

Part I

Model Law on Legal Aid in Criminal Justice Systems

Preamble

The [*National Assembly/Parliament/other*] of [*name of State*],

Recalling the Universal Declaration of Human Rights, which provides for the principles of equality before the law and presumption of innocence, as well as for the right to all the guarantees necessary for a person's defence when facing criminal charges,

Recalling also the International Covenant on Civil and Political Rights, in particular article 14, which recognizes the principles of equality before courts and tribunals, presumption of innocence and the right to a fair hearing in the determination of criminal charges and states that anyone who is charged with a criminal offence is entitled "to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it",

Bearing in mind the Basic Principles on the Role of Lawyers, which provide that all persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and that all persons who do not have a lawyer shall, in all cases in which the interests of justice so require, be entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned to them in order to provide effective legal assistance, without payment by them if they lack sufficient means to pay for such services,

Bearing in mind also General Assembly resolution 67/187, in which the Assembly adopted the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, recognized that legal aid is a fundamental right and an essential element of a justice system based on the rule of law and respect for fundamental human rights, as well as an essential condition for the full realization of the right to a fair trial, and invited Member States to adopt or strengthen measures to ensure that accessible, effective, sustainable, and credible legal aid system is in place so as to provide prompt and effective legal aid to the maximum extent possible,

Reaffirming the principles and values of non-discrimination, equality in access to justice, inclusiveness, impartiality and protection of marginalized and vulnerable groups,

Acknowledging that a large number of persons cannot afford to pay for legal services, which is essential for the enjoyment of fair and equal access to justice,

Bearing in mind that the provision of legal aid lessens the occurrence of due process violations, reduces the length of pretrial detention, shortens case resolution times, protects the rights of victims and witnesses of crimes and enhances the likelihood of a fair trial,

Realizing that the effective and efficient provision of legal aid requires the establishment of an independent legal aid system that is comprehensive, accessible, affordable, equitable, effective, credible and sustainable,

Recalling the provisions of article [number] of the Constitution [or *the equivalent basic law*] of [name of State], guaranteeing the rights of the accused [and victims] in criminal proceedings,

Hereby enacts, at its [number] session, on [date]:

Chapter 1. Purpose, definitions and scope of application

Article 1. Title

The present Law may be cited as the [*Criminal Legal Aid Act*] of [*name of State*] [*year of adoption*].

Article 2. Purpose

The purpose of this Law is to implement the rights of the accused, suspects and detained persons as enshrined in the Constitution [*or the equivalent basic law*], to facilitate access to justice, to ensure a fair trial, and to make the criminal justice system more efficient, fair, accountable and based on the rule of law and protection of fundamental human rights by:

- 2.1. [*Establishing a [national] State-funded legal aid system*] OR [*Regulating the provision of [national] State-funded legal aid, including types of legal aid, types of providers and beneficiaries*];
- 2.2. Providing for a [*national*] legal aid system that facilitates transparency, accountability and fairness and takes into account the needs of marginalized and vulnerable groups;
- 2.3. Ensuring accessible, affordable, equitable, effective, credible and sustainable legal aid services to those who are in need of legal aid;
- 2.4. Promoting education, research and dissemination of information on legal aid; and
- 2.5. Providing other legal services.

Article 3. Definitions

For the purposes of this Law:

- 3.1. “Applicant” means any natural person[, *including non-citizens,*] who files an application to receive legal aid pursuant to this Law.

- 3.2. “Child” means any person under 18 years of age.
- 3.3. “Criminal justice system” means the set of processes and law enforcement agencies directed at crime prevention and detection, prosecution, defence, trial, sentencing and serving of sentences.
- 3.4. “Criminal justice process” means the process encompassing detection of the crime, preparation of the complaint, investigation, prosecution, and trial and post-trial procedures, including extradition, transfer of prisoners and mutual legal assistance proceedings, regardless of whether the case is handled in a national, international or regional criminal justice system, or in a customary or informal system of justice.
- 3.5. [Optional provision: “Essential subsistence expenses” means food, housing, clothing, medical care and transportation.]
- 3.6. [Optional provision: “Immediate dependants” means an applicant’s spouse, children or other members of the applicant’s family who are dependent on the applicant’s support for their basic financial needs. [Optional: parents, grandparents and grandchildren]]
- 3.7. “Intermediary” and “lay assistants” mean persons who provide advice and assistance under article 18 of this Law and who are not licensed to practice as legal practitioners [under the bar law].
- 3.8. “Law clinic” means a clinic based at a recognized academic institution or non-governmental organization offering free or subsidized legal services.
- 3.9. “Legal aid” means the provision of legal advice, assistance and representation at the expense of the State on the conditions and in accordance with the procedures established under this Law and its regulations for persons detained, arrested or imprisoned; for persons suspected or accused of, charged with or convicted of a criminal offence; and for victims and witnesses in the criminal justice process. Legal aid includes legal education, access to legal information and other services provided through alternative dispute resolution mechanisms and restorative justice processes.
- 3.10. “Legal Aid Authority [Board/Council/Commission]” means the authority established under article 22 of this Law for the purpose of managing, coordinating and monitoring the provision of legal aid.
- 3.11. “Legal aid beneficiary” means any natural person[, including non-citizens,] who has been granted legal aid after having met the eligibility criteria to receive legal aid pursuant to this Law, where applicable.
- 3.12. “Legal aid provider” means any natural or legal person providing legal aid pursuant to this Law.
- 3.13. “Legal aid services” means the services listed under article 11 of this Law.

3.14. “Legal practitioner” means an attorney or advocate licensed to practice law and represent clients [*under the bar law*].

3.15. [*Optional provision: “Liquid assets” means cash and any asset that can be quickly converted into cash, including bank accounts, stocks and bonds. It does not include real property.*]

3.16. “Paralegal” means a person who provides legal aid services [under articles 11.1.1-3 and 11.1.5 of this Law] who is not licensed to practice as a legal practitioner [*under the bar law*].

3.17. “Victims of a crime” means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic or financial loss or substantial impairment of their fundamental rights through acts or omissions in violation of criminal laws.

