

THE LEGAL AID BILL, 2011

ARRANGEMENT OF SECTIONS

PART I - INTERPRETATION

1. Interpretation.

PART II – PRINCIPLES

2. Principles.

PART III - PROVISION OF LEGAL AID

Procedure

3. Qualification for legal aid.
4. Determination of indigence.
5. Application for legal aid.
6. Issue of certificate.
7. Cancellation of certificate.
8. Furnishing false information.
9. Refusal of legal aid.
10. Persons and agencies involved in legal aid services.
11. Termination or withdrawal of a legal aid provider.
12. Appeal against refusal of legal aid.

Legal advice and assistance

13. Legal advice and assistance.
14. Legal advice and assistance by civil society or non-governmental organizations and law clinics.
15. Legal advice and assistance at magistrates' courts.

16. Appointment of legal aid paralegals in sub-counties.
17. Legal advice and assistance in court from paralegals.
18. Accreditation of civil society or non-governmental organizations and law clinics

Legal representation

19. Persons authorized to provide legal representation.
20. Accreditation of legal aid advocates, bar training course students or law graduates awaiting their enrolment.

Supervision

21. Records.
22. Monitoring and evaluation.

PART IV -ESTABLISHMENT OF THE LEGAL AID COUNCIL

23. Establishment of the Council.
24. Common seal.
25. Composition of the Council.
26. Chairperson and Deputy Chairperson.
27. Tenure of office.
28. Meetings of the Council.
29. Immunity.
30. Disclosure of interest.

PART V - POWERS, FUNCTIONS AND DUTIES OF THE COUNCIL

31. Powers of the Council.
32. Functions of the Council.

33. Duties of Council.

34. Independence of the Council.

PART VI - THE SECRETARIAT

35. Secretariat.

36. Director.

37. Other staff.

PART VII - FINANCIAL PROVISIONS

38. Funds of the Council.

39. Accounts and other records.

40. Financial year.

41. Audit.

42. Annual Report.

43. Recovery of costs and benefits.

PART VIII – DUTIES

44. Duties of legal aid offices.

45. Duties of the Law Council and the Uganda Law Society

46. Rights and duties of legal aid advocates, bar training course students or law graduates awaiting their enrolment.

47. Rights and duties of civil society or non-governmental organizations and law clinics.

48. Duties of police officers, Judges, magistrates, probation officers and prison officers.

PART IX – MISCELLANEOUS

49. Legal Aid **Regulations**.
50. Confidentiality.
52. Offences and penalties.
53. Transitional arrangements and repeal.

A Bill for the Act

Entitled

The Legal Aid Act, 2011

An Act to establish a Legal Aid Council, to provide accessible, affordable, sustainable, credible and accountable legal aid services to indigent persons, to repeal the Poor Persons Defence Act and to provide for other related matters

Commentary

The drafting team recommend the establishment of a ‘Council’ as opposed to a ‘Commission’ as the last imports a cost with the creation of salaried ‘Commissioners’. The first draft of the Bill included provision for payment of honoraria to the members of the Council. This was opposed at the Consensus Building Workshop (CBW:220811) and the provision has been deleted in this draft. At present, the debate appears to turn on the issue whether to extend the remit of the Law Council to administer and manage the delivery of legal aid services or to establish a new body. The drafting team note that the statutory position of the Law Council would need to be altered so that it did not both regulate and deliver legal aid services, since this would create an inherent conflict of interest. The team further note that there is little to be saved in terms of costs since there is no capacity at present for any ‘body’ (Law Council or otherwise) to administer legal aid services. The advantages and disadvantages are set out in the draft policy note in Section IV under Options.

PART I - INTERPRETATION

1. Interpretation

In this Act, unless the context otherwise requires –

“Accredited” means a person or body accredited by the Legal Aid Council.

“Advocate” means any person admitted and enrolled to practice as an advocate in terms of the Advocates Act;

“Bar training course student” means a post-graduate law student who has duly enrolled for a post-graduate bar course in a post-graduate law school, or institution, under the Advocates (Student Practice) Regulations and who has been accredited by the Council in terms of this Act;

“Civil society organization” means a civil society organisation that has entered into a cooperation agreement with the Council and has been accredited by the Council in terms of this Act;

“Council” means the Legal Aid Council established under subsection (1) of section 23 of this Act;

“Cooperation agreement” means an agreement entered into between a legal aid provider with the Council which sets out the terms and conditions of their relationship;

“Director” means the Director of Legal Aid appointed by the Council as its chief executive officer, and who is directly accountable to the Council and responsible for implementing the directives and policies of the Council;

“Indigent person” means a person who cannot afford to pay for the services of a legal practitioner as defined by the Council in the Regulations referred to in subsection 1 of section 49 of this Act;

“Law clinic” means a law clinic attached to the Law Development Centre or a university in Uganda or other institution that has entered into a cooperation agreement with the Council and has been accredited by the Council in which law students provide free legal advice and assistance to indigent persons under the supervision of an advocate;

“Law Council” means the Law Council established under section 2 of the Advocates Act.

“Law graduate awaiting their enrolment” means a law graduate awaiting their enrolment in terms of the Advocates Act who has entered into a cooperation agreement with the Council and has been accredited by the Council under this Act;

“Legal advice and assistance” means in respect of both criminal and civil cases: receiving information about the relevant law and legal processes; providing assistance through alternative dispute resolution such as negotiation, mediation and conciliation; advising on legal issues; providing assistance with the drafting of documents other than instruments prohibited in terms of the Advocates Act; referring persons to advocates, relevant non-governmental or faith-based organizations and institutions for assistance; diverting people from the formal justice system to traditional and other dispute resolution mechanisms; conducting research, advocacy, lobbying, legal awareness and training; and doing such other things that do not constitute legal representation in contravention of the Advocates Act;

“Legal aid” means the provision of free legal advice and assistance or legal representation to indigent persons who are eligible for legal aid under this Act;

“Legal aid advocate” means an advocate who has been appointed by the Council to act as an advocate in a legal aid case;

“Legal aid office” means an office of the Council established to provide legal aid services to indigent persons under this Act;

“Legal aid provider” means a person or body that has entered into a cooperation agreement with the Council and has been accredited by the Council in terms of this Act, and includes an advocate, or a law graduate awaiting their enrollment employed by the Council or an accredited civil society or non-governmental organization; an advocate; law clinic students; and paralegals employed by accredited non-governmental organizations;

“Legal representation” means representation by an advocate or bar training course student acting under supervision of such advocate, or by a law graduate awaiting their enrolment, and includes counseling clients; representing or defending clients in criminal cases during pre-trial, trial and post-trial proceedings; representing or defending clients in civil cases and before public administrative bodies; and doing all such things that legal practitioners are entitled to do in terms of the Advocates Act;

“Minister” means the Minister of Justice and Constitutional Affairs;

“Non-governmental organization” means a non-governmental organisation that has entered into a cooperation agreement with the Council and has been accredited by the Council in terms of this Act;

“Paralegal” means a person employed by the Council, a government department, accredited civil society organization, an accredited non-governmental organization or a law clinic who has completed a training course approved by the Council, or a training course conducted by the Law Development Centre, a university, an accredited civil society organization, or accredited non-governmental organization, and who provides free legal advice and assistance and legal awareness education

under the general supervision of an advocate but is not licensed to practice as an advocate;

“Secretariat” means persons employed under the direction of the Director to provide administrative and other support to the Council to enable it to implement its directives and policies;

Commentary

‘Accredited’: The repeated use of ‘accredited’ has been deleted in this draft in line with the JLOS comments. There is a need to regulate the provision of legal aid services and establish criteria which those offering such services need to meet if they are to enter into a co-operation agreement with the Council and gain access to funding from the Legal Aid Fund. Where the word has been retained in the draft Bill, it is deliberate and draws attention to the need for, say, magistrates to refer an indigent party or accused to approach a ‘registered’ provider (and not just any provider).

