



REPUBLIC OF ZAMBIA

REPORT

OF THE

**COMMITTEE ON LEGAL AFFAIRS, HUMAN RIGHTS, NATIONAL
GUIDANCE, GENDER MATTERS AND GOVERNANCE**

ON THE

LEGAL AID BILL, N.A.B. NO. 1 OF 2021

FOR THE

FIFTH SESSION OF THE TWELFTH NATIONAL ASSEMBLY

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REPORT OF THE COMMITTEE ON LEGAL AFFAIRS, HUMAN RIGHTS, NATIONAL GUIDANCE, GENDER MATTERS AND GOVERNANCE ON THE LEGAL AID BILL, N.A.B NO. 1 OF 2021 FOR THE FIFTH SESSION OF THE TWELFTH NATIONAL ASSEMBLY

1.0 MEMBERSHIP OF THE COMMITTEE

The Committee consisted of Mr M Jere, MP (Chairperson); Mrs P G M Jere, MP (Vice Chairperson); Mr C Nanjuwa, MP; Evg. H Shabula, MP; Mr E Sing'ombe, MP; Mr R Bulaya, MP; Ms M P Langa, MP; Mr S Banda, MP; Mr S Chungu, MP; and Mr M F Fube, MP.

The Honourable Mr Speaker
National Assembly
Parliament Buildings
LUSAKA

Sir,

The Committee has the honour to present its Report on the Legal Aid Bill, N.A.B. No. 1 of 2021 for the Fifth Session of the Twelfth National Assembly referred to it by the House on 9th February, 2021.

2.0 FUNCTIONS OF THE COMMITTEE

The functions of the Committee are as set out under Standing Order 157(2). Among other functions, the Committee is mandated to consider Bills that may be referred to it by the House.

3.0 MEETINGS OF THE COMMITTEE

The Committee held nine meetings to consider the Legal Aid Bill, N.A.B. No. 1 of 2021.

4.0 PROCEDURE ADOPTED BY THE COMMITTEE

In order to acquaint itself with the ramifications of the Bill, the Committee sought both written and oral submissions from the stakeholders listed at Appendix II.

5.0 OBJECTS OF THE BILL

The objects of the Bill are to:

- (a) provide for the granting of legal aid in civil and criminal cases to persons whose means were insufficient to enable them to pay for legal services;
- (b) provide for the regulation of law clinics in the provision of legal aid;
- (c) continue the existence of the Legal Aid Board and provide for its functions;
- (d) re-constitute the Board of the Legal Aid Board and re-define its functions;

- (e) provide for the registration of practitioners, legal assistants, paralegals and legal aid service providers;
- (f) continue the existence of the Legal Aid Fund and provide for its administration and management;
- (g) repeal and replace the Legal Aid Act, 1967; and
- (h) provide for matters connected with, or incidental to, the foregoing.

6.0 BACKGROUND

The *Legal Aid Act, Chapter 34 of the Laws of Zambia* was enacted in 1967 to provide for the granting of legal aid in civil and criminal matters and causes to persons whose means were inadequate to enable them to engage practitioners to represent them. However, the provision of legal aid in Zambia had been affected by the absence of a comprehensive National Legal Aid Policy and a corresponding implementation framework to guide the provision of legal aid services by all legal aid service providers, including non-state actors.

The process of reviewing the *Legal Aid Act, Chapter 34 of the Laws of Zambia* was followed by the adoption of the National Legal Aid Policy in 2018 which sought to establish a renewed regulatory and implementation framework for the provision, administration, coordination, regulation and monitoring of legal aid in Zambia.

In order to codify the National Legal Aid Policy of 2018 by way of repealing and replacing *the Legal Aid Act, Chapter 34 of the Laws of Zambia*, so as to widen the scope of legal aid, and bring into effect the renewed regulatory implementation framework, the Government introduced the Legal Aid Bill, N. A. B No. 1 of 2021 (hereinafter referred to as the Bill).

7.0 SALIENT PROVISIONS OF THE BILL

The salient features of the Bill were as set out below.