3.18. “Vulnerable person” means a person who is in need of special protection because of age, gender, sexual orientation, illness, disability, national, social or personal status, or other status, including but not limited to children, refugees, internally displaced persons, stateless persons, asylum seekers, victims of human trafficking and of gender-based violence, illiterate persons, minorities, migrants and migrant workers, persons who do not speak or understand the language of the proceedings, elderly persons, persons with disabilities, persons with mental illnesses, persons living with HIV and other serious contagious diseases, persons in custody and drug users [*and indigenous and aboriginal people*].

3.19. [*Optional provision: “Apprentice legal practitioner” means a person who is undergoing an apprenticeship with a qualified legal practitioner [under the bar law] who provides legal aid services under article 14 of this Law*].

3.20. [*Optional provision: “Law student practitioner” means a law student employed by the Legal Aid Authority, by a university law clinic or by an accredited non-governmental organization who may represent legal aid beneficiaries in court under the provisions of article 16 of this Law*].

Article 4. Scope of application

4.1. Subject to the procedures established under the present Law, an individual is entitled to legal aid, regardless of his or her financial means, when he or she:

4.1.1. Is arrested, detained, suspected or accused of, charged with or sentenced for a crime punishable by a term of imprisonment [*or the death penalty*];

4.1.2. Is arrested, detained, suspected or accused of, charged with or sentenced for a non-imprisonable crime, when the interests of justice so require,

owing to the urgency of the circumstances, the complexity of the case or the severity of the potential penalty;

4.1.3. Is arrested, detained, suspected or accused of, charged with or sentenced for a non-imprisonable crime, and is a child, a person with disabilities, a person with mental illnesses, a stateless person, an asylum seeker, a refugee, an internally displaced person or a victim of human trafficking.

4.2. An individual who is arrested, detained, suspected or accused of, charged with or sentenced for a non-imprisonable crime, but does not fall within the scope of eligibility under article 4.1, is entitled to legal aid, subject to the means test provided under article 33 of this Law.

4.3. An individual is entitled to legal aid, subject to the means test provided under article 33 of this Law, when he or she is:

4.3.1. A witness; or

4.3.2. A victim of crime. Victims of crime are entitled to legal aid when seeking civil remedies.

4.4. Legal aid shall be granted, in accordance with the provisions of this article, at all stages of the criminal justice process, before, during and after trial, from the moment an individual is notified or otherwise made aware by the competent authorities that he or she is suspected or accused of having committed a criminal offence until the conclusion of criminal proceedings, including, where applicable, at sentencing, at the resolution of appeal and during the serving of a sentence. In any event, legal aid shall be available for suspects or accused persons from whichever of the following points in time is the earliest:

4.4.1. Before they are interviewed or questioned by the police or any other investigating authority;

4.4.2. Upon the carrying out by any investigating authority of an investigative or evidence-gathering act;

4.4.3. Without undue delay after deprivation of liberty;

4.4.4. In due time before they appear in any court having jurisdiction in criminal matters.

Chapter 2. Guiding principles

Article 5. Non-discrimination

5.1. Legal aid shall be provided on grounds and in accordance with the procedures established under this Law, without any discrimination based on age, race, colour, gender, sexual orientation, language, religion or belief, political or other opinion, national, ethnic or social origin, property, citizenship or domicile, birth, education, social or other status.

5.2. Special measures and regulations adopted to facilitate equality in access to legal aid for vulnerable persons shall not be considered discriminatory.

5.3. Special measures adopted to ensure the right of women to access legal aid shall not be considered discriminatory.

Article 6. Right to information

6.1. Anyone who is arrested, detained, suspected, accused of or charged with a criminal offence has the right to be promptly informed of his or her procedural rights, including the right to legal aid and of the process to obtain legal aid and the consequences of waiving such a right in a way and in language that is clearly understandable to him or her, prior to any interviewing and at the time of deprivation of liberty.

6.2. An appropriate remedy shall be guaranteed for violations of the right to information, in accordance with article 47 of this Law.

Article 7. Protection of vulnerable persons

7.1. Vulnerable persons have the right to be informed of their right to legal aid in a way that is appropriate to meet their special needs, including by means of translation services, use of age-appropriate language and support of visual aids.

7.2. It shall be the duty of the Legal Aid Authority, established under article 22 of this Law, to ensure that the provision of legal aid is carried out in a sensitive and respectful manner that takes into account the special needs of vulnerable

categories of people, including through the support of other professionals, such as health, social and child welfare specialists.

Article 8. Right to early access to legal aid

The right to legal aid arises from the moment an individual is made aware by the competent authority, by official notification or otherwise, that he or she is the subject of an investigation, including when he or she is arrested or detained and prior to questioning.

Article 9. Equal right to defence for legal aid beneficiaries

Subject to the provisions of articles 12, 19 and 20 of this Law, the legal aid provider and legal aid beneficiary shall be entitled to the same rights and privileges and subject to the same obligations, responsibilities and duties as would arise from any relationship between a legal counsel and his or her client.

Article 10. Principles of interpretation

10.1. Nothing in the present Law shall be interpreted as providing a lesser degree of protection than that provided in other national laws applicable to legal aid.

10.2. Nothing in the present Law shall be interpreted as providing a lesser degree of protection than that provided under international human rights conventions applicable to the administration of and access to justice to which [*name of State*] is a party.

10.3. The present Law shall be interpreted in the light of the principles and guidelines embodied in the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems and other relevant international legal instruments.

Chapter 3. Legal aid beneficiaries and legal aid providers

Article 11. Types of legal aid

11.1. Legal aid services shall include the following:

- 11.1.1. The provision of legal advice;
- 11.1.2. The provision of legal assistance;
- 11.1.3. The provision of legal information;
- 11.1.4. The provision of legal representation in national, regional and international courts, for adults or juveniles, as well as in customary and informal systems of justice;
- 11.1.5. Legal education;
- 11.1.6. Legal drafting; and
- 11.1.7. Legal advocacy.

