

THE LEGAL AID BILL, 2015
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THE LEGAL AID BILL, 2015

A Bill for

AN ACT of Parliament to give effect to Articles 19 (2), 48, 50 (2) (g) and (h) of the Constitution to facilitate access to justice and social justice; to establish the National Legal Aid Service; to provide for legal aid, and for the funding of legal aid and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Legal Aid Act, 2015. Short title

2. In this Act, unless the context otherwise requires— Interpretation.

“accredited paralegal” means a person accredited by the service to provide paralegal services under the supervision of an advocate;

“advocate” has the meaning assigned thereto in the Advocates Act;

“aided person” means a person who is granted legal aid under this Act and includes—

- (i) a person who is granted legal aid on an interim basis; and
- (ii) a person whose grant of legal aid has been withdrawn under section 52;

“alternative dispute resolution” means settling a dispute by means other than through the court process and includes negotiation, mediation, arbitration, conciliation and the use of informal dispute resolution mechanisms;

“applicant” means a person who makes an application for legal aid pursuant to this Act or on whose behalf such an application is made;

“Board” means the board established under section 9;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to legal aid;

“chairperson” means the chairperson of the Board appointed under section 9;

“child” has the meaning assigned to it under article 260 of the Constitution;

“co-operation agreement” means an agreement entered into between the Service and legal aid provider to provide legal aid services;

“Director” means the Director of the National Legal Aid Service appointed under section 24;

“Fund” means the Legal Aid Fund established under section 29;

“grant of legal aid” means a grant of legal aid under this Act and includes any amendments to that grant;

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

“intermediary” means a person who assists a complainant or an accused person to communicate with the court in accordance with section 69;

“justice advisory centre” means a centre established by the Service for administering and providing legal aid services in Kenya;

“legal aid” includes—

- (a) legal advice;
- (b) legal representation;
- (c) assistance in—
 - (i) resolving disputes by alternative dispute resolution;
 - (ii) drafting of relevant documents and effecting service incidental to any legal proceedings; and
 - (iii) reaching or giving effect to any out-of-court settlement;
- (d) creating awareness through the provision of legal information and law-related education; and
- (e) recommending law reform and undertaking advocacy work on behalf of the community;

“legal aid clinic” means a law clinic accredited by the Service;

“Legal Aid Guide” means the Guide referred to in section 85;

“legal aid provider” means—

- (a) an advocate operating under the pro bono programme of the Law Society of Kenya or any other civil society organization or public benefit organization;
- (b) a paralegal;
- (c) a firm of advocates;
- (d) a public benefit organization or faith based organization;
- (e) a university or other institution operating legal aid clinics; or
- (f) a government agency, accredited under this Act to provide legal aid.

“marginalized group” has the meaning assigned to it under Article 260 of the Constitution;

“maximum grant” means the maximum amount of legal aid granted under a grant of legal aid;

“paralegal” means a person employed by the Service or an accredited legal aid provider who has completed a training course in the relevant field of study in an institution approved by the Council of Legal Education;

“public benefit organization” means a public benefit organization registered under Public Benefit Organizations Act;

“proceeds of proceedings”, in relation to civil proceedings for which legal aid has been granted, means— No.19 of 1990

- (a) any money or property to which the aided person is entitled under a judgment or out-of-court settlement relating to the proceeding; and
- (b) any costs awarded or payable to the aided person under a judgment or out-of-court settlement relating to the proceedings;

“register of accredited legal aid providers” means the register of persons accredited by the Service under section 60 to provide legal aid services under this Act; No. 18 of 2013

“Service” means the National Legal Aid Service established under section 5.

3. The object of this Act is to establish a legal and institutional framework to promote access to justice by— Object of Act.

- (a) providing affordable, accessible, sustainable, credible and accountable legal aid services to indigent persons in Kenya in accordance with the Constitution;
- (b) providing a legal aid scheme to assist indigent persons to access legal aid;
- (c) promoting legal awareness;
- (d) supporting community legal services by funding justice advisory centres, education, and research; and
- (e) promoting alternative dispute resolution methods that enhance access to justice in accordance with the Constitution.

4. In the performance of the functions and the exercise of the powers conferred on the Service under this Act, the Service shall be guided by— Guiding Principles.

- (a) the national values and principles of governance set out in Article 10 of the Constitution;
- (b) the values and principles of the public service set out in Article 232 of the Constitution;
- (c) the principles of impartiality, gender equality and gender equity;
- (d) the principles of inclusiveness, non-discrimination and protection of marginalized groups;
- (e) the rules of natural justice; and
- (f) the provisions of any treaty or convention ratified by Kenya, relating to the provision of legal aid.

PART II—THE NATIONAL LEGAL AID SERVICE

5. (1) There is established a service to be known as the National Legal Aid Service. Establishment of the National Legal Aid Service.

(2) The Service shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name be capable of—

- (a) suing and being sued;
- (b) acquiring, holding, charging or disposing of movable and immovable property; and
- (c) doing or performing all such things or acts for the proper discharge of its functions under this Act, which may be lawfully performed by a body corporate.

(3) The Service shall be the successor to the National Legal Aid and Awareness Program existing immediately before the coming into force of this Act.

6. (1) The Headquarters of the Service shall be in the capital city but the Service may establish offices at any place in Kenya. Headquarters

(2) The Service shall ensure access to its services in all parts of the Republic in accordance with Article 6(3) of the Constitution.

7. (1) The functions of the Service shall be to— Functions of the Service.

- (a) establish and administer a national legal aid scheme that is affordable, accessible, sustainable, credible and accountable;
- (b) advise the Cabinet Secretary on matters relating to legal aid in Kenya;
- (c) encourage and facilitate the settlement of disputes through alternative dispute resolution;
- (d) undertake and promote research in the field of legal aid, and access to justice with special reference to the need for legal aid services among indigent persons and marginalized groups;
- (e) take necessary steps to promote public interest litigation with regard to consumer protection, environmental protection and any other matter of special concern to the marginalized groups;
- (f) provide grants in aid for specific schemes to various voluntary social service institutions, for the implementation of legal aid services under this Act;
- (g) develop and issue guidelines and standards for the establishment of legal aid schemes by Non-Governmental Agencies;

- (h) in consultation with the Council of Legal Education, develop programs for legal aid education and the training and certification of paralegals;
 - (i) promote, and supervise the establishment and working of legal aid services in universities, colleges and other institutions;
 - (j) promote the use of alternative dispute resolution methods;
 - (k) take appropriate measures to promote legal literacy and legal awareness among the public and in particular, educate vulnerable sections of the society on their rights and duties under the Constitution and other laws;
 - (l) facilitate the representation of persons granted legal aid under this Act;
 - (m) assign legal aid providers to persons granted legal aid under this Act;
 - (n) establish, co-ordinate, monitor and evaluate justice advisory centres;
 - (o) co-ordinate, monitor and evaluate paralegals and other legal service provider sand give general directions for the proper implementation of legal aid programs;
 - (p) administer and manage the Legal Aid Fund; and
 - (q) perform such other functions as may be assigned to it under this Act or any other written law.
- (2) The Service shall issue guidelines specifying matters or classes of matters relating to the provision of legal aid.

8. The Service shall have all powers incidental to and necessary for the effective discharge of its functions under this Act and any other written law.

Powers of the Service.

PART III—ADMINISTRATION

9. (1) The Service shall be governed by a board which shall consist of—

Establishment of Board of Service.