7.1 PART I: PRELIMINARY PROVISIONS

Part I of the Bill provided for the preliminary provisions, including the short title, commencement, interpretation and application.

7.2 PART II: LEGAL AID BOARD

This part provided for the continuation of Legal Aid Board; functions of the Legal Aid Board; scope of legal aid; autonomy of the Legal Aid Board; constitution of the Board; functions of the Board; Director and other staff and the right of audience of a Legal Aid Assistant.

7.3 PART III: PRACTITIONER, LEGAL ASSISTANTS, PARALEGALS AND LEGAL AID SERVICE PROVIDERS

A. Practitioners under Judicare

This part provided for the application for registration of practitioners under judicare; remuneration of practitioners under judicare and payment of costs to private practitioners for judicare.

B. Legal Assistants

This part provided for the application for registration of legal assistant to the Director for a certificate of registration; qualifications of legal assistant to be registered by the Legal Aid Board and the scope of services of legal assistant. Further, this part mandated a practitioner to supervise a legal assistant based on guidelines issued by the Board.

C. Paralegals

This part sought to place an obligation on a paralegal who intended to provide legal aid, to apply to the Director for a certificate of registration. It further provided for the qualifications of a paralegal and scope of practice of paralegals. Furthermore, it mandated a practitioner, a legal assistant or any other person to supervise a paralegal that the Board may determine.

D. Legal Aid Service Provider

This part placed an obligation on a civil society organisation or higher education institution that intended to provide legal aid, to apply to the Director for a certificate of registration. It set out the qualifications that had to be met by a civil society organisation or higher education institution that intended to provide legal aid services. Further, it set out the scope of practice applicable to a civil society organisation or higher education institution law clinic.

7.4 PART IV: PROVISIONS APPLICABLE TO LEGAL PRACTITIONERS, LEGAL ASSISTANTS AND PARALEGALS

This part provided for the prohibition of a person from providing legal aid services without being registered by the Director. It further provided a sanction for providing legal aid services without registration. Furthermore, it provided for the grant or rejection of application; change of particulars; suspension and cancellation of certificate of registration; re-registration of a certificate of registration; display of certificate of registration; renewal of a certificate of registration; prohibition of the transfer of a certificate of registration to a third party; duplicate certificate of registration and offences that related to registration under the Bill.

7.5 PART V: PROVISIONS OF LEGAL AID GRANTED BY LEGAL AID BOARD

This part provided for the application for legal aid and stated that a person who intended to access legal aid or apply for legal aid on behalf of another needed to apply to the Director in the prescribed manner and form. Further, the part provided for the circumstances under which the Director may grant legal aid; the effect of the legal aid certificate; alternative dispute resolution; appeal against refusal of the Director to grant legal aid; termination of legal aid and empowered a person whose legal aid had been terminated to appeal to the Board.

7.6 PART VI: LEGAL AID FUND

This part provided for the continuation of the Fund established under the repealed Act; application of moneys of the Fund and administration of the Fund and accounts.

7.7 PART VII: LEGAL AID GRANTED BY COURT

A. Criminal Cases

This part provided for the applications for legal aid in court; legal aid granted at the initiative of court and set out the circumstances under which a person could apply for legal aid in criminal matters.

B. Civil Cases

This part provided the circumstances under which the court could grant legal aid to a person who was a party in any civil proceedings where the State was also a party; cases involving points of law of public importance; grant of legal aid in civil matters; option by a person to refuse or dispense with legal aid and categories of civil cases for which legal aid may not be granted.

7.8 PART VIII: CONTRIBUTIONS AND COSTS OF LEGAL AID

This part provided for consultation fees payable for legal aid provided under this Bill; contributions by a person granted legal aid under the Bill to the costs of legal aid; ascertainment of means; costs awarded to legally aided persons; deductions from awards to legally aided persons; costs and also provided that the Director shall keep and maintain a register relating to persons granted legal aid, registered practitioners, legal assistants, paralegals and legal aid service providers.

