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CHAPTER L9

LEGAL AID ACT

An Act to provide for establishment of a Legal Aid Council which will be responsible for the operation of a scheme for the grant of free legal aid in certain proceedings to persons with inadequate resources.

[1976 No. 56. 1978 No. 34. 1979 No. 18. 1986 No. 10.]

[2nd May, 1977]

[Commencement.]

PART I

Establishment of Legal Aid Council

1. Legal Aid Council

(1) There shall be established a council to be known as the Legal Aid Council which shall be a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name.

(2) The Council shall have responsibility for the provision in accordance with this Act of legal aid and advice to and in respect of persons entitled thereto.

2. Membership of the Council, etc.

(1) The Council shall consist of a chairman to be appointed by the President and the following other members, that is—

- (a) a representative of the Attorney-General;
- (b) a representative of the Federal Ministry of Finance;
- (c) a representative of the National Youth Service Corps Directorate;
- (d) a representative of the Inspector-General of Police;
- (e) four representatives of the Nigerian Bar Association, one of whom shall be the General Secretary of that Association;
- (f) the Director-General of Legal Aid; and

- (g) five other persons to represent interests not otherwise represented above to be appointed by the President.

(2) The supplementary provisions set out in the First Schedule to this Act shall have effect with respect to the tenure of office members of the Council and the other matters mentioned therein.

[First Schedule.]

3. Director-General of Legal Aid and other staff of the Council

(1) There shall, on the recommendation of the Attorney-General, be appointed by the President a Director-General of Legal Aid who shall be the chief executive officer of the Council and shall be responsible for the day-to-day running of the affairs of the Council.

(2) A person shall not be qualified to hold or to perform the functions of the office of Director-General unless he is a legal practitioner of not less than ten years' standing.

(3) There shall be paid to the Director-General such salary and allowances as may be determined by the Council with the approval of the President:

Provided that such salary and allowances are not less than those payable to the Permanent Secretary of any Ministry of the Government of the Federation.

(4) There may be appointed from time to time, by the Council, such supporting legal and other staff as may be required for the purposes of the efficient performance of the duties of the Council under or pursuant to this Act.

(5) Subject to subsection (3) of this section, the remuneration and tenure of office and conditions of service of the staff of the Council shall be determined by the Council after consultation with the Federal Civil Service Commission.

4. Service in the Council to be pensionable

(1) Notwithstanding the provisions of the Pensions Act, it is hereby declared that service in the Council shall be approved service for the purposes of that Act and, accordingly, the Director-General and other members of staff of the Council shall in respect of their service in the Council be entitled to pensions, gratuities and other retirement benefits as are enjoyed by persons holding equivalent grades in the public service of the Federation.

[Cap. P4.]

(2) For the purposes of the application of the Pensions Act in accordance with this Act—

- (a) section 3 (1) (a) and 21 of that Act shall have effect as if for references to the Minister there were substituted references to the Council;
- (b) the power under section 3 (1) (b) and 4 (2) of that Act shall be exercisable by the Council and not by any other authority.

(3) Nothing in this section shall be construed as preventing the appointment of a person to any office in the Council on terms which preclude the grant of a pension and gratuity in respect of that office.

5. State branches of the Council

The Council may establish such number of branches of the Council in the State as the President may, from time to time, direct.

6. Power of President to give directions to the Council

The President may give the Council directions of a general character or relating generally to particular matters with regards to the exercise by the Council of its functions under or pursuant to this Act, and it shall be the duty of the Council to ensure that the directions are complied with.

PART II

Legal aid and advice

7. Scope of legal aid to be given

(1) Subject to the provisions of this section, proceedings in connection with which legal aid may be granted shall be in respect of criminal and civil matters specified in the Second Schedule to this Act and no legal aid shall be granted in respect of proceedings not so specified.

[Second Schedule.]

(2) Notwithstanding the provision of subsection (1) of this section, the President may by regulations—

- (a) provide that legal aid be given in respect of such types or classes of criminal or civil proceedings as may be specified;
- (b) vary the proceedings in connection with which legal aid may be given and such regulations may specify the proceedings to be included or excluded by reference to—
 - (i) the court or tribunal;
 - (ii) the issues involved;
 - (iii) the capacity in which the person requiring legal aid is concerned;
 - (iv) proceedings in the Second Schedule to this Act;
 - (v) provision of legal advice in civil causes and matters,

or otherwise howsoever.

(3) Notwithstanding the provisions of this Act, or of any regulations made thereunder, legal aid shall not be provided in connection with proceedings before any court or tribunal before which persons have no right to be defended or represented by a legal practitioner.

