

ACT

Supplement to the Sierra Leone Gazette Vol. CXLIII, No. 42

dated 23rd August, 2012

THE LEGAL AID ACT, 2012

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SIGNED this 19th day of July , 2012.

DR. ERNEST BAI KOROMA,
President.

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No. 6



2012

Sierra Leone

The Legal Aid Act, 2012

Short title.

Being an Act to provide for the establishment of the Legal Aid Board, to provide accessible, affordable, credible and sustainable legal aid services to indigent persons and for other related matters.

[] Date of commencement.

ENACTED by the President and Members of Parliament in this present Parliament assembled.

PART 1—PRELIMINARY

Interpretation.

1. In this Act unless the context otherwise requires—

"accredited civil society organization" means a civil society organization that has been accredited by the Board to provide legal aid;

"accredited non-governmental organization" means a non-governmental organization accredited by the Board to provide legal aid;

"accredited paralegal" means a person employed by the Board, a government department, an accredited civil society organization or a non-governmental organization and who has completed a training course in the relevant field of study at the Judicial and Legal Training Institute or an educational institution approved by the Board;

"accredited university law clinic" means a university law clinic accredited by the Board to provide legal aid;

"Appeals Panel" means the Appeals Panel established by section 28;

"Bar Association" means the Sierra Leone Bar Association;

"Board" means the Legal Aid Board established by section 2;

"cooperation agreement" means a written agreement entered into between a legal aid provider and the Board;

"Chairman" means the Chairman of the Board;

"Director" means the Director appointed under section 13;

"General Legal Council" means the General Legal Council established by the Legal Practitioners Act 2000. Act No. 15 of 2000.

"indigent" means a person who cannot afford to pay for legal services;

"legal advice and assistance" means providing information in both criminal and civil cases about the relevant law and legal processes, assisting with alternative dispute resolution, advising on legal issues, assisting with the drafting of documents other than instruments prohibited under section 24 of the Legal Practitioners Act, 2000, referring matters to legal practitioners and doing other things that do not constitute legal representation. Act No.15 of 2000.

"legal aid" means the provision of legal advice, assistance or representation to indigent persons;

"legal aid practitioner" means a legal practitioner employed by the Board, a legal practitioner in private practice accredited by the Board, a legal practitioner employed by an accredited civil society, non-governmental organization or university law clinic, to provide legal aid ;

"legal aid provider" means a legal practitioner, civil society organization, non-governmental organization, university law clinic or paralegal accredited to provide legal aid;

Act No.15 of 2000.

"legal practitioner" means a person who has been admitted and enrolled to practice law as a barrister and solicitor under the Legal Practitioners Act, 2000;

"legal representation" means a representation in court by a legal practitioner or pupil barrister ;

"legally-aided person" means a person who has been granted legal aid under this Act;

"Minister" means the Attorney-General and Minister of Justice;

"pupil barrister " means a person serving a period of pupillage under section 20 of the Legal Practitioners Act 2000;

"University law clinic " mean a law clinic attached to a University in Sierra Leone , the Sierra Leone Law School or other institution approved by the Board in which law students provide free legal advice and assistance to indigent persons under the supervision of a legal practitioner.

PART II—ESTABLISHMENT OF LEGAL AID BOARD

2. (1) There is hereby established a body to be known as the Establishment of Board. Legal Aid Board .

(2) The Board shall be a body corporate having perpetual succession and capable of acquiring , holding and disposing of any property, whether movable or immovable, and of suing and being sued in its corporate name, and subject to this Act, of performing all acts that bodies corporate may by law perform.

3. (1) The Board shall have a common seal the use of which shall be authenticated by the signatures of the Chairman or other member of the Board generally or specifically authorized by the Board for that purpose. Common seal.

(2) Every document purporting to be an instrument executed or issued by or on behalf of the Board and to be sealed with the common seal of the Board and 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.

4. The Board shall consist of the following members: - Composition of Board.

- (a) a chairman who is a judge of the Superior Court of Judicature recommended by the Chief Justice and appointed by the President subject to the approval of Parliament;
- (b) a representative of the Law Officers Department not below the rank of Principal State Counsel;
- (c) a representative of the Ministry responsible for social welfare not below the rank of Deputy Director ;
- (d) a representative of the Bar Association of not less than five years standing at the Bar ;
- (e) a representative of the Department of Law , Fourah Bay College;
- (f) a representative of the Council of Paramount Chiefs ;

- (g) one representative each from civil society and non-governmental organizations having experience, knowledge and expertise on issues relating to legal aid;
- (h) a representative of the Inter-Religious Council; and
- (i) the chairman of the Local Government Association.

