

National Report – Zambia ILAG Conference 2017

1. About the Legal Aid Board in Zambia

The Legal Aid Board in Zambia, established under the Legal Aid (Amendment) Act of 2005, is a statutory body mandated with the provision of legal aid to indigent persons in criminal and civil cases. It also advises the Minister of Justice on policies relating to the provision of legal aid and their implementation.

The Legal Aid Board has currently a total of 12 stations country wide, reaching out to all provinces in Zambia with at least one Legal Aid Board station per province.

Over the last years, the Legal Aid Board has largely focused on the provision of legal aid on criminal and civil cases at the High Court and Subordinate Courts. Legal aid is mainly provided by legal practitioners in full-time employment for the Legal Aid Board, further assisted by legal aid assistants that are law graduates attached to the Legal Aid Board and granted limited right of audience as per the provisions of the Legal Aid (Amendment) Act.

In 2013, the Legal Aid Board developed an innovative scheme to expand the delivery of legal aid at Subordinate Court level, namely the Legal Services Unit. It takes the form of a permanent unit based and operating from the court premises, with daily outreach to remandees appearing in court and other parties in criminal and civil cases, providing them with the whole range of legal aid services. It is run jointly by paralegals affiliated to Civil Society Organisations (CSOs) and legal aid assistants attached to the Legal Aid Board, all of them operating under the supervision of a Legal Aid Board legal practitioner.

Where necessary and for specific cases, the Legal Aid Board engages legal practitioners in private practice under the Judicare system to take up cases at prescribed fees.

In 2015, the Legal Aid Board received 4,314 applications for legal aid, out of which 1,583 were granted legal assistance and representation, while the other applicants were provided with legal information and advice only. In addition, the Legal Aid Board received 1,193 cases referred by the courts of law with legal aid granted by the Judiciary.

The Legal Aid Board is managed by a Director and Secretariat, who operate under the supervision of a statutory Board consisting of a Chairperson and 9 other Board members, appointed by the Minister of Justice.

2. Other Legal Aid Service Providers

a) Civil Society Organisations and Paralegals

Over 30 CSOs provide legal aid to indigent persons and vulnerable groups in Zambia. Services are mainly provided by paralegals and range from legal education in communities and correctional facilities, to legal information, advice and mediation in individual cases. Depending on their level of qualification and experience, paralegals also provide some forms of legal assistance. Some paralegals work with backing from legal practitioners, whereas others are supervised by their affiliate CSOs. Some CSOs and paralegals have specialised on the provision of legal aid in the criminal justice system, operating at Subordinate Court, correctional facility and police station levels. Others focus on communities working primarily on family law and property matters, land matters, gender-based violence and women's and children's rights. The current number of active paralegals is estimated between 750 and 900 country wide.

Paralegals play a vital role in Zambia as they assist indigent persons and vulnerable groups to engage with the legal environment and justice system, empowering them to understand and claim their rights. They also play an essential bridging role. With an in-depth knowledge of the community within which they live and work, paralegals are able to provide targeted legal education and advice. They can identify problems and bottlenecks; through linkages with CSOs, legal practitioners, institutions and authorities, paralegals provide simple and proximate solutions. Overall, they support increased confidence of the public in the justice system. Similarly, paralegals in the criminal justice system have outreach to inmates in correctional facilities, police stations and police posts and at courts.

However, the role of CSOs as legal aid service providers is not formally recognised in any piece of legislation, similarly for services delivered by paralegals, which makes the delivery of legal aid unregulated if not provided by the LAB or legal practitioners in private practice. In addition, no standardised regime is in place to ensure the competence and accountability of paralegals when providing legal aid. CSOs working with paralegals face additional challenges in terms of institutional funding and technical weaknesses that further affect their capacity to adequately supervise, monitor and support their paralegals.

b) Legal Practitioners in Private Practice

There are over 1,000 legal practitioners registered at the Law Association of Zambia against the population of more than 17 million, which makes a ratio of 1 legal practitioner to 17'000 persons. Most legal practitioners that are in private practice are concentrated in Lusaka and in a few other major towns in Zambia, focusing on court work and providing legal services that most citizens in Zambia cannot afford.

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Some legal practitioners in private practice engage in pro bono legal aid and CSOs have established linkages with the legal profession, whereby cases that require legal representation may be referred by CSOs either directly to legal practitioners, or through the Legal Aid Committee of the Law Association of Zambia. The development and implementation of a pro bono scheme is part of the Law Association of Zambia Strategic Plan 2013-2018.

c) University Law Clinics

No university law clinic is presently up and running, though the University of Zambia is engaged in establishing a clinic that would operate from Lusaka.

3. State Civil and Criminal Legal Aid

a) Scope of Legal Aid

The Legal Aid (Amended) Act provides for the definition of legal aid as consisting in legal assistance provided by legal practitioners and legal representation.

Legal assistance is understood as the assistance provided by a legal practitioner including all such assistance as is usually given by a legal practitioner in the steps preliminary or incidental to any proceedings or in arriving at or giving effect to a compromise to avoid or bring to an end any proceedings. As for legal representation, it includes representation in any court.

b) Eligibility for Legal Aid

A decision by the Legal Aid Board to grant legal aid in any case is based on the means test and the interests of justice principle. A merit test also applies in civil cases.

