

GOVERNMENT OF ZAMBIA

ACT

No. 17 of 2000

Date of Assent: 25th August, 2000.

An Act to amend the Legal Aid Act

[1st September, 2000

enacted by the Parliament of Zambia.

Enactment

1. (1) This Act may be cited as the Legal Aid (Amendment) Act 2000, and shall be read as one with the Legal Aid Act, in this Act referred to as the principal Act.

Short title and commencement
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(2) This Act shall come into operation on such date as the Minister may, by statutory instrument, appoint.

2. Section 2 of the principal Act is amended—

Amendment of section 2

(a) in the appropriate places of the following definitions:

“Board” means the Legal Aid Board established by section seven A; No. 19 of 2005

“Directorate” means the Directorate of Legal Aid established under section four; No. 19 of 2005

“Fund” means the fund established by section seven D; No. 19 of 2005

“Registrar” means the Registrar of the High Court; and

“Secretary” means the Secretary of the Law Association Association of Zambia.

Single copies of this Act may be obtained from the Government Printer, P. O. Box 30136, 10101, Lusaka. Price K3,500.00 each.

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Amendment
of Part II of
principal Act

3. Part II of the principal Act is amended by the deletion of the Heading and the substitution therefor of the following heading:
"Directorate of Legal Aid". 19 / 2005

Repeal and
replacement
of section 4

4. The principal Act is amended by the repeal of section *four* and the substitution therefor of the following section:

Establish-
ment of
Directorate
of Legal Aid

4. (1) There is hereby established the Directorate of Legal Aid for the provision and administration of legal aid under this Act.

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

(3) The Director shall—

(a) undertake the representation of persons granted legal aid under this Act;

(b) be responsible for the assignment of practitioners to persons granted legal aid under this Act;

(c) be responsible for the day to day administration of the Board and for the implementation of resolutions of the Board; and

(d) subject to the general or special direction of the Board, manage and disburse funds from the Fund for purposes of this Act.

(4) The functions of the Director under this Act may be exercised and performed by the Director in person or by legal aid counsel acting in accordance with the Director's general or special directions.

(5) Except as otherwise provided in this Act, in the exercise of the powers conferred by this Act, the Director shall not be subject to the direction or control of any other person or authority.

(6) Subject to section *thirteen*, where the Director grants legal aid to a person under this Act or the court grants legal aid to a person under this Act, the Director shall, unless the Director 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.

No 19 of 2005

5. Section six of the principal Act is amended—

Amendment
of section 6

(a) in subsection (1)—

(i) by the insertion of the words “ who is registered under section 20A ” after the words “ any practitioner ”; and

(ii) by the deletion of the word “ Minister ” and the substitution therefor of the word “ Board ”.

(b) by the deletion of subsection (2); and

(c) by the re-numbering of subsection (3) as subsection (2).

6. The principal Act is amended by the insertion immediately after Part II of the following new part:

Insertion of
new Part IIA

PART IIA
LEGAL AID BOARD

№ 19 of 2005

7A. (1) There is hereby established the Legal Aid Board.

Establishment of
Board

(2) The provisions of Part I of the Schedule shall apply to the Board.

7B. (1) The Board shall consist of the following part-time members appointed by the Minister:

Composition
of Board

(a) a person qualified to be a judge of the High Court who shall be the Chairperson;

(b) a representative of the Law Association of Zambia;

(c) the Permanent Secretary in the ministry responsible for legal affairs;

(d) a representative of the ministry responsible for Home Affairs;

(e) the Director who shall be an ex officio member;

(f) a representative of a non-governmental organisation active in the promotion of human rights; and

(g) one other person.

(2) The Vice-Chairperson shall be elected by the members from amongst themselves.

7C. Subject to the other provisions of this Act, the functions of the Board shall be—

Functions of
Board

(a) to manage and administer the Legal Aid Fund; and

(b) to carry out any other activities relating to the provision of legal aid which are necessary or conducive to the performance of its functions under this Act:

Provided that the Board shall not be responsible for the supervision and administration of the Directorate.