Tenure of office of members of Board.

5. (1) Members of the Board shall hold office for a term of three years and shall be eligible for reappointment for another term only.

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

- (a) if his term of office expires;
- (b) if he resigns his office by written notice to the President;
- (c) if he is convicted of an offence involving fraud or dishonesty;
- (d) if he is declared bankrupt;
- (e) for his inability to perform the functions of his office by reason of infirmity of mind or body;
- (f) for proven misconduct.

(3) Where a vacancy occurs in the membership of the Board, the President or the appropriate body shall appoint a replacement who shall hold office for the remainder of the term of the person replaced and shall, subject to this Act, be eligible for re-appointment.

6. (1) The Board shall meet for the dispatch of its business at least once every three months at such times and places as the Chairman may determine. Meetings of Board.

(2) A special meeting of the Board shall be summoned by the Chairman at the written request of not less than one-third of the members of the Board.

(3) The Chairman shall preside at meetings of the Board and in his absence, a member elected by the members from among their number shall preside.

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

(5) The quorum for a meeting of the Board shall be five.

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

(7) Subject to this Act, the Board shall regulate the procedure for its meetings.

7. Members of the Board and its employees shall have immunity from civil claims where they have acted in good faith during the performance of their functions under this Act. Immunity.

8. Where a member of the Board has an interest in a matter to be decided by the Board, that member shall disclose the interest to the Board, and the Board shall determine whether the member shall take part in the deliberation concerning that matter. Disclosure of interest.

PART III- FUNCTIONS OF BOARD

Functions of Board.

9. (1) The object for which the Board is established is to provide, administer, coordinate and monitor the provision of legal aid in civil and criminal matters.

(2) Without prejudice to the generality of subsection (1), it shall be the function of the Board to—

- (a) provide legal aid;
- (b) accredit persons or bodies to provide legal aid;
- (c) determine the types of persons and cases for which legal aid may be granted;
- (d) determine the circumstances in which contributions towards legal aid shall be paid by legally-aided persons and how the contributions shall be calculated;
- (e) enter into cooperation agreements with legal practitioners, civil society and non-governmental organizations, university law clinics or law departments;
- (f) compile and publish information about the functions of the Board and other legal aid providers;
- (g) cooperate with other bodies as it may determine for achieving its object;
- (h) carry out other activities conducive to the attainment of the object of the Board;

- (i) undertake research into all aspects of legal aid.

(3) The Board shall, in performing its functions establish offices in places that it may determine.

10. The Board shall have power to do all things necessary to provide legal aid in accordance with its functions under this Act including – Powers of Board.

- (a) granting legal aid with or without conditions or varying, withdrawing or revoking the legal aid;
- (b) contracting legal aid work to legal aid practitioners in private practice on such terms and conditions as the Board may consider appropriate;
- (c) entering into co-operation agreements with legal aid providers;
- (d) establishing mechanisms for the effective administration, coordination and evaluation of legal aid;
- (e) undertaking inquiries or investigations which the Board considers expedient in order to discharge its functions;
- (f) disseminating information regarding the national legal aid scheme;
- (g) requesting assistance of the ministry responsible for justice, public and private and other bodies as may be necessary for carrying out its functions.

11. The Board shall not be subject to the direction or control of any person or authority in the performance of its functions. Independence of Board.

PART IV—THE SECRETARIAT OF BOARD

Secretariat. **12.** The Board shall have a secretariat which shall provide administrative, secretarial and other assistance to the Board.

Director of Secretariat. **13.** (1). The Board shall appoint a Director who shall be the head of the Secretariat .

(2) The Director shall be a legal practitioner qualified to hold office as a judge of the superior court of judicature and having considerable experience in management or administration.

(3) The Director shall be responsible to the Board for-

- (a) the day-to-day administration of the Board;
- (b) the arrangement of business and the recording and keeping of the minutes of the meetings of the Board;
- (c) implementing the directives and policies of the Board; and
- (d) performing other functions as the Board may assign to him.

(3) The Director shall attend all meetings and deliberations of the Board but shall not be entitled to vote.

Other staff of Board. **14.** (1) The Board shall appoint such other staff as it may require for the effective discharge of its functions.

(2) Without prejudice to subsection (1), the Board shall appoint at least one paralegal to each Chiefdom-

- (a) to provide advice, legal assistance and legal education to the Paramount Chief and the inhabitants of the Chiefdom;
- (b) where appropriate to assist in diverting certain cases to the formal justice system.

PART V—FINANCIAL PROVISIONS

15. (1) The activities of the Board shall be financed by a fund consisting of- Funds of Board.

