense to refer to the time spent before case disposition that is not necessary for case development and processing.<sup>108</sup> Delay may occur in bringing the case to trial, in the trial itself or in the proceedings after the trial.<sup>109</sup> Delay occurs in a situation where too much time elapses between the filing of an action and its ultimate decision by the court until remedies are obtained by plaintiff in civil proceedings.<sup>110</sup>

The Constitution of Tanzania<sup>111</sup> and Ghana<sup>112</sup> provide that, the determination of a civil suit or criminal charge shall be done within reasonable time. In practice however, that is not the case. Many factors are responsible for delay in the administration of justice. According to Storey its causes are to be found partly in lawyers, partly in the court and partly in the rules which regulate procedural and appeal.<sup>113</sup>

In Tanzania, for instance, the shortage of resources at several levels of the legal system causes delay in civil and criminal cases.<sup>114</sup> In March 2007, remandees boycotted court sessions protesting delays in the investigation of their cases and delay in conduct of their cases.<sup>115</sup> Most civil cases also take long time to be decided by the court.<sup>116</sup>

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<sup>106</sup> n 28 above.

<sup>107</sup> M Cappelletti *The Judicial process: A comparative perspective* (1985) 243.

<sup>108</sup> J Kakalik et al: *Averting gridlock: Strategies for reducing civil delay in the Los Angeles Superior Court* (1990) 8.

<sup>109</sup> Interview Hon Mwaiseje (n 100 above).

<sup>110</sup> C van Rhee "The law's delay an introduction" in: C Van Rhee *Essays on undue delay in civil litigation* 1.

<sup>111</sup> Art 107A (2) (b) of Constitution of URTZ.

<sup>112</sup> Art 19(1) and (14) of the Constitution of the Republic of Ghana.

<sup>113</sup> M Storey *The reform of legal procedure* (1986) 27.

<sup>114</sup> Legal and Human Rights Center & Zanzibar Legal Aid Center *Tanzania Human Rights Report* (2007)

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<sup>115</sup> n 118 above).

<sup>116</sup> Interview Hon Mwaiseje (n 100 above).

In Ghana, delay is attributed to absence of lawyers in court, retirement, death of criminal investigating officers, police prosecutors or judges, or unwillingness of witnesses to appear in court.<sup>117</sup> These are few instances of cases that are delayed for a long time, with such situation access to justice can not be realised by ordinary citizens.

The problem of delay in administration of justice has many consequences on the right of access to justice. Delay in the courts is bad because the lapse of time frequently causes the deterioration of evidence and makes it less likely that justice is done. Delay may cause several hardships to some parties when the case is finally tried and it is bad because it brings the entire court system to loss of public confidence, respect and pride.<sup>118</sup> In criminal cases, delay causes hardship to accused persons, particularly those in custody.<sup>119</sup> It affects accused persons who await trial for years only to find that they are innocent or they have spent more time in remand than the maximum sentence that is given to them after the trial. As a result, it not only affecting the liberty of the accused but also his rights to fair trial are affected.<sup>120</sup> In civil cases, delay can make the litigant incur financial loss, because he has incurred more costs that the actual remedy he was claiming. In other situations, because of delays a prospective litigant may avoid filing his claim in the court or accepts a lesser amount he claims.<sup>121</sup>

Therefore, the problem of delay of cases denies people access to justice at all stages of the trial. Unless the institutions that are engaged in the process of administration of justice speed up the entire process, the problem of delay will remain an obstacle to the realisation of the right of access to justice.<sup>122</sup>

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<sup>117</sup> AfriMAP (n 92 above) 105.

<sup>118</sup> H Zeisel et al; *Delay in the courts* (1959) xxii-xxvi.

<sup>119</sup> M Bassiouni 'Human rights in the context of criminal justice: Identifying International procedural protections in national constitutions' (1993) 3 *Duke Journal Contemporary & international law* 235, 285.

<sup>120</sup> N Tobi "Delay in the administration of justice" in C Nweze: *Essays in honour of honourable Justice Eugene Ubaezona* (1997)135.

<sup>121</sup> C Barr 'Delay in the Administration of justice' (2005) *Judicial Journal of the Commonwealth Magistrates and Judges Association* Vol 16 No 2, 13.

<sup>122</sup> Interview Mr. Mkatambo (n 104 above.)



### 2.2.4.3 Technicalities of the law

Technicalities involved in the law are impediments to the realisation of the right of access to justice.<sup>123</sup> Law is an inherently technical subject and this technicality is manifested in the various rules and procedures in place. The litigant, however well-educated he may be is usually unable to understand the intricate processes and rules applicable to his case.<sup>124</sup> The right of access to justice is always imperilled where the court or other institutional procedures are cumbersome and sometimes incomprehensible to the ordinary litigant. The laid-down procedures in civil and criminal matters are to be followed by the court. If the litigant or an accused person is ignorant of these procedures the right of access to justice is denied.<sup>125</sup>

The rules towards justice and particularly in the courts of law are littered with technicalities, which are remote to and have nothing to do with justice.<sup>126</sup> The hardship in understanding what the law requires during proceedings arises due to the fact that majority of people in Tanzania and Ghana are illiterate. This makes people unable to understand what they are required to do to prove or disprove the case at hand. For a hearing in a court to be declared fair, the parties thereto must be able to understand the proceedings; this is not always easy because of legal technicalities involved. Even the most intelligent member of our society always finds himself out of place in the courts of law; this is because they are not trained in this discipline.<sup>127</sup> It is worse for the illiterate as the Supreme Court of USA once noted in the case of *Powel v. Alabama*:

“Even the intelligent and the educated layman has small and sometimes no skill in the science of law, if charged with a crime, he is incapable generally of determining of himself whatever the indictment is good or bad. He is unfamiliar with the rules of evidence.... He lacks both the skill and knowledge adequate to prepare his defence, even though he has a perfect one. He requires the guiding hand of a counsel at every step in the proceedings against him. Without it though he not guilty, he faces the danger of conviction because he does not know how to establish his innocence. If that be true of a man of intelligence, how much more true is it of the ignorant and illiterate or those of the feeble intellect?”<sup>128</sup>

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<sup>123</sup> G C Doumbia African commitments to human rights: A Review of eight NEPAD Countries (2004)87.

<sup>124</sup> Okogbule (n 2 above) 102.

<sup>125</sup> Sakala (n 10 above) 345.

<sup>126</sup> Peter (n 3 above) 17.

<sup>127</sup> Bissimba & Peter (n 27 above) 468.

<sup>128</sup> (1932) 237 US 45.

