

# legal aid in The Gambia

an introduction  
to law and practice



Institute for Human Rights and Development in Africa

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IHRDA is a pan-african non-governmental organisation that works to promote awareness of human rights in Africa and improve the effectiveness. We envision a continent where all have access to justice, using national, African and international human rights law and mechanisms. Summarised in three key words - **defend, educate, inform** - IHRDA works by advising and representing (*pro bono* legal counsel) victims of human rights abuses in Africa, training human rights defenders in Africa on the African Human Rights System and how to use its mechanisms to seek justice for victims of violations and publishing and distributing information on the African Human Rights System. Thus, we demonstrate that the use of the African human rights instruments and mechanisms provides an important avenue for securing human rights and reparation.

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## **Foreword**

Access to justice is a fundamental human right. In line with its vision of a continent where all have access to justice, using national, African and international human rights law for the promotion and protection of their rights, the Institute for Human Rights and Development in Africa (IHRDA) is pleased to be at the forefront of advocacy for legal aid in The Gambia. Legal aid is all about providing legal assistance to indigent people to protect their fundamental rights and obtain a fair hearing.

IHRDA's involvement in advocacy for legal aid in The Gambia is multi-pronged. This entailed working with different stake-holders, namely the Attorney General's Chambers, the Bench and the Bar, civil society partners, lobbying for law-making and providing legal aid necessary for advancing stalled cases involving children before the Children's Court in The Gambia.

In May 2005, during a seminar entitled Access to Justice in The Gambia, access to justice was recognised and defined as a fundamental human right as per the 1997 Constitution of The Gambia and the African Charter on Human and Peoples' Rights.

In October 2006, IHRDA arranged for a roundtable discussion to bring together stakeholders from the justice system and civil society to strategise for improved legal aid in The Gambia.

Recommendations from these deliberations were that the law on legal aid needed to be expanded beyond capital offences and offences punishable with life imprisonment and a strong and sustainable legal aid programme was required.

After this workshop, the Legal Aid Bill was drafted and in September 2007, IHRDA facilitated another workshop to discuss the draft Bill in detail. The workshop recommendations aimed at broadening access to justice in The Gambia and ensuring consonance with best practices in legal aid in Africa and with international and African human rights law. The workshop brought together the Attorney-General's Chambers, lawyers in private practice and external expertise from the Ghana Legal Aid Board. In November 2008, the Legal Aid Act was passed into law.

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Implanting an effective legal aid system in The Gambia indeed opens the doors of justice to those who may have otherwise been shut out. This, it is hoped, will have such a ripple effect, bringing to life the promise of fundamental rights in the Gambian Constitution to those who are economically constrained.

This publication provides information about the law on legal aid in The Gambia, how and where to access legal aid and also provides recommendations on how to render legal aid more effective. As IHRDA fulfils its mandate of Defend, Educate and Inform, it is hoped that this publication will serve as a useful tool to all who need legal aid, as well as to those who provide legal aid.

Sheila B. Keetharuth  
Executive Director

Institute for Human Rights and Development in Africa (IHRDA)

## **Executive Summary**

### **Introduction**

Legal aid entails the provision of legal support and assistance to indigent individuals involved in legal disputes. The Legal Aid Act of 2008 (LAA 2008) was enacted in November 2008. The purpose of this publication is to disseminate the significant improvements that the LAA 2008 brought to access to justice in The Gambia.

Prior to 2008 legal aid was restricted to persons charged with offences punishable with either the death penalty or life imprisonment, as provided for by the Poor Persons Defence (Capital Charges) Act 1993 and section 24 (3) of the 1997 Constitution. This left a considerable number of indigent persons without access to legal aid, including those involved in civil cases, thus doing great disservice to the promise of 'Equality before the Law'. This situation was reversed in the case of children by the advent of the Children's Act in 2005, which guarantees legal aid for all children in conflict with the law and those whose rights are at stake.

The Gambia ratified the International Covenant on Civil and Political Rights (ICCPR) on 22 March 1979. The ICCPR provides for the provision of legal aid to indigent persons. However, The Gambia entered a reservation to the ICCPR to the effect that for financial reasons, it could only guarantee legal aid for persons charged with offences punishable with either death or life imprisonment.

There was a need for a new law to cater for a fully-fledged legal aid system addressing in particular:

- what legal aid entailed;
- who was in charge of its administration; and
- where, when and to whom it was available.

Prior to the LAA 2008, the already busy office of the Chief Justice was tasked with the equally demanding responsibility of administering legal aid in the country.

## **Legal Aid in The Gambia after the Legal Aid Act of 2008**

For the first time in The Gambia, legal aid is available to all indigent persons, to be determined once the Attorney General and Minister of Justice sets a national minimum wage as required by the LAA 2008, regardless of whether they are involved in a civil or criminal case. The LAA 2008 extends the scope of legal aid to include legal advice given by a lawyer to his/her client as well as efforts to secure alternative methods of dispute resolution, plea bargaining and out of court settlement. Essentially, legal aid can now be given in court at the trial stage and all levels of appeal, police station, prisons as well as at the National Agency for Legal Aid (NALA). In addition, legal aid is now available during proceedings at the District Tribunals thus making the statutory restriction on lawyers from representing clients at that level untenable.

The LAA 2008 provides for a Legal Aid Fund to facilitate the availability of financial resources to fund legal aid. The fund would be managed and administered by NALA, statutorily tasked with administering legal aid in The Gambia. This fund would be sustained by voluntary contributions from the government, organisations, individuals as well as monies received by NALA as fines for offences committed under the LAA 2008. Beneficiaries of the legal aid scheme are also required to contribute a percentage of any compensation received in a case where legal aid was provided. Costs awarded in such proceedings would also be paid into the legal aid fund.

Lawyers assigned to provide legal aid are strictly prohibited from demanding any payment for their services to client. All legal bills must be directed to and paid for by NALA, from the Legal Aid Fund. Under the LAA 2008, it is an offence to knowingly give false information in one's application for legal aid.

### **Setting-up of a National Legal Aid Agency**

One of the main innovations of LAA 2008 is the setting up of a National Agency for Legal Aid (NALA) tasked with the management and administration of the legal aid system in The Gambia. The agency was formally established on the 30 September 2010 by the Vice President on behalf of the President of the Republic of the Gambia. Its duties include receiving and reviewing applications for legal aid, administering the Legal Aid Fund as well as the assigning, monitoring and

remuneration of lawyers willing to participate in the NALA legal aid scheme. Since its inception NALA has been active in about 90 court cases. The United Nations Development Programme (UNDP) has been instrumental in the setting up and operationalising of its office in Banjul. NALA is working to establish regional offices to make its services more accessible. However, lack of adequate funding remains an impediment to NALA's work. Indeed, adequate funding is vital if NALA is to fulfil its future plans of increasing its human resources, building up staff capacity, as well as engaging in greater outreach work. NALA is expected to publish Regulations outlining further details on the modalities of legal aid administration.

## **Recommendations**

The Institute for Human Rights and Development in Africa (IHRDA) recommends that the Attorney-General and Minister of Justice and NALA set a national minimum wage as well as publish Regulations outlining the modalities of legal aid administration as required by the LAA 2008. IHRDA also recommends the repeal of section 33 of the District Tribunals Act because the LAA 2008 and sections 19 and 24 (3) (d) of the 1997 Constitution have made it redundant. It is further recommended that the Republic of The Gambia withdraws its reservation to the ICCPR. NALA should strengthen its internal capacity to conduct public education and sensitisation about its mandate and work by recruiting expertise in outreach, including, campaigning and use of mass communication. Finally NALA should develop and implement strategies to diversify its sources of funding to ensure smooth and efficient delivery on its mandate.