‘Co-operation agreement’ means a contract between the provider and the Council and is enforceable. In other jurisdictions, it is referred to as a ‘service contract’ (ie in the UK). ‘Co-operation agreement’ is used here as it is applied in South Africa.

‘Legal advice and assistance’ is defined in terms of what is already practised in Uganda and draws in addition from the Lilongwe Declaration on Legal Aid in Criminal Justice Systems in Africa. The legal needs of ordinary people are multiple: ‘representation’ by a lawyer in a court of law represents the tip of the iceberg of such needs. Accordingly, the phrase is broadly drawn.

‘Legal aid provider’ is restricted to those persons or bodies who have been a) accredited and b) signed a co-operation agreement with the Council. It does not exclude others from providing legal aid services, but ensures that those in receipt of state funding satisfy the conditions agreed by the Council members (not only in terms of competence but also in terms of accounting procedures).

‘Legal representation’ is extended to students under professional supervision.

PART II - PRINCIPLES

Commentary

This Part is new. The view of the CBW was that the provision of legal aid services should come first and the body for delivering the services last. In addition, since the first draft, the UN Office on Drugs and Crime has produced draft UN Principles and Guidelines on Legal Aid in the Criminal Justice System, which is in an advanced stage and is to be submitted for discussion at an inter-governmental meeting of experts in November in Vienna. The drafting team thought that in view of the comments received a clear statement of Principle would be of use in setting the tone of the Bill, emphasizing the rights based approach adopted to-date and clarifying the objectives of the legislation.

2. Principles

The provision of legal aid in this Act is governed by the following principles:

- (1) Legal aid is an essential element of a functioning justice system that is based on the rule of law, and is the foundation for the enjoyment of other rights, including the right to a fair trial.

Commentary: *This sub-section is inspired by Principle 1 of the UN draft Principles and Guidelines as well as Recommendation 2 of the Lilongwe Declaration which states: ‘Governments should also sensitize criminal justice system administrators to the societal benefits of providing effective legal aid and the use of alternatives to imprisonment. These benefits include elimination of unnecessary detention, speedy processing of cases, fair and impartial trials, and the reduction of prison populations.’ The principle underpins the duties on state justice actors set out in Section 48.*

- (2) Legal aid is the responsibility of the state and the state should allocate the necessary human and financial resources to the legal aid system.

Commentary: *This sub-section is inspired by Principle 2 (draft UN Principles above) and recommendation 1 of the Lilongwe Declaration which states inter alia that: ‘All governments have the primary responsibility to recognise and support basic human rights, including the provision of and access to legal aid for persons in the criminal justice system. As part of this responsibility, governments are encouraged to adopt measures and allocate funding sufficient to ensure an effective and transparent method of delivering legal aid to the poor and vulnerable, especially women and children, and in so doing empower them to access justice.’ The World Bank’s World Development Report (2011) notes that justice is one of the ‘essential public goods that benefit development and poverty reduction’ and observes: ‘It is both appropriate and necessary for the state to allocate resources for the maintenance of security and access to justice.’ (WDR, 2011, Ch V, p150)*

- (3) The state should ensure that anyone who is arrested, detained or prosecuted for a crime punishable by a term of imprisonment or the death penalty receives legal assistance and that the legal assistance is free of charge, if the person cannot afford it, at all stages of the criminal justice process, including post-trial proceedings.

Commentary: *The wording in sub-section (3) is inspired by Principle 3 (at para 16, draft UN Principles above) and recommendation 3 Lilongwe Declaration which provides: ‘A legal aid program should include legal assistance at all stages of the criminal process, including investigation, arrest, pre-trial detention, bail hearings, trials, appeals, and other proceedings brought to ensure that human rights are protected.’ When a person's fundamental rights to liberty and life are put at risk by the State, that person has a right to legal assistance to ensure that the*

State properly meets the burdens and obligations imposed by law to do so, and further, has not violated the rights of the individual in the process. Sub-section (3) should be read together with Section 13(4). Sources in support include: International Covenant on Civil and Political Rights, Art 9, protecting people from arbitrary arrest or detention (1) and production ‘promptly’ before a court and trial ‘within a reasonable time or release’ (3). UN Basic Principles on the Role of Lawyers, Principle 1: ‘All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings.’ ACHPR Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, 2001 at N.2.(c) Prompt and regular access to a lawyer for a detainee is an important safeguard against torture, ill treatment, coerced confessions and other abuses. (General Comment 20, para 11 of the Human Rights Committee; and Report of the UN Special Rapporteur on Torture (E.CN.4/1992/17, 17 December 1991, para 284). The Committee for the Prevention of Torture (CPT) established by the Council of Europe reported: ‘The CPT wishes to stress that, in its experience, the period immediately following deprivation of liberty is when the risk of intimidation and physical ill treatment is greatest. Consequently, the possibility for persons taken into police custody to have access to a lawyer during that period is a fundamental safeguard against ill-treatment.’ (Extract from the 6th General Report [CPT/Inf/(96)21]). Any suspension of this right must be ‘in exceptional circumstances’ (UN Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, Principle 18(3)) when it is considered ‘indispensable by a judicial or other authority to maintain security and good order.’

(4) Free legal assistance should be provided, regardless of the income of the person, if the interest of justice so requires, for example in the case of urgency, complexity or the severity of the potential penalty.

Commentary: *This sub-section is inspired by Principle 3 (para 17 of the UN draft), the economic status of the party of accused should not be the determining factor in granting a person legal aid but the nature of the case itself. This finds resonance in the Constitution (Art. 21(2)). Sub-section (4) should be read together with Sections 3(4) and 13(4).*

(5) It is the responsibility of prosecutors and judges to ensure that those who appear before them who cannot afford a lawyer and/or who are vulnerable are properly assisted.

Commentary: *This provision emphasises the role of judge and prosecutor as impartial administrators of justice. It goes to the principle of equality of arms and that every person appearing before a court is of equal standing (Art 21, Constitution). It is inspired by Principle 3 (para 19 of the UN draft) and Art 9(4) ICCPR. Sub-section (5) should be read together with Sections 15(1) and 48.*

(6) The state should ensure the provision of legal aid to all persons regardless of age;

race; colour; sex; sexual orientation; language; religion or belief; political or other opinion; national or social origin; or property, birth or other status.

Commentary: *This provision follows standard non-discrimination clauses.*

(7) The state should ensure that effective legal aid is provided promptly at all stages of the criminal justice process.

Commentary: *Considerable emphasis is placed by international and regional human rights instruments on independent advice and assistance upon arrest and detention, ie at police stations (see Commentary under sub-section (3) above). The advantages serve not only to protect constitutional guarantees (ie against torture, cruel, inhuman or degrading treatment) but also to divert appropriate cases from the formal justice system and so reduce the caseload and pressure on the justice system (with their attendant costs) – as well as to build public trust and confidence in the law enforcement agencies. However, this principle also goes to the pre-trial, trial and post-trial phases. A lawyer at a pre-sessions hearing (operating in some courts in Uganda) may be in a position to ‘hold’ a number of briefs and assist the court time-table them more efficiently. Post-trial proceedings are often neglected and provision is seldom made to advise on and assist with any appeal. Sources from which this sub-section draws include: The African Commission’s Resolution on Fair Trial Principles (cited above) which emphasises the right to counsel at all stages of any criminal prosecution (N.2 (c)); Recommendation 3 (Lilongwe Declaration) provides ‘at all stages of the criminal process’ which includes: ‘investigation, arrest, pre-trial detention, bail hearings, trials, appeals and other proceedings brought to ensure that human rights are protected.’ UN Basic Principles on the Role of Lawyers, Principle 1: ‘All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings.’ This sub-section should be read together with Sections 13(4), 44 and 48.*

(8) The state should ensure that, at the time of deprivation of liberty and prior to any questioning, persons are informed of their right to legal aid and other procedural safeguards and of the consequences of voluntarily waiving those rights.