(4) Legal aid shall consist, on terms provided for in this Act, of—

- (a) the assistance of a legal practitioner including all such assistance as is usually given by a legal practitioner in the steps preliminary or incidental to any proceedings;
- (b) representation by a legal practitioner before any court; and

- (c) such additional aid (including advice in civil causes and matters) as may be prescribed.

(5) Where regulations made pursuant to this section provide for legal aid in civil proceedings, provision shall be made therein to the effect that a person shall not be given legal aid in connection with any such proceedings unless he shows to the satisfaction of the Director-General or other person authorised by the Council that he has reasonable grounds for taking, defending or being a party thereto, and may also be refused legal aid if it appears unreasonable that he should receive it in the particular circumstances of the case.

(6) Save as expressly provided by this Act—

- (a) the fact that the services of a legal practitioner are given by way of legal aid shall neither affect the relationship between or rights of legal practitioner and client or any privilege arising out of such relationship; and
- (b) the rights conferred by this Act on a person receiving legal aid shall not affect—
- (i) the rights or liabilities of other parties to the proceedings;
 - (ii) the principles on which the discretion of any court or tribunal is normally exercised.

PART III

Financial aspects of legal aid

8. Legal Aid Fund

There is hereby established a fund to be known as the Legal Aid Fund into which there shall be paid—

- (a) such sums as may be provided from time to time by the Government of the Federation or of a State for payment into the Fund;
- (b) such sums as may be paid by way of contribution under or pursuant to the provisions of this Act or any other enactment; and
- (c) subject to section 11 (2) of this Act, all sums accruing to the Council by way of gifts, testamentary disposition, contributions from philanthropic persons or organisations or otherwise howsoever.

9. Persons entitled to legal aid

(1) Legal aid shall only be granted to a person whose income does not exceed ₦5,000 per annum.

[1994 No. 22.]

(2) Notwithstanding the provisions of subsection (1) of this section, the President may by regulation provide for the giving of legal aid on a contributory basis to a person whose income exceeds ₦5,000 per annum:

generally or, in the case of a member of a firm of legal practitioners, out of that of any person who is for the time being a member of the firm) for excluding him.

(3) Where a legal practitioner is aggrieved by any decision excluding him (whether permanently or temporarily) from any panel, he may appeal against the decision of the Council to the Attorney-General, and the Attorney-General (whose decision shall be final) may confirm or quash the decision appealed against or may substitute such decision as he thinks fit.

(4) Where a person is entitled to receive legal aid, the legal practitioner to act for him shall be selected from the appropriate panel, and he shall be entitled to make the selection himself:

Provided that—

- (a) this subsection shall not prejudice the right of a legal practitioner where he has good reason to refuse or give up a case or entrust it to another; and
- (b) the legal practitioner selected, if shown on the panel as a member of a firm, shall act in the name of the firm.

(5) Subject to the provisions of this Act, a legal practitioner who has acted for a person receiving legal aid shall be paid for so acting by the Council out of the Legal Aid Fund and the legal practitioner shall not demand or receive any payment from such person receiving legal aid.

(6) The sums payable under subsection (5) of this section to a legal practitioner shall be such as may be determined in the prescribed manner.

(7) In the foregoing provisions of this section, references to acting for a person receiving legal aid shall, in relation to a legal practitioner, include acting indirectly for such a person, as agent for his legal practitioner, so however that any selection from any panel of a legal practitioner to act as agent shall be made by the legal practitioner for whom he is to act.

14. Lawyers serving in Youth Corps to give free legal aid

Notwithstanding the provisions of any other enactment (including rules of court), legal practitioners for the time being serving in the National Youth Service Corps shall, if the Council so directs, act for a person receiving legal aid, in which case no payment shall be made by the Council or any other person for the services of any such legal practitioner.

PART V

Miscellaneous and supplementary

15. Secrecy

(1) Subject to subsection (2) of this section, no information furnished to the Council for the purpose of this Act in connection with the case of a person seeking or receiving legal aid or advice, shall be disclosed by any other person otherwise than—

- (a) for the purpose of facilitating the proper performance by any person or body of persons of functions under this Act; or

Provided that—

- (a) the Council shall recover the expenses incurred in giving legal aid to such a person by the retention of both an amount equal to 10 per cent of the damages awarded and the costs awarded to him;
- (b) where such a person has been granted legal aid on a contributory basis he shall be entitled to a refund of his contribution from such costs.

(3) No contribution made under subsection (2) of this section shall exceed the appropriate sum calculated in the manner prescribed for that purpose.