Article 12. Rights of legal aid beneficiaries

12.1. Any individual who is entitled to legal aid in accordance with article 5 shall have the following rights:

- 12.1.1. The right to non-discrimination in access to legal aid;
- 12.1.2. The right to an appropriate remedy in cases in which access to legal aid is denied, undermined or delayed;
- 12.1.3. The right to prompt and effective provision of legal aid throughout all the stages of the criminal justice process;
- 12.1.4. The right to have a legal aid provider present during questioning by any investigative authority and at all stages of the proceedings;
- 12.1.5. The right to be assisted and treated with respect for his or her human rights and human dignity by legal aid providers;

12.1.6. The right to confidentiality of communications and consultations with legal aid providers; and

12.1.7. The right to be exempted from court costs, pursuant to article 42 of this Law.

Article 13. Legal aid providers

Legal aid providers shall include legal practitioners; [*apprentice legal practitioners*]; organizations, including non-governmental organizations, community-based organizations and faith-based charitable organizations; professional bodies and associations; law clinics; and paralegals.

Article 14. Legal practitioners [*Attorneys and advocates*]

14.1. Legal practitioners accredited as legal aid providers pursuant to article 27 of this Law shall provide the legal aid services listed under article 11 of this Law.

14.2. Legal practitioners accredited as legal aid providers include:

14.2.1. Public defenders, salaried and employed by [*the Legal Aid Authority [or] a public defender organization [or] the office of the public defender [or: specify here the status of public defender office in accordance with national legal system]*];

14.2.2. Private legal practitioners [*and apprentice legal practitioners*], accredited by and under contract with or appointed by the Legal Aid Authority.

14.3. Nothing in this Law shall be construed as adversely affecting or in any way interfering with the provision of pro bono services by legal practitioners [*and apprentice legal practitioners*], either voluntarily or as a requirement or recommendation of professional bodies or associations, outside the scope of this Law and with no right to remuneration.

Article 15. Non-governmental organizations, community-based organizations and faith-based organizations

15.1. Organizations, including non-governmental organizations, community-based organizations and faith-based organizations accredited as legal aid providers pursuant to article 27 of this Law, shall provide the legal aid services listed under article 11 of this Law, under contract with the Legal Aid Authority.

15.2. Nothing in this Law shall be construed as adversely affecting or in any way interfering with the provision of services, such as the ones listed under article 11 of this Law, by non-governmental organizations, community-based organizations and faith-based organizations outside the scope of this Law.

Article 16. Law clinics

16.1. Law clinics accredited as legal aid providers pursuant to article 27 of this Law shall provide the legal aid services listed under article 11 of this Law, under contract with the Legal Aid Authority.

16.2. Nothing in this Law shall be construed as adversely affecting or in any way interfering with the provision of services, such as the ones listed under article 11 of this Law, by law clinics outside the scope of this Law.

[Optional provisions:

16.3. *A law student employed by the Legal Aid Authority, an accredited university law clinic or an accredited non-governmental organization may appear as a law student practitioner in any criminal matter in any [first level] court on behalf of a legal aid beneficiary, provided that:*

16.3.1. *The legal aid beneficiary has consented in writing;*

16.3.2. *The law student practitioner is supervised by a legal practitioner and has the written consent of his or her supervisor; and*

16.3.3. *The supervisor is present in court or is satisfied that the student practitioner is sufficiently competent to conduct the case without his or her presence and the supervisor has informed the court accordingly.*

16.4. *The consent, or consent and notification of the supervisor's presence, required under paragraph 3 of article 16 shall be kept in the case records and brought to the attention of the presiding officer.*

16.5. *In order to qualify as an accredited law student practitioner in terms of this Law, the law student must be:*

16.5.1. *Registered as a student in the faculty of law of a university in [name of State];*

16.5.2. *Certified by the dean of his or her faculty of law to be of good character and adequately trained to perform as a law student practitioner;*

16.5.3. *A law student practitioner employed by the Legal Aid Authority, an accredited university law clinic or an accredited non-governmental organization;*

16.5.4. *Introduced into the court before which he or she is appearing as a legal practitioner.*

16.6. *A law student practitioner shall not demand, request or receive any payment from legal aid beneficiaries.*

16.7. *The certification of a law student practitioner by the dean of his or her faculty of law:*

16.7.1. *Shall be filed with the court and, unless it is withdrawn, shall remain in effect until the law student practitioner is licensed to practice as a legal practitioner in terms of the [bar law];*

16.7.2. *May be withdrawn by the dean of law as a student practitioner for a good reason at any time by notice to the court and to the student practitioner; and*

16.7.3. *May be terminated on notice to the dean and to the law student practitioner concerned by the court for demonstrated good cause.*

16.8. *A law student practitioner may engage in other activities, under the general supervision of a legal practitioner, provided that all letters and documents shall contain the name of the law student practitioner and the signature of his or her supervisor.*

16.9. *The legal practitioner under whose supervision a law student practitioner acts in terms of this section shall:*

16.9.1. *Assume personal professional responsibility for the student practitioner's guidance in any work undertaken and for supervising the quality of the law student practitioner's work; and*

16.9.2. *Assist the law student practitioner to the extent that the supervising legal practitioner considers necessary.]*

Article 17. Paralegals

17.1. *Paralegals accredited as legal aid providers pursuant to article 27 of this Law shall provide the legal aid services listed under articles 11.1.1-3 and 11.1.5 of this Law, under contract with the Legal Aid Authority.*

17.2. *Nothing in this Law shall be construed as adversely affecting or in any way interfering with the provision of services, such as those listed under article 11.1.1-3 and 11.1.5 of this Law, by paralegals outside the scope of this Law and with no right to remuneration.*

[Optional provisions:

17.3. *The Legal Aid Authority shall ensure that at least one accredited legal aid paralegal is appointed in a neutral office in every chiefdom in the vicinity of the relevant chief's office in order to provide legal advice and assistance to that chief, his or her officials and the inhabitants of the chiefdom, and where appropriate to provide legal*

education and assist with the diversion of serious cases to and from the formal criminal justice system.

17.4. *Where under article 17.3 minor criminal cases are diverted from the formal criminal justice system to traditional dispute resolution bodies, accredited legal aid paralegals shall assist such bodies to ensure that their decisions are consistent with fundamental human rights and provisions of [the country's Constitution].*

17.5. *In order to comply with article 17.3, the Legal Aid Authority may enter into cooperation agreements with accredited civil society organizations and non-governmental organizations that have offices in the relevant chiefdoms.]*

Article 18. Intermediaries

18.1. Intermediaries and lay assistants may provide advice and assistance, including in liaising with family and guardians and finding sureties for bail, to any person who is arrested, detained, accused or suspected of, or charged or sentenced with a crime and who has been appropriately informed of his or her right to legal aid in accordance with this Law.