- (a) a person appointed by the President, who shall be the chairperson;

- (b) a judge of the High Court nominated by the Chief Justice;
 - (c) the Principal Secretary in the Ministry for the time being responsible for matters relating to legal aid;
 - (d) the Principal Secretary in the Ministry for the time being responsible for matters relating to finance;
 - (e) the Principal Secretary in the Ministry for the time being responsible for the interior and co-ordination of National Government;
 - (f) the Attorney-General or his representative;
 - (g) the Director of Public Prosecutions or his representative;
 - (h) one person nominated by the Law Society of Kenya;
 - (i) one person nominated by the Kenya National Commission on Human Rights;
 - (j) one person nominated by the public universities that have established legal aid clinics;
 - (k) one person nominated by the Public Benefit Organisations Board to represent public benefit organizations operating in the fields of legal aid and marginalization;
 - (l) one person nominated by a forum comprising registered paralegal organizations;
 - (m) one person nominated by the National Council of Persons with Disabilities;
 - (n) one person nominated by the joint forum of the religious organizations specified in subsection (2); and
 - (o) the Director.
- (2) The joint forum of religious organizations referred to in subsection (1) shall consist of representatives of—
- (a) the Supreme Council of Kenya Muslims;
 - (b) the Kenya Episcopal Conference;
 - (c) the National Council of Churches of Kenya;

- (d) the Evangelical Fellowship of Kenya; and
- (e) the Hindu Council of Kenya.

(3) Each nominating body under sub-section 1(f) to (l) shall submit the names of three nominees to the Cabinet Secretary.

(4) The nomination of board members shall take into account the principles of equality and non-discrimination, regional balance and gender parity.

(5) A person shall be qualified for appointment as a member of the Board if such a person is—

- (a) a citizen of Kenya; and
- (b) meets the requirement of Chapter Six of the Constitution.

(6) A person shall not be qualified for appointment as a member of the Board if such person—

- (a) is a member of a governing body of a political party or an employee of a political party;
- (b) is an un-discharged bankrupt;
- (c) has been convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
- (d) has been removed from office for contravening the provisions of the Constitution or any other written law.

(7) Members of the Board shall be appointed by the Cabinet Secretary from a list of nominees submitted under subsection (3).

(8) The Board shall, at its first meeting elect the vice-chairperson of the Board from among its members.

(9) The chairperson and the vice-chairperson of the Board shall be of the opposite gender.

10. The Board shall—

- (a) formulate and review the policies of the Service;
- (b) ensure that the Service performs its functions;
- (c) monitor and evaluate the performance of the Service;

Functions of the Board.

- (d) appoint, train, discipline and remove members of staff of the Service;
- (e) accredit and enter into cooperation agreements with legal aid providers;
- (f) set and monitor standards for the establishment and operations of legal aid schemes;
- (g) establish departments within the Service and allocate responsibilities to such departments; and
- (h) perform such other functions as prescribed by this Act or any other written law.

11. The Board shall have all powers necessary for the proper performance of its functions under this Act and in particular, but without prejudice to the generality of the foregoing, the Board shall have power to— Powers of the Board.

- (a) control, supervise and administer the assets of the Service in such manner as best promotes the purposes for which the Service is established;
- (b) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Board;
- (c) receive any grants, gifts, donations or endowments and make legitimate disbursements there from;
- (d) enter into association with such other bodies or organizations within or outside Kenya as it may consider desirable or appropriate and in furtherance of the purposes for which the Service is established;
- (e) open a banking account or banking accounts for the funds of the Service; and
- (f) invest any of its funds not immediately required for its purposes in the manner provided in section 33.

12. (1) The chairperson of the Board appointed under section 9(1) (a) shall be appointed for a single term of six years and shall not be eligible for re-appointment. Tenure of Office.

(2) A member of the Board, other than a member under section 9(1) (c), (d), (e), (f) and (g), shall be appointed for a single term of five years and shall not be eligible for re-appointment.

(3) The chairperson and members of the Board shall serve on a part-time basis.

(4) The office of the chairperson or a member shall become vacant if the holder—

- (a) dies;
- (b) ceases to be a member of the nominating body under section 9 (1);
- (c) is absent from three consecutive meetings of the Board without reasonable cause;
- (d) resigns from office by notice in writing addressed to the Cabinet Secretary;
- (e) is unable to perform the functions of the office arising out of physical or mental infirmity;
- (f) is negligent or incompetent in the performance of his or her functions;
- (g) is adjudged or otherwise declared bankrupt under any law in force in Kenya;
- (h) violates Chapter Six of the Constitution; or
- (i) is convicted of a criminal offence and sentenced to imprisonment for a term of not less than six months.

(5) The Cabinet Secretary shall—

- (a) notify every vacancy in the Gazette within fourteen days of the occurrence of the vacancy;
- (b) invite nomination of a replacement by the nominating bodies within fourteen days from the date of the Gazette Notice referred to in paragraph (a); and
- (c) appoint a new member to fill the vacancy within seven days from the date of receipt of the nominations under paragraph (b).

13. (1) Where a vacancy occurs in the membership of the Board under section 12(4), the Cabinet Secretary shall appoint a new member in accordance with the provisions of this Act. Filling of vacancy.

(2) An appointment to fill a vacancy shall be for the remainder of the term of the member being replaced and the new member shall be eligible for reappointment.

14. The validity of any proceedings of the Board shall not be affected by any vacancy among its members or by any defect in the appointment of any member or by the fact that a person who was not entitled to do so took part in the proceedings of the Board.

Vacancy not to affect proceedings.

15. (1) The business and affairs of the Board shall be conducted in accordance with the Schedule.

Procedures of the Board.

(2) Except as provided in the Schedule, the Board may regulate its own procedure.

(3) The Board may co-opt any person to attend its meetings but that person shall not vote at such meeting.

16. The chairperson, members of the Board and staff of the Service shall be paid such remuneration or allowances as the Public Service Commission may, on the advice of the Salaries and Remuneration Commission, determine.

Remuneration of members.

17. (1) The Board may, in the performance of its functions under this Act, constitute such committees of the Board as the Board may consider necessary for the efficient performance of its functions.

Committees of the Board.

(2) The Board may co-opt into the membership of a committee established under subsection (1) any person whose knowledge and skills are considered necessary for the effective discharge of the functions of the Board.

18. The Board may, by resolution either generally or in any particular case, delegate to any committee of the Board or to any member, officer, employee or agent of the board, the exercise of any of the powers or the performance of any of the functions or duties of the Board under this Act or under any other written law.

Delegation by the Board.

19. (1) The Board may engage the service of experts and consultants in respect of any of the functions of the Service.

Engagement of experts and consultants.

(2) An expert or consultant engaged under this section may be paid such fees and allowances as the Board may determine.

20. In the discharge of its functions under this Act, the Board shall coordinate with other governmental and non-governmental agencies and other persons or organizations engaged in the promotion of legal aid services and shall—

Co-ordination with other Agencies.

- (a) promote the establishment of legal aid schemes by governmental and non-governmental agencies; and
- (b) in consultation with the Cabinet Secretary responsible for matters relating to finance, recommend incentives, including tax rebates and waivers to persons and organizations that contribute to the Fund or otherwise support the provision of legal aid.

21. No matter or thing done by a member of the Board or any officer, employee or agent of the Board shall, if the matter or thing is done bona fide for executing the functions, powers or duties of the Board, render the member, officer, employee or agent or any person acting on his directions personally liable to any action, claim or demand whatsoever.