Therefore, for justice to be done and be seen to have been done a party to a court proceeding requires the services of a legal counsel. A legal counsel can easily look for his way around technicalities and he is able to appreciate the nature of the matter before the court and its gravity.<sup>129</sup>

Procedures that are put in the entire process of administration of justice are intended to facilitate the process than to obstruct it. In *Henry J.B Kendal and others v. Peter Hamilton*, Lord Penzance held that,

“Procedure is the machinery of law after all the channel and means whereby law is administered and justice is reached, it departs from its office when in place of facilitating, it is permitted to obstruct or even extinguish legal rights and thus made to govern where it ought to sub serve<sup>130</sup>

Though illiteracy contributes in denying people justice, in some instances, the attitude of courts towards litigants and the technicalities involved creates doubts whether courts are there to do justice to anyone despite their status.<sup>131</sup> At times justice is not seen to be done. In deciding cases, the best approach should be justice, not procedure. The courts should adopt an active role in ensuring that justice is done and seen to be done. As Kwikima Ag (as he then was) held “` where the parties to the suit are laymen conducting their own case, the trial court should scrutinise the pleadings before admitting them and generally furnish any necessary guidance”.<sup>132</sup>

Perhaps the adversarial system used by Tanzania and Ghana makes the courts act in avoidance of being seen as engaging themselves in helping the parties to the case, because parties are taken to be adversaries, able to conduct their own cases. Courts should change their attitude and help parties attain justice; they may have to heed the advice of the late Biron J who, in *John s/o Magendo v NE Govan*, held that:

“Although we operate an adversarial of court procedure, yet we do not believe that a judge should act as a referee. It is the duty of the judge or magistrate conducting a case to try the case and determine it on its merit doing justice to each party according to law, it is wrong for him to regard himself as a referee in a game, even if both sides are represented by able counsel.<sup>133</sup>

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<sup>129</sup> Bissimba & Peter (n 27 above) 469.

<sup>130</sup> [1887] 4 AC 504.

<sup>131</sup> Interview with Mr. Patrick Kiango, Legal officer National Housing Corporation (1/8/2008).

<sup>132</sup> *Simon Chitanda v Abdul Kisoma* [1973] LRT 11.

<sup>133</sup> [1973] LRT 60.

To solve the problem courts in Tanzania are required while dispensing justice not to be bound by the legal technicalities which may hinder justice. Article 107A (2) (e) of Constitution of URTZ provides that, in deciding civil and criminal cases according to law, the judiciary should do justice without being bound by technicalities which may defeat justice. The adherence of this provision of the Constitution can still be debatable, whether courts are willing to avoid technicalities and do justice to the people.

#### **2.2.4.4 Other factors**

Poverty, technicalities of the law and delay in the administration of justice are by no means the only barriers to effective access to justice. Although not specifically mentioned there are other factors associated with those mentioned above. They can also stand alone as barriers. For instance, illiteracy can be mentioned as a factor that stands alone in denying access to justice,<sup>134</sup> but in this work, it has been treated under the ambit of technicalities of the law. This is because whether a litigant or an accused person is illiterate or not, technicalities of the law affects both of them, in practice it is worse to an illiterate, for that matter illiteracy in this work is seen as contributing factor.

Among the other barriers to access to justice are unfamiliarity with court language, unfriendly court environment and court being located far from the people.<sup>135</sup>

In Ghana and Tanzania more courts are located in urban areas than in rural areas. This uneven distribution of courts is seen as denying justice to rural people who have to travel long distances to go and file a case or attend court proceedings. With the poverty level discussed earlier, the uneven distribution of courts make people abandon their claims, lose their cases or accept a lesser remedy out of court.

As of 2006 in Tanzania, there were 1105 primary courts, 88 district courts, 22 courts of resident magistrate, 13 High Court District Registries and one Court of Appeal station in Dar es Salaam. Tanzania has more than 10,000 villages, more than 125 districts and 21 regions for mainland Tanzania alone.<sup>136</sup> It would be more convenient to at least have Magistrate or District courts in each district of Tanzania, short of which physical access to courts will continue to be denied to majority of Tanzanians.

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<sup>134</sup> Interviews with Hon S. Mwiseje, Mr. P Kiango and Mr. A. Mwenda (n 100, n 131 and n 62 above).

<sup>135</sup> Samatta (n 11 above) 29.

<sup>136</sup> LHRC & ZLAC (n 114 above) 25.

The distribution of courts in Ghana also is not geographically-balanced, leading to limited physical access to justice depending on which part of the country one resides in, areas with high concentration of economic activities have been privileged to the detriment of districts with high populations.<sup>137</sup> Its impact is that, people in rural areas are not able to access justice due to the cost of travel to court for plaintiffs, defendants or witnesses, serving court papers and pay for services of lawyers since lawyers charge clients transport costs.<sup>138</sup> The late Chief Justice of Ghana, Acquah CJ (as he then was) noted in his speech that:

'... one of my prime objectives is to strive to ensure that justice becomes available to all Ghanaians in all one hundred and thirty-eight Districts in the country, because access to justice should not be preserved of only those in the Metropolitan and urban areas, but must be available to all and sundry wherever one is'.<sup>139</sup>

Such a commitment from the head of the judiciary is so crucial in making access to justice evenly distributed to everyone and as a result eradicating the unevenly distribution of courts.<sup>140</sup>

If we argue that the enforcement of all other rights depends on the effectiveness of the right of access to justice, then it is crucial for courts to be reachable to everyone everywhere

### **2.2.5 Conclusion**

As seen in this chapter, access to justice is an important right which leads to the realisation of other rights whether civil, political or economic. It has been guaranteed in international and regional instruments as well as Constitutions of Ghana and Tanzania. However we have seen that in reality, many factors exist that affect the realisation of this right. These are poverty, technicalities of the law, delay in the administration of justice, unequal distribution of courts and illiteracy.

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<sup>137</sup> AfriMAP (n 92above) 121.

<sup>138</sup> AfriMAP (n 92 above) 122.

<sup>139</sup> [http://www.judicial.gov.gh/archives/madina%20court/mc\\_3.htm](http://www.judicial.gov.gh/archives/madina%20court/mc_3.htm) (accessed on 5/9/2008).

<sup>140</sup> Article 5(k) of Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (2003) requires states to ensure that access to justice is not impeded by the distance to the location of judicial institutions.

# CHAPTER THREE

## THE CONCEPT OF LEGAL AID, RATIONALE AND LEGAL PROVISIONS GUARANTEEING LEGAL AID

### 3.0 Introduction

The provision of legal aid to those who are underprivileged is essential in ensuring equality of all citizens in pursuing and enjoying the rights without any discrimination. This part of the work aims at discussing the concept of legal aid, legal provisions that guarantees legal aid and the rationale for providing legal aid. It will also make a comparative analysis of legal aid schemes of Tanzania and Ghana.

### 3.1 The concept of Legal Aid

To Brownell, legal aid means providing lawyers for persons who are unable to pay fees for legal services. He argues that, its object is to make it impossible for any man; woman or child to be denied equal protection of the laws simply because he or she is poor. Thus, legal aid is an essential part of the administration of justice in a democracy.<sup>141</sup> It is however proper to note that, legal aid is more than providing lawyers.