Commentary: *Sub-section (8) is inspired by Principle 7 para 23 (UN draft Principles) and the ACHPR’s Resolution on Fair Trial Principles which grants the ‘right to legal representation upon arrest’ (M.2.(b)) and ‘prompt access to a lawyer and, unless the person has waived this in writing, to be under no obligation to answer any questions or participate in any interrogation without a lawyer being present.’ (M.2.(f)) The principle was also included in the drafting of the rule of procedure and evidence for the ad hoc tribunal in former-Yugoslavia which states ‘questioning of a suspect shall not proceed without the presence of counsel unless the suspect has voluntarily waived the right ...’ (Rules of Procedure and Evidence, UN Doc.IT/32/REV.37 (1994) adopted on February 11, 1994 – R42). This sub-section should be read together with Section 13(4).*

(9) The state should ensure that information on rights during the criminal justice process and on legal aid services is made freely available and accessible to the public.

Commentary: *It is perhaps axiomatic to state that a person who does not know his/her position in law cannot assert his or her rights under the law. This sub-section is inspired by Principle 7 (UN draft Principles) and Recommendation 10 (Lilongwe Declaration) which notes that: ‘Ignorance about the law, human rights, and the criminal justice system is a major problem in many African countries. People who do not know their legal rights are unable to enforce them and are subject to abuse in the criminal justice system.’ Lilongwe recommends to Governments that ‘human rights education and legal literacy programmes are conducted in educational institutions and in non-formal sectors of society, particularly for vulnerable groups such as children, young people, women, and the urban and rural poor.’ This sub-section should be read together with Sections 13(4), 31(g), 32(j) and (k).*

(10) The state should establish effective remedies and safeguards that apply if access to legal aid has been delayed or denied or if persons have not been adequately informed of their right to legal assistance.

Commentary: *This sub-section is inspired by Principle 8 (UN draft Principles) and should be read together with Section 33 and Part VIII.*

(11) The state should ensure that special measures are taken to ensure meaningful access to legal aid for women, children and groups with special needs such as the elderly, minorities, persons with disabilities, persons with mental illnesses, persons living with HIV/AIDS, indigenous people, stateless persons, asylum-seekers, foreign citizens, refugees and internally displaced persons.

Commentary: *The principle in sub-section (11) is inspired by Principle 9 at para 26 (UN draft Principles) which places a positive duty on the state to discriminate in favour of especially vulnerable groups in line with international and regional human rights instruments. Many of the ‘special measures’ alluded to in the sub-section are far advanced in Uganda – eg: the Child and Family Protection Units (CFPU) recently cited with approval in the UNODC Handbook on improving access to legal aid in Africa (2011) in police; the open-door policy of the Uganda Prison Service (allowing civil society groups to enter to work with prison officers in providing legal assistance to prisoners); the district co-ordination committees (DCCs) which have been widely replicated in other countries (otherwise known as ‘Access to Justice Committees’ in Kenya,*

‘Court User Committees’ in Malawi and ‘Case Co-ordination Committees’ in Bangladesh – all are based on the Uganda model). The sub-section should be read with Section 3(4).

(12) The state should ensure that legal aid is provided to persons living in rural, remote and economically and socially disadvantaged areas and persons who are members of economically and socially disadvantaged groups.

Commentary: *Sub-section (12) is inspired by Principle 9 at para 27 (UN draft Principles). It is estimated 86% of Ugandans live in rural areas (UNODC Survey of Legal Aid: 2011) with the prospect of legal representation only in 16% of the country (Sendugwa, Access to Justice in Africa and Beyond, 2007, PRI). The Bill pragmatically recognises the limited role lawyers can play in remote parts of the country and promotes the role of law students and paralegals as ‘the only feasible way of delivering effective legal aid to the maximum number of persons’ (Lilongwe recommendation 7). The sub-section should be read with Sections: 13(3), 15(1), 16, 33(4)(a), 44(2)(b).*

(13) The state should ensure that legal aid providers are able to carry out their work effectively, freely and independently.

Commentary: *The sub-section is inspired by Principle 11 (UN draft Principles). The draft Bill builds on the work that has already been undertaken by civil society and state actors in Uganda, supplemented by international and regional good practices. An approach that is complementary (ie which mixes delivery systems) and functional (which seeks to provide legal services that are appropriate to the demands of indigent people) stands a good chance of being ‘effective’. The requirement that legal aid providers are able to work ‘freely and independently’ follows standard principles (eg: UN Principles on the Role of Lawyers that lawyers should be able to perform their professional functions ‘without intimidation, hindrance, harassment or improper interference ... and consult with their clients freely...’ (Principle 16)). The freedoms granted legal aid providers is balanced by the Duties set down in Sections 46 and 47.*

(14) The state should ensure that disciplinary complaints against legal aid providers should be promptly investigated and adjudicated in accordance with professional codes of ethics before an impartial body and subject to judicial review.

Commentary: *This sub-section is inspired by Principle 12 para 32 (UN draft Principles). The CBW expressed concern that those coming for legal aid services needed to be protected from abuse. The drafting team has deleted reference to lay advisers and court clerks as a result. The sub-section should be read together with Sections: 46(3), 47(4) and 51.*

(15) The state should recognize and encourage the contribution of lawyers’

associations, universities, civil society and other groups and institutions to providing legal aid, and, where appropriate, public-private and other forms of partnerships should be established to extend the reach of legal aid.

Commentary: *This sub-section is inspired by Principle 13 (UN draft Principles) and recommendation 6 (Lilongwe Declaration). The framework for delivering legal aid services is predicated on an effective partnership between state and non-state actors. The sub-section should be read together with Sections 31 and 32.*

(16) The legal aid scheme under this Act should be accessible, affordable, sustainable, accountable and credible.

Commentary: *‘accessible’ means that every Ugandan who is eligible for services, should have access to them; ‘affordable’ means that the national legal aid body should ensure that legal aid is provided in the most effective, efficient and economical manner within the means allocated by the state; ‘sustainable’ means that state funding for legal aid services are specifically allocated to the Council by Parliament to ensure that the funds cannot be used for other purposes; ‘accountable’ means the Council is accountable to the Minister of Justice and Constitutional Affairs and ultimately to Parliament; ‘credible’ means that the legal aid system is not perceived to be an organ of the state, to avoid the state being perceived as colluding in the prosecution and defence of persons accused of crimes and that those who provide legal aid services qualify for accreditation. This sub-section should be read together with Section 32.*

PART III – PROVISION OF LEGAL AID SERVICES

Commentary: *This long Part is divided into a set of sub-Parts to ease navigation and comprehension.*

Procedure

3. Qualifications for legal aid

(1) Any person who is arrested, detained or charged with a crime, has a right to legal advice and assistance.

(2) A person who is an accused in a trial, has the right to free legal representation provided by the Council during the pretrial, trial and post-trial stages of the case, where the person is indigent and it is in the interests of justice the person be so represented.

(3) A person who wishes to bring or defend a civil matter has a right to –

(a) legal advice and assistance where he or she is indigent;

(b) free legal representation where it is provided by the Council in the interests of justice, from the inception of the claim or defence until the final determination of the matter.