## **How to contact NALA**

Legal Aid Agency Secretariat

80 OAU Boulevard

Banjul, The Gambia

Tel: (+220)4201535/7

Email: [legalaidagency@gmail.com](mailto:legalaidagency@gmail.com)



## **Introduction**

In November 2008, The Gambia enacted the Legal Aid Act (LAA 2008). This law has significantly improved the system of providing legal aid in The Gambia. To ensure that such major achievements in law are enjoyed by all, it is important that this new system is adequately explained to all stakeholders, from police and prison officers to court officials and indeed, to all in the country and beyond.

To put it simply, the Government of The Gambia, in passing the LAA 2008, is now required to provide legal aid, that is, lawyers for free to poor and vulnerable persons held in police stations and prisons as well as those appearing in court, in criminal matters and in civil suits. Legal aid is also to be provided for all persons – where such persons are facing the death sentence or life imprisonment as required by the 1997 Constitution. Through the LAA 2008 and the Children’s Act of 2005, children are also entitled to legal aid. The LAA 2008 therefore marks a key step in enhancing access to justice in The Gambia.

## **What is legal aid?**

Legal aid is essentially about providing legal assistance to people who are unable to afford it, or to persons who are facing serious offences in order to ensure equality and fairness in the settlement of legal disputes. For example, in a criminal case, legal aid assists persons suspected or accused of being in conflict with the law to defend themselves adequately in court. This is consistent with the principle that all suspects are presumed innocent until proven guilty by an impartial court of law. To ensure equality of arms, it is important to help those who may not be able to effectively defend themselves because they do not have the means to hire a lawyer. Legal aid can also be available to assist poor persons involved in civil cases to receive legal support. This can be particularly important in civil matters involving, for instance, a widow seeking to secure her ownership of the family home for her sake and that of her children.

## **What is the purpose of legal aid?**

Legal aid preserves the ideal of ‘equal access for all’ to the judicial system. It upholds the rule of law. It further brings stability within society as a whole, by

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enabling the poor and vulnerable to adequately seek resolution for their conflicts and redress of their grievances through formal legal processes.

Most countries around the world consider it necessary to provide some level of legal aid to persons otherwise unable to afford legal representation. Not doing so would deny poor people the ability to get justice in court. If all persons are equal before the law, a situation where poor people cannot go to court because they lack money would not only be unjust but also inconsistent with their human rights.

### **Legal aid in The Gambia before 2008**

Before 2008, legal aid in The Gambia was provided for first in the Constitution. The 1997 Constitution of The Gambia (Section 24)<sup>1</sup> guarantees that all persons have a right to a fair hearing. In fact, the Constitution specifically gives the right to all persons charged with offences that carry the death penalty or imprisonment for life before a court to receive legal aid. This means that the Constitution requires the state to ensure that any person accused of an offence whose punishment is death or life imprisonment, has legal assistance. So important is equality before the law that if a poor or vulnerable person were not properly represented and yet convicted by a court, that conviction could be overturned on appeal.

Before 2008, two other laws in The Gambia also provided for legal aid. The Poor Person's Defence (Capital Charges) Act 1993 was enacted to give poor people access to legal aid. However, this law was not comprehensive enough to cater

<sup>1</sup> Section 24 states:

(1) Any court or other adjudicating authority established by law for the determination of any criminal trial or matter, or for the determination of the existence or extent of any civil right or obligation, shall be independent and impartial; and

(a) if any person is charged with a criminal offence, then, unless the charge is withdrawn; or

(b) where proceedings are commenced for the determination or the existence of any civil right or obligation,

the case shall be afforded a fair hearing within a reasonable time...

(3) Every person who is charged with a criminal offence -

(d) shall be permitted to defend himself or herself before the court in person or, at his or her own expense, by a legal representative of his or her own choice;

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.

for a fully-fledged legal aid system. In its Section 3 the Act established that poor persons accused of crimes punishable by death must be assigned a lawyer at the expense of the government. This law has since been repealed by the LAA 2008.

The second law that made legal aid possible in The Gambia before 2008 is the Children's Act 2005. Recognising the special needs of children, Section 72(1)<sup>2</sup> of the Act gives all children in The Gambia the right to legal aid and legal representation paid for by the state in case they are involved in any type of case, whether civil or criminal.

It is therefore a must that legal aid is provided:

- for children involved in any type of case before the courts (civil or criminal), and;
- accused persons charged with offences that carry the death penalty or life imprisonment.

## **Legal aid for Children**

The Children's Act 2005 was passed to protect and promote the welfare of all children. Furthermore, it also helps to avoid secondary victimisation of children in conflict with the law or whose rights are otherwise at stake. One of the main innovations of the Act was the establishment of a Children's Court to deal with all matters pertaining to children. Under the Act, all children are entitled to legal aid. For example, the Act states that no child in conflict with the law can represent himself/herself in court. In other words, he/she must be represented by a lawyer at all stages during proceedings. Provision of legal aid to ensure adequate and timely assistance to all children is a useful way to protect and promote their best interest[s]. This is consistent with article 3<sup>3</sup> of the Convention on the Rights of the Child and article 4<sup>4</sup> of the African Charter on the Rights and Welfare of the Child.

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<sup>2</sup> Section 72.1(f) of the Act states: the Child shall have a right to legal representation and legal aid provided by Government.

<sup>3</sup> Article 3(1) of the Convention on the Rights of the Child States: In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration

<sup>4</sup> Article 4(1) of the African Charter on the Rights and welfare of the Child States: In all actions concerning the child undertaken by any person or authority the best interests of the child shall be the primary consideration.

## **Legal aid and The Gambia's obligations under international law**

From an international law perspective, The Gambia has long recognised and accepted the right of poor people to receive support for accessing the courts.

In 2003, the African Commission on Human and Peoples' Rights, in the case of *Purohit and Moore v The Gambia*, added its voice to the rising concern over the state of legal aid in The Gambia by noting that the Poor Persons' Defence (Capital Charge) Act 1993 did not sufficiently fulfil the promise of equality before the law. It stated "as admitted by [The Gambia], the remedies in this particular instance are not realistic for [the mentally ill] and therefore not effective". It strongly recommended that The Gambia improve its laws accordingly.

On 22 March 1979, The Gambia ratified the International Covenant on Civil and Political Rights (ICCPR)<sup>5</sup>. This is an international law treaty under the United Nations system guaranteeing a set of fundamental civil and political rights. Among these rights is the right to legal aid. By recognising these standards of international law, The Gambia indicated its commitment to providing legal aid. However, the question of finances has been so enormous an obstacle to providing equal access to justice for all persons that when The Gambia ratified the ICCPR in 1979, it entered a reservation with regard to legal aid in the following words:

"For financial reasons, free legal assistance for accused persons is limited in our Constitution to persons charged with capital offences only. The Government of The Gambia therefore wishes to enter a reservation in respect of article 14 (3) (d) of the Covenant in question".

### **Challenges to legal aid before 2008**

Despite being a good start by attempting to set up a legal aid scheme for The Gambia, the laws on the statute book before 2008 were limited and did not make sufficient provision to ensure all persons in the country could access justice. Although the laws loosely interpreted legal aid to mean legal representation at the expense of the state for persons already charged and tried before a court of law, it did not offer guidance as to:

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<sup>5</sup> <http://treaties.un.org/> Accessed on 13 September 2011.