According to Singh, legal aid in its common sense conveys the assistance provided by the society to its weaker members in their efforts to protect their rights and liberties, bestowed upon them by laws, and to make them get such benefits and rights back if these are snatched from them by the might and muscled members of the society.<sup>142</sup>

Shivji argues that, legal aid is the brainchild of a system which proclaims 'justice for all and equality before the law'. While its foundations rest on the basic social-economic inequality, the aim of legal aid has never been to eradicate inequality. To him the motives and aims behind legal aid have historically moved from typically philanthropic considerations, through state administered welfarism, to the assertion of democratic rights on the part of dominated classes and social groups.<sup>143</sup>

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<sup>141</sup> E A Brownell *Legal aid in United States* (1951) xiii.

<sup>142</sup> Singh (n 12 above) 2.

<sup>143</sup> Shivji (n 24 above.)

In explaining what is legal aid, Singh, quotes the words of Justice P.N Bhagwati, "the legal aid means providing an arrangement in the society so that the machinery of administration of justice becomes easily accessible and is not out of reach of those who have to resort to it for enforcement of the rights given to them by law." In such an arrangement, Justice Bhagwati emphatically observes that, "the poor and the illiterate should be able to approach the courts and their ignorance and poverty should not be an impediment in the way of their obtaining justice from the courts"<sup>144</sup>

Singh concludes that the general meaning of legal aid, therefore, is a social arrangement extending and providing special assistance or help to the poorer and weaker members to enable them enforce their legal rights, facing on an equal platform the powerful and the rich members through the legal process.<sup>145</sup> The wide gap between the two buyers of costly justice is made up by the community or state, which is given the name of legal aid.<sup>146</sup>

Legal aid is in essence the gratuitous rendering of legal advice and other legal services to the poor and the powerless, forming part of social or welfare rights.<sup>147</sup> It involves no more than professional consultation, which may include assistance in negotiations, preparation of documents and for representation in courts.<sup>148</sup>

In conclusion, legal aid may involve provision of a lawyer before and after trial, the waiver of paying court fees, drafting of documents, assistance in negotiations and sensitization of people on the law.

## **3.2 Legal guarantees of legal aid**

Legal aid has been guaranteed by international and regional instruments. This part will focus on these provisions and also look at how they have been interpreted.

### **3.2.1 The ICCPR**

Article 14 (3) provides that, in the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

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<sup>144</sup> Singh (n 12 above) 5.

<sup>145</sup> Singh (n 12 above) 2.

<sup>146</sup> Singh (n 12 above) 14.

<sup>147</sup> N Steytler 'Access to Justice: The Role of Legal Aid' (1988) *Law and Justice in South Africa* 25, 26.

<sup>148</sup> Brownell (n 141above) 95.

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

In *Kelly v Jamaica* it was held that;

“in capital punishment cases, a fair trial for accused persons must provide them with effective legal counsel if the accused are unable to retain private counsel and that while article 14(3) (d), does not entitle the accused to choose counsel provided to him free of charge, measures must be taken to ensure that counsel, once assigned, provides effective representation in the interests of justice.<sup>149</sup>

The ICCPR has failed to provide in express terms the right to legal aid in civil cases. The provision is trial-centred. It does not provide for the right to legal aid before trial and after trial. The ICCPR leaves the discretion to provide legal aid where the interest of justice requires.<sup>150</sup>

### 3.2.2 The ECHR

Article 6(3) provides that, everyone charged with a criminal offence has the following minimum rights:

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

In *Poitrimol v France*, the Court stated that, “ although not absolute, the right ... to be effectively defended by a lawyer, assigned officially if need be, is one of the fundamental features of a fair trial.<sup>151</sup> Likewise , Para 6(3) (c) does not merely import the right to have legal assistance but rather it includes three other rights, to have recourse if desired to legal assistance, to choose that assistance, if the defendant has insufficient means to pay for that assistance to be given free if interest of justice so require.<sup>152</sup>

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<sup>149</sup> HRC, Communication No 253/1987, (8 April 1991) U.N. DOC. SUPP.NO 40(A/46/40) AT 241 (1991).

<sup>150</sup> E Skinnider ‘The responsibility of states to provide legal aid’ paper prepared for the legal aid conference Beijing China (March 1999).

<sup>151</sup> (1993) A.277-A; (1993)18 EHRR 130.

<sup>152</sup> Pakelli, Judgment of 25 April 1983, A.64 (1983).

### 3.2.3 IACHR

Article 8(2) provides that ` ... during the proceedings, every person is entitled, with full equality, to the following minimum guarantees:

(d) the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;

(e) the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law;

In *Suárez Rosero v Ecuador*, the Inter-American Court found violation of article 8(2) (d) and (e) when the victim was held incommunicado detention for 36 days during which time he was denied adequate opportunity to prepare his defense, since he did not have the legal assistance of a public defender and, once he was able to obtain legal counsel of his own choosing, he was unable to communicate with him freely and privately.<sup>153</sup>

### 3.2.4 The ACHPR

Article 7(1) of the ACHPR provides that, every individual shall have the right to have his cause heard; this comprises(c) " the right to defence, including the right to be defended by counsel of his choice."

In *Avocats Sans Frontiers (on behalf of Bwampamyé) v Burundi*, it was held that,

"the right to legal assistance is a fundamental element of the right to fair trial, more so where the interest of justice demands it and that considering the gravity of the allegations brought against the accused and the nature of the penalty he faced, it was in the interest of justice for him to have the benefit of the assistance of a lawyer at each stage of the case."<sup>154</sup>

Likewise in *Amnesty International & Others v Sudan*, the African Commission held that the right to freely choose one's counsel is essential to the assurance of a fair trial.<sup>155</sup> The ACHPR is silent on the question of free legal aid. However article 9 of Dakar Declaration and Recommendations on the Right to a Fair Trial (1999) gives a duty to governments to

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<sup>153</sup> Judgment of November 12, INTER-AM.CT.HR (SER. C) NO. 35 (1997).

<sup>154</sup> (2000) AHRLR 48 (ACHPR 2000).

<sup>155</sup> (2000) AHRLR 297 (ACHPR 1999) Para 64.



provide legal assistance to indigent persons in order to make the right to a fair trial more effective. Also the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (2003), in article H (a) provides that,

“the accused person or a part to a civil case has a right to have legal assistance assigned to him or her in any case where the interest of justice so require, and without payment by the accused or a party to a civil case if he/she does not have sufficient means to pay for it.

Moreover article H (b) provides that, the interest of justice should be determined by considering, in criminal matters, the seriousness of the offence and severity of sentence, while in civil matters, the complexity of the case and the ability of the party to adequately represent himself and the rights that are affected. The adoption of the Dakar Declaration and Principles and Guidelines on the Right to a Fair Trial and Legal Assistance provides a wider framework and interpretation of the right to fair trial guaranteed by the ACHPR. The adherence of these standards by the state parties to the ACHPR will improve the provision of legal aid in Africa.

