

# legal aid in The Gambia

## an introduction to law and practice

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**L**egal 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.

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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.

### **F** 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, regardless of whether they are involved in a civil or criminal case. This will start once the Attorney General and Minister of Justice sets a national minimum wage as required by the LAA 2008.

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."

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The LAA 2008 provides for a Legal Aid Fund to be administered by NALA. 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 clients. 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 NALA tasked with the administration of legal aid in 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. 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.

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### IHRDA Recommendations

IHRDA recommends that:

- the Attorney-General and Minister of Justice and NALA set a national minimum wage and publish Regulations outlining the modalities of legal aid administration;
- 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;
- 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;
- NALA should develop and implement strategies to diversify its sources of funding to ensure smooth and efficient delivery on its mandate.

## **NALA in action**

NALA was formally established on 30th September 2010. In 12 months, NALA's caseload stands at about 90 cases drawn from all the Courts in The Gambia. 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.

## **NALA's achievements**

In its first year, NALA:

- has organised sensitisation workshops for stakeholders in legal aid in The Gambia including the security services, the bar, bench and media;
- has published an information note for the general public on its activities in the print media;
- preparing public education programmes on radio and television;
- implementing the recommendations of an assessment of existing legal aid schemes in The Gambia;
- Working towards establishing its regional offices.

## **NALA's challenges**

- Lack of resources to adequately fulfil its mandate;
- Limited sources of funding;
- Still Banjul-based.

## **NALA's immediate plans**

- 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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