(4) The interests of justice referred to in subsection (2) and (3) include situations where-

(a) The indigent person may not be able to understand the court proceedings or present their case; and

(b) The indigent person is a child in need or protection, woman in vulnerable circumstances, immigrant, refugee, asylum-seeker, internally displaced person, suspect in criminal proceedings, prisoner, aged, person with a serious health condition (including HIV AIDS), or who is mentally fragile, or physically disabled or an unskilled labourer; or

(c) The indigent person -

(i) is likely to lose their liberty or their livelihood; or

(ii) is a victim of a crime; or

(iii) is a party to a case involving a substantial question of law; or

(iv) is a party to proceedings which may involve the tracing, interviewing or expert cross-examination of witnesses; or

(v) is a party to a case in which the court is of the opinion that the person before it cannot have a fair trial unless the person receives legal representation.

Commentary: Legal representation is mandated where 'the interests of justice so require' International Covenant on Civil Political Rights (ICCPR) at Art 14(3)(d). There is a lack of clarity and international consensus as to what is meant by 'the interests of justice' and interpretation of this phrase is left for courts to determine. The European Court of Human Rights has held that the right to state funded legal representation applies whenever the deprivation of liberty is at stake (Benham v UK, ECtHR, 10 June 1996). Some regard this interpretation as too narrow. In South Africa, free legal representation is mandated where the sentence of imprisonment amounts to 3 months or over. The ACHPR Resolution on Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa only provides that in considering the interests of justice regard should be had to the seriousness of the offence and the severity of the (potential) penalty (at H(b)). Sub-section (4) should be read together with Section 2(4) and (11).

4. Determination of indigence

(1) The Council shall determine the level of income which qualifies a person as indigent and shall provide for this in the Regulations.

(2) In assessing the means of any person for the purposes of determining whether that person qualifies for legal aid, the legal aid provider shall take into account the income and assets of the applicant, but these shall exclude the following:

- (a) the dwelling house of the applicant;
- (b) the beds and clothing of the applicant;
- (c) the furniture and household utensils of the applicant; and
- (d) the tools and implements necessarily used by the applicant in his or her trade or occupation.

Commentary: The detail of the means and merit test is delegated to the Regulations as this will require close consultation and deliberation. The drafting team have sought to ring fence here what should **not** be taken into account in setting the bar. The risk here is that the bar is set too low and results in people who are still too poor to be able to afford the services of a service provider or lawyer.

5. Application for legal aid

(1) A person who wishes to apply for legal aid shall complete the application form prescribed in the Regulations.

(2) A person applying for legal aid shall submit with the application an income, assets, liabilities and a declaration form.

(3) An application for legal aid may be made by the applicant personally, by relatives or any other person authorized by him or her.

Commentary: The application form will be set out in the Regulations. The UNODC Survey of Legal Aid in Africa (2011) cautioned that the procedure should be both simple and accessible. The report cites several countries where the procedure is unduly bureaucratic (so that people gave up) or the evidence required in support of an application is unduly onerous and cannot be supplied.

6. Issue of certificate

Where the Council grants an application it shall issue a legal aid certificate in the prescribed form.

7. Cancellation of certificate

(1) Where a legally aided person fails to meet the criteria outlined in the Regulations, the Council may cancel the legal aid certificate.

(2) Prior to the cancellation of a certificate under subsection (1) the Council shall give the legally aided person, notice in writing of its intention to do so, specifying the ground on which the Council considers the certificate ought to be cancelled.

(3) A legally aided person who is served a notice under subsection (2) shall within fourteen days of receipt of such notice submit to the Chairperson of the Council a written statement of objection to the cancellation.

(4) The Chairperson of the Council shall inform the legally aided person of their decision within fourteen days of receipt of the statement of objection.

8. Furnishing false information

A person who knowingly makes a false statement in the legal representation application form or income and assets declaration form referred to in subsection (2) of section 5, acts in breach of trust and shall have his or her legal aid certificate revoked.

Commentary: the CBW recommended a non-punitive sanction. The punitive sanction that originally appeared in the first draft has been deleted.

9. Refusal of legal aid

An application for legal aid shall be refused if-

- (a) The applicant has knowingly included false information in the application form and the income and assets declaration; or
- (b) The applicant is not eligible for legal aid under this Act.

10. Persons and agencies involved in legal aid services

The following persons and agencies shall be involved in providing legal aid services –

- (a) The Council;
- (b) Legal aid offices of the Council;
- (c) The Law Council *pro bono* scheme under the Advocates (Pro bono Services to Indigent Persons) Regulation, 2009;
- (d) advocates in private practice;
- (e) bar training course students;
- (f) law graduates awaiting their enrolment;
- (g) paralegals;

- (h) Legal aid providers in civil society and non-governmental organisations; and
- (i) Legal aid providers in law clinics.

Commentary: The clause is inclusive and seeks to exclude no one. It draws inspiration from Rec 6 (Lilongwe) which notes that: 'Each country has different capabilities and needs when consideration is given to what kind of legal aid systems to employ. In carrying out its responsibility to provide equitable access to justice for poor and vulnerable people, there are a variety of service delivery options that can be considered.' The legal aid providers listed here are in line with the recommendations made at the CBW.

11. Termination or withdrawal of a legal aid provider

- (1) If a legal aid provider withdraws from a case, or their mandate is terminated by the Council through no fault of the legal aid applicant, the Council shall provide such applicant with another legal aid provider.
- (2) A legal aid provider may at any time withdraw from a case where:
 - (a) a conflict of interest arises between the legal aid provider and the client;
 - (b) where a legally aided client shows a lack of co-operation with the legal aid provider;
 - (c) where a client fails to appear **on more than two occasions** without reasonable cause when called upon to do so by the legal aid provider, or by the court;
 - (d) where the client gives false information to the legal aid provider;
 - (e) where a legal aid provider has proof that his or her client has taken the matter to either another legal aid provider or an advocate in private practice;
 - (f) where a client ceases to be indigent; or
 - (g) for any other sufficient reasons.
- (3) Legal aid providers shall not withdraw their services to a client under this Act unless the provider has given 30 days notice to the client and has given an opportunity to that client to show cause why the legal aid service should not be withdrawn.

(4) The Council shall not terminate the services of a legal aid provider under this Act unless the provider has been given 30 days notice and an opportunity to show cause why their services should not be terminated.

(5) Notwithstanding anything to the contrary under this Act, a legal aid client may at any time dispense with legal aid services granted to him or her.

12. Appeal against refusal of legal aid

(1) A person who is aggrieved by a decision of the Council under section 9 may within fourteen days of notice of such decision, appeal in writing to the Chairperson of the Council against the decision.

(2) The Chairperson of the Council shall determine the appeal within fourteen days after receipt of the appeal.

(3) The appeal **decision shall be in writing and must be communicated to the client promptly.**

(4) The decision of the Chairperson of the Council shall be final.

Legal advice and assistance

13. Legal advice and assistance

(1) Advocates, bar training course students, law graduates awaiting their enrolment, paralegals, law students employed by the Council, accredited civil society and non-governmental organizations, or accredited law clinics may provide legal advice and assistance to all indigent persons.

(2) Persons referred to under subsection (1) shall not charge a fee for their services rendered.

(3) Where appropriate, persons referred to under subsection (1) may, before such offences and wrongs are brought to court, contact legal aid providers who have established mechanisms for referring alleged minor offences and minor civil wrongs to relevant Local Council Courts, or customary or other informal dispute resolution bodies that resolve such disputes in accordance with fundamental human rights and freedoms.

(4) In criminal cases, advocates, bar training course students, law graduates awaiting their enrolment, paralegals and law students employed by the Council, civil society organisations or non-governmental organisations and law clinics shall be allowed to assist at police stations, prisons and courts by –

- (a) Providing indigent persons with information on their rights and the procedures to be followed;
- (b) Assisting the tracing of sureties for bail;
- (c) Assisting the tracing of parents or guardians of children and juveniles;
- (d) Notifying witnesses of upcoming trial dates; and
- (e) Assisting in any other way to ensure that indigent persons receive a fair trial.

