

Zambia

## Legal Aid Act, 1967

### Chapter 34

Legislation as at 31 December 1996

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## Zambia

### Legal Aid Act, 1967 Chapter 34

There are multiple commencements

Provisions	Status
Part I, section 1–3; Part II, section 6(1), 6(2), 6(3), section 7(3), 7(4); Part III, section 8, section 9, section 10; Part IV (section 11–13); Part V, section 14(c), 14(d); Part VII (section 21–26)	commenced on 3 July 1967.
Part VI (in part)	commenced on 20 November 1967.
<b>Part I (in part); Part II, section 4–5, section 6, section 7(1), 7(2); Part III, section 10(1), 10(2), 10(3); Part V, section 14(a), 14(b), section 15, section 16; Part VI, section 17–20</b>	<b>not yet commenced.</b>

*[This is the version of this document at 31 December 1996.]*

*[Repealed by [Legal Aid Act, 2021 \(Act 1 of 2021\)](#) on 9 November 2021]*

*[30 of 1967; 34 of 1972]*

**An Act to provide for the granting of legal aid in civil and criminal matters and causes to persons whose means are inadequate to enable them to engage practitioners to represent them; and to provide for matters connected with or incidental to the foregoing.**

#### Part I – Preliminary

##### 1. Short title

This Act may be cited as the Legal Aid Act.

##### 2. Interpretation

In this Act, unless the context otherwise requires—

"**court**" shall include any court or tribunal before which a practitioner may represent a client, but shall not include a local court established under the Local Courts Act;

*[Cap. 29]*

"**Director**" means a public officer appointed as Director of Legal Aid;

"**legal aid**" has the meaning given to the expression in section three;

"**legal aid assistant**" means a public officer appointed as a Legal Aid Assistant or Senior Legal Aid Assistant;

"**legal aid committee**" means a committee established in accordance with the provisions of section seven;

"**legal aid counsel**" means a public officer appointed as a Legal Aid Counsel, Assistant Senior Legal Aid Counsel or Senior Legal Aid Counsel;

"**practitioner**" shall have the meaning assigned to the word in the Legal Practitioners Act;

*[Cap. 30]*

"**specified offence**" means an offence of a class specified by the Minister by statutory order for the purposes of section nine; and

"**subordinate court**" means a court constituted under the Subordinate Courts Act.

*[Cap. 28]*

*[As amended by No. 34 of 1972]*

### 3. Scope of legal aid

- (1) Legal aid shall consist, on the terms provided for in this Act, of—
  - (a) the assistance of a practitioner including all such assistance as is usually given by a practitioner in the steps preliminary or incidental to any proceedings or in arriving at or giving effect to a compromise to avoid or bring to an end any proceedings; and
  - (b) representation in any court.
- (2) Save as otherwise provided in or under this Act—
  - (a) the fact that assistance or representation is by way of legal aid shall not affect the relationship between or the rights of practitioner and client or any privilege arising out of such relationship; and
  - (b) the rights conferred by this Act on a legally aided person shall not affect the rights or liabilities of any other parties to any proceedings or the principles on which the discretion of any court is normally exercised.

## Part II – Appointments and powers

### 4. Appointment and functions of Director and staff

- (1) There shall be appointed as public officers a Director of Legal Aid and such legal aid counsel and legal aid assistants as shall be necessary for the proper administration of this Act:

Provided that no person other than one who has attended or is attending a course of post-graduate study required by the Council of Legal Education and provided by the Law Practice Institute shall be appointed as legal aid assistant.

- (2) The functions of the Director under this Act may be exercised and performed by him in person or by legal aid counsel acting in accordance with his general or special directions.
- (3) Save as otherwise in this Act provided, in the exercise of the powers conferred upon him by this Act the Director shall not be subject to the direction or control of any other person or authority.
- (4) Subject to the provisions of section thirteen, whenever the Director grants legal aid to a person under this Act he shall, unless he allocates the matter in question to a practitioner under section six, provide that person with such of the services included in legal aid as may be required.

*[As amended by No. 34 of 1972]*

## 5. Right of audience of legal aid assistants

- (1) Notwithstanding that he is not a practitioner, every legal aid assistant shall, in any matter in which any services included in legal aid are provided by the Director, be entitled to appear for and represent a legally aided person—
  - (a) in any criminal proceedings before a subordinate court;
  - (b) in any civil proceedings before a subordinate court;
  - (c) in any proceedings in chambers; and
  - (d) for the purpose of making any application in proceedings before a subordinate court, where the Director is representing a legally aided person and is unable to attend.
- (2) The right of audience conferred on legal aid assistants by this section is in addition to and not in derogation of any other written law relating to the right of audience of a person who is not a practitioner.