18.2. When an accused person appears in a first-level court in a jurisdiction where no legal practitioner or legal aid provider is available, the court may allow that person to be advised and assisted by a lay adviser and/or a social worker, who may not represent the accused person but may:

18.2.1. Before the trial, advise and assist the accused person on all preliminary matters, including bail applications, pleading to charges and other such matters.

18.2.2. During the trial:

18.2.2.1. Take notes and quietly advise and assist the accused person in such a manner as not to disturb the proceedings;

18.2.2.2. Suggest questions that the accused person might ask during examination-in-chief, cross-examination or re-examination; and

18.2.2.3. Assist the accused person in making opening or closing statements and, for an accused person who is convicted, a plea in mitigation.

18.3. Intermediaries and lay assistants may not provide legal representation and shall not charge a fee for their services.

18.4. Where an accused person who was unrepresented or was unrepresented and assisted by a lay adviser under article 18.2 has been convicted and sentenced to a term of imprisonment, the court shall advise the convicted person that he or she may apply for a review of his or her case.

18.5. Where a convicted person referred to in article 18.4 wishes to apply for a review of his or her case, the court shall refer him or her to a legal aid provider who can provide legal representation.

Article 19. Obligations of the State to ensure effective provision of services by legal aid providers

19.1. The State shall ensure that legal aid providers are able to:

19.1.1 Provide legal aid services independently, without intimidation, hindrance, harassment, or improper interference;

19.1.2 Have prompt access to police stations, places of detention and prisons for the purpose of assisting their legal aid beneficiaries or prospective beneficiaries, and to be present during questioning by any investigative authority, subject only to lawful exceptions;

19.1.3 Consult with the legal aid beneficiaries in confidence;

19.1.4 In accordance with existing law, have access to information and documents regarding the offence that the legal aid beneficiary is suspected or accused of, or in respect of which he or she is being prosecuted;

19.1.5 Represent a legal aid beneficiary in court and to be present at all critical stages of the proceedings;

19.1.6 Cooperate with other professionals, including health, social and child-welfare professionals; and

19.1.7 Receive remuneration, pursuant to article 21 of this Law.

Article 20. Duties of legal aid providers

20.1. Legal aid providers shall have the following duties when providing legal advice, assistance and representation:

20.1.1. Duty of confidentiality towards the legal aid beneficiary;

20.1.2. Providing prompt and effective legal aid [*optional: that reflects the standards of quality established by [name of relevant authority]*];

20.1.3. Protecting the interests of the legal aid beneficiary;

20.1.4. Providing legal aid beneficiaries with appropriate information, including, but not limited to, defence strategies;

- 20.1.5. Avoiding, and taking appropriate action in respect of, conflicts of interest;
 - 20.1.6. When providing legal aid services to vulnerable legal aid beneficiaries, acting in a sensitive and respectful manner that takes into account their special needs;
 - 20.1.7. Abiding by the rules of procedure of courts and tribunals;
 - 20.1.8. Abiding by the code of conduct for legal aid providers, adopted by the Legal Aid Authority in accordance with article 28 of this Law;
 - 20.1.9. Maintaining all documents of the legal aid beneficiary and making them available to the legal aid beneficiary upon request;
 - 20.1.10. Undergoing mandatory training, pursuant to article 26.4.5; and
 - 20.1.11. Keeping records of their activities on behalf of the legal aid beneficiaries and reporting on their activities in accordance with regulations issued by [*name of regulating authority*], pursuant to article 44.2.5.
- 20.2. Legal aid providers shall not demand, request or receive any payment from legal aid beneficiaries.
- 20.3. Violations of the duties listed under this article may be reported to the Legal Aid Authority [*optional: and to the Bar Association*] for the purpose of initiating disciplinary action against the legal aid provider.

Article 21. Remuneration of legal aid providers

- 21.1. Public defenders shall be compensated at regular intervals at a rate in accordance with a compensation schedule established by [*name of relevant authority*].
- 21.2. Legal aid providers contracted by the Legal Aid Authority shall receive, within a reasonable period of time, remuneration for the legal aid services provided in accordance with this Law based on legal fees determined by the Legal Aid Authority.
- 21.3. Remuneration of legal service providers shall be payable from the Legal Aid Fund established under article 40 of this Law or such other funds as may be available to the Legal Aid Authority for this purpose.
- 21.4. Remuneration of legal aid providers shall be timely and adequate to appropriately compensate legal aid providers for the full range of legal aid services rendered.
- 21.5. The Legal Aid Authority shall reimburse expenses that are reasonably related and necessary to the provision of legal aid services, including travel,

transcripts, expert services and other miscellaneous expenses as determined and regulated by the Legal Aid Authority.

21.6. The Legal Aid Authority, in cooperation with [*the relevant governmental authority*], shall promote the provision of incentives, including in the form of tax exemptions, scholarships or travel and subsistence allowances to legal aid providers who work in economically or socially disadvantaged areas.

Chapter 4. The Legal Aid Authority

Article 22. Establishment of the Legal Aid Authority

22.1. The Legal Aid Authority is hereby established as an independent body with the functions of managing, coordinating and monitoring the provision of legal aid in an accessible, affordable, equitable, effective, credible and sustainable way to ensure the quality of legal aid services.

22.2. The Legal Aid Authority shall be a body corporate with a seal and with the capacity:

22.2.1. To sue and be sued;

22.2.2. To acquire and dispose of property;

22.2.3. To receive funds and donations;

22.2.4. To employ staff to undertake the functions of the Legal Aid Authority; and

22.2.5. To perform tasks necessary to carry out the functions of the Legal Aid Authority, as detailed in article 26.

Article 23. Structure of the Legal Aid Authority

23.1. The Legal Aid Authority shall have a Board chaired by [*name or title of person*] and composed of the following members, appointed by [*name of entity or authority*]:

[*Names or titles of members.*]

[*Options may include: members of the bar, retired justices, Ministry of Justice officials specializing in legal aid, members of the Ministry of Finance, members of human rights commissions, gender equality commissions and child protection commissions, representatives of non-governmental or other organizations, representatives of universities with law clinics and representatives of paralegal associations.*]

23.1.1. The Board of the Legal Aid Authority shall be responsible for designing legal aid policies and overseeing the implementation of the nationwide provision of legal aid.