Under the means test, the Legal Aid Board assesses whether an applicant's means are inadequate to enable her/him to engage a legal practitioner to represent her/him. The ascertainment of means will include the applicant's income, personal and real property; provided that account shall not be taken of the applicant's dwelling-house, household furniture, the tools or implements of a trade, and the subject matter of the dispute in relation to which legal aid might be granted. The Legal Aid Board may further prescribe other commitments to be considered in assessing an applicant's means.

Should the applicant qualify under the means test, qualification for legal aid also requires that, having regards to all the circumstances of the case, it is in the interest of justice that the person is represented in the proceedings.

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Lastly, a merit test also applies in civil cases whereby an applicant must have reasonable grounds for taking, defending or being a party to the proceedings.

c) Contributions Required from Legal Aid Clients

The following contributions may be required by the Legal Aid Board from a legal aid client:

- A consultation fee applies to anyone consulting the Legal Aid Board. The current amount requested by the Legal Aid Board is equivalent to about 2 USD;
- In granting legal aid, the Legal Aid Board may require a contribution fee from the applicant, for a just and reasonable amount having regards to the applicant's means. The standard amount requested by the Legal Aid Board is equivalent to about 16 USD for criminal legal aid, and about 17 USD for civil legal aid;
- Both the consultation fee and the contribution fee may be waived by the Legal Aid Board when it is shown to the satisfaction of the Legal Aid Board that the applicant is, by reason of poverty, unable to pay, or that a good cause for remission of payments exists;
- Other contributions to the Legal Aid Board from legal aid clients may include deductions from costs awarded by courts to legally aided persons, or costs awarded to legally aided persons as the case may be.

4. Legal Aid Board Budget

The Legal Aid Board receives funding annually from the state budget appropriated by the Parliament for administration of the Legal Aid Board and the Legal Aid Fund managed by the Legal Aid Board. The funding of the Legal Aid Board in the 2017 State Budget is as follows:

	2017 Legal Aid Board (LAB) Budget	Increase (from 2016 Budget)
LAB General Budget (including operational costs)	1,975,850 USD	+5.7%
LAB Legal Aid Fund (covering additional costs related to the provision of legal representation)	262,910 USD	unchanged
Total	2,238,760 USD	+5.0%

This level of state funding translates to 0.13 USD per person on legal aid in Zambia in 2017.

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The Legal Aid Board receives additional support from the European Union and the Federal Republic of Germany under the Programme for Legal Empowerment and Enhanced Justice Delivery (PLEED) in Zambia running from 2015 to 2019. Support is aimed at improving the institutional and organisational capacity of the Legal Aid Board in delivering legal aid. The PLEED also supports the establishment of a network of Legal Services Units at Subordinate Court level managed by the Legal Aid Board, and further supervision by the Legal Aid Board of paralegal desks established in correctional facilities and police stations and operated by paralegals affiliated to CSOs.

5. Development of a National Legal Aid Policy for Zambia

The legal aid situation in Zambia has been affected by the absence of a comprehensive national legal aid policy and a corresponding implementation framework to guide the provision of legal aid services by all legal aid service providers, including non-state actors.

The Ministry of Justice has endeavoured to remedy the current gaps in the provision of legal aid in Zambia by developing a National Legal Aid Policy installing a comprehensive legal aid system and establishing a renewed regulatory and implementation framework for the provision, administration, coordination, regulation and monitoring of legal aid in Zambia.

The drafting of the National Legal Aid Policy has now reached its final stage with a Technical Working Group appointed in 2016 by the Ministry of Justice to complete the development of the draft National Legal Aid Policy. The policy formulation process is supported under the PLEED with technical assistance provided by the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) and the Danish Institute for Human Rights (DIHR).

The (draft) National Legal Aid Policy establishes a comprehensive and forward-looking legal aid framework in Zambia, based on the following key features:

- It widens the scope of legal aid to comprise legal education, information, advice and alternative dispute resolution in addition to legal assistance and representation;
- It recognises the roles of CSOs and university law clinics in the provision of legal aid and establishes the process for their accreditation as legal aid service providers;
- It recognises and regulates the role of paralegals at various levels of qualification in the delivery of legal aid and establishes a quality assurance framework and regulator ensuring competence and accountability in the services they provide;

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- It delineates complementary legal aid service delivery models involving all legal aid service providers to best suit the beneficiaries' needs and the available human capacity and material resources among legal aid service providers. In that regard, delivery models include the Legal Aid Board offices, CSOs legal desks, Legal Services Units at court level, correctional facility and police station legal desks, the Judicare system, the pro bono legal aid scheme, and university law clinics;
- It strengthens coordination and cooperation mechanisms among the various legal aid service providers for increased synergy between the Legal Aid Board, CSOs, university law clinics and legal practitioners in private practice;
- It restructures the legal aid scheme institutional framework based on inclusiveness with increased engagement, participation and consultation of the different key institutions involved;
- It re-aligns the legislative framework in order to develop a supportive and effective regulatory framework in accordance with the National Legal Aid Policy;
- It develops the legal aid funding base to ensure that adequate financial resources are allocated for the implementation of the National Legal Aid Policy and the effective and efficient provision of legal aid services.

6. For More information

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