(4) The Council shall not be liable in any way to pay costs howsoever awarded against a person granted legal aid.

(5) The rules of any court relating to payment of fees shall not apply to a person granted legal aid.

10. Ascertainment of means

(1) In ascertaining the means of any person for the purposes of this Act, that person's income and his personal and real property shall be taken into account.

(2) In assessing a person's means, such of his commitments as may be prescribed shall be deducted from the resources which would otherwise be his means.

11. Power to accept gifts

(1) The Council may accept gifts of land, money or other property upon such terms and conditions, if any, as may be specified by the person or organisation making the gift.

(2) The Council shall not accept any gift if the conditions attached by the person or organisation making the gift to the acceptance thereof are inconsistent with the functions of the Council.

12. Audit

The accounts of the Council shall be audited as soon as may be after the end of each financial year by auditors appointed by the Council and the fees of the auditors and the expenses for the audit generally shall be paid from the funds of the Council.

[1986 No. 10.]

PART IV

Legal practitioners

13. Legal practitioners

(1) Panels of legal practitioners willing to act for persons receiving legal aid (whether gratuitously or otherwise) shall be prepared and maintained by the Council and there may be separate panels for different purposes, for different courts and for different districts.

(2) Any legal practitioner shall be entitled to have his name on the appropriate panel or panels unless the Council thinks that there is good reason (arising out of his conduct when acting or selected to act for persons receiving legal aid or his professional conduct

- (b) for the purpose of any criminal proceedings for any offence thereunder or of any report of such proceedings.

(2) Subsection (1) of this section shall not prevent the disclosure of information for any purpose with the consent of the person in connection with whose case it was furnished and, where he did not furnish it himself, with that of the person or body of persons who furnished it.

(3) Any person who otherwise than in compliance with the provisions of this Act or of any regulations made thereunder discloses information obtained by him shall be guilty of an offence and shall be liable on summary conviction to a fine of ₦200 or imprisonment for a term not exceeding six months or to both such fine and imprisonment.

16. Penalty for false information

If a person seeking or receiving legal aid or advice in furnishing any information required under or pursuant to this Act, knowingly or recklessly makes any statement which is false in a material particular, he shall be guilty of an offence and shall be liable on summary conviction to a fine of ₦200 or imprisonment for a term not exceeding six months or to both such fine and imprisonment.

17. Annual reports

The Council shall in each year make a report to the President through the Attorney-General of its proceedings under this Act during the preceeding year containing—

- (a) an account of its operations and transactions throughout the preceeding year; and
- (b) a statement of the accounts of the Council audited in accordance with section 12 of this Act.

18. Regulations

The Attorney-General may make regulations generally for the better carrying on of the purposes of this Act and, without prejudice to the generality of the foregoing, such regulations may make provision for—

- (a) anything which is to be or which may be prescribed under this Act;
- (b) the form of any certificate, any application and any other document which may be required for the purpose of this Act;
- (c) the manner in which the means of any person who may be eligible for legal aid shall be computed;
- (d) the manner in which contributions into the Legal Aid Fund are to be made by persons receiving legal aid or advice and in which sums owing from such persons to the Council may be recovered;
- (e) reports and information required by the Council for the purposes of this Act to be supplied by public officers and other persons; and
- (f) matters which appear to the Attorney-General necessary or desirable for giving effect to the provisions of this Act or for preventing abuses thereof.

19. Interpretation

(1) In this Act, unless the context otherwise requires—

“**Attorney-General**” means the Attorney-General of the Federation;

“**Council**” means the Legal Aid Council established under section 1 of this Act;

“**legal aid**” has the meaning given to the expression in section 7 (4) of this Act;

“**offence**” means an offence of a class specified in the Second Schedule to this Act or prescribed by the President;

“**tribunal**” includes an *ad hoc* tribunal.

(2) In this Act, references to the Council include, where appropriate, references to the Director-General or any staff of the Council appointed in pursuance of section 3 of this Act.

(3) In this Act, references to persons seeking or receiving legal aid do not include references to bodies of persons, whether corporate or unincorporated.

20. Short title, etc.

(1) This Act may be cited as the Legal Aid Act.

(2) The provisions of this Act shall be without prejudice to section 32 of the Supreme Court Act or to the provisions of any other enactment relating to the grant of legal aid by any court or other body.

[Cap. S15.]

SCHEDULES
FIRST SCHEDULE

[Section 2 (2).]

*Supplementary provisions relating to the Council**Tenure of office*

1. (1) The chairman shall hold office for three years and shall be eligible for re-appointment for one further period of three years.