7.9 PART IX: GENERAL PROVISIONS

This part provided for appeal by a person aggrieved by a decision of the Legal Aid Board to appeal to the Minister; information on the right to legal aid by Judges, Magistrates, Correctional and Police Officers, Prosecutors or Law enforcement officers; general offences under the Act; circumstances under which the Administrator-General may be Administrator *ad litem*; regulations;

repeal of Act No. 30 of 1967; that the Act will bind the Republic and saving and transitional provisions.

8.0 STAKEHOLDERS' SUBMISSIONS AND CONCERNS

While supporting the Bill, stakeholders raised the concerns set out below.

PART I

PRELIMINARY PROVISIONS

Interpretation

Some stakeholders were of the view that the terms “Legal Assistant” and “Paralegal” both needed to be defined in the Bill so as to have one standard definition.

PART II

THE LEGAL AID BOARD

Functions of the Legal Aid Board

Stakeholders were in support of the re-defined functions of the Board under clause 5 of the Bill. They were, however, concerned with the provision in section 5 (f) of the Bill which stipulated that the Legal Aid Board would “register” a civil society organisation and higher education institution law clinic that intended to provide legal aid. Stakeholders submitted that such broad reference to registering CSOs may be misunderstood and seen as a duplication, as CSOs were already registered with their own legal status, either as non-profit or non-governmental organisations, and/or as companies limited by guarantee. Civil society organisations and higher education institution law clinics that intended to provide legal aid would, therefore, need an ‘accreditation’ rather than “registration” by the Legal Aid Board for the legal aid component of their work, to ensure that minimum parameters were in place when providing legal aid. Such parameters could include qualified staff, a supervision scheme, sufficient facility or space to ensure confidentiality, and access to legislation, among others.

Other stakeholders, while supporting the provision of the registration of CSOs and higher education institution law clinics that intended to provide legal aid, proposed that this provision should be amended to read *‘register a civil society organisation and higher institution law clinic that intends to provide legal aid in consultation with the Higher Education Authority.’* The justification was that the Higher Education Authority provided quality assurance to the higher education institutions in the country and therefore it would be in order if they were part of the process of registering the law clinics in higher education institutions.

Stakeholders were concerned that, whereas the Legal Aid Board played an important role in administering legal aid to members of the public who qualified, it was not right that legal practitioners should be regulated twice for

the provision of the same kind of services which they were trained and qualified to provide. It was proposed that the Law Association of Zambia should remain the regulator of the Zambian legal profession whether offering services at a fee or providing legal aid to those who may not afford to retain lawyers.

Clause 6: Scope of Legal Aid

Stakeholders supported the expansion of the scope of legal aid under clause 6(1) of the Bill which included legal education, legal information, legal advice, legal assistance, or legal representation. It was submitted that this entailed that clients would greatly benefit from this extended scope. The scope of Legal aid, as currently existed, was restrictive as the focus was mainly on legal representation.

Some stakeholders, however, were of the view that the inclusion of legal information and legal education as part of the definition of legal aid for which registration was required, was not progressive. They were of the view that the provision was an assault on public discourse and civic education for citizens who wanted to share information and debate law related issues that affected their rights and wished to sensitise their fellow citizens on governance issues that had legal implications. In light of the above, it was proposed that “*legal information and legal education*” should not be part of the definition of legal aid for which registration was required.

Clause 8: Constitution of the Board

Some stakeholders welcomed the re-constitution of the Board under clause 8(2)(c)(d)(e) which included a representative of a CSO providing legal aid, a representative of the Law Association of Zambia and a representative of a School of Law of a higher education institution providing legal aid services. However, it was observed that the composition of the Board was still predominantly made up of individuals that represented the Government. It was proposed that the Legal Aid Board should have equal representation of both state and non-state actors so as to give integrity and public confidence in the decisions made.

Further, some stakeholders noted that the National Prosecution Authority (NPA) played a major role in criminal matters and should, therefore, be a member of the Board as this would ensure that the functions of the Board, especially as they related to the implementation of the National Legal Aid Policy, were carried out more effectively.