- what legal aid entailed;
- how it was to be administered (i.e. who will make legal aid available);
- where, when and to whom legal aid was to be made available.

Thus, many questions remained unanswered. Was legal aid available from the time of arrest or only from the time an accused person was charged before a court of law? To whom can the public go to seek legal aid? What about convicted persons seeking an appeal for their cases? What about poor persons seeking justice in civil matters like inheritance for widows or rent or other disputes handled by tribunals and other adjudicating bodies?

Further, the laws did not provide rules as to how legal aid should be administered in The Gambia. The already busy Office of the Chief Justice, through the Master of the High Court, was assigned the difficult task of administering the legal aid scheme, including the identifying and assigning of cases requiring legal aid, as well as the remuneration payable to lawyers for taking on such cases. Given that legal aid can be a long process (as long, if not longer, than the court case) there was increasing need for a dedicated administrator who would monitor the cases, ensuring high quality representation, in addition to raising funds for legal aid.

## **Legal aid under the Legal Aid Act 2008**

These shortcomings led to the enactment of the LAA 2008, which goes a long way in addressing the above-identified challenges. One such development is that any person who cannot afford adequate legal representation should access legal aid. To make this possible, there is provision for certain actions to be taken, indicated specifically under Section 30 of the LAA 2008.

In addition, under the Poor Persons' Defence (Capital Charges) Act 1993, legal aid was only available in court. Legal assistance is required from the time of arrest, during the trial and at all levels of appeal. Legal aid has now been extended to suspects held at police stations and prisons. Even after the first conviction, if one wishes to appeal and does not have the means to finance such appeal, one can apply for legal aid.

This is of great benefit to the poor and vulnerable, children, widows, and the physically and mentally disabled, among others. More importantly, it is not just criminal cases that are covered by the LAA 2008 but also civil cases. So if a poor

woman wishes to protect her livelihood or get maintenance for her children, she would be entitled to legal aid to facilitate the necessary legal proceedings to make her claim.

## **Scope of legal aid after 2008**

### ***Legal aid expanded to cover all poor persons***

The LAA 2008 not only continues to provide legal aid for children and persons charged with offences punishable with death and life imprisonment, but it has also widened the scope of legal aid to include persons who earn not more than such minimum wage as the State may specify. This minimum wage standard will act as a poverty line, therefore giving all persons who earn below such an amount the right to legal aid for any cases they may be involved in, both civil and criminal. This assistance can take the form of legal advice or full legal representation.

However, for this wide application of legal aid to begin, the Attorney-General would need to announce a minimum wage through a Legal Notice in the Official Gazette and indicate a commencement date. As soon as this is achieved, anyone who earns less than the minimum would be entitled to legal aid. The material question then becomes whether a person can afford the services of a lawyer and no longer whether a case is civil or criminal or whether the offence with which an accused is charged carries a death sentence or not.

### ***Legal aid expanded to include all forms of legal advice***

Under the LAA 2008, legal aid is also widened to include all forms of help given by a lawyer to a client both before and during a case, from simply giving legal advice and information to full legal representation in court. Legal aid now covers any legal proceeding before any court or tribunal (whether at first instance or on appeal).

Even more importantly, legal aid is deemed to include efforts made by a lawyer to explore, for example, settling a matter out of court or a plea bargaining agreement<sup>6</sup>. Section 89(1) of the Drug Control Act, for example, mandates the

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<sup>6</sup> Plea bargaining is an arrangement whereby an accused person pleads guilty to a lesser offence

Director of Public Prosecutions (DPP), with the approval of the Attorney General (AG), to grant to an accused person charged with a drug offence immunity from prosecution with a view to obtaining the evidence of any person who appears to have been directly or indirectly involved in contravening any provision of the Act. This might involve plea bargaining, which could be a step preliminary or incidental to criminal proceedings in drug cases. A person entering into such a plea bargain could need legal assistance or legal aid if his/her situation falls under Section 30 LAA.

### ***Legal aid in both criminal and civil cases***

Thus legal aid under the LAA 2008 goes beyond the provision of legal representation during a criminal trial. In criminal matters it would include aid or advice from the time of arrest, through to the trial and all levels of appeal.

Section 19 (2) of the 1997 Constitution further provides:

“Any person who is arrested or detained shall be informed as soon as is reasonably practicable and in any case within three hours, in a language he or she understands, of the reasons for his or her arrest or detention and of ***his or her right to consult a legal practitioner.***”<sup>7</sup>

Thus any person in conflict with the law has a constitutional right to be informed, within three hours of arrest or detention of his or her right to consult a lawyer in a language he or she understands. Any arrest that does not conform to this constitutional requirement is unlawful. In addition to informing the person arrested or detained of his or her right to consult a lawyer, the arresting officer must also enable the person arrested or detained to consult a lawyer of his or her choice where he or she can afford it. A logical conclusion is that those in charge of the administration of criminal justice must put in place measures which would allow the arresting officer to enable the suspect to have access to a lawyer through legal aid if he or she does not have the means to do so.

In a civil case, legal aid includes advice in all the steps that happen before a case starts and during the case. This helps persons receiving legal aid to make the best choices on how to carry out their case despite their lack of knowledge of the law.

or to one of multiple charges in exchange for a more lenient sentence or a dismissal of the other charges.

<sup>7</sup> Emphasis added.

## ***Legal aid now not restricted to superior courts***

In addition, the LAA 2008 makes it possible for lawyers appointed by or in the service of NALA, the body set up to manage legal aid, to give legal advice to a poor or needy person at any NALA office, court, court martial, *ad hoc* tribunal, police station or prison in any civil or criminal matter. Thus advice through legal aid is no longer restricted to the courtroom but could be provided at the agency, court, police station or prison in any civil or criminal matter.

In effect, this means that legal aid is no longer limited to persons appearing before the superior courts of record and magistrates' courts. Poor persons appearing before District Tribunals are also entitled to legal aid. These developments in the law make the previous restriction on lawyers from appearing before District Tribunals (District Tribunal Act, Section 33)<sup>8</sup> untenable, as the persons who may appear before these tribunals would have the right to legal aid.

## ***Legal Aid in Alternative Dispute Resolution (ADR)***

Under the LAA 2008, legal aid is now defined to include any professional assistance given by a lawyer, including the standard help and advice before and during a case. This includes instances where parties involved in a case resort to Alternative Dispute Resolution (ADR) mechanisms such as conciliation. In fact, courts and tribunals are usually open to adjourning civil cases when there is a likelihood that the parties may come to a settlement. This can be before or during the case, and such resolution usually needs legal advice from a lawyer. Labour disputes provide a good example where the availability of such legal aid can prove to be crucial.

## ***Establishment of the National Legal Aid Agency (NALA) and its structure***

The LAA 2008 has established a dedicated administrator of legal aid by creating the National Agency for Legal Aid (NALA). NALA is responsible for receiving and reviewing legal aid applications, ensuring that those who cannot afford the services of lawyers get legal representation at no charge. NALA is also mandated to administer the Legal Aid Fund as well as maintain a Register of lawyers willing

<sup>8</sup> Section 33 of the Act states that: No legal Practitioner may appear or act for any party before a District Tribunal.

and able to provide legal aid. Persons in need of legal aid would therefore apply to NALA, giving full personal data regarding income, number of dependants, and related matters to allow the agency to determine whether they qualify.