Protection from
Personal liability.

22. The provisions of section 15 shall not relieve the Board of the liability to pay compensation or damages to any person for an injury to him, his property or any of his interests caused by the exercise of the powers conferred on the Board by this Act or by any other written law or by the failure, whether wholly or partially, or any works.

Liability of the
Board for damages.

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

Independence of the
Board.

PART IV—MANAGEMENT AND STAFF OF THE SERVICE

24. (1) There shall be a Director of the Service who shall be recruited competitively by the Board and appointed by the Cabinet Secretary.

The Director.

(2) The Director shall be the Secretary to the Board.

(3) A person is qualified for appointment as the Director if such person—

- (a) is a citizen of Kenya;
- (b) has been an advocate of the High Court of Kenya for at least seven years and has experience in matters relating to legal aid;
- (c) has at least five years proven experience in management; and

(d) meets the requirements of Chapter Six of the Constitution.

(4) The Director shall be the Chief Executive Officer of the Service and shall—

(a) be responsible for—

- (i) implementing the decisions of the Board;
- (ii) the day-to-day administration and management and the control of the other staff of the Service; and
- (iii) the arrangement of business, recording and keeping of the minutes of the Board and such other records as the Board may direct;

(b) subject to the general or special direction of the Board, manage and disburse funds from the Legal Aid Fund for the purposes of this Act; and

(c) perform such other functions as may be assigned by the Board.

(5) The Director shall be an ex-officio member of the Board with no right to vote at any meeting of the Board.

(6) The Director shall hold office for a term of five years but shall be eligible for re-appointment for one further term of five years.

25. (1) The Director may be removed from office by the Board only for— Removal of Director.

- (a) inability to perform the functions of the office of director arising out of physical or mental incapacity;
- (b) gross misconduct or misbehaviour;
- (c) incompetence or neglect of duty;
- (d) violation of the Constitution; or
- (e) any other ground that would justify removal from office under the terms and conditions of service of office.

(2) The Board shall, before removing the Director under subsection (1) —

(a) inform the Director in writing of the reasons for the intended removal;

- (b) give the Director an opportunity to be heard in accordance with the principle of fair administrative action prescribed under Article 47 of the Constitution.

26. The Director may, with the approval of the Board, delegate in writing any of his or her powers or functions under this Act or any other written law to any other officer or member of staff on the terms specified in the instrument of delegation. Delegation powers of Director.

27. (1) There shall be a secretariat of the Service which shall provide administrative, secretarial and other assistance to the Service. Staff of the Service.

(2) The secretariat shall comprise of—

- (a) such professional, technical and administrative officers and support staff as may be appointed by the Board in the discharge of its functions; and
- (b) such public officers as may be seconded by the Public Service Commission upon the request of the Service.

(3) The members of staff of the Service shall be paid such remuneration or allowances as the Board may, in consultation with the Public Service Commission, determine.

28. (1) The common seal of the Service shall be kept in such custody as the Board shall direct and shall not be used except on the order of the Board. Common seal of the Service.

(2) The affixing of the common seal shall be authenticated by the chairperson or any other person authorized by a resolution of the Board.

(3) The common seal of the Service shall, when affixed to a document and duly authenticated, be judicially and officially noticed and unless the contrary is proved, any necessary order or authorization of the Board under this section shall be presumed to have been duly given.

PART V—THE LEGAL AID FUND

29. (1) There is established a fund, to be known as the Legal Aid Fund, which shall vest in and be managed by the Service. Establishment of Legal Aid Fund.

- (2) The Fund shall consist of—
- (a) moneys allocated by Parliament for the purposes of the Service;
 - (b) any grants, gifts, donations, loans or other endowments given to the Service;
 - (c) such funds as may vest in or accrue to the Service in the course of the exercise of its powers or the performance of its functions under this Act; and
 - (d) moneys from any other lawful source accruing to the Fund.

(3) The Service shall open and maintain such bank accounts as are necessary into which shall be paid monies payable to the Fund.

30. The Service may use the moneys of the Fund to— Application of the Fund.

- (a) defray the expenses incurred in the representation of persons granted legal aid in accordance with this Act;
- (b) pay the remuneration of legal aid providers for services provided in accordance with this Act;
- (c) meet the expenses incurred by legal aid providers in providing services under this Act; and
- (d) meet the expenses of the operations of the Service as approved by the Board.

31. The financial year of the Fund shall be the period Financial Year. of twelve months commencing on the first of July and ending on the thirtieth June of the subsequent year.

32. (1) At least three months before the Annual Estimates. commencement of each financial year the Board shall cause to be prepared estimates of the revenue and expenditure of the Service for that financial year.

(2) The annual estimates shall make provision for all estimated expenditure of the Service for the financial year concerned, and in particular shall provide for—

- (a) the expenses stipulated in section 30;
- (b) the payment of salaries, allowances and other charges in respect of the members of the Board and staff of the Service;

- (c) the payment of pensions, gratuities and other charges in respect of benefits which are payable out of the funds of the Service;
- (d) the proper maintenance of the buildings and grounds of the Service;
- (e) the maintenance, repair and replacement of the equipment and other property of the Service;
- (f) the funding of training, research and development activities of the Service;
- (g) the creation of such funds to meet future or contingent liabilities in respect of benefits, insurance or replacement of buildings or installations, equipment and in respect of such other matters as the Service may think fit; and
- (h) any other expenditure necessary for the purposes of this Act.

(3) The annual estimates shall be approved by the Board of the Service before the commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary for approval and after the Cabinet Secretary's approval, the Service shall not increase the annual estimates without the consent of the Cabinet Secretary.

33. (1) The Service may, subject to the approval of the Cabinet Secretary for the time being responsible for matters relating to finance, invest any funds not immediately required for its purposes, as it may determine. Investment of funds.

(2) The Board may place or deposit with such bank or banks as it may determine any money not immediately required for the purposes of the Board.

34. (1) The Board shall cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities of the Service. Accounts and Audit.

(2) Within a period of three months after the end of each financial year, the Service shall submit to the Auditor-General the accounts of the Service in respect of that year together with a—

- (a) statement of the income and expenditure of the Service during that year; and

(b) statement of the assets and liabilities of the Service on the last day of that financial year.

(3) The annual accounts of the Service shall be prepared, audited and reported upon in accordance with the provisions the Article 226 and 229 of the Constitution and the law relating to public audit.

PART VI—LEGAL AID SERVICES

35. (1) The Service shall provide legal aid services at the expense of the State to persons who qualify for legal aid services under this Act. General principles of legal aid.

(2) The Service shall provide legal aid services in—

- (a) civil matters;
- (b) criminal matters;
- (c) constitutional matters;
- (d) matters of public interest; or
- (e) any other type of case or type of law that the Service may approve.

(3) Despite subsection (2), the Service shall—

- (a) determine the legal needs of indigent persons and of disadvantaged communities in Kenya;
- (b) establish priorities for the areas of law, types of proceedings for which it will provide legal aid services; and
- (c) formulate policies for the kind of legal aid services to be provided in the different areas of law, types of cases and types of proceedings.

(4) The Service shall establish and administer a cost effective and efficient system for providing high quality legal services within the financial resources available to the Service.