23.2. The Legal Aid Authority shall have a secretariat, which will carry out administrative and secretarial functions.

23.3. The Legal Aid Authority shall operate through local offices, as appropriate, to make legal aid accessible throughout the State.

23.4. The [*name of regulating authority*], pursuant to article 44.1 of this Law, shall regulate the procedures for the appointment of any staff of the Legal Aid Authority and its offices as required for the exercise of its functions in accordance with article 26, on the basis of specific needs as identified by the Legal Aid Authority.

Article 24. Tenure of office of members of the Board of the Legal Aid Authority

24.1. Members of the Board of the Legal Aid Authority shall be appointed through an open nomination and selection process, shall hold office for a term of [*duration of term*], which may be reduced under prescribed circumstances, and shall be eligible for reappointment for [*number of terms*] term[s] only.

24.2. After the expiration of their mandate, members of the Board of the Legal Aid Authority shall continue to hold office until reappointed or replaced.

Article 25. Independence of the Legal Aid Authority

The Legal Aid Authority is an independent authority and shall not be subject to the direction or control of any person or authority in the regulation and performance of its functions.

Article 26. Functions of the Legal Aid Authority

26.1. The Legal Aid Authority shall be responsible for managing, coordinating and monitoring the provision of legal aid.

26.2. For the purpose of managing the provision of legal aid, the Legal Aid Authority shall have the following functions:

26.2.1. Establishing and publishing financial eligibility standards that must be satisfied in order for an applicant to meet the means test provided for under article 33 of this Law. The Legal Aid Authority shall be responsible for the periodic review of the financial eligibility standards and adjust them to account for changes in the cost of living index and other relevant factors;

- 26.2.2. Receiving, reviewing and deciding on applications for legal aid;
 - 26.2.3. Conducting the means test provided for under article 33 of the this Law for the purpose of determining an applicant's financial eligibility to receive legal aid;
 - 26.2.4. Determining the circumstances and amount of an applicant's contribution, pursuant to article 33.3 of this Law;
 - 26.2.5. Administering the Legal Aid Fund established under article 40 of this Law.
- 26.3. For the purpose of coordinating the provision of legal aid, the Legal Aid Authority shall have the following functions:
- 26.3.1. Accrediting and employing public defenders, pursuant to article 27 of this Law;
 - 26.3.2. Accrediting private legal practitioners, non-governmental organizations, community-based organizations, faith-based organizations, law clinics and paralegals as providers of legal aid, pursuant to article 27 of this Law;
 - 26.3.3. Entering into contract agreements for the provision of legal aid with private legal practitioners, public defender organizations, non-governmental organizations, community-based organizations, faith-based organizations, law clinics and paralegals on such terms and conditions as regulated by the Legal Aid Authority;
 - 26.3.4. Establishing legal fees for the remuneration of contracted legal aid providers and regulating the reimbursement of expenses;
 - 26.3.5. Designing programmes to promote the establishment of law clinics in institutions of higher education and encouraging the participation of law students in the provision of legal aid services, as deemed appropriate, to promote a culture of volunteerism during students' formative years.
- 26.4. For the purpose of monitoring the provision of legal aid, the Legal Aid Authority shall have the following functions:
- 26.4.1. Developing, publishing and disseminating through appropriate channels information on the right to legal aid and access to legal aid, including distribution at police stations, detention centres, courts, local government offices, educational and religious institutions; through public service announcements; over the Internet; at community meetings; and by other appropriate means. In developing and disseminating such information, the Legal Aid Authority shall ensure that the needs of isolated and marginalized groups are appropriately catered for and that geographical areas and

economically and socially disadvantaged populations with large numbers of potentially eligible applicants are effectively targeted;

26.4.2. Directly, and through contracts with monitoring and evaluation organizations, compiling and analysing data on such matters as: applications received, granted and denied; stage of the criminal justice process when legal aid was provided; response times; number and type of services provided; number and profile of legal aid providers; quality and effectiveness of legal services provided; legal aid providers' compliance with ethical standards; and administration of funds;

26.4.3. Monitoring, in cooperation with bar associations, the provision of legal aid services at all stages of the criminal justice process, including by regulating, recording and verifying legal aid provision, for the purpose of ensuring transparency and accountability in the provision of legal aid;

26.4.4. Receiving reports on the activities of accredited legal aid providers pursuant to article 20.1.12. The Legal Aid Authority shall keep any information received about case details confidential;

26.4.5. Providing, or making appropriate arrangements for, regular and mandatory training to legal aid providers for the purpose of constantly ensuring competence and innovation in the provision of legal aid, including specialized training for lawyers providing legal aid services to children;

26.4.6. Introducing and implementing appropriate mechanisms for the supervision, support and training of Legal Aid Authority staff members;

26.4.7. Undertaking research, studies and investigations, including by entering into agreements with non-governmental organizations, consultancy firms and universities, into all aspects of legal aid, including early access to legal aid, types of services offered, providers, target populations and methods of financing, to develop and experiment with effective ways of delivering legal aid;

26.4.8. Monitoring and developing effective mechanisms for delivering good quality legal aid services as well as compiling and sharing the best practices in the provision of legal aid;

26.4.9. Receiving and investigating disciplinary complaints against legal aid providers and taking disciplinary action against legal aid providers that the Legal Aid Authority finds acted in a negligent or incompetent way or in violation of their duties under article 20 of this Law, and, where relevant, referring legal aid providers to their employers and relevant professional bodies for disciplinary action;

26.4.10. Reporting on the activities, operation and budget spending of the Legal Aid Authority, pursuant to article 41 of this Law;

26.4.11. Carrying out any other activity contributing to the achievement of the purposes of the Legal Aid Authority.

Article 27. Accreditation of legal aid providers

27.1. The Legal Aid Authority shall undertake the process of accreditation of legal aid providers [*in collaboration with Bar associations, public defender organizations or other similar bodies*]

27.2. In making the determination as to the accreditation of a legal aid provider, the Legal Aid Authority shall take into consideration:

- 27.2.1. Area of practised law and scope of work;
- 27.2.2. Absence of disciplinary sanctions;
- 27.2.3. Qualifications;
- 27.2.4. Years of experience;
- 27.2.5. Demonstrable competence.