Part III of the LAA 2008 provides for the structure and functions of NALA. This includes a Board and a Secretariat headed by an Executive Secretary. Its main functions include:

- maintaining a roster of lawyers for the purposes of implementing provisions of the Act;
- advising the Attorney General in relation to provisions of the Act; and
- sensitising the public on the provisions of the LAA 2008.

The Board consists of:

- a Chairperson who shall be a judge or lawyer of not less than 15 years standing at the Bar;
- a representative of the Attorney General;
- a representative of the Office of the Chief Justice;
- the Director of Social Welfare or his or her representative;
- the Permanent Secretary of the Ministry of Interior or his or her representative who shall not be below the rank of Deputy Permanent Secretary;
- the President of the Bar;
- the Executive Secretary of the Agency or his representative; and
- two persons from civil society.

The tenure of office of Board members, general powers of the Board and its meetings are provided for in the LAA 2008. Members are also required to disclose any interest in any company or undertaking with which the NALA intends to enter into a contract with.

The representative nature of the Board demonstrates a formal commitment to diversity and an attempt to visibly connect with beneficiaries of legal aid. All stakeholders, including the Bar and civil society, are represented and the powers and functions of the Board well articulated. By centralising the administration of legal aid in NALA, the LAA 2008 has eliminated the reasons for delay previously experienced under the old system. All these are welcomed developments.

## **Legal Aid Fund**

Part VII of the LAA 2008 creates a Legal Aid Fund whose management is vested in the Agency and whose finances will be used to provide legal aid. The Fund shall consist of<sup>9</sup>:

- Sums paid to the fund by Government;
- Any costs awarded in any proceedings in favour of a person granted legal aid;
- Fines for offences committed under the Act;
- Any sums of money paid under Section 34 of the LAA 2008. This section requires, *inter alia*, that any person who receives compensation after being granted legal aid should pay into the Legal Aid Fund such percentage as the Attorney General may specify;
- Donations, gifts, testamentary disposition, contributions from philanthropic persons or organisations and otherwise howsoever;
- Other monies accruing to the Fund from any legitimate source.

Fees of lawyers offering legal aid are paid by NALA at determined rates out of the Legal Aid Fund. According to the LAA 2008, lawyers are prohibited from charging any additional fee to the person receiving legal aid. All costs are to be forwarded to NALA. Money received by a private lawyer on behalf of a person entitled to legal aid, including proceeds of any judgment, order or settlement, are paid to the Legal Aid Fund, so that it can be reused to help other persons in need of legal aid. When persons are paid compensation as a result of a case in which they received legal aid, they would be required to contribute a certain percentage of this compensation back into the Legal Aid Fund to help maintain funds for the benefit of others. NALA is expected to issue policy guidelines indicating the required contribution in this regard.

This shows that the state is no longer viewed as the only source of funding for legal aid. The success of NALA in acquiring funding for legal aid would therefore depend on how innovative it gets in raising funds and also on the trust and credibility it generates as a reliable and efficient provider of legal aid.

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<sup>9</sup> See s. 25 of LAA 2008.

## ***Applying for legal aid***

The LAA 2008 has also provided for the basic elements relating to the application process for legal aid. The application should be made to the NALA Executive Secretary, in a form that NALA would prescribe. Applicants should give: -

1. (a) their full name, date of birth, age, gender and address;
2. (b) their income and occupation;
3. (c) the full details of the proceedings or matter for which legal aid is sought;
4. (d) the court or tribunal in which the proceedings or matter is to be or is being tried or heard;
5. (e) particulars of the applicant's lawyer, if any; and
6. (f) such other information as NALA may deem necessary for the purposes of the application.

This information is important as it will be used to assess whether the person applying for legal aid qualifies for it as described in the LAA 2008.

## ***Register of lawyers offering legal aid***

The LAA 2008 requires NALA to prepare and maintain a Register of lawyers and firms of lawyers willing to advise, assist or represent persons entitled to legal aid, whether gratuitously or otherwise. NALA assigns cases to lawyers from this Register or to its own staff lawyers. Thus lawyers whose names appear in the Register could indicate whether or not they are giving legal aid for free. Many lawyers in The Gambia provide legal aid but this was not previously documented. With the new NALA Register, such good will can be recorded and appreciated, a fact that can in itself be an incentive for lawyers to offer legal advice and representation for free.

## ***Duties of and conditions for lawyers giving legal aid under the LAA 2008***

The LAA 2008 has detailed provisions on several important matters governing the conduct of NALA, the lawyers giving legal aid and the persons receiving legal aid. In addition to those mentioned above, it also provide for:

- secrecy (Section 41);
- duties of a lawyer involved in legal aid (Section 39);
- how cases are assigned to a lawyer from the Register (Section 33);
- fees that NALA is excluded from paying (Section 38);
- payments to a lawyer providing legal aid (Section 34);
- termination of legal aid and general conditions for referrals (Section 35).

### ***Changing legal representation***

A legally-aided person can change his or her lawyer provided he or she complies with section 33 (4) (a) – (c) of the LAA which require the following:

- That such a person intending to withdraw gives a notice in writing to the Executive Secretary of NALA informing him or her of his/her intention to withdraw. Reasons for withdrawal must also be given;
- That the Executive Secretary or his or her representative approves the change; and
- That as a general rule, no additional expense is incurred by the change.

### ***Withdrawing legal representation***

A lawyer is also permitted under the LAA to refuse or give up a case or hand it over to another lawyer where the lawyer has good reason for doing so. For such a withdrawal or refusal to be effective, the lawyer must notify NALA of his or her rejection of a brief within fourteen days of the notification of the grant of legal aid<sup>10</sup>. The failure of a lawyer to notify NALA within the time specified is deemed as an acceptance of the assignment, but an extension of time for acceptance may be permitted in such circumstances as NALA may determine<sup>11</sup>. A lawyer only

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<sup>10</sup>LAA Section 35 (5).

<sup>11</sup>See LAA S 35 (6).

ceases to act in a matter after receiving a notice in writing from NALA<sup>12</sup>.

### ***Giving false information criminalised***

If a person seeking or receiving legal aid or advice, in furnishing any information required under the LAA 2008, knowingly or recklessly makes any statement which is false, he or she commits an offence and can be fined either ten thousand Dalasis<sup>13</sup> or imprisoned for a term not more than six months, or both fine and imprisonment.

### ***NALA Regulations***

NALA is expected to publish Regulations, which are subsidiary laws outlining the details of legal aid administration provided for in the LAA 2008. The Regulations are expected to be drafted with the approval of the Attorney-General and would include among other things:

The legal aid application forms;

The fees to be paid to lawyers offering legal aid;

The details on administering merit and means tests in respect of persons who may be eligible for legal aid;

The contributions into the Legal Aid Fund that persons receiving legal aid or advice would be required to make,

Reports and information NALA requires for the purposes of the LAA 2008 to be supplied by public officers and other persons; and

Matters which appear to the Attorney General necessary or desirable for giving effect to the provisions of the LAA 2008.

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<sup>12</sup>LAA Section 37.

<sup>13</sup>Approximately US Dollars 350.



Officials of the Children's Court: From left, Saloum Cham, Registrar; William Kujabi, Member, Alagbe Taiwo Ade, Acting Court Chair; Carolyn Oldfield, Member; Landing Musa Secka, Social Welfare Probation Officer. IHRDA is administering in 2011 a legal aid project at the Children's Court.