(5) Except as is otherwise provided under this Act—

- (a) the assistance or representation through legal aid shall not affect the relationship between the rights of an advocate and a client or any privilege arising out of such relationship; and
- (b) the rights conferred by this Act on an aided person shall not affect the rights or liabilities of any other

parties to any proceedings or the principles on which the discretion of any court is normally exercised.

36. (1) A person is eligible to receive legal aid services if that person is indigent, resident in Kenya and is—

Persons eligible for legal aid.

No.13 of 2006

- (a) a citizen of Kenya
- (b) a child;
- (c) a refugee under the Refugees Act;
- (d) a victim of human trafficking; or
- (e) an internally displaced person; or
- (f) a stateless person.

(2) A person who is eligible to receive legal aid services under subsection (1) shall apply to the Service in the prescribed manner.

(3) A person shall not receive legal aid services unless the Service has determined that the individual's financial resources are such that the person is eligible for the services.

(4) Despite subsections (1), (2) and (3), the Service shall not provide legal aid services to a person unless the Service is satisfied that—

- (a) the cost of the proceedings is justifiable in the light of the expected benefits;
- (b) resources are available to meet the cost of the legal aid services sought;
- (c) it is appropriate to offer the services having regard to the present and future demands;
- (d) the nature, seriousness and importance of the proceedings to the individual justify such expense;
- (e) the claim in respect of which legal aid is sought has a probability of success;
- (f) the conduct of the person warrants such assistance;
- (g) the proceedings relate to a matter that is of public interest;
- (h) the proceedings are likely to occasion the loss of any right or the person may suffer damages;

- (i) the proceedings may involve expert cross-examination of witnesses or other complexity;
- (j) it is in the interest of a third party that the person be represented;
- (k) denial of legal aid would result in substantial injustice to the applicant; or
- (l) there exists any other reasonable ground to justify the grant of legal aid.

37. The Service shall not provide legal aid services in respect of civil proceedings—

Legal aid not available in certain civil matters.

- (a) to a company, corporation, trust, public institution, civil society, Non-Governmental Organization or other artificial person;
- (b) in matters relating to tax;
- (c) in non-justifiable matters;
- (d) in matters relating to the recovery of debts;
- (e) in bankruptcy and insolvency proceedings;
- (f) in defamation proceedings; and
- (g) in which a company, civil society or non-governmental organization or other artificial person is a plaintiff in the proceedings.

38. (1) The Service may grant legal aid to an applicant in a matter in which more than one person is a party with the same interest and the applicant is entitled to sue or has been sued on behalf of all those persons.

Several parties to a suit.

(2) The Service shall not grant legal aid under subsection (1) if the Service is satisfied that the rights of the applicant would not be seriously prejudiced or it would be proper for the other persons having the same interest to pay for the proceedings.

(3) Except in the case of public interest matters, if an applicant has the right to be joined with others as a plaintiff in one action because a common question of law or fact arises, the Service may grant legal aid to the applicant that is limited to the proceedings necessary to preserve the applicant's right to relief.

39. (1) The Service may, where it deems it necessary, recommend an aided person to alternative forms of dispute resolution and may for that purpose, provide the aided person with such services at the expense of the Service.

Alternative dispute resolution.

(2) An alternative dispute resolution service may be provided by—

- (a) an employee of the Service; or
- (b) a person or institution with expertise in the area of alternative dispute resolution that is engaged by the Service specifically to conduct an alternative dispute resolution programme.

PART VII— APPLICATION FOR LEGAL AID

40. (1) A person who wishes to receive legal aid, shall apply to the Service in the prescribed manner.

Application for legal aid.

(2) Where a person wishes to apply for legal aid the person shall apply before the final determination of the matter by a court, tribunal or any other forum to which the application relates.

(3) An application under subsection (1) shall be assessed, with respect to the applicants' eligibility for legal aid services in accordance with the prescribed procedures.

(4) A person who provides false information in the application under subsection (1) commits an offence.

41. An application for legal aid may be made by—

Persons who may apply for legal aid.

- (a) the applicant in person;
- (b) any other person authorized by the applicant;
- (c) any person or organization—
 - (i) authorized by the applicant, on behalf of the applicant; or
 - (ii) on behalf of the applicant where the authority of the applicant cannot be reasonably obtained.

42. (1) The officer-in-charge of a prison, police station or other place of lawful custody shall—

Persons in lawful custody.

- (a) ensure that every person held in custody, is informed, in language that the person understands, of the availability of legal aid on being admitted to custody and is asked whether he or she desires to seek legal aid;

- (b) maintain a register in which shall be entered the name of every person held there and the response of each such person when asked if he or she desires to seek legal aid;
- (c) provide to each person who so requests, free of charge, a legal aid application form; and
- (d) ensure that a legal aid application form is properly completed by a person in their custody wishing to apply for legal aid and shall inform the Service of the application within twenty-four hours of the making of the application.

(2) A person who willfully obstructs a person held in lawful custody from making an application for legal aid commits an offence.

43. (1) A court before which an unrepresented accused person is presented shall— Duties of the Court.

- (a) promptly inform the accused of his or her right to legal representation;
- (b) if substantial injustice is likely to result, promptly in form the accused of the right to have an advocate assigned to him or her; and
- (c) inform the Service to provide legal aid to the accused person.

(2) The Service shall provide legal aid to the accused person in accordance with this Act.

(3) Where a child is brought before a court in proceedings under the Children Act or any other written law, the court may where the child is unrepresented, order the Service to provide legal representation for the child.

(4) Where an accused person is brought before the court and is charged with an offence punishable by death, the court may, where the accused is unrepresented, order the Service to provide legal representation for the accused.

(5) The provision of legal representation under subsection (4) shall be subject to the criteria for eligibility for legal aid under this Act.

44. (1) On an application for legal aid, the Service may, in respect of the whole or any part of a matter, proceedings or appeal— Decision on application for Legal Aid.

- (a) grant legal aid to the applicant subject to such terms and conditions as the Service considers appropriate;
- (b) grant legal aid to the applicant on an interim basis pending further consideration of the application; or
- (c) refuse to grant legal aid to the applicant.

(2) Where the Service grants legal aid to an applicant under this Act, the Service shall specify—

- (a) the conditions, if any, attaching to the grant;
- (b) the name of the accredited legal aid provider assigned to the aided person; and
- (c) may specify a maximum grant.

(3) The Service shall make a decision on every application for legal aid without undue delay but not later than fourteen days from the date of receipt, by the Service, of such application.

(4) The decision of the Service shall be in writing and shall specify—

- (a) the conditions, if any, attaching to the grant of legal aid;
- (b) the matter for which the legal aid is granted or not granted;
- (c) the date on which the grant of legal aid takes effect;
- (d) the benefits included in the grant of legal aid;
- (e) the possible deductible amount from the grant to the aided person; and
- (f) the name of the legal aid provider assigned to the aided person.

(5) The Service may specify the maximum grant of legal aid awarded to an aided person.

(6) The decision of the Service shall be communicated to the applicant within seven days of the decision.

(7) The conditions referred to in subsection (4)(a) shall specify the amount, if any, that shall be payable by the applicant to the Service on account of costs recovered by

the applicant in the proceedings in respect of which legal aid was provided.

(8) Where the Service grants legal aid the Service shall issue a certificate of grant of legal aid to a successful applicant and shall send a copy of the certificate to the designated legal aid provider.

(9) Where the Service does not grant legal aid to an applicant, the Service shall send a written notice to the applicant stating—

- (a) the reasons for refusal to grant legal aid; and
- (b) the right to seek review of the decision of the Service and of appeal to the High Court.