### **3.3 Rationale for the provision of legal aid**

Legal aid gives life to the right of access to justice. Samatta argues that access to justice will not be a meaningful right to a poor person if legal aid is not made available to this individual in serious court proceedings and he is not exempted from paying court fees or depositing money as security for costs.<sup>156</sup>

The rationale for the provision of legal aid can be deduced from the doctrine of rule of law, which requires equal protection of every person before the law.<sup>157</sup> The machinery of justice that gives life to law and makes it effective must therefore be readily accessible to all, irrespective of their social, economic, geographical, and biological or any other type of differences.<sup>158</sup> In order to achieve equal justice in practice and give reality to the constitutional guarantee of equality before the law and equal protection of the law, a legal aid scheme providing help to the impoverished litigant or accused may have to be devised to render justice available to those who can not buy it.<sup>159</sup> One of the main objectives of legal aid must be to remove obstacles to equal access to

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<sup>156</sup> Samatta (n 28 above) 3.

<sup>157</sup> Bissimba & Peter (n 27 above) 379.

<sup>158</sup> Singh (n 12 above) 3.

<sup>159</sup> SM Huangthio ‘Legal aid a facet of equality before the law’ (1963) *International law quarterly* Vol 12, 1135.

legal protection.<sup>160</sup> Likewise its primary aim is to eradicate the legal discrimination caused by poverty.<sup>161</sup> Thus, achieving equality has always been a goal of legal aid.<sup>162</sup>

The provision of legal aid is necessary for the society to remain peaceful and prosper, that law must not only speak justice but also behave justly to do justice and this can be done only by infusing legal aid in the arteries of the legal system.<sup>163</sup> This is essential as it will make the disadvantaged and underprivileged members of the society not resort to self help.

The rationale for the provision of legal services to the indigent is essential to the proper functioning and integrity of the machinery of justice.<sup>164</sup> Without legal aid the machinery of justice will be seen to benefit few people in the society and leave the rest unable to realise various rights.

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<sup>160</sup> J Bodenstein 'access to legal aid in rural South Africa: in seeking a coordinated approach' pg 307.

<sup>161</sup> H Van As 'Legal aid in South Africa: Making Justice Reality' (2005) Vol 49 No 1 *Journal of African Law* 66.

<sup>162</sup> <http://www.icclr.law.ubc.ca/Publications/Reports/beijing.pdf> (accessed on 1/10/2008).

<sup>163</sup> SS Sharma *Legal aid to the poor* (1993) 4.

<sup>164</sup> Reyntjens (n 25 above) 13.

## CHAPTER FOUR

# LEGAL AID SCHEMES OF TANZANIA AND GHANA AND THEIR COMPARATIVE ANALYSIS

### 4.0 Introduction

Tanzania and Ghana have established legal aid schemes in both criminal and civil cases. These schemes are a combination of efforts by the state and NGOs to improve the realisation of the right of access to justice. This part will focus on these schemes and making a comparative analysis of them.

### 4.1 Legal aid scheme in Tanzania

The right to legal aid is not expressly stated in the Constitution of URTZ. However it can be inferred from the right to a fair hearing under article 13(6) (a), the right to legal aid comes as a safeguard to the right of a fair trial. Moreover the Constitution prohibits discrimination on basis of nationality, ethnicity, and place of origin, political opinion, colour, religion, gender or station in life.<sup>165</sup> Station in life can include poverty and illiteracy which were found to be factors that deny people access to justice. Thus, legal aid comes in to eradicate these inequalities and enable people to access justice before, during and after trial.

#### 4.1.1 Legal aid in criminal cases

In criminal matters the accused has the right to legal representation and legal aid. Section 310 of the Criminal Procedure Act (CPA) provides that: "any person accused before any criminal court, other than a primary court, may as of right be defended by an advocate of the high court"<sup>166</sup> For years, this provision has been interpreted to mean that those who have the means of engaging the services of an advocate are allowed to do so under the law; it was however never seen as a right to all accused persons.<sup>167</sup>

In the case of *Khasim Hamisi Manywele v Republic*, Mwalusanya J, held that, the plain meaning of that provision would appear to cover both the accused person who can

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<sup>165</sup> Article 13(5) of Constitution of URTZ.

<sup>166</sup> CAP 20[R.E 2002].

<sup>167</sup> Peter (n 3 above) 338.

afford to pay for an advocate and those who cannot afford to hire the services of a lawyer, if it meant otherwise the CPA should have included the phrase to such effect.<sup>168</sup>

Free legal aid in criminal proceedings is governed by Legal Aid (Criminal Proceedings) Act (herein referred to as CAP 21).<sup>169</sup> CAP 21 has defined the accused person to include, in case of an appeal, the appellant or in case of an appeal by the Director of Public Prosecution, the respondent.<sup>170</sup>

Section 3 of CAP 21 provides that;

“where it appears in any proceedings to the certifying authority that it is desirable in the interest of justice that an accused person ought to have legal aid in the conduct and preparation of his defence or appeal as the case may be and that his means are insufficient to enable him to obtain such aid, the certifying authority may certify that the accused ought to have legal aid and upon such certificate being issued the registrar shall where it is practicable to do so assign the accused an advocate for the purpose of the preparation and conduct of his defence or appeal as the case may be”<sup>171</sup>

According to this provision, the grant of legal aid comes about when it appears to the certifying authority that it is desirable in the interest of justice that an accused person should have legal aid to conduct his case on account that he has insufficient means, where upon issuing a certificate an advocate will be assigned.

CAP 21 has not defined what it means by the phrase ‘it is desirable in the interest of justice’. For in instance, in *Mohamed Salim v Republic*, the High Court, after examining the accused charged with murder concluded that he had ten heads of cattle he should not have legal aid. He was then convicted. On appeal it was held that the depute registrar did not exercise his independent judgement properly. The court further held that;

“ it is clearly desirable in the interest of justice that a person on trial of capital offence have the benefit of legal aid in preparation and conduct of his defence... while in capital offences it is normally presumed that the interest of justice require that an accused should be legally represented, there is no such presumption in non capital offences.”<sup>172</sup>

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<sup>168</sup> Criminal appeal No 39 of 1990, HC at Dodoma (Unreported).

<sup>169</sup> [CAP 21 R.E 2002].

<sup>170</sup> Section 2 of [CAP 21 R.E 2002].

<sup>171</sup> Act No 21 of 1969.

<sup>172</sup> [1958] EA 202.