27.3. The Legal Aid Authority shall keep, periodically update and review a register of accredited legal aid providers, which shall indicate:

- 27.2.1. Names of legal aid providers;
- 27.2.2. Legal services that each provider is accredited to provide;
- 27.2.3. Geographical coverage of legal aid services;
- 27.2.4. Any circumstances or conditions related to the provision of services by each provider.

27.4. The Legal Aid Authority must ensure that the register referred to in article 27.3, whether in printed or electronic form, is available for inspection free of charge by members of the public at appropriate locations such as libraries, police stations, courts, prisons and public administration authorities.

27.5. The Legal Aid Authority may suspend or cancel accreditation for:

- 27.5.1. Any legal aid provider that or who requests the withdrawal of accreditation;
- 27.5.2. Any legal aid provider that or who has obtained accreditation through fraud or misrepresentation;
- 27.5.3. Any legal aid provider that or who does not provide legal aid services for which he, she or it has been accredited;

27.5.4. Any legal aid provider that or who demands, requests or receives any payments from a legal aid beneficiary, in violation of article 20.2;

27.5.5. Any legal aid provider that or who is charged with or convicted of an offence, or in respect of which or whom disciplinary sanctions have been imposed;

27.5.6. Any legal aid provider that or who, on the basis of his, her or its professional conduct, is deemed by his, her or its professional body not suitable to provide legal aid for reasons of incompetence or negligence.

27.6. Legal aid providers whose accreditation has been suspended or cancelled shall not be allowed to provide legal aid services. The suspension or cancellation decision may be appealed before the competent court or tribunal.

Article 28. Code of conduct for legal aid providers

28.1. No later than [*number of months*] from the enactment of this Law, the Legal Aid Authority shall, in consultation with the relevant professional bodies, adopt a code of conduct for legal aid providers, for the purpose of ensuring transparency and accountability in the provision of legal aid.

28.2. The fact that an accredited legal aid provider provides advice, assistance and representation under this Law shall not in any way affect the legal aid provider's obligations under any rules or codes of ethics of any professional or equivalent body that the legal aid provider belongs to.

28.3. Violations of the code of conduct for legal aid providers shall be promptly reported to [*name of oversight body*] for the purpose of initiating appropriate oversight proceedings.

Article 29. Reporting requirements

29.1. The Legal Aid Authority shall, in accordance with the applicable law, prepare a report for each financial year for the purpose of reporting on the performance of the Legal Aid Authority's functions and any other matters relevant to the delivery of legal aid.

29.2. The Legal Aid Authority shall submit the report at the end of each financial year to the [*name[s] of authority or authorities*] in accordance with applicable law and shall make the report available to the general public.

Chapter 5. Procedures

Article 30. Early access to legal aid for individuals in custody

30.1. Police officers, prosecutors or other relevant officials at police stations, detention centres, courts or prisons must promptly inform anyone suspected of or charged with a criminal offence, prior to any questioning, of the right to legal aid, of the right to free legal aid pursuant to article 33, of the type and availability of legal aid services and how to access them, and of the consequences of waiving that right, as regulated or monitored by the Legal Aid Authority.

30.2. Any waiver of the right to legal aid shall be informed and voluntary, in line with the procedures established pursuant to this Law.

30.3. No police officer, prosecutor or other relevant official at police stations, detention centres, courts or prisons should, at any time, do or say anything to dissuade any person who might be entitled to legal aid in accordance with this Law from obtaining legal aid.

30.4. Even when a means test is required by virtue of articles 4.2 and 4.3, individuals in custody shall be presumed eligible for legal aid, and a legal aid provider shall be promptly appointed for them pending determination of eligibility.

30.5. Police officers or other relevant officials, as regulated or monitored by the Legal Aid Authority, must give prompt effect to an early request for legal aid and must not interview or continue to interview the person until legal aid is provided.

Article 31. Legal aid application

31.1. An individual who is eligible to request legal aid by virtue of article 4 of this Law shall submit an application for legal aid in the prescribed form to the Legal Aid Authority.

31.2. Individuals in custody shall not be required to submit an application for the purpose of receiving legal aid during the early stage of the criminal justice process. Once proceedings have commenced, the Legal Aid Authority shall prioritize requests from individuals in custody.

31.3. The Legal Aid Authority shall regulate and monitor effective ways to assist any applicant requiring assistance, especially vulnerable persons, in the preparation and submission of a legal aid application.

Article 32. Proceedings in court

32.1. When an application for legal aid is filed after proceedings have commenced, the Legal Aid Authority shall immediately send a notice to any other party to the proceedings and to the court [*or tribunal*] where the proceedings are pending. The court [*or tribunal*] shall not proceed in the matter of the applicant until the Legal Aid Authority has decided to grant or refuse legal aid.

32.2. When the applicant is in custody, the Legal Aid Authority shall inform the court [*or tribunal*] of its decision within two weeks.

32.3. The aforementioned in article 32.1 shall not prevent the court or tribunal from issuing any civil protection orders that it deems necessary owing to the urgency of the circumstances.

Article 33. Means test

33.1. When an application for legal aid is submitted by an individual among those listed in articles 4.2 and 4.3, the Legal Aid Authority shall conduct a prescribed means test to determine whether the applicant is financially eligible to obtain legal aid. In these cases, legal aid shall not be granted unless the Legal Aid Authority determines that the applicant does not have sufficient means to afford the costs of legal services.

33.2. An individual can be financially eligible to obtain legal aid when his or her income [*optional: "and liquid assets"*] does [do] not exceed [*insert here the income ceiling level or "the income level prescribed and periodically reviewed by the Legal Aid Authority"*].

Alternative provisions

33.2. An individual can be financially eligible to obtain legal aid when he or she is recognized by the Ministry of Social Welfare [*or other relevant ministry*] as being entitled to State-funded social services for reason of poverty or disability.

33.2. For the purpose of determining the applicant's financial eligibility, the Legal Aid Authority shall ascertain the liquid assets and liabilities of the applicant in excess of the amount needed to meet the essential subsistence expenses for the applicant himself or herself and his or her immediate dependants, in accordance with the prescribed financial standards pursuant to article 26.2.1 of this Law. If such assets are not sufficient to cover the anticipated costs of legal services, the applicant shall be considered financially eligible to obtain legal aid. Items that are exempt from attachment by provision of law shall not be considered in determining financial eligibility.