Members of the Children's Court: From left, William Kujabi, Member, Alagbe Taiwo Ade, Acting Court Chair; Carolyn Oldfield, Member.



View of NALA's first floor offices on OAU Boulevard, Banjul.



The Children's Court bench.



## **NALA IN ACTION**

The National Agency for Legal Aid (NALA) was formally established by the Vice-President Her Excellency Ajaratou Dr Isatou Njie-Saidy on behalf of the President His Excellency Sheikh Professor Alhaji Dr Yahya A. J. J. Jammeh on 30<sup>th</sup> September 2010.

With the support of United Nations Development Plan (UNDP), NALA's head office in Banjul was also set up with office equipment and furniture to facilitate smooth commencement of work.

### **NALA's caseload**

From its establishment to date, NALA's caseload stands at about 90 cases drawn from all the Courts in The Gambia<sup>14</sup>. NALA is presently providing support for criminal cases referred to it by the Courts in line with the Constitution and the Legal Aid Act, 2008. NALA's caseload includes all the cases before the Children's Court of The Gambia<sup>15</sup>.

### **NALA's personnel**

NALA is currently headed by an Administrator. He is assisted by a deputy, an accountant, 3 legal officers, a senior legal assistant, a legal assistant and a support administrative staff. The administrator is tasked with the day to day running of the institution<sup>16</sup>. The legal officers provide legal advice and representation to beneficiaries of legal aid on behalf of the institution.

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<sup>14</sup>Derived from 'Case Note Statistics of NALA' and other case lists obtained from NALA's Head Office on Monday, 6th September 2011.

<sup>15</sup> NALA will only commence work on civil cases when the minimum wage for the purposes of legal aid is fixed by Government.

<sup>16</sup> This includes the preparation of schemes of service, staff appraisal reports, policy matters, establishing and promoting of cooperation with local and international partners, initiating and implementing fund-raising activities, supervising preparation of quarterly and annual progress reports and supervising the preparation of annual estimates and work plans.

## **NALA's achievements**

Over the past year in which NALA has been in existence, it has:

- organised sensitisation workshops for stakeholders in legal aid in The Gambia including the security services, the bar, bench and media;
- published an information note for the general public on its activities in the print media;
- preparing to launch its public education programmes on radio and television;
- implementing the recommendations made in the report on the assessment of the capacity of existing legal aid within communities in The Gambia with an aim to efficiently roll out its services countrywide.
- working towards establishing its regional offices to increase its coverage and availability of its services<sup>17</sup>.

## **NALA's challenges**

NALA faces the following main challenges currently:

- Lack of resources to adequately fulfil its mandate<sup>18</sup>;
- Limited sources of funding<sup>19</sup>;
- Still Banjul-based.

## ***NALA's immediate plans***

In the immediate future NALA plans to<sup>20</sup>:

- further equip its national headquarters with office equipment;
- establish and operationalise its Basse regional office;
- increase awareness on legal aid through the print and electronic media, as well as rural sensitisation on legal aid;
- increase its staff, including by providing for two additional legal officers, an interpreter to help facilitate the applications process for legal aid and regional officers;
- increase the capacity of its staff in records management and information technology;
- collaborate with and support existing legal aid initiatives in the country.

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<sup>17</sup>To this end, it has effected a working visit to Basse in August 2011.

<sup>18</sup> Funding, human resources and capacity.

<sup>19</sup>To date, the Gambia Government remains the only source of funding.

<sup>20</sup> NALA Annual Work Plan 2011.

## ***How to Contact NALA***

Legal Aid Agency Secretariat  
80 OAU Boulevard  
Banjul, The Gambia  
Tel: (+220)4201535/7  
Email: legalaidagency@gmail.com

## **Recommendations**

IHRDA recommends that:

The Attorney-General and Minister of Justice, in consultation with NALA, sets a national minimum wage and defines its scope to further enhance the effectiveness of the legal aid scheme under the Legal Aid Act 2008 without delay;

The Government of the Republic of The Gambia take steps to withdraw its reservation to the International Covenant on Civil and Political Rights made in 1979, thus bringing it in conformity with the spirit and intent of the Legal Aid Act 2008;

The Attorney-General and Minister of Justice take steps to ensure the availability of legal representation at District Tribunals by proposing the repeal of Section 33 of the District Tribunal Act;

NALA engages with the Attorney-General and Minister of Justice on the formulation, drafting and publishing of Regulations outlining the modalities of legal aid administration in The Gambia as a matter of necessity;

NALA should strengthen its internal capacity to conduct public education and sensitisation about its mandate and work by recruiting expertise in outreach, including, campaigning and use of mass communication;

NALA should develop and implement strategies to diversify its sources of funding to ensure smooth and efficient delivery on its mandate.



## **ANNEX I: LEGAL AID ACT, 2008**

Supplement “C” to The Gambia Gazette No. 24 of 21st November, 2008

Legal Aid Act, 2008



THE GAMBIA

NO. 16 OF 2008

Assented to by The President this 17th day of November, 2008

AN ACT to provide for the establishment of a National Agency for Legal Aid which will be responsible for the Legal Aid which will be responsible for the administration of the grant of Legal Aid in certain proceedings and for matters connected therewith.

(17th November, 2008)

ENACTED by the President and the National Assembly.

### **Part I – Preliminary**

#### *Short title and commencement*

1. 1. This Act may be cited as the Legal Aid Act, 2008 and comes into force, in the case of Section 30 (2), on such date as the Attorney General may, by Order

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published in the Gazette, appoint; and the other provisions, on the date of assent of this Act.

#### *Interpretation*

2. In this Act, unless the context otherwise requires-

“Agency” means the National Agency for Legal Aid established under section 3;

“Attorney General” means the Attorney General and Secretary of State for Justice;

“court” includes a court martial;

“Executive Secretary” means the Executive Secretary appointed for the Agency under section 15;

“Legal Aid” has the meaning given to it in section 30 (3);

“offence” means an offence for which Legal Aid may be sought as specified in section 30;

“prescribed” means prescribed by regulations made by the Attorney General;

“Register” means the Register of legal practitioners kept and maintained under section 32;

“tribunal” includes an *ad hoc* tribunal.

## **Part II – Establishment of the National Agency for Legal Aid and its Governing Board**

### *Establishment of the National Agency for Legal Aid*

3. (1) There is hereby established a body to be known as the National Agency for Legal Aid which shall be responsible for administering the provisions of this Act.

(2) The Agency is a body corporate with perpetual succession and a succession and a common seal and may –

a) sue or be sued in its corporate name;

b) enter into contracts, and acquire, hold and dispose of property; and

c) so far as is possible for a body corporate, exercise the rights, powers and privileges and incur the liabilities and obligations of a natural person of full age and capacity.

(3) The application of the common seal of the Agency shall be authenticated by the

signature of the Executive Secretary or such other person as may be authorised by the Agency to sign on its behalf.

(4) A document bearing the imprint of the common seal of the Agency is deemed to be properly sealed, unless the contrary is proved.

*Establishment and compositions of the governing Board*

4. (1) There is hereby established for the Agency a governing Board which shall, subject to the provisions of this Act, carry out the functions and manage the affairs of the Agency.

