

LEGAL AID DECREE 1976



ARRANGEMENT OF SECTIONS

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Decree No. 56

[See section 19 (1)]

Commence-
ment.

THE FEDERAL MILITARY GOVERNMENT hereby decrees as follows :—

Part I—ESTABLISHMENT OF LEGAL AID COUNCIL

1.—(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.

Legal Aid
Council.

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

Member-
ship of the
Council, etc.

2.—(1) The Council shall consist of a chairman to be appointed by the Federal Executive Council 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) two representatives of the Nigerian Bar Association to be appointed by the Federal Executive Council ;
- (f) the Director of Legal Aid ; and
- (g) five other persons to represent interests not otherwise represented above to be appointed by the Federal Executive Council.

(2) The supplementary provisions set out in Schedule 1 to this Decree shall have effect with respect to the tenure of office of members of the Council and the other matters mentioned therein.

Director of
legal Aid
and other
staff of the
Council.

3.—(1) There shall, on the recommendation of the Attorney-General, be appointed by the Federal Executive Council a Director 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 unless he is a legal practitioner of not less than seven years standing.

(3) There shall be paid to the Director such salary and allowances as may be determined by the Council with the approval of the Federal Executive Council.

(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 Decree.

(5) Subject to subsection (3) above, 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 Commissioner for Establishments.

State bran-
ches of the
Council.

4. The Council may establish such number of branches of the Council in the States as the Federal Executive Council may from time to time direct.

Power of
Federal
Executive
Council to
give direc-
tions to the
Council.

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

Part II—LEGAL AID AND ADVICE

6.—(1) Subject to the provisions of this section, proceedings in connection with which legal aid may be given shall be criminal proceedings and shall be in respect of the criminal proceedings specified in Schedule 2 to this Decree and no legal aid shall be provided in respect of criminal, civil or other proceedings not so specified.

Scope of
legal aid to
be given.

(2) Notwithstanding the provisions of subsection (1) above, the Federal Executive Council 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 Schedule 2 to this Decree,

(v) provision of legal advice in civil causes and matters,

or otherwise howsoever.

(3) Notwithstanding the provisions of this Decree 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 Decree, 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 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 Decree—

(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 Decree 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

Legal Aid
Fund.

7. 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 Decree or any other enactment ; and

(c) subject to section 10 (2) of this Decree, all sums accruing to the Council by way of gifts, testamentary disposition, contributions from philanthropic persons or organisations or otherwise howsoever.

Persons
entitled to
free legal
aid, etc.

8.—(1) Subject to subsection (2) below, legal aid shall only be given to a person whose income does not exceed ₦720 per annum or such higher sum as may be prescribed by the Federal Executive Council from time to time.

(2) Notwithstanding subsection (1) above, the Federal Executive Council may by regulations provide for the giving of legal aid, on a contributory basis, to persons whose income exceeds the sum referred to in that subsection and the Legal Aid Council may, in granting legal aid to any person under this section, require that person to contribute to the cost of that legal aid to an extent which seems to the Council to be just and reasonable having regard to that person's means ; but for the avoidance of doubt, no contribution shall be required of or paid by any person entitled to legal aid under subsection (1) above.

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

Ascertain-
ment of
means.

9.—(1) In ascertaining the means of any person for the purposes of this Decree, 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.

Power to
accept gifts.

10.—(1) The Council may accept gifts of land, money or other property upon such trusts 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.

Audit.

11. The accounts of the Council shall be audited as soon or may be after the end of each financial year by auditors appointed by the Council with the approval of the Federal Commissioner for Finance, and the fees of the auditors and the expenses of the audit generally shall be paid by the Council.

PART IV—LEGAL PRACTITIONERS

Legal practi-
tioners.

12.—(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 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 rights 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 Decree, 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 the last foregoing subsection 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.

13. 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.

Lawyers
serving in
Youth
Corps to
give free
legal aid.

Part V—MISCELLANEOUS AND SUPPLEMENTARY

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

Secrecy.

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

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

(2) The foregoing subsection 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 Decree 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.

Penalty for false information.

15. If a person seeking or receiving legal aid or advice in furnishing any information required under or pursuant to this Decree, 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.

Annual reports.

16. The Council shall in each year make a report to the Federal Executive Council through the Attorney-General of its proceedings under this Decree during the preceding year containing—

(a) an account of its operations and transactions throughout the preceding year ; and

(b) a statement of the accounts of the Council audited in accordance with section 11 of this Decree.

Regulations.

17. The Federal Executive Council may make regulations generally for the better carrying on of the purposes of this Decree 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 Decree ;

(b) the form of any certificate, any application and any other document which may be required for the purposes of this Decree ;

(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 Decree to be supplied by public officers and other persons ; and

(f) matters which appear to the Federal Executive Council necessary or desirable for giving effect to the provisions of this Decree or for preventing abuses thereof.

Interpretation.

18.—(1) In this Decree, 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 Decree ;

“Director” means the Director of Legal Aid appointed pursuant to section 3 of this Decree ;

“legal aid” has the meaning given to the expression in section 6(4) of this Decree ;

“specified offence” means an offence of a class specified in Schedule 2 to this Decree or prescribed by the Federal Executive Council ;

“tribunal” includes an ad hoc tribunal.

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

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

19.—(1) This Decree may be cited as the Legal Aid Decree 1976 and shall come into force on such day as the Attorney-General may appoint by Order published in the *Gazette*. Citation, etc.

(2) The provisions of this Decree shall be without prejudice to section 32 of the Supreme Court Act 1960 or to the provisions of any other enactment relating to the grant of legal aid by any court or other body. 1960 No. 12.

SCHEDULES

SCHEDULE 1 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 reappointment for one further period of three years.

(2) Members of the Council (not being public officers) shall hold office for three years and shall be eligible for reappointment for one further period of three years.

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

Proceedings of the Council

3.—(1) Subject to this Decree and to section 26 of the Interpretation Act 1964, the Council may make standing orders regulating the proceedings of the Council or of any committee thereof. 1964 No. 1.

(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 20 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 that 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 foregoing provisions 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 Federal Executive Council may determine, but no other remuneration shall be paid to any member of the Council.

8. The validity of any 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 a 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.

SCHEDULE 2

Section 6 (1)

CRIMINAL PROCEEDINGS IN RESPECT OF WHICH LEGAL AID MAY BE GIVEN

A. Proceedings in court or tribunal (whether at first instance or on appeal) wholly or partly in respect of :—

1. Murder of any degree
2. Manslaughter
3. Maliciously or wilfully wounding or inflicting grievous bodily harm
4. Assault occasioning actual bodily harm

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 above.

MADE at Lagos this 10 day of November 1976.

LT.-GENERAL O. OBASANJO,
*Head of the Federal Military Government,
Commander-in-Chief of the Armed Forces,
Federal Republic of Nigeria*

EXPLANATORY NOTE

(This note does not form part of the above Decree but is intended to explain its purpose)

The Decree provides for the 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 criminal proceedings to persons with inadequate resources. If the Federal Executive Council so decides by regulations made under the Decree, persons of moderate means may also become eligible for legal aid but each such person may be required to contribute towards the legal expenses of his case.

Legal aid will be provided to those eligible for it in all courts of first instance before which legal practitioners may appear and in appeal cases up to the Supreme Court.