PART III

PRACTITIONERS, LEGAL ASSISTANTS, PARALEGALS AND SERVICE PROVIDERS

Stakeholders supported the provisions of the Bill under Part III which required one to apply for registration to the Director in order to offer legal aid. Among

others, these provisions included the requirement for registration of legal practitioners who wished to provide legal services under judicare, requirement for registration of legal assistants, requirement for registration of paralegals and requirement for registration as legal aid service providers.

Some stakeholders, however, expressed the view that the Law Association of Zambia was better placed and had better systems to regulate the provision of legal services in Zambia. They further submitted that the Association was better placed to ensure the integrity of the legal profession as it had established and uniform rules and ethics that governed the provision of legal services. In this regard, the stakeholders recommended that the registration by one who intended to provide legal aid services needed to be a preserve of the Law Association of Zambia and not the Legal Aid Board.

Clause 16: Qualifications of Legal Assistant

Stakeholders supported the introduction of qualifications for legal assistants. They submitted that the requirement for a legal assistant to hold a Bachelor of Laws Degree (LLB) or a relevant qualification determined by the Board and accredited and recognised by the Zambia Qualifications Authority was progressive.

Other stakeholders, however, submitted that lowering the qualification for legal aid assistants to only law degrees would affect the quality of services and lower the standards of the legal profession in Zambia. In view of the foregoing, the stakeholders were of the view that the requirement for one to have postgraduate training or undergoing such training should be maintained as it was in the current Act.

PART IV

REGISTRATION OF PRACTITIONERS, LEGAL ASSISTANTS, PARALEGALS AND LEGAL AID SERVICE PROVIDERS

Clause 24: Prohibition of Providing Legal Aid without Registration

Some stakeholders supported the five year sentence for those who violated the law by offering legal aid services without a certificate of registration. However, *other stakeholders were of the considered view that thereby abrogating the law, other stakeholders were of the considered view that this sentence was too harsh and recommended that the offence attached to offering legal aid services without a certificate of registration be removed as it would, in effect, cause a reduction in legal aid service providers or stifle the provision of legal aid services, where persons, practitioners, legal aid service providers providing legal aid services on their own volition through their organisations or firms without a certificate would not be able to do so for fear of conviction for a criminal offence.*

Another section of the stakeholders submitted that, as opposed to completely removing the sentence, it should be reduced to three years. Yet other stakeholders were of the view that punishment should only be limited to the withdrawal of the licence as was the case under the Law Association of Zambia.

Clause 25: Grant or Rejection of Application

While welcoming the roles of the Director as prescribed in the Bill, some stakeholders were of the view that a Paralegal Standing Committee as suggested by the National Legal Aid Policy, 2018, should be constituted to assist the Director in making the decisions under Clause 25 of the Bill.

Clause 27: Suspension and Cancellation of Certificate of Registration

While a number of stakeholders supported this clause which provided discretion for the suspension and cancellation of the certificate of registration of a legal practitioner by the Director, some stakeholders were of the view that Part IV, which contained Clause 27 should exclude legal practitioners and should only regulate non-legal practitioners as the legal practitioners were already regulated by the Law Association of Zambia.

A number of stakeholders supported the provision under Clause 27(1)(c)(ii) which provided information on failure by a legal aid service provider to comply with a term or condition of the certificate of registration' as a ground upon which a certificate of registration may be withdrawn. On the contrary, other stakeholders submitted that there was no provision in the Bill which stipulated what the conditions or terms were, and this would lead to uncertainty, unpredictability and abuse. They were of the view that the key terms or conditions should be spelt out.

PART VIII

CONTRIBUTIONS AND COSTS OF LEGAL AID

Clause 54: Deductions from Awards to Legally Aided Persons

While some stakeholders supported the provision for the Director to make deductions from awards to legally aided persons, some stakeholders were not in support of the discretion by the Director to deduct an amount in the event that a legally aided person was awarded damages or any form of compensation. They were of the view that if that would be the case, the amount should be fixed at a percentage of not more than 10 percent.