Commentary: *This section should be read with Section 2(3),(4),(7), (8), (9) and (12). As the definitions section suggests, ‘legal advice and assistance’ is broadly defined. The diversionary element in sub-section (3) demonstrates the practical application of the principles set down in the UN Standard Minimum Rules for Non-Custodial Measures (the ‘Tokyo Rules’) and builds on the work already undertaken by paralegals in police stations and the work of the Children and Family Support Units in the Uganda Police Service. The purpose in sub-section (4) is not only to provide ‘first legal aid’ (at (a)) but also to provide a functional purpose to assist both the indigent person and the state justice actors (sub-section 4 (b)-(e)).*

14. Legal advice and assistance by civil society and non-governmental organizations and law clinics

(1) Civil society or non-governmental organisations and law clinics may provide legal advice and assistance on behalf of the Council provided they are so accredited by the Council.

(2) Where the funding for legal advice and assistance is not provided by the Council, the eligibility of persons for legal advice and assistance provided by a civil society or non-governmental organisation or law clinic shall be done in accordance with the rules of such civil society or non-governmental organisation or law clinic.

(3) A civil society or non-governmental organisation or law clinic shall not charge a fee for their services rendered under this Act.

15. Legal advice and assistance at magistrates' courts

(1) The magistrate shall refer persons to the nearest legal aid office or legal aid provider for legal advice and assistance.

(2) Where appropriate, the magistrate referred to under subsection (1) may contact legal aid providers who have established mechanisms for referring alleged minor offences and minor civil wrongs to relevant Local Council Courts or customary or other informal dispute resolution bodies that resolve such disputes in accordance with fundamental human rights and freedoms.

Commentary: The CBW was opposed to the use of 'court clerks' in the original draft, which has been deleted. The burden is now placed on the presiding magistrate to refer the unrepresented party to the appropriate legal aid provider. The Section should be read together with Section 2(5) and (12).

16. Appointment of paralegals in sub-counties

(1) The Council shall ensure that at least one paralegal is appointed in every sub-county to provide legal advice and assistance and legal education to members of the public.

(2) In order to comply with subsection (1), the Council may enter into cooperation agreements with civil society or non-governmental organisations that have offices in the relevant sub-counties.

Commentary: The aim is to extend legal aid services to all eligible Ugandans anywhere in the country. The role of paralegals (akin to paramedics in providing primary health care) is discussed below. The Section should be read together with Section 2(12).

17. Legal advice and assistance in court from a paralegal

(1) Where an accused person or any litigant appears in a magistrate's court in a jurisdiction where no legal practitioner is available to represent the accused person, the paralegal may not represent the accused person or litigant but may -

(a) Before the trial, advise and assist accused persons and litigants in civil claims on all preliminary matters including bail applications, pleading to charges and such other matters.

(b) During the trial, not speak on behalf of an accused person, but may –

(i) Take notes and quietly advise and assist the accused person or litigant in such a manner as not to disturb the proceedings;

(ii) Suggest questions that the accused person or litigant might ask in examination in chief, cross-examination or re-examination; and

(iii) Assist the accused person or litigant to make opening or closing statements and in the case of an accused person who is convicted a plea in mitigation.

(2) A paralegal who assists an accused person or a litigant under subsection (1) shall not charge a fee for services rendered.

Commentary: At the CBW, concern was expressed with the original phrasing of ‘lay advisor’ – or ‘next friend’ or otherwise known as ‘amicus’. The concern was that ‘any’ person could use the clause to provide services to ignorant persons and abuse this position for personal gain. This role now falls to the paralegal, assuming the individual is accredited. While the paralegal’s role is extensive it falls short of representation: she or he has no locus to appear in court on behalf of a party or accused. There is a trend across the continent to promote the role of paralegals in providing primary justice services in simple and non-serious matters, similar to the role of paramedics in providing primary health care services. The ACHPR observed that ‘in many states the number of lawyers is low’ and that ‘states should recognize the role that paralegals could play in the provision of legal assistance and establish the legal framework to enable them to provide basic legal assistance.’ (Fair Trial Principles at H.7). The Lilongwe Declaration picks this up noting that ‘An effective legal aid system should employ complementary legal and law-related services by paralegals and legal assistants.’ (recommendation 7). The UNODC Survey of Legal Aid in Africa (2011) demonstrates that in most countries the number of lawyers is low (with the possible exception of Botswana, Egypt, Ghana, Kenya, Nigeria, South Africa) with the overwhelming majority based in the urban centres while the majority of people remain in rural areas – Uganda is no different in this regard with less than 2000 lawyers, the majority of whom work in the Kampala area.

18. Accreditation of civil society, non-governmental organizations and law clinics

Civil society organisations, non-governmental organisations and law clinics that provide indigent persons with legal advice and assistance who wish to be accredited by the Council shall enter into a cooperation agreement with the Council.

Legal representation

19. Persons authorized to provide legal representation

(1) The following persons may be accredited by the Council to provide legal representation in legal aid matters –

- (a) Advocates employed in legal aid offices;
- (b) Advocates providing legal aid under the Law Council’s *pro bono* scheme under the Advocates (*Pro bono* Services to Indigent Persons) Regulation, 2009;
- (c) Advocates in private practice;
- (d) Advocates employed by a civil society or non-governmental organisation;

- (e) Advocates employed by a law clinic;
- (f) Bar training course students employed in a legal aid office, civil society or non-governmental organization; or
- (g) Law graduates awaiting their enrolment.

(2) An advocate, bar training course student or a law graduate awaiting their enrolment, accredited by the Council to provide legal representation shall not charge a legally aided person a fee for any services rendered.²

Commentary: An inclusive approach is once more taken here. The provision is in compliance with the laws of Uganda and student practise regulations. The aim here is to encourage and extend the use of all legally qualified professionals, including law students.

20. Accreditation of advocates, bar training course students or law graduates awaiting their enrolment

(1) The criteria for the accreditation of advocates, bar training course students, or law graduates awaiting their enrolment, shall be determined by the Council after consultation with the Law Council and the Uganda Law Society.

(2) The accreditation of advocates, bar training course students, or law graduates awaiting their enrolment, as legal aid providers shall be undertaken by the Council after consultation with the Law Council, Law Development Centre and the Uganda Law Society.

Supervision

21. Records

A legal aid provider who provides legal aid services from funds provided by the Council shall keep proper records of their activities on behalf of their clients as determined by the Council under the relevant cooperation agreement.

22. Monitoring and evaluation

(1) The Council shall monitor and evaluate the quality of legal representation in legal aid cases in accordance with the procedures established by the Council.

(2) Where the results of monitoring and evaluation conducted under the provisions of subsection (1) indicate that a legal aid advocate, a bar training course student, or a law graduate awaiting their enrolment, has been guilty of unprofessional conduct, the Council shall refer the matter to the Law Council for disciplinary action.

Commentary: Those who receive funds from public money should be held strictly to account and include performance indicators. The World Bank notes that resources should be used 'effectively and efficiently against agreed priorities.' (WDR, 2011, Ch V, p150). This Section should be read together with Section 31(e) and 32(2)(g) and (l).

PART IV- ESTABLISHMENT OF THE LEGAL AID COUNCIL

23. Establishment of the Legal Aid Council

- (1) There is hereby established a body to be known as the Legal Aid Council.
- (2) The Council is a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name.
- (3) The Council may for the purpose of discharging its functions acquire and hold movable or immovable property and may do all acts and things that a body corporate may lawfully do.