*[As amended by No. 34 of 1972]*

## 6. Legal practitioners

- (1) The Director may, by agreement with any practitioner, retain the services of that practitioner for the purpose of providing legal aid under this Act and every such agreement shall be upon and shall set out such conditions, including the remuneration of the practitioner, as the Minister may in each case approve.
- (2) The Director may allocate to any practitioner, whether or not the practitioner has been retained under subsection (1), any matter in respect of which he has granted legal aid under this Act and the practitioner shall, save as otherwise provided by agreement between the practitioner and the Director, be entitled to the appropriate prescribed fees for his services.
- (3) The Director may at any time in his discretion dispense with the services of any practitioner to whom any matter in respect of which legal aid has been granted has been allocated, except where legal aid has been granted under section thirteen.

## 7. Legal aid committees

- (1) There is hereby established for each District a legal aid committee which shall perform such functions and exercise such powers in relation to legal aid in civil matters and causes as are imposed or conferred on the committee by or under this Act.
- (2) The Minister shall appoint the members of each legal aid committee.
- (3) A member of a legal aid committee who is not a public officer shall be paid such allowance as may be prescribed.
- (4) Subject to this Act and any regulations made thereunder, each legal aid committee shall regulate its own practice and procedure.

## Part III – Legal aid in criminal cases

### 8. Legal aid in the High Court

- (1) Whenever any court commits a person for trial before the High Court and the court considers that the accused has insufficient means to enable him to engage a practitioner to represent him, the committing court shall issue a legal aid certificate.

- (2) If an accused person before the High Court is unrepresented by a practitioner and the Court considers that there is insufficient reason why the accused should not be granted legal aid, the Court may issue a legal aid certificate.

## 9. Legal aid in subordinate courts

- (1) Whenever—
  - (a) a person is—
    - (i) charged with a specified offence; or
    - (ii) charged with an offence other than a specified offence and any court before which he appears considers that, having regard to all the circumstances of the case, it is desirable in the interests of justice that the accused should have legal aid;
  - (b) the case is not to be the subject of a preliminary inquiry; and
  - (c) any court before which the accused appears considers, after inquiry, that the accused has insufficient means to enable him to engage a practitioner to represent him;the court shall issue a legal aid certificate.
- (2) If during a preliminary inquiry held under the Criminal Procedure Code the court considers that—
  - (a) having regard to all the circumstances of the case it is desirable in the interests of justice that the accused should be represented by a practitioner at that inquiry; and
  - (b) the accused has insufficient means to enable him to engage a practitioner to represent him;the court shall recommend to the Director that the accused be granted legal aid.

*[Cap. 88]*

- (3) Whenever a subordinate court refuses to grant a legal aid certificate to a person charged with an offence who applies to the court for legal aid, the court shall advise the accused of his right to apply to the Director and, where the offence charged is a specified offence, shall also advise the Director of the reasons for such refusal.

## 10. Powers and duties of Director in criminal cases

- (1) The Director shall grant legal aid to any person in respect of whom a legal aid certificate has been issued under this Part.
- (2) The Director may grant legal aid to any person with respect to whom a recommendation has been made by a court under section nine.
- (3) Any person charged with an offence may apply to the Director for legal aid, whether or not an application for legal aid has been made to or refused by any court, and if the Director considers that—
  - (a) having regard to all the circumstances of the case, it is desirable in the interests of justice that the accused person should be represented by a practitioner; and
  - (b) the accused has insufficient means to enable him to engage a practitioner to represent him;the Director may grant legal aid to that person.

## Part IV – Legal aid in civil cases

### 11. Application for legal aid in civil cases

Application for legal aid to be granted under this Part may be made either to the Director or to a legal aid committee and, in the case where a legal aid committee considers an applicant to be eligible for legal aid under section twelve, it shall recommend to the Director that legal aid be granted accordingly.

### 12. Powers of Director

- (1) Subject to subsection (2), the Director may grant legal aid to any applicant who in his opinion—
  - (a) is in need of or would benefit from the services of a practitioner in any civil case or matter affecting him; and
  - (b) has insufficient means to obtain such services.
- (2) Notwithstanding the provisions of subsection (1), the Director shall not grant legal aid for the purpose of proceedings in any court unless he is satisfied that—
  - (a) an applicant has reasonable grounds for taking, defending or being a party to these proceedings; and
  - (b) it is in the interests of justice that the applicant should be represented in these proceedings.
- (3) The Director may of his own motion invite any person to apply for legal aid if it appears to the Director that such person may—
  - (a) be eligible for legal aid under this section; and
  - (b) be ignorant of his right to apply for legal aid.