CAP 21 guarantees legal aid in any proceedings. It has also defined proceedings to mean any proceedings in any court other than the primary court in which a person is being tried for criminal offence and includes an appeal before the High Court against the decision in any proceedings of a criminal nature before the district court, a court of resident magistrate or a primary court.<sup>173</sup> It does not specify in which offences legal aid should be granted. This means that legal aid covers all offences. However, the practice is that, the state provides legal aid in capital offences such as murder and treason, such that most accused persons are not covered at all. This practice has led many accused persons charged in the district and resident magistrate court with serious offences such as robbery, rape and stealing which attract serious punishment unable to benefit from legal aid under CAP 21.<sup>174</sup>

In the case of *Laurent Joseph & Another v Republic*, the CAT held that, the statutory provision of section 3 of CAP 21 creates an undoubted right to free legal aid to the poor paid for by the state in all cases whether capital offences or non-capital offences.<sup>175</sup> The impact of this case was seen in the case of *Haruna Said v Republic*, a case of stealing by a public servant. The High Court held that the trial in the district court was a nullity because the accused was denied of his right to free legal aid paid for by the state.<sup>176</sup>

Courts have also held that the accused has the right to be informed of the right to legal aid.<sup>177</sup> In *Ally s/o Shamte & Two others v Republic*, the counsel for accused withdrew from the case. The trial magistrate did not inform the accused of their statutory right to legal representation. The High Court quashed the convictions and held that the accused person must be informed of his right to instruct another counsel.<sup>178</sup>

#### **4.1.2 Legal aid in civil cases**

The state has not set any state organised legal aid scheme to cover civil matters in Tanzania. As a result in civil matters legal aid is mainly done by NGOs pursuant to Government Notice (GN) No 308 of 1964 as amended from time to time by GN Numbers

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<sup>173</sup> Section 2 of [CAP 21 R.E 2002].

<sup>174</sup> Interview Mr. A. Mwenda (n 62 above).

<sup>175</sup> [1981]TLR 351.

<sup>176</sup> Criminal appeal No 10 of 1990, HC at Dodoma (Unreported).

<sup>177</sup> n 168 above..

<sup>178</sup> Criminal Appeal No 11 of 1985, High Court of Dodoma (Unreported).

64 of 1981, 20 of 1996, 313 of 2002 and 430 of 2002 and pursuant to GN No 375 and 376 of 2002, all these allow filing of suits and documents without paying of fees.

Different criteria have been put up by each NGO for an applicant to qualify for legal aid. When legal aid is granted a certificate is provided which is sent to the appropriate court (as per ANNEXTURE A). Some of the problems faced by NGOs will be discussed later in this work.

#### **4.1.3 Challenges facing Legal aid in Tanzania**

It can be seen that this provision of CAP 21 leaves the grant of legal aid at the discretion of the judiciary. The certifying authority in all cases is either the Chief Justice, Principle Judge of the High Court or the Judge in Charge of the district registry where proceedings are conducted. The omission of CAP 21 to state situation in which the interest of justice requires legal aid has occasioned the denying of many people legal aid simply because it does not appear to the certifying authority that the interest of justice requires provision of legal aid. The discretion in the hands of the certifying authority must, however, be exercised judicially.<sup>179</sup>

Likewise under this provision, legal aid is provided in terms of an advocate but it only covers the trial. In other words, CAP 21 has not covered the provision of legal aid before and after trial, where the rights of an accused are also under jeopardy. It is essential to assign an accused person a counsel before trial as it will help in avoiding involuntary confessions, torture and ill treatment to accused persons.

CAP 21 has omitted to cover legal aid to accused persons before the primary courts which also deal with cases that warrant serious punishment. CAP 21 does not provide any procedure to be used if an accused person requests for legal aid and he is denied it by the magistrate. In total, the provisions of CAP 21 are inadequate to effectively guarantee provision of legal aid in Tanzania. Inadequate of funds limit both the state and NGO provision of legal aid in Tanzania.

#### **4.2 Legal aid scheme in Ghana**

Legal aid in Ghana is a constitutional right provided for under article 294. Legal aid scheme was first established in 1987 by PNDC Law 184 of 1987 and subsequently

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<sup>179</sup> n 168 above.

amended by PNDC Law 200 of 1988.<sup>180</sup> The law was amended in 1997 by the Legal Aid Scheme Act (Act 542) to accommodate the provision of article 294 of the Constitution.

Under article 294 (1) of the Constitution a person is entitled to legal aid in relation to any proceedings relating to the Constitution. The Constitution also gave Parliament the power to regulate the grant of legal aid by an Act of Parliament<sup>181</sup> and to extend it to other matters.<sup>182</sup> Under the Constitution legal aid consists of representation by a lawyer, including his assistance in the steps preliminary or incidental to any proceedings or arriving at or giving effect to a compromise or brings to an end any proceedings.<sup>183</sup>

Sections 2(1) and (3) of Act 542 reaffirms article 294(1) and (4) of the Constitution and extends the scope of legal aid to persons who earn the Government minimum wage or less in both criminal matters and civil matters if in the opinion of the board the person requires legal aid.<sup>184</sup>

Act 542 established Legal Aid Board (GLAB) to administer the provisions of the Act, one of its functions is to supervise the general administration of the legal aid programme.<sup>185</sup> An applicant for legal aid is required to complete an application form which shall be subject to the approval of the selection committee.<sup>186</sup> When the application is approved, the applicant will be exempted from paying the prescribed fee in respect of filling of relevant court documents and cost of preparing appeal records.<sup>187</sup>

The scheme covers all the 10 regions in Ghana. While some regional committees are effectively operating others are dormant.<sup>188</sup> The activities of the Scheme have extended to cover awareness-creation on the scheme, giving legal advice and services

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<sup>180</sup> Legal Aid Scheme, Draft Strategic Plan (2009-2013) 4.

<sup>181</sup> Art 294(2).

<sup>182</sup> Art 294(3).

<sup>183</sup> Art 294(4).

<sup>184</sup> Section 2(2).

<sup>185</sup> Section 5(b), there are also Regional Committees with the same function at the regional level as per section 12(a).

<sup>186</sup> As per section 24, this section doesn't apply if a person is charged of offence punishable by death or life imprisonment. The selection Committees is responsible for considering and approving applications for legal aid as per section 15.

<sup>187</sup> Section 25(1).

<sup>188</sup> Legal Aid Scheme Annual Report (2006)12.

to the poor and indigent and representation in court.<sup>189</sup> It corroborates with NGOs like FIDA to conduct outreach programmes in several issues of law and human rights.<sup>190</sup>

There has been an improvement in the provision of legal aid. The tables below shows the number and type of cases handled in the year 2004 to 2006.

**TABLE1: TRADITIONAL CASES-** These are cases specifically provided for coverage by Act 542

Year	Maintenance Paternity, Custody &related family matters	Landlord/tenant	Inheritance	Insurance	Criminal cases/appeals	Total
2004	959	293	495	268	587	2602
2005	1002	391	461	189	831	2874
2006	1390	398	698	279	667	3434

**TABLE 2: NON TRADITIONAL CASES-**These are cases though not specifically covered by Act 542 are nevertheless handled out of the wide discretion which the Scheme exercises.

Year	Matrimonial	Land disputes	Labour	Miscellaneous	Total
2004	370	346	496	485	1697
2005	777	384	540	546	2247
2006	691	424	601	744	2460

<sup>189</sup> LAS Report (n 188 above) 7.

<sup>190</sup> LAS Report (n 188 above) 8.



Despite many challenges that the scheme faces, it can be seen from these tables that there has been a steady increase of cases handled from 2004 to 2006. These cases cover all the 10 regions in which legal aid is administered.<sup>191</sup> With the population of 22 million people, there is the need to increase awareness on the scheme for more people to benefit on it.