45. (1) Where a party to civil proceedings is granted legal aid, the legal aid provider under the grant shall immediately give notice of that fact to every other party to the proceedings, and to the Registrar of the relevant court. Notification of other parties

(2) If any other person subsequently becomes a party to the proceedings, the legal aid provider shall give notice to the new party.

(3) If the grant of legal aid is withdrawn, the legal aid provider under the grant shall immediately notify all parties to the proceedings and the Registrar of the relevant court, of that fact.

46. (1) An applicant for legal aid, an aided person or a person acting for an aided person shall notify the Service of— Notification of change in circumstances.

- (a) any increase in the income or disposable capital of the applicant by an amount that may affect the aided person's eligibility for legal aid; and
- (b) any change in the address of the applicant, aided person or of the person acting for the aided person.

(2) For the purposes of subsection (1), an aided person is deemed to have waived any legal professional privilege that might otherwise prevent a person acting for the aided person from complying with that subsection.

(3) Where an aided person or person acting for an aided person fails to give information under subsection(1) (a), the Service—

- (a) shall cancel the certificate issued under section 44(8) and cease to provide legal aid services to the aided person;
- (b) may declare that, with respect to part of the legal aid services rendered, the aided person is not entitled to legal aid services; and
- (c) may recover from the aided person the amount that it has paid or is obligated to pay to the legal aid provider.

(4) Where an advocate or legal aid service provider knowingly fails to give information under subsection (1)(a), the Service shall, with respect to part or all of the legal aid services declare that the advocate, or service provider is not entitled to payment by the Service and, if any payment has already been made for such services, the Service shall recover the amount it has paid for services rendered after the date of the failure to discharge the obligation.

47. The Service may require an aided person to provide up-to-date information about the person's financial means if the Service requires the information to make any decision under this Act. Financial information.

48. (1) The Service may where it is satisfied that there is sufficient reason to vary its decision, vary a decision to provide legal aid services to a person under this Act at any time in order to— Variation of a decision to provide legal aid

- (a) terminate the provision of legal aid services;
- (b) alter the nature or extent of the legal aid services, including the variation of a decision relating to the person or persons who will provide the legal aid services;
- (c) make the provision of legal aid services subject to conditions; or
- (d) alter a condition to which the provision of legal aid services is subject.

(2) The Service shall issue a notice of the decision under subsection (1) to the aided person within thirty days of the decision.

49. (1) Where a decision has been made in relation to an application for legal aid, the aided person may apply to the Service for a review of the grant of legal aid in the prescribed manner. Application for review of grant of legal aid by aided person.

(2) On an application under sub-section (1) the Service may review any decision in relation to any of the following—

- (a) any conditions imposed on a grant of legal aid;
- (b) the suspension or cancellation of the accreditation of a legal aid provider;
- (c) any amount payable by the applicant, under a grant of legal aid;
- (d) the appointment of any legal aid provider in a grant of legal aid;
- (e) the maximum grant; or
- (f) the withdrawal of, or variation of the terms or conditions on which legal aid is granted.

(3) The Service, may after considering an application for review of the grant—

- (a) reject the application for review;
- (b) vary the terms on which the grant was made; or
- (c) review its decision to grant legal aid.

50. Any legal aid provider appointed by the Service who is aggrieved by a decision of the Service in respect of an amount payable by the Service to the legal aid provider may apply to the Service to review its decision. Application for review by a legal aid provider.

51. (1) The Service may review a decision to grant legal aid where—

- (a) the conditions on which legal aid was granted have substantially changed; or
- (b) the aided person has for any reason ceased to be eligible for legal aid.

(2) The Service shall send a written notice of its decision to the aided person and the designated legal aid provider within seven days of such decision.

(3) The Service shall not be liable for any costs incurred by the aided person and the legal aid provider, subsequent to service upon them of the notice specified in subsection (2).

(4) Where an aided person is no longer entitled to legal aid, any service by a legal aid provider subsequent to cessation of legal aid shall not be the responsibility of the Service.

52. (1) Where the Service decides to withdraw legal aid provided to an aided person the Service shall, as soon as is practicable send a written notice to the aided person and the legal aid provider of—

Review of decision of the Service.

- (a) the intention to withdraw legal aid;
- (b) the reasons for the decision to withdraw legal aid; and
- (c) the right of the aided person to seek a review of the decision.

(2) An aided person or a legal aid provider who is served a notice pursuant to subsection (1) may, within fourteen days of receipt of the notice, submit a written statement of objection to the intended withdrawal to the Service.

(3) The Service shall, within fourteen days of receipt of the statement of objection specified in subsection (2) notify the aided person or legal aid provider of its final decision.

(4) Where a grant of legal aid is withdrawn, the Service shall immediately notify the aided person and the legal aid provider of the date on which the withdrawal takes effect.

53. (1) The withdrawal of legal aid does not affect—

Consequences of withdrawal of legal aid.

- (a) obligations of the aided person arising out of the conditions of the grant;
- (b) the rights of the Service to enforce the obligations arising out of the conditions of the grant; or
- (c) the obligations of the Service to pay for services provided under the grant before the date of withdrawal.

(2) If legal aid is withdrawn in respect of an aided person, the legal aid provider has the right to recover from the aided person the difference between the amount paid or payable by the Service under this Act and the full amount of that legal aid provider's fees and disbursements.

(3) For the purposes of subsection (2), the amount payable by the Service shall be for services rendered by the legal aid provider prior to the receipt of notice of withdrawal.

54. (1) An aided person may apply to the Service to terminate the services of a designated legal aid provider for good cause and the Service shall appoint another legal aid provider to represent the aided person.

(2) The Service shall give written notice of any application made under subsection (1) to the legal aid provider whose services are to be terminated within seven days of receipt of such application.

(3) The legal aid provider may make representations on his own behalf in response to the application of the aided person.

(4) In determining an application for termination of the services of a designated legal aid provider, the Service shall be guided by the principles of fair administrative action set out in Article 47 of the Constitution.

(5) A legal aid provider whose services are terminated under this section shall be entitled to payment for services rendered at the request of the Service, prior to the date of termination.

55. An applicant, an aided person or a legal aid provider who is aggrieved by a decision of the Service may appeal to the High Court within thirty days of the decision. Appeal to High Court.

PART VIII—ACCREDITATION OF LEGAL AID PROVIDERS

56. A person or organization shall not provide legal aid services under this Act unless that person or organization is accredited to provide those services. Provision of Legal Aid.

57. (1) The Service shall develop and adopt accreditation criteria for determining when a person or institution may be approved to provide legal aid services as specified in the Regulations. Accreditation criteria

(2) In developing accreditation criteria, the Service shall consult with the Law Society of Kenya, the Attorney-General, the Cabinet Secretary, the Director of Public Prosecutions, public benefit organizations, faith based

organizations and any other person that the Service considers necessary.

58. (1) A person or organization wishing to provide legal aid services shall apply to the Service for accreditation in the prescribed manner. Application for accreditation

(2) A person who or an organization which—

- (a) gives false information in an application for accreditation;
- (b) purports to provide legal aid services under this Act as an accredited legal aid provider without accreditation,

commits an offence.

59. (1) The Service may accredit a person or an institution providing the services prescribed by the Service. Accreditation of legal aid providers.

(2) The Service may charge—

- (a) for accreditation; and
- (b) for monitoring the services provided by an accredited person or institution.