### 13. Legal aid in civil actions where the State is a party

- (1) A court may at any time issue a special aid certificate to any person who is a party in any civil proceedings, whether at first instance or at appeal, in which the State is also a party if the court considers that—
  - (a) the person satisfies the conditions under which legal aid may be granted to him under this Act; and
  - (b) it is in the interests of justice that the person should be represented by a practitioner other than the Director.
- (2) The powers of a court under subsection (1) shall be exercisable whether or not legal aid has been applied for or granted under any other provision of this Act.
- (3) In granting a special aid certificate under this section, the court may specify one or more practitioners and the Director shall thereupon allocate the representation of the person concerned to the practitioner or practitioners so specified who shall represent that person to the exclusion of any other practitioner.
- (4) Where a special aid certificate has been granted under this section, the court may order the legally aided person to contribute to the cost of the legal aid afforded to him to such extent as seems to the court to be just and reasonable having regard to that person's means.

*[As amended by No. 34 of 1972]*

## Part V – Legal aid in appeals

### 14. Applications for legal aid in appeals

Application for legal aid may be made either to the Director or to a legal aid committee by any person who –

- (a) intends to appeal against his conviction or sentence or against any judgment or order affecting him which was made in any criminal cause or matter;
- (b) becomes a respondent in any appeal in a criminal cause or matter,
- (c) intends to appeal against any final judgment or order of a court in any civil cause or matter; or
- (d) becomes a respondent in an appeal in a civil cause or matter;

and in the case where application is made to a legal aid committee, the committee shall, if it considers the applicant eligible to be granted legal aid under this section, recommend to the Director that legal aid be granted accordingly.

### 15. Director may grant legal aid for appeals

The Director may grant legal aid to an applicant under section fourteen if he satisfied that—

- (a) the applicant has insufficient means to enable him to obtain the services of a practitioner to represent him in the appeal to which the application relates;
- (b) the applicant has reasonable grounds for instituting, defending or being a party to the appeal; and
- (c) it is in the interests of justice that the applicant should be represented in the appeal.

### 16. Courts may direct the grant of legal aid for appeals

Where, in any appeal before the High Court or the Supreme Court, any party to the appeal is unrepresented and the court considers that a point of law of public importance is likely to arise in the appeal, the court may issue a legal aid certificate and the Director shall thereupon grant legal aid to that party for the purposes of the appeal.

## Part VI – Financial considerations of legal aid

### 17. Contributions towards legal aid

- (1) Subject to subsection (2), the Director may, in granting legal aid to any person under this Act, require that person to contribute to the cost of that legal aid to an extent which seems to the Director to be just and reasonable having regard to that person's means.
- (2) No contribution made under subsection (1) shall exceed the appropriate sum calculated in the manner prescribed for this purpose:  
  
Provided that different methods of calculating such sum may be prescribed for criminal and civil matters.
- (3) Any sum remaining unpaid on account of the contribution required to be made under subsection (1) may be recovered as a civil debt as if the sum had been adjudged to be payable to the Republic as such by an order of a subordinate court of the first class.
- (4) Where damages, costs or any property is recovered for a legally aided person, the costs incurred by the Director on behalf of the legally aided person reduced by any contribution made by such person



under subsection (1) shall be the first charge in favour of the Republic upon the sum representing damages, costs or the property so recovered.

*[As amended by No. 34 of 1972]*

### **18. Ascertainment of means**

- (1) In ascertaining the means of any person for the purpose of this Act, that person's income and his personal and real property shall be taken into account:

Provided that no account shall be taken of his dwelling-house, his household furniture or the tools or implements of his trade.

- (2) The subject-matter of any dispute in relation to which legal aid is granted shall not be taken into account in assessing a person's means.
- (3) In assessing a person's means, such of his commitments as may be prescribed shall be deducted from the resources which would otherwise be his means.

### **19. Costs awarded to legally aided persons**

- (1) Where a court in respect of any proceedings before it awards costs to a legally aided person, the costs should be paid to the Director and only the Director shall be capable of giving good discharge for costs so payable.
- (2) For the purpose of receiving any costs payable to him in pursuance of subsection (1), the Director may take all such steps and pursue all such remedies as could have been taken or pursued by the legally aided person to whom costs were awarded and the costs of taking such steps or pursuing such remedies may be recovered and received by the Director.
- (3) Costs paid to the Director in pursuance of this section shall be paid into and shall form part of the general revenues of the Republic:

Provided that a legally aided person may be paid out of the costs paid to the Director the amount, or such portion of the amount as the Director considers just and equitable, of any contribution made by him under section seventeen.

- (4) Subject to this section, the costs awarded by a court to a legally aided person shall be the costs which would have been payable if the services performed under legal aid had been performed by a practitioner in private practice on the instruction of a client without benefit of legal aid, and such costs shall be taxed accordingly.