The Scheme also conducts mediation in disposing of complaints.<sup>192</sup> It established Community Mediation Centres (CMC) in all the regions in December 2006, up to July 2007 a total number of 603 were received in all regions and 347 were resolved.<sup>193</sup> The table below shows the distribution of cases

**NUMBER OF CASES RECEIVED AT REGIONAL CMC CENTRES (DEC 2006-JULY 2007)<sup>194</sup>**

Region	Cases received	Cases resolved	Cases pending	Total
Greater Accra	189	180	9	189
Eastern	15	9	6	15
Western	246	60	186	246
Central	26	21	5	26
Ashanti	18	6	12	18
Volta	0	0	0	0
Brong Ahafo	71	44	27	71
Northern Region	22	17	5	22
Upper East	16	10	6	16
Upper West	0	0	0	0

<sup>191</sup> LAS Report (n 188 above) 8.

<sup>192</sup> LAS Report (n 188 above) 7.

<sup>193</sup> The Legal Aid Scheme in Ghana, Report on the Community Mediation Centers (December 2006 – July 2007) ii.

<sup>194</sup> n 193 above.

### 4.2.1 Challenges facing the Scheme

The scheme has been facing a number of setbacks that hinder its effective functioning. Since its inception it has lacked the structure and the funding to realistically achieve the objectives for which was set up.<sup>195</sup> Contrary to section 5(a) the scheme has no identifiable programme and policy for legal aid which is operated by the scheme.<sup>196</sup> The various regions therefore operate the scheme according to the commitment and understanding of individual secretaries to the regional legal aid committee.<sup>197</sup> This does not bring uniformity in the administration of the scheme.

While to the management inadequate human resource, poor training and facilities for staffs, low remuneration and inadequate resources epitomise the scheme's problems and reasons to deliver,<sup>198</sup> stakeholders view the scheme to have failed to strategically position itself to provide a range of legal services to teeming population in need of such services.<sup>199</sup> Many criminal defendants are unable to get legal representation.<sup>200</sup> This is attributed to various factors. Among others, although GLAB offices are in all regions, many districts and communities do not have this facility.<sup>201</sup> Moreover there is lack of awareness about the scheme, although it is reported that public awareness of the scheme is growing and more people apply for the assistance.<sup>202</sup> There is inadequate number of lawyers in the Scheme caused by low remuneration given to them.<sup>203</sup> The state scheme in Ghana is facing financial problems. It could not access adequate funds to implement plans that would provide legal aid to a greater proportion of its clients.<sup>204</sup>

### 4.3 NGOs and legal aid

NGOs in Tanzania and Ghana play a major role in the provision of legal aid. They have set legal aid clinics which save majority of people who cannot access the state

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<sup>195</sup> LAS Plan (n 180 above)4.

<sup>196</sup> Interview with Mr. Seini, Acting Director GLAB (10/9/2008).

<sup>197</sup> A Y Seini 'The Legal aid scheme in the access to justice program in Ghana' paper presented at the Attorney-General & Minister of Justice Access to Justice Series (September 2008)3.

<sup>198</sup> Interview Mr. Seini (n 196 above).

<sup>199</sup> LAS Plan (n 180 above) 5.

<sup>200</sup> AfriMAP (n 92 above) 103.

<sup>201</sup> AfriMAP (n 92 above) 103.

<sup>202</sup> LAS Report (n 188 above) 18.

<sup>203</sup> LAS Report (n 188 above) 11.

<sup>204</sup> LAS Plan (n 180 above) 23, see also Seini (n 197 above)12 who argues that underfunding has hampered the effective functioning of the Scheme since its creation in 1988.

schemes. In Ghana, NGOs such as FIDA-Ghana,<sup>205</sup> WILDAF-Ghana, Legal Resource Centre (LRC) and Centre for Public Interest Litigation (CEPIL) provide *pro bono* legal representation on human rights violations.<sup>206</sup> The attempts by the CSOs to run legal aid facilities are affected by their low numbers and lack of sufficient funds to run the programme.<sup>207</sup>

In Tanzania, several NGOs have established legal aid clinics; these include among others Tanganyika Law Society (TLS), Tanzania Media Women Association (TAMWA), Tanzania Women Lawyers Association (TAWLA), Legal and Human Rights Centre (LHRC), legal aid clinic of Faculty of Law University of Dar es Salaam, Women Legal AID Centre (WLAC). Each of these has set its own criteria for providing legal aid, their services are immerse, they involve legal representation, counselling, drafting of legal documents, mediation and awareness building. For instance, LHRC in 2007 received 3515 legal aid applications.<sup>208</sup> However, they cannot afford to cater for all citizens due to limited financial resources and number of lawyers.<sup>209</sup> They face difficulties in securing funds because very few donors understand the importance of legal aid to a country like Tanzania.<sup>210</sup> Moreover most of these NGOs are based in urban areas.

Despite the problems faced by NGOs in Tanzania and Ghana, it is important to acknowledge their efforts in ensuring the realisation of the right of access to justice through the provision of legal aid.

#### 4.4 Comparative analysis

From the discussion of the legal aid schemes in Tanzania and Ghana there are various points of convergence and divergence. The points of convergence revealed by this study include

- Both schemes are a response to the problem of access to justice in both countries.

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<sup>205</sup> Many people benefit from the legal aid provision, 1305 people in 2002 , 1302 people in 2003 and 1340 people in 2004 <http://www.fidaghana.org.administration.php> (accessed on 10/10/2008).

<sup>206</sup> AfriMAP (n 92 above) 126.

<sup>207</sup> APRM, Country Review Report of the Republic of Ghana (June 2005) p 22 item 31.

<sup>208</sup> LHRC & ZLAC (n 114 above) 24.

<sup>209</sup> Peter (n 3 above) 342.

<sup>210</sup> LHRC & ZLAC (n 114 above) 24.

- Both aim at benefiting majority of their citizens who are illiterate, poor and underprivileged.
- Both countries have established legal aid schemes to improve the realisation of the right of access to justice. There is similarity in state legal aid scheme in criminal matters and through NGOs.
- Both legal aid schemes do not benefit the majority of people due to lack of awareness.
- The schemes are concentrated more in urban than rural areas.
- There is less political will to improve the provision of legal aid.
- Provision of legal aid by NGOs is hindered by availability of funds in both countries.

Points of divergence as revealed by this study include

- Right to legal aid is specifically provided for in the Constitution of Ghana, unlike the Constitution of URTZ.
- In Ghana, state provision of legal aid covers both civil and criminal cases while in Tanzania, the state provide legal aid in criminal cases only and NGOs in civil cases.
- State provision of legal aid in Tanzania is trial-centred while in Ghana it covers before, during and after trial
- In Tanzania state provision of legal aid is done by the judiciary while in Ghana it is by the judiciary and GLAB.
- In law and in practice legal aid covers all offences in Ghana while in Tanzania the law is not specific and in practice legal aid covers only capital offences.
- There are more efforts to improve state provision of legal aid in Ghana than in Tanzania.
- There is a more elaborate legal aid framework in Ghana than Tanzania

#### **4.5 Conclusion**

From the comparative analysis it is evident that there are similarities and differences in both countries towards the issue of access to justice and provision of legal aid. There are areas that each can draw from the others experience and practice. The next chapter

will summarise what has been discussed in the study and give recommendations which could be adopted by both countries in improving the right of access to justice and the provision of legal aid.