24. Common seal

(1) The Council shall have a common seal the use of which shall be authenticated by the signatures of the Chairperson and one other member of the Council generally or specifically authorized by the Council for that purpose.

(2) Every document purporting to be an instrument executed or issued by or on behalf of the Council and to be sealed with the common seal of the Council authenticated in the manner stated in subsection (1) shall be deemed to be so executed or issued without further proof unless the contrary is proved.

25. Composition of Council

(1) The Council shall consist of the following eleven members –

- (a) A Judge, appointed by the Minister in consultation with the Chief Justice who shall be the chairperson of the Council;
- (b) A representative of the Law Council, nominated by the Law Council;
- (c) The President of the Uganda Law Society;
- (d) Two representatives of non-governmental organizations, one of whom shall reside or be employed in a rural area, nominated by non-governmental organisations;
- (e) A member of a law clinic, on a rotational basis, nominated by the law clinics;
- (f) A member of JLOS nominated by the Minister;
- (g) A member of the Uganda Human Rights Commission, nominated by the Human Rights Commission;
- (h) A representative of the Ministry of Gender Affairs, Labour and Social Development, nominated by the Minister of Gender Affairs, Labour and Social Development;
- (i) A representative of the Ministry of Justice and Constitutional Affairs, nominated by the Minister;
- (j) An expert in financial management, nominated by the members mentioned in sub-paragraphs (a)-(i) of this subsection.

(2) The Director shall be an ex officio member of the Council and shall be the Secretary of the Council, but shall not be entitled to vote.

(3) Members of the Council shall be appointed by the Minister from a list of nominees provided by the Ministries or institutions referred to in subsection (1) and subject to the approval of Parliament.

(4) In nominating persons to membership of the Council, the nominating authority shall have regard to the desirability of ensuring that the nominees are persons having experience, knowledge and expertise in issues relating to legal aid services.

Commentary: The representative members of the Council is in line with the recommendations put forward at the CBW.

26. Chairperson and Deputy Chairperson

(1) Members of the Council shall elect among themselves at their first meeting, by secret vote a Chairperson and Deputy Chairperson both of whom shall hold office for the period of their membership of the Council.

(2) Members employed by the Government shall not be appointed Chairperson or Deputy Chairperson.

(3) For the purposes of this section, a Judge shall not be deemed to be employed by the Government.

(4) The mandate of the Chairperson or Deputy Chairperson of the Council may be revoked by a secret vote by at least two thirds of the members of the Council for failing to fulfill his or her functions or for inappropriately fulfilling his or her functions under this Act.

27. Tenure of office

(1) Members of the Council shall hold office for a term of three years and shall be eligible for reappointment for another term of three years but shall not be eligible for reappointment after the expiration of a second term of office.

(2) A person shall cease to be a member of the Council on any of the following grounds:-

- (a) If his or her term of office expires;
- (b) If he or she resigns their office by written notice to the Minister;
- (c) If he or she dies;
- (d) If he or she is convicted of an offence involving fraud or dishonesty;
- (e) If he or she is declared bankrupt;
- (f) For his or her inability to perform the functions of their office by reason of infirmity of mind or body;
- (g) For proven misconduct; or
- (h) On a resolution by at least two thirds of the members of the Council, submitted to the Minister to terminate the membership of a member for failing to fulfill his or her functions or for inappropriately fulfilling his functions under this Act.

(3) Where a vacancy occurs in the membership of the Council, the Minister shall appoint a replacement from among the ministries or units concerned , who shall hold office for the remainder of the term of the person replaced and shall, subject to this Act, be eligible for reappointment.

28. Meetings of the Council

(1) The Council shall meet for the dispatch of its business at least once every three months at such times and places as the Chairperson may decide.

(2) A special meeting of the Council shall be convened by the Chairperson at the written request of not less than one third of the members of the Council, such meeting to be held at such time and place as the Chairperson may decide.

(3) The Chairperson shall preside at meetings of the Council at which he or she is present and in his or her absence the Deputy Chairperson shall preside. In the absence of both the Chairperson and the Deputy Chairperson, a member elected by the members present from among their number shall preside.

(4) Each member shall have one vote but where there is equality of votes, the Chairperson or Deputy Chairperson or other member presiding shall have a casting vote.

(5) All acts, matters or things authorized or required to be done by the Council shall be decided at a meeting where a quorum is present and the decision is supported by the votes of the majority of the members.

(6) The quorum for a meeting of the Council shall be six members.

(7) The Council may co-opt any person to attend and participate in its deliberations on any matter but such person shall not vote on any matter for decision by the Council.

(8) Subject to this Act, the Council shall regulate its own procedure.

Commentary: The CBW disagreed with the provision for the payment of honoraria in the original draft which has been deleted.

29. Immunity

Members of the Council and the Council's employees shall have immunity from civil claims where they have acted in good faith during the performance of their functions under this Act.

30. Disclosure of interest

Where a member of the Council has an interest in any matter to be decided by the Council, that member shall disclose such interest to the Council and the other members of the Council shall determine whether or not such member shall recuse himself or herself from such decision-making process.

PART V- POWERS, FUNCTIONS AND DUTIES OF THE COUNCIL

***Commentary:** The drafting team have reordered the text from the original, and brought the duties of the Council within this Part. The mischief this Part seeks to avoid is ‘sounding well and doing nothing’. It is not enough therefore for the Council merely to grant legal aid, it must go further and deliver legal aid (Functions) and inform those responsible in remoter parts of the country how to direct poor persons that appear before them to access legal aid (Duties). In short, this part represents the job description or Terms of Reference for the Legal Aid Council.*

31. Powers of Council

In the performance of its functions, the Council shall have power to do all such things necessary to provide legal aid services in accordance with this Act including, but not limited to the following –

- (a) Granting legal aid in accordance with this Act with or without conditions, or varying, withdrawing or revoking of such legal aid;
- (b) Contracting legal aid work to advocates in private practice, bar training course students and law graduates awaiting their enrolment, on such terms and conditions as the Council may consider fit and appropriate;
- (c) Accrediting and entering into co-operation agreements with civil society organisations, non-governmental organizations, law clinics or any other persons or bodies engaged in providing legal aid services, or terminating such agreements;

- (d) Dismissing, or withdrawing legal aid service providers who are in breach of the provisions of this Act in accordance with the rule of natural justice and due process;
- (e) Establishing mechanisms for the effective administration, coordination and evaluation of legal aid services to ensure their quality;
- (f) Undertaking inquiries or investigations which the Council considers expedient in order to discharge its duties and functions;
- (g) Disseminating information regarding the national legal aid services scheme;
- (h) Receiving donations of funds, materials and technical assistance in furtherance of the Council's functions;
- (i) Requesting and obtaining the assistance of the Minister, other Ministers, public institutions and other institutions or bodies as may be necessary for the carrying out of the functions of the Council under this Act; and
- (j) Prescribe fees payable for programmes, publications, seminars, documents and other services provided by the Council.

Commentary: This Section should be read together with Section 2(9) and (15).

