

**Keynote Address**  
**Hon. Edward Anthony Gomez, Attorney-General and Minister for Justice**

Chairperson of the IHRDA Board  
Executive Director of the IHRDA Board  
President of the Gambia Bar Association (GBA)  
Hon. Members of the Judiciary  
Members of the Gambia Bar Association  
Workshop participants  
Members of the Press  
Distinguished Ladies and Gentlemen  
All protocols respectfully observed

According to the “Enactment Clause” of the Legal Aid Act, 2008 (LAA), the aforesaid Act was enacted by H.E the President of The Republic of The Gambia and the National Assembly, on 17<sup>th</sup> November 2008.

The preamble of the Act reads and I quote *in extenso* –

“An Act to provide for the establishment of a national agency for legal aid which will be responsible for the administration of the grant of legal aid in certain proceedings and for matters connected therewith.”

The legal criteria, which one has to satisfy before he/she is eligible to be a *bona fide* beneficiary of legal aid, is clearly encapsulated in Section 30(1) and (2) of the LAA which reads:

“30(1) Subject to the provisions of this section –

- (a) a person is entitled to legal aid in proceedings in a court or tribunal, where the person is charged with an offence in the Criminal Code, or in any other enactment, which carries a punishment of death or imprisonment for life, in exercise of his right under Section 24(3) of the Constitution of The Republic of The Gambia, 1997; and
  - (b) a child is entitled to legal aid in proceedings in the Children’s Court, brought by or on behalf of a child, in exercise of his or her right under section 72(1)(f) of the Children’s Act, 2005.
- (2) A person is also entitled to legal aid if he or she desires legal representation in criminal or civil matters and earns not more than such minimum wage as the Government may specify.”

Sections 30 (3) and (4) of LAA defines legal aid thus:

“30 (3) Legal aid under the Act consists of

- (a) the assistance of a legal practitioner, including all such assistance as is usually given by a legal practitioner in the steps preliminary or incidental to any proceedings;
- (b) representation by a legal practitioner before any court or tribunal (whether at first instance or on appeal); and
- (c) such additional assistance relating to the provision of legal aid, including assistance to arriving or giving effect to a compromise to avoid or to bring an end to any proceedings to which this section relates.

(4) The Agency may cause legal advice to be given free on any office of the Agency, court, police station or prison in any civil or criminal matter by legal practitioners appointed by or in service of the Agency.”

Section 3(1) of the LAA, provided for the establishment of the National Agency for Legal Aid, which shall be responsible for administering the Act.

Section 4 (1) of the LAA provides for the establishment of governing board for the Agency and it would carry out the functions and manage the affairs of the Agency.

The important functions of the Agency are clearly spelt out in Section 14 (1) and (2) of the Legal Aid Act which reads:

“14 (1) The Agency has responsibility for administering the provisions of legal aid in accordance with this Act, and render advice to and in respect of persons entitled to legal aid.

(2) The Agency shall-

- (a) ensure that legal aid is available in accordance with this Act;
- (b) maintain a Register of legal practitioners from which the Agency shall provide legal practitioners for the purposes of this Act
- (c) undertake any inquiry or investigation which it considers necessary or expedient in relation to the performance of its functions;
- (d) render to the Attorney-General such advice as it or the Attorney-General may consider appropriate in relation to the provision of legal aid under this Act;
- (e) sensitise the public on the provisions of this Act; and
- (f) perform the other functions assigned to it under this Act.”

Lawyers indeed have a role of paramount importance to play, as far as providing legal aid is concerned. To start with, they are in an ideal position to render legal aid to clients which they regard as poor, and are therefore unable to pay their legal fees. Any attempt to get these clients to pay the legal fees of their lawyers, for the professional services rendered to them, by their lawyers, would indeed be tantamount to attempting to squeeze water out of a stone. These clients are wallowing in abject poverty and they are classic beneficiaries for legal aid. The United Nations definition of poverty is “someone who lives below one US Dollar per day”.

Section 34(1) of the LAA allows either a lawyer or non-lawyer to make an application for legal aid, on behalf of an accused person. The aforesaid agent of the accused would be paid for his/her professional services by the Agency from the Legal Aid Fund. The Agent must not demand or receive any payment from the person receiving legal aid.

The LAA complements Section 24 (3) (c) of the 1997 Constitution of the Second Republic of The Gambia, which says:

“Every person who is charged with a criminal offence – shall be given adequate time and facilities for the preparation of his or her defence ... provided that where a person is charged with an offence which carries a punishment of death or imprisonment for life, that person shall be entitled to legal aid, at the expense of the State.”

The LAA would indeed go a long way in enhancing The Gambia's criminal justice system. It would make it more affordable and accessible, and it would complement international and regional human rights conventions like the 1948 UN Universal Declaration of Human Rights, the African (Banjul) Charter on Human and Peoples' Rights, all of which The Republic of The Gambia has signed, ratified and domesticated, thus making the enforceable in our national courts.

There is now a new school of thought pertaining to legal aid for children, although it is an established school of thought in criminal law, that children are *doli incapax* (i.e. they cannot have criminal liability) and in civil law, they cannot have civil liability, except in cases relating to Contract of Necessaries. The leading contract case which established this principle is *Nash vs Inman*. IHRDA has been working closely with the Ministry of Justice on child rights matters, has proposed to render general technical assistance to the Children's Court in Kanifing, and this assistance or package would include legal aid for children and youths.

A one time Lord Chief Justice of Great Britain, Lord Hewart, once said, "Justice must not only be done, but must manifestly and undoubtedly be seen to be done." Let me conclude by saying that the LAA is out to achieve a noble goal or objective.

I wish you fruitful brainstorming sessions, during this timely workshop. I now have the singular honour and privilege to declare this workshop officially open.

May God bless you all.  
Thank You.