(2) Notwithstanding subsection (1), the Board may delegate to any member of the Board, to any committee of the Board, any of its functions under this Act.

Legal Aid
Fund

7D. (1) There is hereby established a Legal Aid Fund for purposes of securing the costs of representation for persons granted legal aid in accordance with this Act.

(2) The provisions of Part II of the Schedule shall apply to the Fund.

Repeal and
replacement
of sections 8
and 9

7. The principal Act is amended by the repeal of sections *eight* and *nine* and the substitution therefor of the following sections:

Legal Aid in
subordinate
courts

8. (1) A person charged with an offence before a subordinate court may apply to the court for legal aid and if the court considers that—

(a) the accused has insufficient means to enable the accused to engage a practitioner to represent the accused; and

(b) 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;

the court may grant a legal aid certificate in the prescribed form.

(2) Where a subordinate court refuses to grant a legal aid certificate on an application made under subsection (1), the court shall—

(a) record, in writing, the reasons for such refusal; and

(b) inform the accused of the accused's right to appeal to the High Court.

(3) Where a Subordinate Court refuses to grant a legal aid certificate on an application made under subsection (1), the accused may appeal to the High Court.

(4) Notwithstanding the provisions of subsection (1), where—

(a) a person is—

(i) charged with a specified offence; or

- (ii) charged with an offence other than a specified offence and the court before which the person appears considers that, having regard to all the circumstances of the case, it is desirable in the interests of justice that the person should have legal aid;
- (b) the case is not to be the subject of a preliminary inquiry; and
- (c) any court before which the person appears considers that the person has insufficient means to enable that person to engage a practitioner to represent that person;

the court shall, whether or not an application has been made under subsection (1), issue a legal aid certificate in the prescribed form.

(5) If during a preliminary inquiry held under the Criminal Procedure Code the court considers that—

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- (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 the accused to engage a practitioner to represent the accused;

the court may grant a legal aid certificate in the prescribed form.

(6) The Court shall at the time of issuing a legal aid certificate under this section cause a copy of the legal aid certificate to be transmitted to the Director.

(7) Upon receipt of a legal aid certificate issued under this section the Director shall, in consultation with the Secretary, and subject to section *twenty A*, assign a practitioner to the person named in the certificate for purposes of the criminal proceedings to which the certificate relates.

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

Legal aid in
High Court

(2) If an accused person before the High Court is not represented 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.

(3) The High Court may, in an appeal referred to in subsection (3) of section *eight*—

(a) set aside the decision of a subordinate court refusing the application for legal aid if it is satisfied that grounds exist which qualify or entitle the accused to be granted legal aid and may issue a legal aid certificate in the prescribed form; or

(b) dismiss the appeal.

(4) Where the Court dismisses an appeal under subsection (3), the Court shall—

(a) record, in writing, the reasons, for such dismissal; and

(b) inform the accused of the accused's right to appeal to the Supreme Court.

(5) Where the High Court dismisses an appeal by the accused against the refusal of a subordinate court to grant legal aid under subsection (3), the accused may appeal to the Supreme Court.

(6) The High Court shall at the time of issuing a legal aid certificate under this section cause a copy of the legal aid certificate to be transmitted to the Director.

(7) Upon receipt of a legal aid certificate issued under this section the Director shall, in consultation with the Secretary, and subject to section *twenty A*, assign a practitioner to the person named in the certificate for purposes of the criminal proceedings to which the certificate relates.

Repeal of
section 10
Amendment
of section 11

8. The principal Act is amended by the repeal of section *ten*.

9. Section *eleven* of the principal Act is amended by the insertion of the words " in civil proceedings for purposes of which legal aid may be granted " after the words " to be granted ".