9.0 COMMITTEE'S OBSERVATIONS AND RECOMMENDATIONS

The Committee notes that all the witnesses who appeared before it were in support of the Bill. The Committee also supports the Bill, and in supporting the Bill, it makes the following observations and recommendations:

- (i) The Committee observes that Clause 2 of the Bill does not define the terms “Legal Assistant” and “Paralegal.” The Committee, therefore, recommends that both terms be defined in Clause 2 of the Bill for uniformity.
- (ii) The Committee observes that the provision in section 5(f) requiring the “registration” of a civil society organisation (CSO) and higher education institution law clinic that intends to provide legal aid is too broad and may be misconstrued as a duplication since CSOs are already registered as non-profit or non-governmental organisations or as companies limited by guarantee.

The Committee, therefore, recommends that CSOs and higher education institution law clinics that intend to provide legal aid should be “accredited” rather than “registered” by the Legal Aid Board to ensure that minimum parameters such as qualified staff, a supervision scheme, and access to legislation are in place.

- (iii) The Committee observes that the expansion of the scope of legal aid to consist of legal education, legal information, legal advice, legal assistance, and legal representation will greatly benefit the clients. The Committee, however, is concerned that the inclusion of “legal information” and “legal education” in the definition of legal aid for which registration is required will stifle public discourse and civic education for members of the public who may wish to share information and debate law related issues that affect their rights. The Committee, therefore, recommends that “legal information” and “legal education” should not be part of the definition of legal aid for which registration is required.
- (iv) While the Committee welcomes the re-constitution of the Board to include a representative of a CSO providing legal aid, a representative of the Law Association of Zambia and a representative of a School of Law of a higher education institution providing legal aid services, the Committee observes with concern that the Board is still predominantly made up of individuals representing the Government.

The Committee, therefore, recommends that the Board of the Legal Aid Board should have equal representation of both state and non-state actors for integrity, credibility and public confidence in the decisions made. Further, the Committee recommends that the National Prosecutions Authority (NPA), which plays a major role in prosecuting criminal matters, should be represented on the Board.

- (v) While in support of the provisions under part III which require, *inter alia*, one to apply for registration to the Director in order to offer legal aid, the Committee is concerned that the registration of legal practitioners who

wish to provide legal services under judicare, registration of legal assistants, registration of paralegals and registration as legal aid service provider, will be regulated by the Board.

The Committee is of the view that the Law Association of Zambia is better placed with already existing rules and ethics to regulate the provision of legal services in Zambia. The Committee, therefore, recommends that the registration of legal practitioners who wish to provide legal services under judicare, registration of legal assistants, registration of paralegals and registration as legal aid service provider should be regulated by the Law Association of Zambia to ensure the integrity of the legal profession.

- (vi) The Committee observes that the five year sentence for those who offer legal aid services without a certificate of registration, is too harsh. The Committee, therefore, recommends that any person or firm found offering legal aid services without a certificate of registration should be barred from offering legal aid services for three years or a fine not exceeding three hundred thousand penalty units, or both. The justification is that the sentence is likely to have a chilling effect on the provision of legal services as possible service providers will fear conviction for a criminal offence.
- (vii) The Committee agrees with the stakeholders that in executing the process of granting or rejecting an application as prescribed in the Bill, the Director will require assistance. The Committee, therefore, recommends that a Paralegal Standing Committee, as suggested by the National Legal Aid Policy of 2018 should be constituted to assist the Director in making the decisions with regard to granting or rejecting applications.
- (viii) The Committee observes that Clause 16 of the Bill is introducing qualifications for a legal assistant which includes a Bachelor of Laws Degree or a relevant qualification determined by the Board and accredited and recognised by the Zambia Qualifications Authority. The Committee is of the view that the requirement that one must be either attending or have already attended a postgraduate training from the law practice institute must be maintained as is the case in the current Act so as not to lower the quality of legal aid.
- (ix) The Committee disagrees with the provision that the suspension and cancellation of a certificate of registration of a legal practitioner by a Director should apply to a person who has been admitted to practice as an advocate and whose name is duly entered on the Roll. The Committee is of the view that this provision should only affect non-legal practitioners. In this regard, the Committee recommends that suspension and cancellation of a certificate of registration of a legal

practitioner should be left with the Law Association of Zambia as the regulatory institution for the legal profession.