60. (1) The Service shall maintain a register of accredited legal aid providers containing— Register of accredited legal aid providers.

- (a) the personal details and contact addresses of all accredited legal aid providers;
- (b) in the case of a registered association or a public benefit organization, the nature of the association or organization and the particulars of its registration;
- (c) the nature of services in respect of which the legal aid providers are accredited;
- (d) the conditions, if any, attaching to the accreditation of legal aid providers; and
- (e) any other matter prescribed by regulations.

(2) The Service shall ensure that the register maintained under subsection (1)—

- (a) is publicized, placed or posted and made available for inspection at no charge by members of the public at police stations, courts, prisons and such

other public places as may be determined by the Service;

- (b) is available in electronic form or other accessible formats; and
- (c) is publicized, at such places as the Service shall determine.

61. (1) Except as may be expressly provided for by or under this Act, the fact that a legal aid provider provides services under this Act does not in any way affect that provider's obligations under any rules or codes of conduct of any professional or similar body to which that provider belongs, nor does it in any way affect their rights, obligations, responsibilities, or duties as a member of such body.

Obligations relating to professional conduct.

(2) The Service shall develop a code of conduct to apply to accredited legal aid providers.

(3) The code of conduct referred to under subsection (2) shall provide for—

- (a) the protection of the rights and interests of an aided person;
- (b) duties to the aided person, the Service, court or tribunal;
- (c) conflict of interest;
- (d) observance of confidentiality;
- (e) in the case of professionals, the duty to observe prescribed ethical standards of their respective professional bodies; and
- (f) probity and ethical conduct.

62. (1) No legal aid provider, agent or staff of the Service shall demand, request or receive payment from or in respect of an aided person, in relation to services rendered under this Act, unless such payment is authorized under this Act.

Unauthorized payments.

(2) Any person who demands, requests or receives the payment specified under subsection (1) commits an offence.

63. Except as otherwise authorized by the Service, an accredited legal aid provider shall pay all disbursements relating to a matter in which legal aid has been granted, but may claim for reimbursement of those costs. Legal aid disbursements.

64. (1) A legal aid provider shall— Protection of interests of the Service.

- (a) take all reasonable steps to protect the interests of the Service and the aided person; and
- (b) inform the Service if the legal aid provider is aware that the aided person has avoided, is avoiding, or is attempting to avoid making payments to the Service from proceeds of proceedings.

(2) If a person to whom subsection (1) applies fails to fulfill his or her duties under that subsection, the money that should have been paid to the Service or from proceeds of proceedings, may be deducted from any money owing, by the Service, to that person.

65. (1) A legal aid provider shall— Records, monitoring and evaluation.

- (a) keep proper records of activities undertaken on behalf of an aided person; and
- (b) provide legal services, as prescribed by the Service.

(2) The Service shall monitor and evaluate the activities and the quality of legal representation offered by a legal aid provider under sub-section (1).

66. (1) The Service may temporarily suspend any approved services in the accreditation of a registered legal aid provider for a specified period if the accredited legal aid provider— Suspension of accreditation.

- (a) is guilty of professional misconduct;
- (b) is in breach of the code of conduct prescribed under this Act, a code of conduct prescribed by the relevant professional body or under any other written law;
- (c) is convicted of an offence;
- (d) is subject to disciplinary procedures before the relevant professional body of which he or she is a member; or

- (e) fails to keep proper records of activities undertaken on behalf of an aided person or to provide legal services,

and the Service considers that this shall have an adverse effect on the interests of the aided person generally or in any particular case.

(2) The Service shall give written notice of its decision to suspend the accreditation of a legal aid provider within seven days of the suspension.

(3) A legal aid provider whose accreditation is suspended shall cease to provide the relevant service, and the Service shall not be liable to pay for any service rendered to an aided person after the date on which the suspension takes effect.

(4) A legal aid provider whose accreditation is suspended may request the Service to review its decision within fourteen days of receipt of the notice of suspension.

(5) The Service shall, within twenty eight days of receipt of the request specified in sub-section (4) notify the aided person or legal aid provider of its decision.

67. (1) The Service may cancel the accreditation of a legal aid provider on any of the following grounds— Cancellation of accreditation

- (a) the Service is satisfied that the accreditation was obtained by mistake, fraud, undue influence or misrepresentation;
- (b) the legal aid provider—
 - (i) does not meet the accreditation criteria, whether or not that criteria was adopted before or after the accreditation was given;
 - (ii) is not providing, or has not provided, the service for which they are accredited to the prescribed standard;
 - (iii) has been adjudged bankrupt, is insolvent or has entered into an arrangement with his or her creditors;
 - (iv) has failed to comply with one or more of the conditions of the accreditation; or
 - (v) is convicted of an integrity related offence which touches on his or her integrity,

accountability, or is subject to an order made under the relevant body.

(2) The Service shall give written notice of its decision to cancel the accreditation of a legal aid provider under subsection (1) to the legal aid provider within seven days of the cancellation.

(3) A legal aid provider whose accreditation is cancelled shall cease to provide the relevant service, and the Service shall not pay for any services provided after the date on which the cancellation takes effect.

(4) A legal aid provider whose accreditation is cancelled may request the Service to review its decision within fourteen days of receipt of the notice of cancellation.

68. (1) An accredited paralegal employed by the Service, or an accredited body may provide legal advice and assistance in accordance with this Act. Legal advice and assistance by Paralegals.

(2) An accredited paralegal shall not demand payment of a fee from a person who qualifies for legal aid under this Act.

(3) An accredited paralegal who demands payment of a fee as specified under subsection (2) commits an offence.

69. (1) Where a complainant or an accused person appears in a court in a jurisdiction where no legal aid provider is available, the court may allow an intermediary to assist such complainant or accused person to communicate with the court. Assistance by an intermediary.

(2) An intermediary shall not charge a fee for his or her services.

(3) An intermediary who charges a fee for services rendered under subsections (1) and (2) commits an offence.

PART IX—ENFORCEMENT OF CONDITIONS OF GRANT OF LEGAL AID

70. (1) An aided person who receives legal aid shall— Terms of provision of funded services.

- (a) pay a fee of such amount as may be determined by the Service;
- (b) if the financial resources of the aided person are, or relevant conduct is, such as to make the aided person liable to do so, pay the cost of the services

or make a contribution in respect of the cost of the services of such amount as may be prescribed; or

- (c) if the services relate to a dispute and the aided person has agreed to make a payment (which may exceed the cost of the services) only in specified circumstances, make in those circumstances a payment of the amount agreed or determined in the manner agreed by the aided person.

(2) For purposes of this section, “relevant conduct” means conduct in connection with the services, an application for funding or any proceedings in relation to which they are provided.

71. (1) Where the Service or an advocate who is accredited under section 59 (1) has assisted an aided person who has been awarded costs in any proceedings, the aided person is deemed to have surrendered the costs to the Service, and the Service shall be entitled to such costs.

Recovery of costs and benefits.

72. A legal aid provider shall take the steps necessary to enforce a judgment or an out-of-court settlement in order to recover the proceeds of proceedings.

Enforcement of judgment.

PART X—AWARD OF COSTS IN CIVIL PROCEEDINGS

73. (1) If an aided person receives legal aid for civil proceedings and loses the case, the court shall not award an order of costs against the aided person, unless there are exceptional circumstances.