Insertion of
new section
13A

10. The principal Act is amended by the insertion immediately after section *thirteen* of the following new section:

Minister to
specify
proceedings
for which
legal aid
may be
granted in
civil
proceedings

13A. The Minister may, after consultation with the Chief Justice and the Board, by statutory instrument, specify the categories of civil proceedings for the purposes of which legal aid may be granted under this Part.

11. Section *fourteen* of the principal Act is amended—

Amendment
of section 14

- (a) by the deletion of paragraphs (a) and (b); and
- (b) by the re-numbering of paragraphs (c) and (d) as paragraphs (a) and (b) respectively.

12. The principal Act is amended by the insertion immediately after section *fourteen* of the following new section:

Insertion of
new section
14A

14A. (1) A person who has been convicted of, or sentenced for, an offence by a subordinate court or the High Court and intends to appeal against such conviction or sentence or against any judgement or order affecting that person which was made in any criminal cause or matter may apply for legal aid to the court that convicted or sentenced that person.

Application
for legal aid
in criminal
appeals

(2) A person who becomes a respondent in any appeal in a criminal cause or matter before the High Court or the Supreme Court may apply for legal aid to the High Court or the Supreme Court as the case may be.

(3) Where an application for legal aid is made under subsection (1) or (2) and the Court considers that—

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

the Court may issue a legal aid certificate in the prescribed form.

(4) The Court shall at the time of issuing a legal aid certificate under this section cause a copy of the legal aid certificate to be transmitted to the Director.

(5) Upon receipt of a legal aid certificate issued under this section the Director shall, in consultation with the Secretary, and subject to section *twenty A*, assign a practitioner to the person named in the certificate for purposes of the criminal proceedings to which the certificate relates.

13. Section *sixteen* of the principal Act is amended—

Amendment
of section 16

- (a) by the deletion of the words " Court of Appeal " and the substitution therefor of the words " Supreme Court ";
- (b) by the deletion of the words " and the Director shall thereupon grant legal aid ".

Insertion of
new sections
16A, 16B
and 16C

Effect of
legal aid
certificate

Remunera-
tion of
practitioner

Payment of
costs of
representa-
tion

Amendment
of section 17

14. The principal Act is amended by the insertion immediately after section *sixteen* of the following new sections:

16A. Subject to the other provisions of this Act, a person in respect of whom a legal aid certificate has been granted shall be entitled to legal aid in the proceedings to which the legal aid certificate relates and to have a practitioner assigned to represent that person.

16B. A practitioner assigned to represent a person who has been granted legal aid under this Act shall receive such remuneration as the Minister may, in consultation with the Board, by statutory instrument prescribe.

16C. (1) Subject to the other provisions of this Act, where a legal aid certificate has been granted to any person, the costs of representing that person shall be paid by the Board out of the Fund.

(2) Subject to section *sixteen B*, the costs of representing any person under this Act shall include sums on account of the fees payable to a Practitioner assigned to represent that person and disbursements reasonably incurred by that Practitioner in connection with the representation of that person.

(3) The costs required by this section to be paid in respect of a person granted legal aid shall not include any sum in respect of allowances to witnesses attending to give evidence in the proceedings for the purposes of which legal aid has been granted to any person in any case where such allowances are payable under any other law.

15. Section *seventeen* of the principal Act is amended by the insertion immediately after subsection (4) of the following new subsections:

(5) Where the court or the Director grants legal aid under this Act and in connection with the grant the Director makes a contribution order under subsection (1) for which any such sum is required to be paid on the making of the order, the Director may direct that the grant of legal aid shall not take effect until that sum is paid.

(6) Where a legally aided person fails to pay any relevant contribution under this section when it is due, the Director may, subject to subsection (7), revoke the grant of legal aid.

(7) The Director shall not revoke a grant of legal aid under subsection (6) unless, after affording the legally aided person an opportunity of making representations the Director is satisfied—

(a) that the person was able to pay the contribution when it was due; and

(b) that the person is able to pay the whole or part of it but has failed or refused to do so.