Further, the Committee recommends that the Bill should stipulate under what conditions or terms the certificate of registration will be withdrawn to avert uncertainty, unpredictability and abuse.

10.0 CONCLUSION

The Committee wishes to express its gratitude to all stakeholders who appeared before it and rendered both oral and written submissions. The Committee also wishes to thank you, Mr Speaker, for your guidance throughout its deliberations. The Committee further appreciates the services rendered to it by the Office of the Clerk of the National Assembly and her staff.

We have the Honour to be, Sir, the Committee on Legal Affairs, Human Rights, National Guidance, Gender Matters and Governance mandated to consider the Legal Aid Bill, N. A. B No. 1 of 2021 for the Fifth Session of the Twelfth National Assembly.

Mr M Jere, MP
(Chairperson)

Mrs P G M Jere, MP
(Vice – Chairperson)

Mr C Nanjuwa, MP
(Member)

Evg. H Shabula, MP
(Member)

Mr E Sing'ombe, MP
(Member)

Mr R Bulaya, MP
(Member)

Mr S Banda, MP
(Member)

Ms M P Langa, MP
(Member)

Mr S Chungu
(Member)

Mr M F Fube
(Member)

February, 2021
LUSAKA

APPENDIX I - NATIONAL ASSEMBLY OFFICIALS

Ms C Musonda, Principal Clerk of Committees
Mr H Mulenga, Deputy Principal Clerk of Committees (FC)
Mrs C K Mumba, Senior Committee Clerk (FC)
Ms B P Zulu, Committee Clerk
Mr A Himululi, Committee Clerk
Mrs R N Mwiinga, Typist
Mr M Chikome, Committee Assistant

APPENDIX II – LIST OF WITNESSES

MINISTRY OF JUSTICE

Hon G Lubinda – Minister of Justice

Ms M Siwiwaliondo – Senior Parliamentary Counsel

CHAPTER ONE FOUNDATION

Ms L Kasonde – Chief Executive Officer

Mr M Kapatiso – Legal Assistant

UNIVERSITY OF LUSAKA – SCHOOL OF LAW

Dr C Mulenga – Deputy Vice Chancellor/ Executive Dean

LAW ASSOCIATION OF ZAMBIA

Mr L Banda – Member

NATIONAL PROSECUTION AUTHORITY

Ms C M Hambayi – Deputy Chief State Advocate

ZAMBIA CORRECTIONAL SERVICES

Ms C B Soko – Head, Legal Services

PARALEGAL ALLIANCE NETWORK

Mr P Sabuni – Director

NATIONAL LEGAL AID CLINIC FOR WOMEN

Ms M Manda – Executive Director

MINISTRY OF HOME AFFAIRS

Mr M W Banda – Permanent Secretary

Mr A Mukisi – Parliamentary Liaison Officer

Ms W Mbula – Legal Officer

MINISTRY OF GENDER

Dr S Silomba – Permanent Secretary

Mrs L S Habanji – Director, Gender Rights Protection

Mr A C Habweza – Acting Director, Planning and Information

JUDGES’ AND MARGISTRATES’ ASSOCIATION OF ZAMBIA

Mr N Simaubi – National Secretary

ZAMBIA QUALIFICATIONS AUTHORITY

Mrs M A M Chiyaba – Director and Chief Executive Office

Mr M Hamalabbi – Assistant Director, Technical

**TECHNICAL EDUCATION, VOCATIONAL AND ENTREPRENEURSHIP
TRAINING AUTHORITY**

Mr C Takaiza – Director-General

MINISTRY OF FINANCE

Dr E M Pamu – Permanent Secretary

Mr H Sampa – Director, Revenue

Mr P Musona – Assistant Director, Expenditure

Ms B Sinyangwe – Senior Economist

LEGAL AID BOARD

Mr K Muzenga – Director

ZAMBIA INSTITUTE OF ADVANCED LEGAL EDUCATION

Mrs A Ononuju – Chief Executive Officer

ZAMBIA LAW DEVELOPMENT COMMISSION

Ms H C Ndhlovu –Director and Commissioner Secretary

Mr M Mwenda –Research Director