(2) Members of the Council (not being *ex-officio* members) shall hold office for three years and shall be eligible for re-appointment for one further period of three years.

2. The chairman or any of the members of the Council referred to in paragraph 1 (2) of this Schedule may by notice addressed to the Council resign his appointment.

Proceedings of the Council

3. (1) Subject to this Act and to section 27 of the Interpretation Act the Council may make standing orders regulating the proceedings of the Council or of any committee thereof.

[Cap. I23.]

(2) The quorum of the Council shall be the chairman and four other members, and the quorum of any committee of the Council shall be determined by the Council.

4. (1) Subject to the provisions of any standing orders of the Council, the Council shall meet whenever it is summoned by the chairman; and if the chairman is required to do so by notice given him by not less than three other members he shall summon a meeting of the Council to be held within twenty days from the date on which the notice is given.

(2) At any meeting of the Council the chairman shall preside, but if he is absent, the members present at the meeting shall appoint one of their number to preside at the meeting.

(3) Where the Council desires to obtain the advice of any person on a particular matter, the Council may co-opt him as a member for such period as it thinks fit; but a person who is a member by virtue of this sub-paragraph shall not be entitled to vote at any meeting of the Council and shall not count towards a quorum.

(4) Notwithstanding anything in the provisions of sub-paragraphs (1), (2) and (3) of this paragraph, the first meeting of the Council shall be summoned by the Attorney-General.

Committees

5. (1) The Council may appoint one or more committees to carry out, on behalf of the Council, such of its functions as the Council may determine.

(2) A committee appointed under this paragraph shall consist of the number of persons determined by the Council, and not more than one third of those persons may be persons who are not members of the Council; and a person other than a member of the Council shall hold office on the committee in accordance with the terms of the instrument by which he is appointed.

(3) A decision of a committee of the Council shall be of no effect until it is confirmed by the Council.

Miscellaneous

6. (1) The fixing of the seal of the Council shall be authenticated by the signature of the chairman or of some other member authorised generally or specially to act for that purpose by the Council.

(2) Any contract or instrument which, if made or executed by a person not being a body corporate, would not be required to be under seal, may be made or executed on behalf of the Council by any person generally or specially authorised to act for that purpose by the Council.

(3) Any document purporting to be a document executed under the seal of the Council shall be received in evidence and shall, unless the contrary is proved, be deemed to be so executed.

7. Members of the Council who are not public officers shall be paid out of moneys at the disposal of the Council such travelling and subsistence allowances in respect of any period spent on the business of the Council as the President may determine, but no other remuneration shall be paid to any member of the Council.

8. The validity of the proceedings of the Council or of a committee thereof shall not be affected by any vacancy in the membership of the Council or committee, or by any defect in the appointment of a member of the Council or of a person to serve on the committee, or by reason that a person not entitled to do so took part in the proceedings.

9. Any member of the Council, and any person holding office on a committee of the Council, who has a personal interest in any contract or arrangement entered into or proposed to be considered by the Council or a committee thereof shall forthwith disclose his interest to the Council and shall not vote on any question relating to the contract or arrangement.

Legal Aid Act

SECOND SCHEDULE

[Section 7 (1).]

Proceedings in respect of which legal aid may be given

A.

Proceedings in a court or tribunal (whether at first instance or on appeal) wholly or partly in respect of crimes of the following descriptions, or as near to those descriptions as may be, respectively in any Criminal Code or Penal Code, that is to say—

| <i>Criminal Code</i> | <i>Penal Code</i> |
|---|--|
| 1. Murder of any degree. | Culpable homicide punishable with death. |
| 2. Manslaughter. | Culpable homicide not punishable with death. |
| 3. Maliciously or wilfully wounding or inflicting grievous bodily harm. | Grievous hurt. |
| 4. Assault occasioning actual bodily harm. | Criminal force occasioning actual bodily hurt. [1994 No. 22.] |
| 5. Common assault. | |
| 6. Affray. | |
| 7. Stealing. | |
| 8. Rape. | |

B.

Aiding and abetting, or counselling or procuring the commission of, or being an accessory before or after the fact to, or attempting or conspiring to commit, any of the offences listed in paragraph A of this Schedule.

C.

1. Civil claims in respect of accidents.
[1994 No. 22.]
2. Civil claims to cover breach of Fundamental Rights as guaranteed under Chapter IV of the Constitution of the Federal Republic of Nigeria.

CHAPTER L9**LEGAL AID ACT****SUBSIDIARY LEGISLATION**

No Subsidiary Legislation