32. Functions of the Council

- (1) The object for which the Council is established is to provide, administer, coordinate and monitor accessible, affordable, sustainable, credible and accountable legal aid services in civil and criminal cases.
- (2) Without prejudice to the generality of subsection (1) it shall be the function of the Council to –
 - (a) Provide legal aid services to indigent persons in accordance with Uganda's international obligations;
 - (b) Determine the categories of persons and cases for which legal aid services may be granted;

- (c) Determine the rules and regulations for deciding eligibility for legal aid;
- (d) Determine the circumstances in which contributions towards legal aid services should be paid by indigent persons and how such contributions should be calculated;
- (e) Establish and manage legal aid offices in such places as it considers appropriate;
- (f) Accredite and enter into cooperation agreements with advocates, bar training course students, law graduates awaiting their enrolment, civil society organisations, non-governmental organisations, law clinics or any other bodies providing legal aid services;
- (g) Ensure that accredited legal aid providers deliver such services in a professional and ethical manner;
- (h) Liaise and cooperate with the Uganda Law Society, civil society organisations, non-governmental organisations, law clinics at the Law Development Centre or universities or any other persons or bodies engaged or interested in providing legal aid services;
- (i) Build the capacity of, and provide the relevant training and information for, all accredited legal aid providers and any other persons or bodies engaged or interested in providing such services;
- (j) Compile and publish information about the functions of the Council and other bodies providing legal aid services;
- (k) Ensure that, when necessary, legal aid providers refer legal aid applicants to agencies that provide psycho-social support and other legal services to vulnerable and marginalized persons;
- (l) Undertake research into all aspects of legal aid services, including investigating and assessing the different methods of financing and providing legal services;
- (m) Prepare reports and recommendations to Parliament on such matters relating to the functions of the Council as the Council considers appropriate; and
- (n) To carry out such other activities conducive to the attainment of the foregoing object or any of them.

Commentary: This Section should be read together with Section 2(9), (15), (16) and Section 22.

33. Duties of Council regarding legal aid services

(1) Where any person has been arrested or summoned to court on a criminal charge, the Council shall appoint a legal aid provider to render legal advice and assistance to such person.

(2) Where an indigent person has a claim actionable in a civil court or has a claim brought against him or her in a civil court, and it is in the interests of justice that such person be provided with legal aid services, the Council shall appoint a legal aid provider to render legal advice and assistance to such person.

(3) In criminal and civil matters brought before the court, where it is in the interests of justice that the indigent person involved be provided with legal representation, the Council shall, within its available resources appoint a legal aid provider at any stage of the proceedings for such indigent person whose application for legal representation has been approved by the Council.

(4) The Council shall, in order to assist indigent persons -

(a) Provide information to magistrate's courts in jurisdictions where there are no legal aid offices to enable them to direct indigent persons to legal aid providers who can provide them with legal advice and assistance under subsection (1) of section 15; and

(b) Enter into Memoranda of Understanding with the Chief Justice, the relevant Ministries and other authorities to ensure that Judges, magistrates, court officials, prosecutors, police officers and prison officials cooperate with legal aid providers.

Commentary: The Section should be read together with Section 2(10) and (12).

34. Independence of Council

The Council shall not be subject to the direction or control of any person or authority in the performance of its functions under this Act.

Commentary: International resolutions offering governments guidance on legal aid are consistent that that body charged with the delivery and administration of legal aid services should be independent of government. There is a clear conflict of interest where a legal aid lawyer employed by the Ministry of Justice is asked by his client who has overstayed in prison to sue his Minister for unlawful detention. Furthermore there is a perception that where legal aid services are a department of a Ministry they are an organ of the state and indistinguishable from the department responsible for prosecutions.

PART VI - THE SECRETARIAT OF THE COUNCIL

35. Secretariat

- (1) The Council shall have a Secretariat which shall be responsible for the day-to-day operations and implementing the decisions of the Council.
- (2) The Secretariat shall be headed by a Director.

36. Director

- (1) The Director shall be appointed by the Minister on the recommendation of the Council.
- (2) A person shall not be appointed Director unless that person has considerable knowledge and experience in the administration and implementation of legal aid.
- (3) The Director shall hold office for five years and is eligible for reappointment for one further term.

(4) The Director shall cease to hold office where-

- (a) he or she resigns;
- (b) he or she is declared or becomes bankrupt or insolvent or has made an arrangement with his or her creditors;
- (c) he or she is convicted of a criminal offence, in respect of which the maximum penalty exceeds six months imprisonment without an option of a fine.

(5) The Director may be removed from office by the Minister on recommendation of the Council for-

- (a) inability to perform the functions of his or her office arising from infirmity of body or mind;
- (b) misbehaviour or misconduct; or
- (c) incompetence.

(6) Subject to this Act and the general supervision and control of the Council the Director shall be responsible to the Council for-

- (a) The day-to-day administration and activities of the Council;
- (b) The arrangement of business, the recording and keeping of the minutes of the meetings of the Council;
- (c) Implementing the directives and policies of the Council;
- (d) Monitoring and evaluating the provision of legal aid services by accredited legal aid providers; and
- (d) The performance of such other functions as the Council may assign to him or her.

(7) The Director shall in performance of his or her functions, be accountable to the Council.

37. Other staff

(1) The Secretariat shall have such other staff as it may require for the effective discharge of its functions under this Act.

(2) The Council may, on advice of the Director, appoint other officers and staff of the secretariat as may be necessary from time to time.

(3) The employees appointed under this section shall hold office on such terms and conditions as the Council may determine.

PART VII - FINANCIAL PROVISIONS

38. Funds of Council

(1) The activities of the Council shall be financed by a fund consisting of-

- (a) Monies appropriated by Parliament for the purposes of the Council;
- (b) Grants, donations, bequests or other contributions made to the Council;
- (c) Monies generated by the Council in the course of its activities; and
- (d) Costs and benefits recovered in respect of successful actions by legal aid litigants in civil matters under section 43 of this Act.

(2) The Council shall establish and maintain a separate Legal Aid Fund.

(3) The Council shall open and maintain bank accounts as are necessary for the performance of the functions of the commission which shall be operated in a manner to be determined by the Council.

Commentary: The draft Bill places the burden on parliament to allocate funds for the administration of legal aid services. However the Lilongwe Declaration (at 9) recognises the reality that: 'legal aid services in many African countries are donor-funded...' and makes provision for the legal aid fund to accept contributions from other sources. The Fund (like the Council) should be kept separate.

39. Accounts and other records

- (1) The Council shall keep proper books of accounts and proper records in a form approved by the Auditor-General.
- (2) Within three months after the end of the financial year, prepare annual financial statements for the preceding financial year; and
- (3) Within three months after the end of each financial year, submit the annual accounts to the Auditor General.

40. Financial year

The financial year of the Council shall be the same as the financial year of the Government.

41. Audit

- (1) The books and accounts of the Council for each financial year shall be audited at the end of that financial year by the Auditor-General or by an auditor appointed or authorized by the Auditor-General.
- (2) The Auditor-General may, in addition to any accounts under subsection (1), at any time, audit the accounts and the records in relation thereto of the Council.
- (3) The Auditor-General shall submit to the Council a report of the audit carried out by him or her, and also to the Minister.

42. Annual report

(1) The Council shall, as soon as practicable, after the end of each financial year, but within six months thereafter, submit to the Minister an annual report dealing generally with the activities and operations of the Council within the financial year and the report submitted by the Auditor-General.

(2) The Minister shall, as soon as practicable after receiving the annual report of the Council, cause it to be laid before Parliament.

43. Recovery of costs and benefits

(1) Where the Council has assisted a successful legally aided person who has been awarded costs against an unsuccessful litigant, such legally aided person is deemed to have ceded such costs to the Council which shall be paid into the Legal Aid Fund established under subsection (2) of section 38.

(2) Where the Council has assisted a successful legally aided person in a civil claim for damages and the successful legally aided person has received payment as a result of a settlement or judgment, ten percent of such monies received shall be paid to the Council which shall be paid into the Legal Aid Fund provided that claims for maintenance for spouses and children and related claims shall not be regarded as damages for the purposes of this subsection.

Commentary: The recovery of costs is unlikely to amount to substantial revenue. The Survey of Legal Aid in Africa found that in South Africa (the country with the most advanced legal aid scheme), the amount recovered by the Legal Aid Board was negligible.