Liability of aided person for costs

(2) In determining whether there are exceptional circumstances under subsection (1), the court may take into account any of the following conduct by the aided person—

- (a) conduct that causes the other party to incur unnecessary costs;
- (b) misleading or deceitful conduct;
- (c) unreasonable pursuit of one or more issues on which the aided person fails;
- (d) unreasonable refusal to negotiate a settlement or participate in alternative dispute resolution; or
- (e) other conduct that abuses the processes of the court.

74. If an order is made under section 73 specifying that a aided person is liable for costs, the Service shall not be liable for the payment of such costs.

Costs against an aided person.

75. (1) Unless there are exceptional circumstances, an aided person shall not be required to provide security for costs during litigation or appeal proceedings.

Aided person not required to provide security for costs.

(2) An order for security of costs made in any proceedings against any person to whom legal aid services are rendered under this Act shall not be enforceable against the Service or any accredited legal aid provider.

PART XI—PAYMENT FOR LEGAL AID SERVICES

76. (1) The Service shall, in consultation with relevant professional bodies, determine the scales of fees payable to legal aid providers contracted by the Service in the performance of its functions under this Act.

Fees payable.

(2) In determining the scales of fees payable under this Act, the Service shall take into account—

- (a) sustainability of the legal aid scheme;
- (b) reasonableness; and
- (c) accessibility of legal aid services.

(3) Notwithstanding the provisions of subsection (1), the Service may, in exceptional circumstances, enter into an agreement with a legal aid provider to provide services under this Act on such terms as may be agreed between the legal aid provider and the Service.

77. A claim for payment in respect of legal aid under this Act shall be made by the legal aid provider to the Service in the prescribed manner and shall indicate—

Claim for payment by legal aid provider.

- (a) the fees claimed by, or the charges due to the legal aid provider;
- (b) the fees claimed by or the charges due to, any other provider who acted on the matter with the approval of the Service; and
- (c) the disbursements claimed by the legal aid provider and any other provider who represents the aided person, with the approval of the Service.

78. (1) Every claim, or part of a claim, shall be examined by the Service to ensure that the claim or part of a claim is in accordance with the approved rates and applicable agreement. Examination and audit of claims by legal aid providers.

(2) The Service may audit the quality and value of the services provided by the legal aid provider that have been, or may be, paid for by the Service.

(3) A legal aid provider who is subject to an examination or audit shall co-operate with the officer of the Service and, in particular shall ensure that the officer of the Service is at all reasonable times, given access to—

- (a) all documents under the control of the legal aid provider that relate to the claim under examination; or
- (b) matters for which the legal aid provider has claimed or may claim payment from the Service.

79. (1) The Service shall pay a legal aid provider in respect of every claim or part of a claim that the Service approves for payment. Service to pay approved claims.

(2) The Service shall not withhold payment of part of a claim on the ground that another part of the claim has been deferred for examination by the Service or has been declined by the Service.

80. (1) An aided person shall not be required to make any payment in connection with the provision of services, except where it is otherwise provided. Payment for services.

- (2) An aided person may be required to pay for—
- (a) the cost of services;
 - (b) a contribution in respect of the services;
 - (c) administration costs; and
 - (d) any other service provided to the aided person.

81. The Service shall refund any amount paid by an aided person to the Service where the amount paid by the aided person exceeds the amount the aided person is required to pay to the Service. Refund of excess payments.

82. (1) The Service may waive its right to recover a debt due to the Service by an aided person, if— Waiver of right to recover debts.

- (a) the enforcement of the debt would cause serious hardship to the aided person;
- (b) the cost of enforcing the debt is likely to exceed the debt sought to be recovered;
- (c) the Service considers that it would be just and equitable in the circumstances of the case to do so.

(2) The Service may at the request of an aided person make a decision under subsection (1) at any time.

(3) Where the Service waives its right to recover a debt, under sub-section (1), the Service shall give notice of the waiver to the debtor.

(4) The waiver of a debt does not affect the obligation of the Service to pay any person who provided legal services under the relevant grant of legal aid.

PART XII—MISCELLANEOUS PROVISIONS

83. Except for the purposes of this Act, no member of the Service or its employees or accredited legal aid providers shall disclose any information relating to an aided person obtained in the course of their duties.

Disclosure of information.

84. (1) The Service shall, not later than three months after the end of each financial year, submit to the Cabinet Secretary an annual report covering the activities and the operations of the Service under this Act during the immediately preceding year.

Annual report and other reports.

(2) The annual report of the Service shall contain, in respect of the year to which it relates—

- (a) the financial statements of the Service;
- (b) a description of the activities of the Service;
- (c) such other statistical information as the Board may consider appropriate relating to the functions of the Service;
- (d) the impact of the exercise of the mandate or functions of the Service;
- (e) the gender, regional and ethnic diversity in the Service;
- (f) the challenges, if any, faced in the implementation of the Act; and

(g) any other matter relating to the functions of the Service that the Board considers necessary.

(3) The Service shall publish and publicize the annual report in such manner as the Service may determine.

(4) The Cabinet Secretary shall, within one month after the receipt of the annual report submit the report to the National Assembly together with a statement of the views of the Cabinet Secretary on the performance of the Service during the year to which the report relates.

(5) The Service shall submit to the Cabinet Secretary any other report that the Cabinet Secretary may in writing, request.

85. The Service shall, at least once in every two years, prepare and publish a Legal Aid Guide detailing in simple language— Legal Aid Guide.

- (a) the provisions of this Act and other relevant legislation and regulations;
- (b) the policies and directives of the Service; and
- (c) the legal aid services available from the Service.

86. (1) A member of the Board or an employee of the Service who— Offences.

- (a) knowingly subverts the process of providing legal aid;
- (b) knowingly obstructs the Service in the discharge of its functions; or
- (c) otherwise interferes with the functions of the Service,

commits an offence.

(2) Any person who commits an offence under this Act for which no penalty is provided is liable on conviction to a fine not exceeding two hundred and fifty thousand shillings or to imprisonment for a term not exceeding one year or to both.

87. (1) The Cabinet Secretary may make Regulations generally for the better carrying into effect the provisions of this Act. Provisions on delegated powers.

(2) Notwithstanding the generality of subsection (1), the Regulations made under this Act may provide for—

- (a) the criteria for eligibility for legal aid;
- (b) the manner of engaging intermediaries to assist complainants or accused persons to communicate with the court;
- (c) the procedures for the provision of legal aid to persons detained at police stations, or in remand, prison or other places of lawful custody;
- (d) procedures and terms and conditions of accreditation of service providers;
- (e) the records to be kept by legal aid providers in relation to legal aid assignments and the reports to be submitted to the Service;
- (f) the manner of applying for legal aid under this Act;
- (g) the manner of assessing the financial resources of applicants and the eligibility of applicants for legal aid;
- (h) the amount or amounts payable by a aided person;
- (i) the method or methods for calculating what maximum grant, if any, should be set under a grant of legal aid in respect of proceedings ;
- (j) the manner in which applications for, and grants of, legal aid in respect of a child, and other persons with special requirements, are to be dealt with;
- (k) the class or classes of defendants to whom priority shall be given or for whom services may be limited;
- (l) the conditions relating to the delivery of services under any scheme;
- (m) the methods for calculating the cost of services;
- (n) the payment of interest in respect of costs of service;
- (o) the circumstances and terms of refusal, variation and withdrawal of legal aid
- (p) anything required to be prescribed under this Act; and
- (q) any other matters necessary for the administration of this Act.