(2) The Board consists of-

- a) a Chairperson who shall be a Judge or a legal practitioner with not less than fifteen years standing at The Gambia bar;
- b) a representative of the Attorney General's Chambers;
- c) a representative of the office of the Chief Justice of The Gambia
- d) the Director of Social Welfare in the Department of State for Health and Social Welfare or his or her designated representative;
- e) the Permanent Secretary of the Department of State for the Interior or his or her designated representative not below the rank of Deputy Permanent Secretary;
- f) the President of The Gambia Bar Association or his or her designated representative;
- g) the executive Secretary of the Agency or his or her designated representative; and
- h) two other persons from the civil society.

(3) The members of the Board, other than ex-officio members, shall be appointed by the President after consultation with the Public Service Commission.

(4) The members of the Board shall appoint a Vice-Chairperson from among themselves.

(5) There shall be Secretary to the Board appointed under section 16.

*Tenure of office*

5. (1) The members of the Board, other than ex-officio members, shall hold office for a term of three years and may be re-appointed.

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(2) A person is not qualified to be a member or to continue to be a member of the Board if -

- a) he or she is adjudged to be a person of unsound mind;
- b) he or she has been convicted of an offence involving dishonesty or fraud and has not been granted a pardon; or
- c) in the case of a person who has professional qualifications, he or she is disqualified or suspended, otherwise than at his or her request, from practicing his or her profession by the order of a competent authority made in respect of him or her personally.

(3) A member of the Board may resign his or her office by notice in writing addressed to the President.

#### *General powers of the Board*

6. The Board may give to the Executive Secretary general directions as to the management of the property, activities and funds of the Agency and other matters relating to the Agency.

#### *Delegation of powers of the Board*

7. For the purpose of discharging its functions under this Act, the Board may delegate to the Executive Secretary, the power to-

- a) acquire or authorise the acquisition of any movable or immovable property and transfer or allocate any funds of the Agency for that purpose;
- b) open and operate current, deposit or credit account on behalf of the Agency at any bank or financial institution; and
- c) do such other things as it considers appropriate.

#### *Meetings of the Board*

8. (1) The Board shall meet for the discharge of its business at least once in every three months at such time and place as the Chairperson shall appoint.

(2) The Chairperson shall, at the written request of the Executive Secretary or not less than five members of the Board, convene a special meeting of the Board

to transact any extraordinary business on a date specified in the request.

(3) A written notice of a special meeting of the Board shall-

- a) be sent to each member not later than forty-eight hours before the meeting; and
- b) specify the business for which the meeting is being convened.

(4) The quorum of the Board at any meeting shall be five, including the chairperson or the Executive Secretary.

(5) The Board shall take decisions by a simple majority of the votes of members present and, where there is an equality of votes, the person presiding shall have a casting vote.

(6) The Chairperson shall preside at every meeting of the Board at which he or she is present and, in his or her absence, the Vice-Chairperson shall preside and, in their absence, the members of the Board present shall appoint one of their number to preside at the meeting.

(7) The minutes of every meeting of the Board shall be recorded by the Secretary to the Board, and signed by the Chairperson or the person who presided at the meeting, after confirmation by the Board.

(8) The Board may at anytime co-opt a person to be an adviser at any of its meetings, but a person so co-opted shall not be entitled to vote at any meeting of the Board.

(9) The Board may appoint such committees as it deems necessary to carry out, on its behalf, such of its functions as it may determine, but a decision of a committee so appointed has no effect unless it is confirmed by the Board.

(10) The validity of the proceeding of the Board shall not be affected by –

- a) a vacancy in its membership;
- b) a defect in the appointment of any of its members; or
- c) reason that a person not entitled to do so, took part in the proceedings.

(11) Subject to this section, the Board may regulate its own procedure.

*Absence of the Executive Secretary from the meetings*

9. If the office of the Executive Secretary is vacant or the Executive Secretary is for any reason unable to attend a meeting of the Board, the person for the time being carrying out the duties of the Executive Secretary shall attend the meeting and may participate in its deliberations.

*Disclosure of interest*

10. (1) A member of the Board who has an interest in a company an undertaking with which the Agency proposes to enter into a contract shall –

- a) disclose to the Board the nature of his or her interest; and
- b) not participate in any deliberation and voting of the Board in respect of the contract.

(2) The President may, on the recommendation of the Board, remove from the Board a member who contravenes the provisions of subsection (1).

*Transaction of business without meeting*

11. A resolution is a valid resolution of the Board if-

- a) it is signed or assented to by a simple majority of the members; and
- b) notice of the proposed resolution was given to each member and to the Executive Secretary, notwithstanding that it was not passed at a meeting of the Board.

*Protection of members*

12. No action, suit, prosecution or other proceeding shall be bought or instituted against a member of the Board personally in respect of anything done in good faith in pursuance, execution or intended execution of any of the provisions of this Act.

*Allowances to members*

13. A member of the Board and a person co-opted to the Board shall be paid such allowances as the Attorney General may approve.

## **Part III – Functions**

### *Functions*

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
- c) provide legal practitioners for the purposes of this Act;
- d) undertake any inquiry or investigation which it considers necessary or expedient in relation to the performance of its functions;
- e) 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;
- f) sensitise the public on the provisions of this Act; and
- g) perform the other functions assigned to it under this Act.

(3) Subject to this Act, the Agency may do anything which-

- (a) it considers necessary or desirable to provide or secure the provision of Legal Aid under this Act; or
- (b) is calculated to facilitate or is incidental or conducive to the discharge of its functions.

(4) The Attorney General may give the Agency directions of a general character or relating generally to particular matters with regard to the performance by the Agency of its functions under or pursuant to this Act, and it shall be the duty of the Agency to ensure that directions are complied with.

## **Part IV – Staff of the Agency**

### *Executive Secretary*

15. (1) There shall be for the Agency an executive Secretary who shall be appointed by the President after consultation with the Board and the Public Service Commission on such terms and conditions as may be specified in his or her letter of appointment.

(2) A person is not qualified to hold or perform the functions of the office of Executive Secretary unless he or she is a legal practitioner of not less than five years standing and has expertise in or knowledge of-

- a) the provision of legal services; and
- b) the work and administration of the court and general office management.

(3) The Executive Secretary shall be –

- a) the chief executive of the Agency; and
- b) responsible for the execution and implementation of the policy, and the transaction of the day-to-day business, of the Agency.

(4) The Board may delegate to the Executive Secretary such of its functions as are necessary to enable him or her to transact efficiently the day-to-day business of the Agency, and for that purpose, the Board may, from time to time, issue written instructions.

### *Appointment of Secretary and other staff*

16. (1) The Board shall appoint an officer from amongst the employees of the Agency to be Secretary to the Board.

(2) The Secretary shall –

- a) keep the books and records and conduct the correspondence of the Board;
- b) prepare the agenda after consultation with the Chairperson and record the minutes of meeting of the Board; and
- c) perform such other functions as the Board or the Executive Secretary may assign to him or her.

(3) The Agency shall, from time to time, appoint for the Agency such supporting legal and other staff as may be required for the purposes of the efficient performance of the functions of the Agency under or pursuant to this Act.

(4) Subject to section 15 (1), the remuneration and tenure of office and conditions of service of the staff of the Agency shall be determined by the Agency after consultation with the Public Service Commission.

(5) The Board shall be responsible for the discipline and removal of employees of the Agency.

(6) The Board shall, in consultation with the Public Service Commission, make regulations establishing schemes for pensions, gratuities and other retirement benefits in respect of employees of the Agency.