PART VIII - DUTIES OF LEGAL AID PROVIDERS AND OTHERS

44. Duties of legal aid offices

(1) Legal aid offices shall give effect to the obligation of the Council to provide legal aid services to arrested, detained or accused indigent persons at any stage of the prosecution.

(2) Legal aid offices shall, within their available resources and where applicants qualify for legal aid services in terms of this Act –

(a) Provide effective legal aid services to indigent persons in both criminal and civil matters;

(b) Provide legal aid services in urban, peri-urban and rural areas where no legal aid offices have been established; and

(c) Provide legal aid services in other matters at the discretion of the Council.

Commentary: This Section should be read together with Section 2(7) and (12).

45. Duties of the Law Council and the Uganda Law Society

The Law Council and the Uganda Law Society shall assist the Council to provide legal aid services by –

(a) Operating the Law Council pro bono scheme whereby advocates are required to provide a prescribed number of hours of free legal services to indigent clients each year;

(b) Identifying advocates, bar training course students or law graduates awaiting their enrolment, who are suitable to be accredited as legal aid providers under Section 20; and

(c) Keeping a register of advocates, bar training course students, or law graduates awaiting their enrolment, who have been identified as suitable to be accredited as legal aid providers in terms of this Act.

46. Rights and duties of legal aid advocates, bar training course students or law graduates awaiting their enrolment

(1) Legal aid advocates, bar training course students or law graduates awaiting their enrolment shall enter into cooperation agreements with the Council, and shall adhere to the terms and conditions of such agreements.

(2) The legal aid advocates, bar training course students or law graduates awaiting their enrolment referred to in subsection (1), shall assist the Council to implement the terms and conditions of the cooperation agreement referred to in subsection (1).

(3) Where the legal aid advocates, bar training course students or law graduates awaiting their enrolment referred to in subsection (1) commit an offence under section 51 of this Act, or breach their contractual obligations under subsection 1, the Council may terminate the cooperation agreement after giving such advocate, bar training course students or law graduate awaiting their enrolment three months notice in writing.

(4) The Council may, review its decision made under subsection (3) on good cause shown at the request of the legal aid advocate, bar training course students or law graduate awaiting their enrolment.

Commentary: This Section should be read together with Section 2(14).

47. Rights and duties of accredited civil society or non-governmental organisations and law clinics

(1) Civil society or non-governmental organisations and law clinics shall enter into cooperation agreements with the Council and shall adhere to the terms and conditions of such agreements.

(2) Civil society or non-governmental organisations and law clinics referred to in subsection 1 have the right to advertise that they have been accredited as legal aid providers by the Council.

(3) Civil society or non-governmental organisations and law clinics referred to in subsection 1 shall assist the Council to implement the terms and conditions of the cooperation agreements referred to in subsection (1).

(4) Where a civil society or non-governmental organisation or law clinic referred to in subsection (1) commits an offence under section 51 of this Act, or breaches their contractual obligations under subsection 1, the Council may terminate the cooperation agreement after giving such civil society or non-governmental organisation or law clinic, three months notice in writing.

(5) On the termination of a cooperation agreement between a civil society or non-governmental organisation or a law clinic and the Council, such civil society or non-governmental organisation or law clinic shall not advertise that it is an accredited legal aid provider.

(6) The Council may review its decision in subsection (5) on good cause shown at the request of the civil society or non-governmental organisation or law clinic.

Commentary: This Section should be read together with Section 2(14).

48. Duties of police officers, Judges, magistrates, probation officers and prison officers

(1) Police officers who arrest or detain any person shall inform that person of their right to legal advice and assistance from the moment of their arrest and in the case of an indigent suspect notify, direct and assist such suspect to contact a legal aid office or an accredited legal aid provider using the mechanism provided by the Council.

(2) Judges and magistrates who are faced with an accused person not represented in court shall inform such person of their right to legal advice and assistance, or to legal representation where the interests of justice so require, and in the case of an indigent accused person, notify and direct such person to a legal aid office or an accredited legal aid provider.

(3) A magistrate faced with an accused person not represented in court in circumstances where it is not possible to obtain the services of a legal aid provider to represent the accused shall allow such person to obtain the services of an accredited paralegal to provide legal advice and assistance under section 17 of this Act.

(4) Probation officers faced with an accused person not represented in court who requires legal advice, assistance or representation shall refer him or her to a legal aid provider.

(5) Prison officers who have been charged with the imprisonment or detention of indigent persons not represented pending trial shall notify, direct and assist such person to contact a legal aid office or an accredited legal aid provider using the mechanism provided by the Council.

(6) A failure to comply with this section may result in an application being made for the trial or proceedings to be declared a nullity.

Commentary: This Section should be read together with Section 2(1), (4) and (7).

PART IX– MISCELLANEOUS

49. Legal Aid Regulations

(1) The Council shall **make rules and regulations on any of the following** –

(a) Particulars of the scheme under which legal aid services are rendered;

- (b) Procedures for the administration of legal aid services;
- (c) Application and other forms for legal aid services;
- (d) Procedures for monitoring and evaluating the provision for legal aid services;
- (e) Fees payable to any legal aid service provider; and
- (f) Any other matter that the Council may determine.

(2) The information contained in subsection (1) above shall be collated in a *Legal Aid Handbook* which shall be made available to all legal aid providers and accessible to members of the public.

Commentary: The CBW preferred 'Regulations' to the use of the phrase 'regulatory handbook' which drew from the South Africa model which seeks to emphasise that any legal aid regulations are accessible to the ordinary person and therefore framed in the form of a 'Handbook' rather than 'Regulations'. This has been amended therefore.

50. Confidentiality

Except for the purpose of this Act, no member of the Council or its employees, or legal aid providers or persons employed in the administration of this Act shall disclose information relating to a legally aided person which is obtained in the course of their duties.

51. Offences and Penalties

(1) Any legal aid provider who charges a fee for their service in breach of this Act shall be guilty of an offence and shall be liable on conviction to a fine of up to ten currency points or to a term of imprisonment not exceeding six months or to both such fine and imprisonment.

(2) Any legal aid provider who provides a legal aid service for a fee in breach of this Act, shall be in breach of their co-operation agreement and shall have their accreditation status cancelled.

(3) Any legal aid provider whose co-operation agreement has been cancelled under subsection (3) of section 46 and subsection (4) of section 47 of this Act, may within 14 days of notice of such cancellation, appeal in writing to the Chairperson of the Council against the decision.

(4) The Chairperson of the Council shall determine the appeal referred to in subsection (2) within 14 days after receipt of the appeal.

(5) The appeal referred to in subsection (2) shall be in writing decided on paper.

(6) The decision of the Chairperson of the Council respect of an appeal referred to in subsection (2) shall be final.

(7) Nothing in this section shall affect the conditions mentioned under sections 47 and 48.

***Commentary:** This section differs from the recommendations made at the CBW that there be no penal sanction for abuse of the co-operation agreement. The concerns expressed at the CBW suggested corrupt practices were widespread (especially in remote areas). Therefore, the drafting team have retained the ultimate sanction of a prison term to deter such abuse, otherwise corruption will flourish. The Section should be read together with Section 2(14).*

52. Transitional arrangements and repeal

(1) Until such time as this Act comes into effect, sub-Section (e) of Section 3 of the Advocates Act shall continue to apply, together with the provisions regarding legal aid in the Advocates Act and the Advocates (Legal Aid to Indigent Persons) Regulations, 2007.

(2) Until such time as the Council makes Regulations, the relevant provisions of the Advocates Act, together with the Advocates (Legal Aid to Indigent Persons) Regulations, 2007 shall continue to apply.

(3) The Poor Persons Defence Act is repealed.

First Schedule

'Currency point' is equivalent to 20,000/=