88. (1) In any matter relating to legal aid, in the event of any conflict between the provisions of this Act and those of any other written law, the provisions of this Act shall prevail.

Supersession,
savings and
transitional
provisions.

(2) Until the Board is established, the National Legal Aid and Awareness Steering Committee appointed pursuant to Gazette Notice number 11598 of 2007 and in existence immediately before the coming into force of this Act shall continue to operate as if it were the Board under this Act.

(3) A case handled by a legal aid pilot existing immediately before the coming into force of this Act and which is not concluded shall continue and be concluded in such manner as the Service shall determine.

(4) Any asset, right or property held on behalf of a legal aid pilot in existence immediately before the coming into force of this Act shall be transferred to the Service.

(5) An obligation or liability subsisting against a legal aid pilot immediately before the coming into force of this Act shall, on the commencement of this Act, subsist against the Service.

(6) The Service shall be bound in all contracts including contracts of service, if any, subsisting at the commencement of this Act and to which the National Legal Aid and Awareness Programme was a party directly or through the State department responsible for legal aid.

SCHEDULE (s.15)

MEETING AND PROCEDURE OF THE BOARD

1. (1) The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

Meetings.

(2) Notwithstanding subparagraph (1), the chairperson may, and upon requisition in writing by at least five members shall, convene a special meeting of the Board at any time for the transaction of the business of the Board.

(3) Unless three-quarters of the members otherwise agree, at least seven days notice in writing of a meeting shall be given to every member.

(4) A meeting shall be presided over by the chairperson or in his or her absence by the vice-chairperson.

2. (1) If any person has a personal or fiduciary interest Conflict of interest. in any matter before the Board, and is present at a meeting of the Board or committee at which any matter is the subject of consideration, that person shall as soon as is practicable after the commencement of the meeting, declare such interest and shall not take part in any consideration or discussion of or vote on any question touching such matter.

(2) A disclosure of interest made under sub-paragraph 1 shall be recorded in the minutes of the meeting at which it is made.

(3) Any person who contravenes sub-paragraph 1 commits an offence and is liable, upon conviction, to a fine not exceeding two million shillings, or to imprisonment for a term not exceeding seven years or to both such fine and imprisonment.

(4) No member or staff of the Board shall transact any business or trade with the Board directly or indirectly.

3. (1) Subject to sub-paragraph (2) the quorum of the meeting shall not be less than half of the appointed members. Quorum.

(2) Where there is a vacancy in the Board, the quorum of the meeting shall not be less than three appointed members.

4. A question before the Board shall be decided by a majority vote of those members present and forming a quorum. Voting.

- 5.** (1) The Board shall— Rules of procedure and minutes.
- (a) determine rules of procedure for the conduct of its business; and
 - (b) keep minutes of its proceedings and decisions.

MEMORANDUM OF OBJECTS AND REASONS

The main object of the Bill is to establish a regime to facilitate the provision of legal aid. The Bill seeks to provide a legal framework for the regulation of persons and institutions offering legal aid services.

PART I of the Bill deals with preliminary matters.

PART II of the Bill establishes the National Legal Aid Service as a state corporation. The functions of the Service shall, among other things, be to establish and administer a national legal aid scheme that is affordable, accessible, sustainable, credible and accountable, to encourage and facilitate the settlement of disputes by using alternative dispute resolution methods, undertake and promote research in the field of legal services, legal awareness and access to justice with special reference to the need for such services among the poor and marginalized groups, to take necessary steps to promote public interest litigation with regard to consumer protection, environmental protection and any other matter of special concern to the marginalized groups and, in consultation with the Council for Legal Education, develop programmes for the training and certification of paralegals.

PART III provides for a board to govern the Service. The functions of the Board shall, among other things, be to formulate and review the policies of the Service, accredit and enter into cooperation agreements with advocates, lawyers, civil society organizations, non-governmental organizations, legal aid clinics or universities.

PART IV of the Bill provides for the Service to be managed by a Director who shall be recruited competitively by the Board and appointed by the Cabinet Secretary. The part further provides that the Board may appoint officers and staff of the Service as necessary for the proper performance of its functions under the Act and provides for recruitment and management of the staff of the Service.

PART V establishes the Legal Aid Fund. The Service may use the moneys of the Fund to ensure the representation of persons granted legal aid in accordance with this Act, to pay the remuneration of legal aid providers for services provided in accordance with this Act, to meet the expenses incurred by legal aid providers in providing services under this Act and to meet the expenses of the operations of the Service as approved by the Board.

PART VI prescribes that the Service shall provide legal aid services in various fields of law at the expense of the State to persons who qualify for legal aid services under the Act. A person qualifies to receive legal aid service if that person is indigent and satisfies criteria specified in the Act.

PART VII sets out the requirements for the application for legal aid. The Part specifies the person who can apply, procedures for application and for suspension or withdrawal of legal aid.

PART VIII provides for the accreditation of legal aid providers who include advocates operating under the pro bono programme of the Law Society of Kenya or other organizations, law firms, non-governmental organizations, Faith Based Organizations, universities and other institutions running legal aid clinics as well as Government agencies involved in the justice system.

PART IX specifies the terms and conditions for the grant of legal aid, which may include payment of a fee to be determined by the Service, contribution in respect of the cost of the services provided, of such amount as may be prescribed. The Part further provides for the recovery of costs and the enforcement of judgments or out-of-court settlements.

PART X deals with the award of costs in civil proceedings. An aided person will not be liable for costs where he loses a case unless there are exceptional circumstances. An aided person is also not required to provide security for costs during litigation or appeal proceedings unless there exist exceptional circumstances.

PART XI deals with the payment to legal aid providers for legal aid services. The Service may determine scales of payment to be made to legal aid providers and examine and audit the quality and value of the services provided by the legal aid providers.

PART XII contains miscellaneous provisions. It provides for disclosure of information, annual reports and other reports of the Service. The Service is required to prepare and publish a legal aid guide at least once in every two years. The guide will detail relevant legislation and regulations, the policies and directives of the Service, the legal aid services available from the Service and how they can be accessed by members of the public. It also contains a general provision on offences and penalties. The Part also contains savings and transitional provisions.

The Schedule to the Bill provides for meetings and procedures of the board.

The enactment of the Bill will occasion additional expenditure of public funds which will be provided for through the estimates.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill only delegates legislative powers to the cabinet secretary for the purpose of making regulations to give effect to the provisions of the Act.

The Bill does not limit fundamental rights and freedoms.

Statement on how the Bill concerns County Governments

The Bill seeks to give effect to various provisions of the Bill of Rights (Articles 19(2), 48, 50 (2)(g) and (h)) by providing a framework for facilitation of access to justice through the provision of legal aid.

Under Article 20 of the Constitution, provides that the Bill of Rights “binds all state organs and all persons”. Further, under Article 10 of the Constitution, the principles of human dignity, equity, social justice, inclusiveness, equality, human rights and accountability bind the county governments. It is therefore the duty of every county government to ensure that its residents are not discriminated against or denied their constitutional rights under the Bill of Rights. The ability of the residents of a county to access justice is therefore a matter that is of concern at every level of government and therefore affects the powers and functions of county governments.

The Bill therefore concerns county government in terms of Article 110(a) of the Constitution as it affects the functions and powers of County Governments set in the Fourth Schedule.

Statement that the Bill is not a money Bill, within the meaning of Article 114 of the Constitution

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 3rd August, 2015.

KITHURE KINDIKI,
Senate Leader of Majority.