33.3. Applicants who exceed the income level [*or the test limit*] pursuant to article 33.2 but, on the basis of their current personal or other circumstances are not able to afford legal services, shall be considered eligible on condition of making a contribution to the Legal Aid Authority. The amount of the contribution, based on the decision of the Legal Aid Authority, shall be a sum not exceeding [*ten (10) per cent*] of the total anticipated amount needed for the representation in question.

33.4. In determining the applicant's financial eligibility, the Legal Aid Authority may take into consideration:

33.4.1. The applicant's debts and financial obligations;

33.4.2. The cost of living in the applicant's habitual place of dwelling;

33.4.3. Whether the applicant has dependants; and

33.4.4. Any other circumstance affecting the applicant's ability to afford legal services.

33.5. If the means test is conducted on the basis of the applicant's household income, but family members are in conflict with each other or the family income is regulated by a matrimonial regime of separate ownership of property, the Legal Aid Authority shall take into consideration only the applicant's income for the purpose of evaluating the applicant's financial eligibility.

33.6. The Legal Aid Authority may accept a sworn written statement submitted by the applicant as sufficient proof of income for the purpose of entitlement to legal aid, unless the Legal Aid Authority has valid, justified reason to disbelieve such a statement.

33.7. The applicant must inform the Legal Aid Authority of any increase in his or her income or liquid assets that may affect his or her financial eligibility. If the applicant fails to do so, the Legal Aid Authority may suspend or terminate the provision of legal aid, pursuant to article 38 of this Law.

Article 34. Determination of eligibility

34.1. The legal aid authority shall grant or refuse legal aid within [*number of days*] of receipt of the application.

34.2. If an incomplete application is submitted, the Legal Aid Authority shall request the applicant to provide any missing information.

34.3. In evaluating the interests of justice, pursuant to articles 4.1.2 and 33.3, the Legal Aid Authority retains the right to take into consideration:

- 34.3.1. The seriousness and complexity of the case or dispute;
 - 34.3.2. Whether the provision of legal aid services is in any case desirable in the interests of justice, by reason of exceptional circumstances, including the gravity of charges or of potential penalty;
 - 34.3.3. Whether the provision of legal aid services is in any way related to a matter of public interest;
 - 34.3.4. Any other reasonable grounds, as deemed appropriate by the Legal Aid Authority.
- 34.4. The Legal Aid Authority shall grant preliminary legal aid whenever it is urgently needed during the determination of the applicant's eligibility.
- 34.5. When a decision is made by the Legal Aid Authority to refuse legal aid, the Legal Aid Authority must notify the applicant in writing and in a language that the applicant understands. The notification must include the reasons for which legal aid has not been granted and must inform the applicant of his or her right to appeal the decision of the Legal Aid Authority before [*name of reviewing authority*].
- 34.6. An applicant who is given notice under article 34.5 may appeal the Legal Aid Authority's decision within [*number of days*] of receipt of the notice. The [*name of reviewing authority*] shall notify the applicant of its decision within [*number of days*] of receipt of the appeal.

Article 35. Legal aid certificate

- 35.1. When legal aid is granted pursuant to article 34 of this Law, the Legal Aid Authority shall issue a legal aid certificate, which will attest to the applicant's status as legal aid beneficiary.
- 35.2. The legal aid certificate shall indicate, at a minimum:
- 35.2.1. The name of the legal aid beneficiary;
 - 35.2.2. The name of the appointed legal aid provider;
 - 35.2.3. The type of legal aid services the beneficiary is entitled to;
 - 35.2.4. The date when the grant of legal aid takes effect;
 - 35.2.5. Any conditions, including contribution by the applicant pursuant to article 33.3 of this Law, to the grant of legal aid, as deemed appropriate by the Legal Aid Authority.

Article 36. Choice of legal aid provider

36.1. The Legal Aid Authority must assign to a legal aid beneficiary a legal aid provider from among those accredited under the register pursuant to article 27.3 of this Law. In assigning a legal aid provider to a legal aid beneficiary, the Legal Aid Authority may take into consideration:

- 36.1.1. The type of legal aid service required;
- 36.1.2. The scope of work of the legal aid provider;
- 36.1.3. The nature as well as the factual and legal complexity of the case;
- 36.1.4. The qualifications and professional experience of the legal aid provider;
- 36.1.5. The caseloads of accredited legal aid providers;
- 36.1.6. The age, gender and vulnerability of the legal aid beneficiary, as well as his or her language knowledge;
- 36.1.7. Any request or preference expressed by the legal aid beneficiary.

36.2. The Legal Aid Authority shall ensure that children are assisted by legal practitioners or other legal aid providers specializing in children's law and development, who have gone through specific training on representing children.

36.3. The appointed legal aid provider shall provide the legal aid services required by the Legal Aid Authority and, except as provided in articles 37, 38 and 39, may not refuse to provide the requested legal aid services.

Article 37. Conflict of interest

37.1. Whenever the interests of the appointed legal aid provider conflict with the interests of the legal aid beneficiary or the interests of another beneficiary assisted by the legal aid provider, the legal aid provider must refuse to provide the requested legal services and must inform the Legal Aid Authority of such a conflict within [*number of days*] from the notification of appointment.

37.2. Upon verification of the existence of the circumstances precluding the provision of legal aid pursuant to article 37.1, the Legal Aid Authority shall appoint a new legal aid provider.

37.3. If a conflict between the interests of the appointed legal aid provider and the interests of the legal aid beneficiary arises after the provision of legal services has already commenced, the legal aid provider must immediately withdraw his, her or its services with respect to that legal aid beneficiary and notify the Legal Aid Authority, which shall appoint another legal aid provider for the beneficiary.

37.4. A legal aid provider who fails to inform the Legal Aid Authority of any existing conflict of interest shall be subject to disciplinary proceedings, as regulated by the Legal Aid Authority.