## **Part V – Financial Provisions**

### *Sources of finance of the Agency*

17. (1) The sources of finances required to meet the expenses of the Agency under section 18 are-

- a) monies appropriated to it by the National Assembly; and
- b) such other monies as may accrue to the Agency from other sources.

(2) The monies accruing to the Agency under subsection (1) shall be paid into a fund to be maintained by the Agency.

### *Expenses of the Agency*

18. The Agency may, from time to time, apply the proceeds of the fund established in pursuance of section 17 to –

- a) the cost of administration of the Agency;
- b) the reimbursement to members of the Board or any committee appointed by the Board for such expenses as may be authorised by the Board, in accordance with the approved rates;

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- c) the payments of salaries, fees and other remuneration, allowances, pensions and gratuities payable to members of the Board, employees of the Agency or experts, professionals or agents appointed by the Agency;
- d) the maintenance of any property acquired or vested in the Agency; and meeting such other expenses, in relation to the Agency, as the Board may approve.

### *Estimates Accounts and audit*

19. (1) The Agency shall, not later than three months before the end of each financial year prepare and submit to the Attorney General for approval, estimates of the income and expenditure of the Agency for the ensuing year.

(2) The Agency shall keep proper records and books of accounts of its income, expenditure and transfers.

(3) The Agency shall prepare, in respect of each financial year a statement of accounts.

(4) The Agency shall, within three months of the end of each financial year, submit its statement of accounts to the Auditor General for audit.

(5) The audited accounts of the Agency and the Auditor General's report on those accounts shall form part of the Auditor General's overall report to the National Assembly.

### *Annual report*

20. (1) The Agency shall, not later than two months after the end of each financial year, submit to the Attorney General, in respect of the financial year, an annual report on the financial position and performance of the Agency.

(2) The report under subsection (1) shall include-

- a) a statement on the income, source of income and application of the monies of the Agency;
- b) information with regard to the operation and performance of the Agency; and
- c) such other information as the Attorney General may require.

(3) The Attorney General shall, not later than three months after the end of the financial year, cause the report to be laid before the National Assembly.

(4) The Executive Secretary shall also, from time to time, provide the Attorney General with such information relating to the affairs of the Agency as the Attorney General may request.

## **Part VI – Legal Proceedings**

### *Notice of legal action*

21. (1) No action may be brought against the Agency unless at least one month's written notice of the intention to bring the action has been served on the Agency by the intending plaintiff or his or her agent.

(2) The notice shall state the cause of action, the name and place of abode of the intending plaintiff and the relief, which he or she claims.

### *Representation*

22. In a suit against the Agency, the Agency may be represented in court at any stage of the proceedings by an officer or any other employee of the Agency duly authorised by the Agency in that behalf.

### *Indemnity*

23. An officer of the Agency or any person acting on the direction of the Agency shall not be personally liable in respect of any matter or thing done by him or her in good faith for the purposes of this Act.

## **Part VII – The Legal Aid Fund**

### *The Legal Aid Fund*

24. There is hereby established a fund to be known as the Legal Aid Fund, the management and control of which are, subject to the provisions of this Act, vested in the Agency.

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*Sources of the Legal Aid Fund*

25. The Legal Aid Fund shall consist of-

- a) such sums as may be provided, from time to time, by the Government for payment into the Legal Aid Fund;
- b) any sum awarded under an order of a court, tribunal or an agreement as the costs in any proceedings in favour of a person granted Legal Aid in any proceeding;
- c) fines paid for offences under this Act;
- d) any sum paid into the Legal Aid Fund under section 34;
- d) donations, gifts, testamentary disposition, contributions from philanthropic persons or organisations and otherwise howsoever; and
- e) other monies which may vest in or accrue to the Legal Aid Fund from any other legitimate source.

*Application of*

26. The Legal Aid Fund shall, subject to the provisions of this Act, be applied to the payment of-

such sums as are, by virtue of any provision of this Act or regulations made under it, due from the Agency in respect of fees and expenses properly incurred in connection with the provision, under this Act, of Legal Aid under this Act;

legal costs awarded against a person granted Legal Aid under this Act; and

such other payments relating to the provision of Legal Aid under this Act, as the Board may determine.

*Restriction on Expenditure from the Legal Aid Fund*

27. (1) No expenditure shall be made from the Legal Aid Fund without the approval of the Board.

(2) The Board shall not approve any expenditure for any purpose other than those specified in section 26.

*Special report in annual report*

28. A report of every exercise of the Agency's power under this part shall be included in the annual report which the Agency is required to submit to the Attorney General.

*Accounts and audit*

29. (1) The Board shall cause proper books of accounts and other records to be kept separately in connection with the Legal Aid Fund.

(2) The Auditor General shall audit the accounts of the Legal Aid Fund.

## **Part VIII – Legal Aid and Advice**

*Scope of Legal Aid*

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 or her 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) No. 5 of 2005 of the Children's Act, 2005.

(2) A person is also entitled to legal aid if he or she desires legal representation in any criminal or civil matter and earns not more than such minimum wage as the Government may specify.

(3). Legal Aid under this 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

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assistance at 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 in any office of the Agency, court, police station or prison in any civil or criminal matter by legal practitioners appointed by or in the service of the Agency.

(5). Except as expressly provided by this Act-

a) the fact that the services of a legal practitioner are given by way of Legal Aid does not affect the relationship between or rights of legal practitioner and client or any privilege arising out of that relationship; and

b) the rights conferred by this Act on a person receiving Legal Aid do not affect-

(i) the rights or liabilities of other parties to the proceedings, or

(ii) the principles on which the discretion of any court or tribunal is normally exercised.

### *Application for Legal Aid*

31. An application for Legal Aid shall be made to the Executive Secretary, in such Form as may be prescribe, requiring-

a) full name, date of birth, age, gender and address of the applicant;

b) the income and occupation of the applicant;

c) the full details of the proceedings or matter for which Legal Aid is sought;

d) the court or tribunal in which the proceedings or matter is to be or is being tried or heard;

e) particulars of the applicant's legal practitioner lawyer, if any; and

f) such other information as the Agency may deem necessary for the purposes of the application.

## **Part IX – Legal Practitioners Concerned with Legal Aid**

### *Register of legal practitioners*

32. (1) The Agency shall prepare and maintain, in such form as it may determine, a Register of legal practitioners and firms of legal practitioners willing to advise, assist or represent persons entitled to receive Legal Aid, whether gratuitously or otherwise.

(2). A legal practitioner is entitled to have his or her name on the Register unless the Agency thinks that there is good reason, arising-

- a) out of his or her conduct, when acting or assigned to act for persons receiving Legal Aid, or out of his or her professional conduct generally; or
- b) in the case of a member of a firm of legal practitioners, out of the conduct of any legal practitioner who is for the time being a member of the firm, for excluding him or her.

(3). Where a legal practitioner is aggrieved by a decision excluding him or her, whether permanently or temporarily, from the Register, he or she may appeal against the decision of the Agency to the General Legal Council may confirm or quash the decision appealed against or may substitute such decision as he or she thinks fit.

*Assignment of legal practitioners*

33. (1) The Agency shall assign, from the Register or from the staff of the Agency, the legal practitioner who shall act from Register for a person entitled to Legal Aid.

(2). Subject to this Act, subsection (1) does not prejudice rights of a legal practitioner, where he or she has good reason, to refuse or give up a case or hand it over to another legal practitioner.

(3). The legal practitioner assigned under subsection (1) shall, if shown on the Register as a member of a firm, act in the name of the firm.