(8) In subsection (6) “relevant contributions” in relation to a legally aided person, means the equivalent of any sum—

(a) which that person is required to pay by a contribution order made in connection with the grant to that person of legal aid under sections *eight, nine* and *fourteen A*; and

(b) which falls due after the making of the order and before the conclusion of the proceedings for the purposes of which that person has been granted such legal aid.

16. The principal Act is amended by the insertion immediately after section *twenty* of the following new sections:

Insertion of sections 20A, 20B and 20C

20A. (1) A practitioner who desires to be registered for purposes of providing legal representation under this Act shall notify the Director of that effect.

Register of practitioners

(2) The Director shall keep a register of practitioners who, in addition to providing legal representation for purposes of section *thirty-six* of the Legal Practitioners Act, are willing to provide legal representation to persons granted legal aid under this Act.

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(3) A practitioner who desires to have his name removed from the register may notify the Director to that effect and the Director shall remove the name of such practitioner:

Provided that a judge may for good cause order the removal of the name of a practitioner from the register.

20B. (1) Where a court grants a legal aid certificate under this Act, the court shall communicate with the Director requesting that a practitioner be assigned to the person named in the legal aid certificate.

Assignment to practitioner

(2) Upon receiving the communication made under subsection (1), the Director shall, in consultation with the Secretary, assign a practitioner, for the purpose of providing representation, from the register maintained under section *twenty A* and shall notify the court and the practitioner of such assignment.

(3) A practitioner upon receiving notice of the assignment from the Director shall undertake the representation of the person to whom the legal aid certificate has been granted.

Registrar to
issue
certificate
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20C. (1) The registrar shall issue a certificate to a practitioner who, for purposes of section *thirty-six* of the Legal Practitioners Act, has undertaken the representation, in not less than two causes, of persons granted legal aid under this Act.

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(2) The Registrar may, where satisfied that considerable progress has been made on the causes undertaken by a practitioner for purposes of section *thirty-six* of the Legal Practitioner's Act, issue a certificate to a practitioner, notwithstanding that the causes undertaken by the practitioner have not been concluded.

Insertion of
new
Schedule

18. The principal Act is amended by the insertion immediately after section *twenty-six* of the following new Schedule set out in the Appendix to this Act.

APPENDIX

(Section 18)

SCHEDULE

(Section 7A and 7D)

PART I

ADMINISTRATION OF BOARD

Tenure of
office

1. (1) Subject to the other provisions of this Act a member shall hold office for a period of three years and may be reappointed for a further like period.

(2) A member may resign upon giving one month's notice in writing to the Minister.

(3) The Minister may remove a member if—

(a) the member is absent without reasonable excuse from three consecutive meetings of the Board of which the member has had notice:

(b) the member is found guilty of an offence involving dishonesty;

(c) the member fails to perform the duties of the member's office; or

(d) the member ceases to hold office or to represent the organisation for which that member was appointed to the Board.

(4) Where the office of a member falls vacant before the expiry of the term of office, the Minister may appoint another person to be a member in place of the member who vacates office but the new member shall hold office only for the unexpired part of the term.

2. No civil or criminal proceedings shall lie against any member of the Board for things done in the lawful exercise of that person's functions under this Act.

Immunity of member

3. There shall be paid to members of the Board or any committee of the Board such remuneration and allowances as the Board, may with the approval of the Minister, determine.

Remuneration of members

4. (1) Subject to the other provisions of this Act, the Board may regulate its own procedure.

Proceedings of Board

(2) The Board shall meet for the performance of its functions at such places and times as the Chairperson may determine.

(3) Five members shall form a quorum at any meeting of the Board.

(4) There shall preside at any meeting of the Board the Chairperson, in the absence of the Chairperson the Vice-Chairperson, or in absence of both the Chairperson and Vice-Chairperson, such member as the members present at the meeting shall elect for the purpose of that meeting.