## CHAPTER FIVE

### CONCLUSION AND RECOMMENDATIONS

#### 4.0 Introduction

In this chapter, a summary of conclusions drawn from the whole study is presented. Thereafter, general and specific recommendations on how to improve access to justice and the provision of legal aid are set out.

#### 4.1 Conclusion

The study has sought to examine the important link between access to justice and legal aid. It began by examining the concept of access to justice and concluded that it is one of the most basic human rights without which the enjoyment of many other rights cannot be assured.<sup>211</sup> A case was then made by this study on the need to improve realisation of the right of access to justice through the provision of legal aid.

The study examined key factors that have inhibited access to justice in Tanzania and Ghana. It noted that poverty, technicalities of the law, delay in the administration of justice, illiteracy and unequal distribution of courts as some of the factors that deny people access to justice in Tanzania and Ghana. A need was established to eradicate these factors and improve the realisation of this crucial right. In response to that the study was of the view that the provision of legal aid will eradicate the factors that hinder the realisation of the right of access to justice. As a result legal aid schemes of Tanzania and Ghana were discussed while looking at their strength and weaknesses and finally making a comparative analysis between the two schemes.

The study also discussed the legal framework on access to justice and legal aid at the international and regional levels in trying to show that the two aspects are widely recognised and guaranteed. It found that, access to justice is guaranteed in ICCPR<sup>212</sup> and the ACHPR.<sup>213</sup> However, the study found that the provisions of legal aid in the ICCPR covers criminal cases only and they are trial-centred.<sup>214</sup> Also, the ICCPR has not

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<sup>211</sup> Samatta (n 28 above) 2.

<sup>212</sup> Article 14 of ICCPR.

<sup>213</sup> Article 3, 7 and 26 of ACHPR.

<sup>214</sup> Article 14(3) of ICCPR.

expressly provided for legal aid in civil cases. In addition, the study observed that ACHPR<sup>215</sup> is silent on the question of legal aid, but the gap is filled by the resolutions of the African Commission.<sup>216</sup> Because both states have agreed to be bound by the provisions of ICCPR and ACHPR the study concluded that they must adopt legislative and other measures to improve access to justice and legal aid.

## **4.2 General recommendations**

It is possible to eradicate the factors that deny people access to justice through the provision of legal aid. From interviews conducted in Tanzania and Ghana with lawyers and NGO officials were of the view that, the existing structures and institutions in place to promote access to justice through legal aid are not properly functioning through lack of effective coordination among them. This present state of affairs is attributed to, among others, lack of system-wide coordination among the various sections of the legal system, political will and absence of judicial activism. The recommendations given in this chapter, if effectively and efficiently followed, will ensure the realisation of the right of access to justice through the provision of legal aid.

### **4.2.1 Coordination of justice system structures**

Administration of justice in Tanzania and Ghana depend on the coordination of a number of institutions, the judiciary, police, prison, immigration and the Attorney General's office. There is lack of effective coordination among these institutions in working towards delivery of justice. Corruption, bureaucracy and inefficiency of these institutions in performing their work in corroboration with each other are a major obstacle to accessing justice. It is recommended that, the two governments create a well-coordinated system between these institutions, reduce bureaucracy and corruption and make them work effectively in making access to justice a reality.

### **4.2.2 Funding of the schemes**

The major problem that faces legal aid schemes in Tanzania and Ghana is funding. It has been argued that the success of any legal aid scheme depends on among other things, the availability of resources including fiscal, human and material for discharge of

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<sup>215</sup> Article 7(1) of ACHPR.

<sup>216</sup> The Dakar Declaration and Recommendations on the Right to a Fair Trial (1999) and The Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (2003).

its responsibilities.<sup>217</sup> The legal aid scheme in Tanzania also depends on the availability of funds to pay advocates who receive dock briefs. It is recommended that both governments increase the funds allocated to these schemes so that the schemes could operate effectively and efficiently and benefit majority of people. The focus should be on reducing corruption and mismanagement of funds in all sectors and then put justice delivery system in priority by allocating the money served to it.

#### **4.2.3 Increasing awareness of the schemes**

It has been argued that access to legal aid requires not only the existence of institutions for providing the services but also knowledge of the populace that the institution exist and provide services and how the services can be accessed.<sup>218</sup> It is recommended that both governments work towards increasing awareness of the schemes. They should also work closely with NGOs that work on awareness-building so that majority of people can benefit from the legal aid schemes available.

#### **4.2.4 Geographical distributions of the scheme**

Unlike the state scheme in Tanzania which depends on the judiciary, Ghana's legal aid scheme needs to be expanded to cover the whole country and benefit majority of Ghanaians.<sup>219</sup> The NGOs' coverage of the provision of legal aid in both countries is mainly in urban areas than in rural areas. As a result majority of rural people do not benefit from them.<sup>220</sup> It is recommended that NGOs should expand their service delivery to rural areas and the government should work towards assisting them and creating conducive working environment for the NGOs to expand themselves.

#### **4.2.5 Judicial activism**

Stakeholders in the judicial process should appreciate that as ministers in the temple of justice, it is their joint responsibility to realise the main aim and goal of courts, which is to ensure that justice is done.<sup>221</sup> Courts in both countries should adopt an active role in

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<sup>217</sup> Seini (n 197above) 5.

<sup>218</sup> Seini (n 197 above) 16.

<sup>219</sup> The LAS has branches in all the 10 regions of Ghana, there is a need to extend them at district levels.

<sup>220</sup> Interview with Jane Shuma, Legal Officer LHRC (15/7/2008).

<sup>221</sup> OO Iruoma 'Eradicating delay in the administration of justice in African Courts: A comparative analysis of South Africa and Nigerian Courts' Dissertation submitted in partial fulfillment of requirement of LLM (Human Rights and Democratisation in Africa) University of Pretoria (2005) 48.



ensuring that people are not denied access to justice. In Tanzania, for instance, where provision of legal aid under CAP 21 is determined by the judge or magistrate, it is recommended that the trial judge or magistrate should feel duty-bound to inform the accused of his statutory right to legal representation and legal aid. It is recommended that all courts should take an active role in assisting every person appearing before it and simplify the procedures to ensure that justice is done and seen to be done to everyone without distinction of any kind.

#### **4.2.6 Empowering Human Rights Commissions**

Apart from accessing justice through the court system, this study acknowledged the work done by the CHRGG in Tanzania and CHRAJ in Ghana as other avenues for accessing justice. These avenues have no technicalities involved; as a result they are preferred to courts.<sup>222</sup> CHRGG does not have adequate funding. It is not fully independent and it does not have offices in all regions. In most cases its recommendations are not respected.<sup>223</sup> CHRAJ, on the other hand is considered more successful in its works.<sup>224</sup> However, budgetary constraints have made it unable to undertake many of its plans.<sup>225</sup> It is therefore recommended that all governments should equip these commissions financially and they should improve their legislative framework to enable them work efficiently and effectively. With respect to Tanzania it has to expand CHRGG to have offices in all regions and districts like how CHRAJ works. It must also make sure that its work is respected.