(4). A person granted Legal Aid has the right to change his or her legal practitioner, provided that-

- a) he or she first gives notice in writing to the Executive Secretary or his or her intention to do so and gives reason;
- b) the Executive Secretary or his or her representative approves the change; and
- c) as a general rule, no additional expense is incurred by the change.

(5). Subject to the provisions of this Act, a person entitled to Legal Aid shall not brief a private legal practitioner in any matter for which Legal Aid is being sought without the approval of the Agency in writing.

(6). When an approval has been given as required under subsection (5), a private legal practitioner shall not be briefed expect on the terms of the grant of Legal Aid by the Agency.

*Payments*

34. (1) Subject to the provisions of this Act, a private legal practitioner or any other person who has acted for a person receiving Legal Aid shall-

a) be paid for so acting by the Agency out of the Legal Aid Fund; and

b) not demand or receive any payment from the person receiving Legal Aid.

(2) Any money whatsoever received by a private legal practitioner on behalf of a person entitled to Legal Aid shall be paid by him or her into Legal Aid Fund and for the avoidance of doubt, every private legal practitioner shall receive the proceeds of any judgment, order or settlement and pay it into the Legal Aid Fund.

(3) Where a person entitled to Legal Aid receives any compensation or other money without the knowledge of the legal practitioner assigned to him or her, the person shall pay into the Legal Aid Fund such percentage as the Agency shall specify by Order published in the Gazette of the compensation or money so received as his or her contribution to the Legal Aid Fund.

(4) The Agency may by notice in writing direct a person granted Legal Aid or a private legal practitioner acting for the person to pay into the Legal Aid Fund the whole, or such part as may be deemed fit by the Agency and specified in the notice, any money recovered by or on behalf of the person in any proceedings in respect of which Legal Aid was granted to him or her.

(5) Where compensation or any other money is paid into the Legal Aid Fund or is received by the Agency in respect of a person granted Legal Aid, the Agency shall, at the final completion of a case, pay money to that person the compensation or other money so paid or received, after deducting ten percent as the person's contribution to the Legal Aid Fund.

*General conditions of referral*

35. (1) A Legal practitioner is entitled to submit only one claim to the Agency on completion of the subject matter of assignment.

(2) The Agency shall settle all the legal practitioner's fees and reasonable claims for out-of-pocket expenses incurred from the day of the referral.

(3) A person granted Legal Aid shall accept the advice of his or her legal practitioner and the private legal practitioner shall report to the Agency any significant failure to accept his or her advice which in his or her legal judgment prejudices the client's interest of the conduct of the case.

(4) The Agency shall not accept responsibility, except in exceptional circumstances, for the payment of any out-of-pocket expenses in excess of such amount as is prescribed unless the consent to incur the sum of money has been expressly obtained.

(5) A private legal practitioner who has rejected an assignment shall notify the Agency of his or her rejection in writing within fourteen days of the notification of the grant of Legal Aid.

(6) The failure of a private legal practitioner to notify the Agency under subsection (5) is deemed as an acceptance of the assignment and he or she shall be bound by all the conditions of the grant of Legal Aid except otherwise agreed, but an extension of time for acceptance may be permitted in such special circumstances as the Agency may determine.

(7) A legal practitioner shall not enter into an agreement with the other party to the proceedings which might limit a right to recover costs without the consent of the Agency first having been obtained.

(8) A private legal practitioner shall-

a) notify the Agency of any relevant developments in the conduct of the matter which would make the cost exceptionally high, and failure to notify may result in the exercise by the Agency of the right to decline to accept liability for the cost.

b) advise his or her client to inform the Agency of any circumstances which come to his or her notice and are relevant to the continuance of Legal Aid;

c) on completion of the matter assigned to him or her, forward a report containing, in particular, the full details of all sums recovered and the following –

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- (i) a certificate of completion in such Form as may be prescribed,
  - (ii) outcome of the case, including details of orders made, and
  - (iii) particulars of any order for costs; and
- d) subject to the exercise of the discretion of the Executive Secretary in appropriate cases, not to call for an itemised bill, submit an account in narrative form sufficient to enable an officer of the Agency to determine the claim, and claims not supported by relevant bills may not be paid.

### *Production of files*

36. If so required by the Agency, a private legal practitioner shall produce to the Agency the file or files relating to the matter in respect of which Legal Aid was granted.

### *Notice of termination of Legal Aid*

37. A private legal practitioner shall not cease to act in a matter except on receipt of a notice in writing from the Agency informing him or her that the grant of Legal Aid has been terminated or that the briefs have been handed over to another private legal practitioner.

### *Fees excluded from Legal Aid*

38. The Agency shall not accept liability to pay any fees charged in respect of any or all the following –

- a) assisting an applicant to complete an application form for Legal Aid as required by the Agency;
- b) interviews, letters and communications with the client for the Agency for the purpose of an application for Legal Aid; and
- c) preparation of and work done in connection with, any itemized bills which the Agency requires.

### *Duties of legal practitioner*

39. A legal practitioner shall, with respect to any application for Legal Aid, assigned matter or account, provide all information and give such assistance as the Agency may require, from time to time, including information required pursuant to the provisions of section 37.

*Terms and conditions*

40. (1) The Agency reserves the right to fix individual terms and conditions where appropriate to any individual matter assigned to a legal practitioner.

(2) No private legal practitioner shall purport to charge any fee except as may be approved by the Agency.

(3) A legal practitioner shall in a matter for which Legal Aid is granted, ascertain the terms and conditions approved by the Agency.

## **Part X – Miscellaneous**

*Secrecy*

41. (1) Subject to subsection (2), no information furnished to the Agency for the purposes of this Act, in connection with the case of a person seeking or receiving Legal Aid or advice, shall be disclosed by any other person otherwise than for the purpose of-

- a) facilitating the proper functions under this Act; or
- b) any proceedings for any matter for which Legal Aid is granted under this Act or of any report of the proceedings.

(2) Subsection (1) does not prevent the disclosure of information for any purpose with the consent of the person in connection with whose case it was furnished and, where he or she did not furnish it himself or herself, with that of the person or body of persons who furnished it.

*Penalty for furnishing false information*

42. If a person seeking or receiving Legal Aid or advice in furnishing any information required under or pursuant to this Act, knowingly or recklessly makes any statement which is false in a material particular, he or she commits an offence and is liable on conviction to a fine of ten thousand dalasis or imprisonment for a term not exceeding six months, or both such fine and imprisonment.

*Regulations*

43. (1) The Agency, with the approval of the Attorney General, may make regulations generally for the better carrying out of the purposes of this Act.

(2) Without prejudice to the generality of subsection (1), the regulations may make provision for-

- a) anything which is to be or which may be prescribed under this Act;
- b) the form of any certificate, application and any other document which may be required for the purposes of this Act;
- c) administering merit and means tests in respect of persons who may be eligible for Legal Aid;
- d) where applicable, the manner in which-
  - (i) contributions into the Legal Aid Fund are to be made by persons receiving Legal Aid or advice, and
  - (ii) sums owing from those persons to the Agency may be recovered;
- e) reports and information required by the Agency for the purposes of this Act to be supplied by public officers and other persons; and
- f) matters which appear to the Attorney General necessary or desirable for giving effect to the provisions of this Act.

*Repeal of No. 2 of 1994*

44. The Poor Persons Defence Act, 1993 is hereby repealed.

PASSED in the National Assembly this Twenty-Seven day of October in the year of Lord Two Thousand and Eight.