### **20. Costs awarded against legally aided persons**

- (1) Where any court awards costs against a legally aided person, those costs shall not, except where the court considers that there was no sufficient cause for that person to institute or defend the proceedings, exceed the contribution which that person was required to make or which the court considers he could reasonably have been required to make under section seventeen, whichever is the greater.
- (2) Costs awarded by a court against a legally aided person shall be paid out of moneys provided for the purpose by Parliament.

## **Part VII – Miscellaneous**

### **21. Parties to submit to arbitration in certain cases**

Where in any proceedings or contemplated proceedings, all the parties thereto apply for legal aid under this Act and the Director considers that the dispute is of a nature which could properly be the subject of

arbitration, the Director may, as a condition of the granting of legal aid, require the parties to submit the dispute to arbitration.

## 22. Termination of legal aid

The Director may, at any time for any reason which he considers to be sufficient, terminate legal aid granted under this Act in any civil cause or matter:

Provided that, in the case of legal aid granted under section thirteen, he shall do so only with the leave of the court.

## 23. Applications for legal aid on behalf of persons under disability

For the purpose of the granting of legal aid under this Act, an application for legal aid which is properly made by any person on behalf of any other person shall be deemed to have been made by that other person.

## 24. Administrator-General may be administrator *ad litem* in certain cases

- (1) Where legal aid has been granted under any of the provisions of this Act for the purpose of bringing or defending proceedings for the benefit of the estate of a deceased person or for the purpose of bringing proceedings under the Fatal Accidents Acts, 1846 to 1908, of the Parliament of the United Kingdom for the benefit of any dependant of a deceased person, and where it appears to the Director that there is no person able and willing to take probate or letters of administration, as the case may be, or to be appointed administrator under the provisions of section thirty-six of the Local Courts Act, then he may request the Administrator-General to apply to the court for a grant of administration for the limited purposes of bringing or defending such proceedings and, upon such application being made, it shall be lawful for the court in its discretion to appoint the Administrator-General to be an administrator for such limited purpose.
- (2) The provisions of subsection (1) shall not be limited by the provisions of section thirty-two of the Administrator-General's Act.

*[Cap. 58]*

- (3) Nothing in this section shall be deemed—
  - (a) to limit the power of the Administrator-General to apply for a grant of probate or general or other letters of administration under any other written law; or
  - (b) to render the Administrator-General personally liable in any way for any act done by him in pursuance of his duties as an administrator appointed under this section.

*[Cap. 29]*

### 24A. Person may refuse or dispense with legal aid

- (1) Notwithstanding anything to the contrary contained in this Act—
  - (a) an accused person may (should he so decide) refuse legal aid which would otherwise be granted to him in furtherance of a legal aid certificate issued or to be issued under Part III;
  - (b) a court may, on the application of a legally aided person—
    - (i) cancel any legal aid certificate which has been issued in respect of that person;
    - (ii) cancel any recommendation made under subsection (2) of section nine;
    - (iii) permit him to conduct his own case or by a practitioner of his choice without legal representation which has been arranged by the Director.

- (2) Where an accused person refuses legal aid or makes application under paragraph (b) of subsection (1), the court shall record reasons put forward by the accused person for the refusal or the application, as the case may be.
- (3) Where in any proceedings commenced before a court an accused person has refused legal aid or the court has cancelled a legal aid certificate or a recommendation under paragraph (b) of subsection (1), the court shall continue with and conclude such proceedings without the legal aid.
- (4) The cancellation of a legal aid certificate or the recommendation under paragraph (b) of subsection (1) shall not affect the right of the Director to require an accused person to contribute to the cost of such legal aid as may have been provided before the cancellation.

*[No. 34 of 1972]*

## **25. Regulations**

- (1) Subject to subsection (2), the Minister may, by statutory instrument, make regulations for the better carrying out of the purposes of this Act and, without prejudice to the generality of the foregoing, such regulations may make provision for—
  - (a) anything which is to be or which may be prescribed under this Act;
  - (b) the composition, powers and functions of legal aid committees and the practice and procedure to be observed by these committees;
  - (c) the form of any certificate, any application and any other document which may be required for the purposes of this Act;
  - (d) the manner in which the means of any person who may be eligible for legal aid shall be computed;
  - (e) the manner of payment and recovery of any contribution required under section seventeen to be made by a person to whom legal aid is granted; and
  - (f) reports and information required by the Director for the purposes of this Act to be supplied by public officers and other persons.
- (2) In the event of any conflict between regulations made under this section and any rules of court made under the Subordinate Courts Act, the High Court Act or the Supreme Court Act, the provisions of the rules of court shall prevail.

*[Cap. 28; Cap. 27; Cap. 25]*

## **26. Act to bind Republic**

This Act shall bind the Republic.