Article 38. Suspension and termination of legal aid

38.1. The Legal Aid Authority retains the right to suspend or cancel a legal aid certificate when the legal aid beneficiary:

38.1.1. Has obtained a legal aid certificate through fraud or misrepresentation;

38.1.2. Ceases to be financially eligible for legal aid;

38.1.3. Refuses to cooperate with the appointed legal aid provider or to provide necessary information or documents, in keeping with what is reasonably expected in a client-counsel relationship;

38.1.4. Makes a request to the Legal Aid Authority to withdraw legal aid.

38.2. The Legal Aid Authority shall notify the legal aid beneficiary of the cancellation or suspension decision.

38.3. The legal aid beneficiary shall have the right to appeal the cancellation or suspension decision before the [*name of relevant authority*] through the submission of a statement of objection within [*number of days*] from the notice of cancellation or suspension. The Legal Aid Authority shall issue its final decision within [*number of days*] from the receipt of the statement of objection.

Article 39. Change of legal aid provider

39.1. The provision of legal aid by the appointed legal aid provider may be terminated and a new legal aid provider shall be appointed by the Legal Aid Authority:

39.1.1. By agreement between the legal aid beneficiary and the legal aid provider;

39.1.2. When the appointed legal aid provider is unable to continue to provide the requested legal services because of death, acts of God or force majeure;

39.1.3. Upon disbarment or suspension of the legal aid provider;

39.1.4. Upon request of the legal aid beneficiary for reasons of incompetence or negligence on the part of the legal aid provider, and when the Legal Aid Authority determines that the request is well founded;

39.1.5. In the cases regulated under article 37 of this Law.

Chapter 6. Financial provisions

Article 40. Legal Aid Fund

40.1. The Legal Aid Fund is hereby established, under the management of the Legal Aid Authority, to finance the legal aid system established pursuant to this Law and support the provision of legal aid services guaranteed under this Law.

40.2. The Legal Aid Fund shall be budgeted from the State budget on the basis of the identified needs of beneficiaries and priorities determined by the Legal Aid Authority, shall be specifically allocated for the funding of legal aid and shall not be reduced or used for other purposes.

40.3. The primary source of revenue of the Legal Aid Fund shall be sums specifically allocated for legal aid in the State budget.

40.4. Other revenue sources of the Legal Aid Fund shall include:

40.4.1. Sums paid by way of contribution by legal aid beneficiaries pursuant to article 33.3 of this Law;

40.4.2. Sums received from foreign, regional and international donors; and

40.4.3. Donations by private individuals, testamentary dispositions and contributions from philanthropic organizations.

40.5. The Legal Aid Authority shall be responsible for allocating resources within the Legal Aid Fund for exclusive purposes as follows:

40.5.1. Remuneration of legal aid providers, in accordance with article 21 of this Law;

40.5.2. Payment of expenses, including expenses for expert witnesses, for translation, for collecting evidence and for overhead;

40.5.3. Covering operational costs and expenses of the Legal Aid Authority, as approved in the Legal Aid Authority's budget.

Article 41. Budget

41.1. The Legal Aid Authority shall not later than [*date*] of each financial year submit to the [*name of relevant authority*] a budget containing estimates of all

amounts required during the next financial year for the purposes of the Legal Aid Authority, and in each budget there shall be set out the estimated revenue and expenditure required in detail and in the prescribed form.

41.2. The Legal Aid Authority shall keep books of account for each financial year of activity.

41.3. The books of account of the Legal Aid Authority shall be audited by [*name of auditing authority*] in accordance with the relevant law.

Article 42. Exemption from court costs

Legal aid beneficiaries shall be exempted from court costs.

Chapter 7. Rules and regulations

Article 43. Regulating authority

The authority to promulgate regulations under this Law is vested in the [*name of competent authority*].

Article 44. Legal aid regulations

44.1. Without prejudice to regulations that may subsequently be relevant and necessary, the [*name of competent authority*] shall issue regulations for the effective implementation of this Law that are not inconsistent with it no later than [*number of days*] after the enactment of this Law.

44.2. Notwithstanding the generality of article 44.1, regulations adopted pursuant to article 44.1 may make provision for the following purposes:

44.2.1 Developing and adopting methods for police officers, prosecutors or relevant judicial officers to promptly inform anyone who is detained, arrested, suspected of or charged with a criminal offence of their right to legal aid;

44.2.2 Developing and adopting methods and schemes for the prompt and effective delivery of legal aid, including methods to promptly contact legal aid providers at police stations and detention facilities;

44.2.3 Regulating the establishment and staffing of local offices of the Legal Aid Authority;

44.2.4 Regulating the appointment and placement of Legal Aid Authority personnel at police stations and detention centres;

44.2.5 Regulating reporting requirements of legal aid providers; or

44.2.6 Regulating disciplinary sanctions and corrective measures against legal aid providers, in coordination with the licensing bar association.

44.3. Regulations on the operations of the police and prosecutors shall be amended to give effect to the rights recognized in this Law.

44.4. Regulations adopted pursuant to article 44.1 shall be enforceable within [*enter number of days*] from publication in the [*official gazette/official journal/other relevant journal*].

Chapter 8. Final provisions

Article 45. Commencement

The present Law shall come into force on [date].

Article 46. Offences

46.1. The [Code of Criminal Procedure or name of relevant law] is amended by adding, after article [article number], the following article:

“Article [number]. Illegal remuneration of legal aid providers

A legal aid provider accredited to provide legal aid services pursuant to [title and number of legal aid law] who demands, requests, or receives any money or other benefits from a legal aid beneficiary as remuneration for the provision of legal aid services commits an offence punishable by [applicable penalty].”

46.2. The [Code of Criminal Procedure or name of relevant law] is amended by adding, after article [article number], the following article:

“Article [number]. Prohibition of interviewing suspects or accused persons without a legal aid provider present

A police officer or other relevant official who interviews or continues to interview a suspect or accused person, who is entitled to legal aid, without a legal aid provider being present commits an offence punishable by [applicable penalty].”

Article 47. Remedies

The [Code of Criminal Procedure or name of relevant law] is amended by adding, after article [article number], the following article:

“Article [number]. Exclusion of evidence

Any evidence obtained in violation of the right of suspects and accused persons to be informed of their right to legal aid shall be excluded.”

Article 48. Transitional provisions

In the period before the entry into force of the rules and regulations to be adopted pursuant to article 44.1 of this Law, the provision of legal aid and rights of legal aid beneficiaries shall be ensured in accordance with the guiding principles of this Law.