- (a) monies appropriated by Parliament for the purposes of the Board;
- (b) monies generated by the Board in the course of its activities ; and
- (c) grants, donations, bequests or other contributions made to the Board.

(2) The funds of the Board shall be managed by the Director who shall also act as the vote controller in accordance with the Public Budgeting and Accountability Act, 2005. Act No. 3 of 2005

16. The Board shall keep proper books of accounts and proper records in relation to the accounts and in a form approved by the Auditor-General. Accounts and other records.

17. (1) The books and account of the Board for each financial year shall be audited by the Auditor-General or an auditor appointed by the Auditor-General. Accounts and audit.

(2) The Auditor-General may, in addition to any accounts under subsection (1), at any time, audit the accounts and the records in relation to the accounts of the Board.

(3) The Auditor-General shall submit to the Board a report of the audit carried out by him.

18. The financial year of the Board shall be the same as the financial year of the Government. Financial year.

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

(2) The Minister shall, within one month after receiving the report lay it before Parliament together with any comments on the report that he may make.

PART VI-PROVISION OF LEGAL AID

Qualification for legal aid.

20. (1) Where the interest of justice so requires, an indigent who is arrested, detained or accused of a crime shall, subject to this Act, have access to—

- (a) legal advice and assistance;
- (b) legal representation, where the indigent's application for legal representation has been approved by the Board from the moment of his arrest until the final determination of the matter and subject to section 28, the appellate process.

(2) Where the interest of justice so requires, an indigent who wishes to bring or defend a civil matter shall have access to—

- (a) legal advice and assistance;
- (b) legal representation, where the indigent's application for legal representation has been approved by the Board.

Determination of indigence.

21. (1) The Board shall prescribe the level of income which qualifies a person as indigent.

Application for legal aid.

22. A person who wishes to apply for legal aid shall complete the application in the prescribed form.

Issue of certificate.

23. (1) The Board shall grant an application for legal aid where it is satisfied that the applicant qualifies for it.

(2) Where the Board grants an application, it shall issue a legal aid certificate in the prescribed form to the applicant.

24. (1) Where a legally-aided person after being granted a legal aid certificate fails to meet the prescribed criteria, the Board may cancel the legal aid certificate. Cancellation of certificate.

(2) Prior to the cancellation of a certificate, the Board shall give the legally-aided person notice in writing of its intention to do so, specifying the grounds on which the Board considers the certificate ought to be cancelled.

(3) A legally-aided person who is given notice under subsection (2) may within fourteen days of receipt of the notice, submit to the Board a written statement of objection to the cancellation.

(4) The Board shall notify the legally-aided person of its decision within seven days of receipt of the statement of objection.

25. A person who knowingly makes a false statement in the application form referred to in section 22, commits an offence and is liable on conviction to a fine not exceeding two million Leones or to a term of imprisonment not exceeding one year. Furnishing of false information.

26. An application for legal aid representation may be refused if— Refusal of legal representation.

- (a) the application form for legal aid has not been properly completed by the applicant or his representative;
- (b) the applicant has knowingly included false information in the application form and the income and assets declaration; or
- (c) the applicant is not eligible for legal aid under this Act.

27. A legally-aided person who wishes to appeal against his conviction or a judgment shall re-apply for renewal of the certificate. Re-application.

Establishment
of Appeals
Panel.

28. (1) There is hereby established an Appeals Panel for the purpose of hearing appeals against decisions of the Board made under sections 24 and 26.

(2) The Appeals Panel shall consist of the following members:—

- (a) a chairman who is a Judge of the Court of Appeal or qualified to sit as a Judge of the Court of Appeal nominated by the Chief Justice;
- (b) the Chief Social Welfare Officer or his representative not below the rank of Deputy Secretary;
- (c) a retired public officer nominated by the Public Service Commission; and
- (d) two representatives of civil society organizations accredited to provide legal aid one of whom shall be a woman.

(3) The quorum for a sitting of the Appeals Panel shall be three and the Chairman shall, on a matter for decision by the Panel have a casting vote in the event of the equality of votes.

(4) Members of the Appeals Panel shall hold office for three years and may be re-appointed.

(5) An applicant who is aggrieved by a decision of the Board under sections 24 and 26 may within fourteen days of the notice of the decision, appeal in writing to the Appeals Panel against the decision.

(6) The Appeals Panel shall determine the appeal within ten days after receipt of the appeal.

(7) The decision of the Appeals Panel shall be final.

(8) The Board shall be bound by a decision of the Appeals Panel.

(9) The Appeals Panel shall regulate its own proceedings.