(6) A decision of the Board shall be by a majority of the members present and voting at a meeting.

(7) Where the Board is of the opinion that a person who is not a member of the Board is required to attend a meeting, that person may be invited to attend but such person shall have no vote.

5. (1) The Board may, in the execution of its functions, establish such committees as it considers necessary and delegate to any of the committees such of its functions as it considers fit.

Committees

(2) Where a committee is appointed under subsection (1), at least one member of the Board shall be a committee member.

(3) A person serving as a member of a committee shall hold office for such period as the Board may determine.

(4) Subject to any specific or general direction of the Board, a committee may regulate its own procedure.

Disclosure
of interest

6. (1) Where a person present at a meeting of the Board has a direct or indirect interest in the subject matter under consideration that person shall, as soon as its practicable, disclose such interest.

(2) The Board shall consider the interest disclosed under subsection (1) and decide whether or not the person disclosing interest should attend the meeting during the discussion.

(3) A disclosure of interest made under this section shall be recorded in the minutes of that meeting.

(4) Any person who contravenes the provisions of subsection (1) commits an offence and shall be liable, upon conviction, to a fine not exceeding five thousand penalty units.

Prohibition
of disclosure
of informa-
tion

7. (1) A person shall not, without the written consent of the Board, publish or disclose to any person other than in the course of that person's duties the contents of any document, communication or information which relates to, and which has come to that person's knowledge in the course of that person's duties under the Act.

(2) A person who contravenes subsection (1) commits an offence and shall be liable, upon conviction, to a fine not exceeding ten thousand penalty units, or to imprisonment for a term not exceeding three years, or to both.

Secretary

8. The Directorate shall provide secretarial services to the Board.

Board to
submit
report to
Minister

9. The Board may at the request of the Minister provide to the Minister such information relating to the functions of the Board as the Minister may specify.

PART II

FINANCIAL PROVISIONS

Legal Aid
Fund

11. (1) The fund shall consist of such moneys as may—

- (a) be appropriated by Parliament for the purpose of the Fund;
- (b) be paid to the Fund by way of fees, contribution, costs, grants or donations; and
- (c) vest in or accrue to the Fund;

(2) The Board may—

- (a) accept moneys by way of grants or donations from any source in Zambia and subject to the approval of the Minister from any source outside Zambia; and

(b) accept moneys by way of contributions from persons granted legal aid under this Act.

(3) There shall be paid from the Fund of the Board—

(a) such moneys as may be necessary for the performance of its functions under the Act;

(b) remuneration of practitioners for services provided in accordance with this Act;

(c) such reasonable travelling, transport and subsistence allowances for members, or members of any committee, of the Board when engaged in the business of the Board, at such rates as the Minister may determine

(d) such expenses incurred by a practitioner while representing a legally aided person and are properly attributable to time spent or work done by the practitioner in representing the person except for a practitioner providing legal aid under section *thirty-six* of the Legal Practitioners Act; and

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(e) any other expenses incurred by the Board in the performance of its functions.

(4) The Board may invest in such manner as it thinks fit such of its funds as it does not immediately require for the performance of its functions.

10. The financial year of the Board shall be the period of twelve months ending on 31st December, in each year.

Financial year

11. The Board shall cause to be kept proper books of account and other records relating to its accounts.

Accounts

12. (1) As soon as practicable, but not later than six months after the expiry of each financial year, the Board shall submit to the Minister a report concerning its activities during the financial year.

Annual report

(2) The report referred to in sub-paragraph (1) shall include information on the financial affairs of the Board and there shall be appended to the report—

(a) an audited balance sheet;

(b) an audited statement; and

(c) such other information as the Minister may require.

(3) The Minister shall, not later than thirty days after the first sitting of the National Assembly next after the receipt of the report referred to in sub-paragraph (1), lay it before the National Assembly.