#### **4.2.7 The role of Universities**

The author has learned that Universities in Tanzania and Ghana have not played a major role in assisting people to access justice or to provide legal aid. Only the Faculty of Law of University of Dar es salaam in Tanzania has a legal aid clinic established in 1967.<sup>226</sup> In Ghana there is no university which offer legal aid services. With this, it is recommended that universities in both countries with law faculties should take an active role in educating the public on law and human rights, also establish legal aid clinics to

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<sup>222</sup> Interview with Mr. Isaac Annan, Head of Enforcement Unit CHRAJ (17/10/2008).

<sup>223</sup> LHRC & ZLAC (n 114 above) 102.

<sup>224</sup> Interview Mr. Annan (n 222 above)

<sup>225</sup> AfriMAP (n 92 above) 131.

<sup>226</sup> Shivji (n 24 above) 16.

enable people receive assistance. They should also use law students in assisting in the legal aid clinics and educating the public on issues of law. This will increase awareness and help people access justice.

#### **4.2.8 Alternative approaches to dispute resolution**

Most African states do not have the resources to extend the formal justice system to the village level to deal with all types of disputes, or to provide the additional legal aid and interpreters that this would require.<sup>227</sup> With factors that deny people access to formal justice system, it is recommended that the governments should work towards promoting the use of alternative dispute resolution or indigenous ways of settling disputes through chiefs, traditional courts and local leaders. These systems are free from obstacles found in a formal justice system. Such a situation makes them preferred than formal courts.

#### **4.1.9 Political will**

The major issue facing access to justice and provision of legal aid is whether there is the political will to improve the two. There is no doubt that the existence of political will in both countries is essential in improving the rights of access to justice and the provision of legal aid. The two governments are urged to give serious recognition and due attention to the critical importance of the legal aid scheme and its role by finding political will to provide funding and other resources to support the scheme.<sup>228</sup>

#### **4.3 Recommendations peculiar to Tanzania**

In addition to the general recommendations, there is a need for Tanzania to re-establish its legal aid system. The following are recommended

- The Constitution of the United Republic of Tanzania should expressly provide for the right to legal aid in both civil and criminal case as it is in the Constitution of Ghana.
- Tanzania should establish a comprehensive legal framework to govern legal aid scheme with an appropriate body to administer it e.g. legal aid board with a specific mandate, structure and procedure to be used in the provision of legal aid.

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<sup>227</sup> <http://www.gsdr.org/docs/open/SSAJ4.pdf> (accessed on 18/8/2008).

<sup>228</sup> Seini (n 197 above) 12.

- Legal aid should be expanded to cover all stages, i.e. before, during and after trial. It should also comprise of assignment of a counsel and waiver of court fees.
- Legal aid should be expanded to cover all courts in Tanzania and move away from the present system which excludes provision of legal representation in primary courts.
- In the present system of state provision of legal aid in criminal cases, it is recommended that the trial judges and magistrates should give legal aid in all serious criminal offences which attract long prison sentences. All cases where a complicated issue of law are involved and in cases where the facts of the same are not clear and complicated and where the republic is represented by a state attorney.<sup>229</sup>

#### 4.4 Recommendations peculiar to Ghana

Compared to Tanzania, Ghana has a better established state legal aid scheme. However, more efforts have to be put for the scheme to benefit majority of people, with the general recommendations given. These specific are also important to outline:

- There is a need to review and amend some aspects of the Act 542, e.g. composition of regional committees and the structure of the scheme.<sup>230</sup>
- The law should specify the objects and mandate of the Scheme not the Board.
- GLAB should develop a comprehensive legal aid program policy to be carried out throughout the country.<sup>231</sup>
- There should be a close cooperation between the GLAB and Ghana Bar Association to ensure implementation of the Scheme.
- The Scheme should work towards developing and improving the functioning of the Community Mediation Centres.
- Need to improve the working conditions of the scheme, improve salaries, office accommodation and training to staffs.<sup>232</sup>

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<sup>229</sup> Peter (n 3 above) 363.

<sup>230</sup> LAS Report (n 188 above) 11.

<sup>231</sup> Seini (n 197above) 4.

## **4.5 Conclusion**

Going through the issues dealt with from chapter two and three, the objectives and research questions set out by this study have been achieved and answered successfully. The work has recommended that the two governments should work towards improving access to justice and legal aid. We can without no doubt conclude that, the right of access to justice is an important right whose enjoyment is necessary to ensure better protection of human rights and enjoyment of freedom under the laws of the land. Despite the fact that its realisation is hindered by many factors, the provision of legal aid is an essential tool towards realisation of the right of access to justice.

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## **INTERVIEWS**

### **Tanzania**

Ayoub Mwenda, State Attorney In charge Mbeya Zone

Fredrick Mkatambo, Head of Legal and Human Rights Centre Magomeni Legal Aid Clinic

Jane Shuma, Legal Officer, Legal and Human Rights Centre

Hon Sekela Mwiseje, Resident Magistrate in Charge Coast Region

Patrick Kiango, Legal Officer, National Housing Corporation

### **Ghana**

AY Seini, Acting Director Ghana Legal Aid Board

Isaac Annan, Head of Enforcement Unit, Commission for Human Rights and Administrative Justice



LEGAL AND HUMAN RIGHTS CENTRE  
LEGAL AID UNIT - MAGOMENI

P.O. BOX 75254, DAR ES SALAAM, TANZANIA

REF. NO. LHRC/LAC/MAG/04/04/684/8

DATE: 19<sup>th</sup> November, 2004

The Registrar,  
The High Court of Tanzania  
(Dar es Salaam Registry)  
At Kivukoni  
**DAR ES SALAAM.**

Your Honour,

**RE: PROVISION OF LEGAL AID TO .....**

**THIS IS TO CERTIFY** that the above named person who is instituting a suit is being provided Legal Aid assistance by ..... Legal Aid Unit of Legal & Human Rights Centre.

Pursuant to Government Notice No 308 of 1964 as amended from time to time by Government Notice Nos 64 of 1981, 20 of 1996, 313 of 2002, and No. 430 of 2002; and Pursuant to Government Notice No 375 and 376 of 2002 would be very much obliged if you would kindly permit her/him to file the matter in *forma pauperis*, i.e. without payment of fees and other court costs as provided for under the provisions of the cited GOVERNMENT NOTICES.

We wish to extend our thanks in advance.

Yours faithfully,  
**LEGAL & HUMAN RIGHTS CENTRE.**

**FOR EXECUTIVE DIRECTOR**

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Board of Directors  
Bishop Elnaza Sendoro (Chairman), Dr. R.W. Tenga, Ananilea Nkya, Dr. Sengondo Mvungi, Martin Saning'o,  
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