29. The Board shall arrange for the provision of emergency legal representation for persons who appear to be indigent.

Emergency
legal re-
presentation.

30. (1) The Board shall subject to subsection (2) and for the purpose of providing legal aid accredit-

Accreditation
of legal aid
providers.

- (a) legal practitioners;
- (b) civil society organizations;
- (c) university law clinics;
- (d) paralegals; and
- (e) non-governmental organisations.

(2) The Board shall accredit university law clinics or paralegals only if in the case of—

- (a) university law clinics, that are affiliated with the Judicial and Legal Training Institute; or
- (b) paralegals, that have been certified as having gone through the appropriate courses at the Judicial and Legal Training Institute or any other appropriate institution approved by the Board.

31. Legal aid providers shall keep proper records of their activities on behalf of their clients as determined by the Board and submit quarterly reports of the activities to the Board.

Records.

32. (1) The Board shall monitor and evaluate the quality of legal representation in legal aid cases in accordance with the prescribed procedures.

Monitoring
and evalua-
tion of legal
representation.

(2) Where the results of monitoring and evaluation conducted under subsection (1) indicate that a legal aid practitioner or pupil barrister has been guilty of unprofessional conduct the Board shall refer the information to the General Legal Council for appropriate disciplinary action.

Board to enter into cooperation agreements.

33. (1) The Board may enter into cooperation agreements with legal aid providers, for the implementation of this Act.

(2) Where a legal aid provider fails to meet its obligations under a cooperation agreement the Board may after giving three months notice in writing to rectify the anomaly terminate the agreement.

(3) On the termination of a cooperation agreement the legal aid provider concerned shall cease to offer legal aid under this Act.

(4) The Board may review its decision in subsection (2) on good cause shown.

Recovery of costs and benefits.

34. (1) Where the Board has assisted a successful legally-aided person who has been awarded costs against an unsuccessful litigant, the legally-aided person is deemed to have ceded ninety percent of the costs to the Board.

(2) Where the Board 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 the monies received shall be paid to the Board.

(3) In this section claims for maintenance for spouses and children and related claims shall not be regarded as damages.

PART VII—MISCELLANEOUS

35. (1) If a police officer arrests a person who appears to be indigent he shall advise the person to contact the Board for assistance

Duties of Magistrates, police officers etc.

(2) A Judge or Magistrate who is faced with an unrepresented person who appears to the Judge or Magistrate to be indigent may advise the person to seek legal aid by contacting the Board.

(3) Prison officers who have been charged with the imprisonment of unrepresented indigent persons pending trial shall notify, direct and assist the persons to contact the Board or legal aid provider.

36. Where the funding for legal advice and assistance is not provided by the Board, the eligibility of persons for legal advice and assistance provided by a legal aid practitioner shall be done in accordance with the rules of the legal aid provider.

Rules for provision of legal aid not funded by Board.

37. (1) A legal aid provider who charges a fee for the provision of legal aid commits an offence and is liable on conviction to a fine not exceeding twenty million leones or to a term of imprisonment not exceeding two years.

Offences.

(2) A person or organisation who-

(a) provides legal aid without being accredited; or

(b) whose cooperation agreement with the Board has elapsed or has been terminated and who continues to provide legal aid,

commits an offence and is liable on conviction to a fine not exceeding thirty million leones or to imprisonment for a term not exceeding three years.

38. (1) Subject to this Act no legal aid provider shall, without the approval of the legally-aided person, disclose any information received in the course of providing legal aid to that person.

Confidentiality.

(2) The Board may terminate a cooperation agreement with a legal aid provider who contravenes subsection (1).

Submission of returns. **39.** (1) Every legal aid provider shall submit to the Board quarterly returns of its activities under this Act.

(2) The Board may terminate a cooperation agreement entered into with a legal aid provider who persistently fails to comply with subsection (1).

Regulations. **40.** (1) The Board may by statutory instrument make rules or regulations for carrying out the purposes of this Act.

(2) Rules or regulations made under subsection (1) may provide for—

- (a) the publication of the scheme under which legal aid is provided;
- (b) procedures for the administration of legal aid;
- (c) application and other forms for legal aid;
- (d) procedures for monitoring and evaluating the provision of legal aid; and
- (e) matters to be included in the returns in section 39.

Passed in Parliament this *10th* day of *May*, in the year of our Lord two thousand and twelve.

IBRAHIM S. SESAY,
Clerk of Parliament.

THIS PRINTED IMPRESSION has been carefully compared by me with the Bill which has passed Parliament and found by me to be a true and correct printed copy of the said Bill.

IBRAHIM S. SESAY,
Clerk of Parliament.