

**PROPOSED AMENDMENTS TO THE NATIONAL LEGAL AID BILL, 2022**

**CLAUSE 1: PRINCIPLES FOR PROVISION OF LEGAL AID SERVICES**

Delete paragraph (d)

**Justification**

- *The requirement for non-discrimination as provided in Paragraph (d) is constitutionally recognised under article 21 of the Constitution, thereby making paragraph (d) redundant in light of the broader requirements for compliance with human rights norms and standards as required in paragraph (a).*

**CLAUSE 2: INTERPRETATION**

Clause 2 of the Bill is amended-

(a) In the definition of the phrase, “eligible person”, by substituting for the words “is eligible”, the word “qualifies”;

(b) In the definition of the phrase “legal aid service provider” by inserting the following new paragraphs immediately after (f) as follows-

“a student under the supervision of a supervising advocate as required in the Advocates (Student Practice) Regulations, 2004;”

(c) In the definition of the phrase “indigent person”, by substituting for the words “that he or she cannot afford to pay for legal services”, the words “is not capable of paying for legal services”;

(d) In the definition of the phrase, “legal personnel”, delete the words “lawyer or”;

(e) In the definition of the phrase “marginalised person” by inserting immediately after the word “age”, the word “ethnicity”;

(f) by substituting for the definition of the word "paralegal", the following-

"paralegal' means a person who holds a qualification in law, other than a degree in law, recognized by the Law Council;"

(g) by inserting immediately the definition of the word "pro bono services", the following-

"student" means a post graduate law student who has duly enrolled for a post graduate bar course in a post graduate law school or institution;

(h) In the definition of the phrase "vulnerable person", by inserting immediately after the word "child", the words "an internally displaced person";

**Justification**

- For completeness and better drafting
- To include, among persons who can provide legal aid services, students, since these are already providing legal aid services to the community.
- To include amongst vulnerable and marginalised persons, internally displaced persons and persons marginalised based on their ethnicity in order to ensure that such persons are eligible for legal aid.
- The amendment proposed to the phrase "legal personnel" is to harmonize the provision with the provisions of the Advocates Act which only recognizes Advocates and not lawyers.

**CLAUSE 3: PROVISION OF LEGAL AID SERVICES**

For clause 3, there is substituted the following-

**"3. Provision of legal aid services**

(1) Legal aid services may be provided in a civil or criminal matter before a tribunal, court of judicature, subordinate court and in any other forum where legal services may be required.

(2) Legal aid services shall be provided-

(a) in the case of a criminal matter, at the earliest opportunity a person is suspected of, arrested or detained in respect of, or is charged with a criminal offence; and

(b) in the case of a civil matter, at the earliest opportunity a cause of action occurs or a need for legal aid services arises.

**Justification**

- *To harmonize the provision with the definition of legal aid which allows the provision of legal aid services beyond court matters.*
- *To incorporate best practices in the provision of legal aid services which is espoused in Article 3 of the 2004 Lilongwe declaration on accessing legal aid in criminal justices systems in Africa which requires legal aid to be provided from a person's first interaction with the justice system.*

**CLAUSE 5: APPLICATION FOR LEGAL AID SERVICES**

Clause 5 of the Bill is amended-

(a) in sub clause (2), by substituting for the word "minister", the words "Law Council"

(b) by inserting immediately after sub clause (2), the following-

"Where an application for legal aid is made orally or in any other language other than the English language, the legal aid service provider shall reduce the application into writing, in the English language."

(c) by substituting for sub clause (3), the following-

"(3) An application for legal aid services may be made by the person who intends to receive legal aid services or any other person or organisation on behalf of that person."

**Justification**

- *the proposal to substitute "Minister" for "Law Council" is to recognise the duty imposed on the Law Council under section 77 of the Advocates Act to make regulations governing any matter concerning the professional practice, conduct and discipline of advocates and since legal aid service*

*JOA*  
*Combraka*  
*Blawie*  
*Alumini*

providers are accredited by the Law Council, then the rules envisaged in clause 5 (2) should be issued by the Law Council.

- The inclusion of a requirement to reduce oral application into writing in the English language is for accountability and data collection and to ensure there is uniformity in the application for legal aid services.
- The proposal to redraft sub clause (3) is intended to remove an ambiguity arising from the use of the phrase "eligible person" which would create an assumption that such persons do not need to be assessed before grant of legal aid since they are already "eligible".

### **CLAUSE 6: EVALUATION OF APPLICATION**

Clause 6 of the Bill is amended-

(a) In the head note, by inserting the words "for legal aid services", immediately after the word "application";

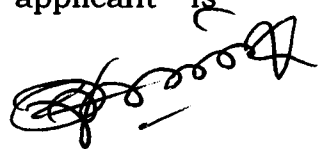
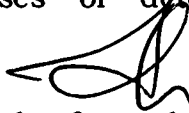
(b) In sub clause (2), by substituting for paragraphs (b) and (c), the following-

"(b) the applicant's age, gender, physical or mental disability, social or personal status, including whether the applicant is a child, a refugee, an internally displaced person, a stateless person, an asylum seeker, a victim of human trafficking or of gender-based violence, an illiterate person, a member of a minority community in Uganda or is suffering from a serious or terminal illness, for purposes of determining whether the person is vulnerable; and

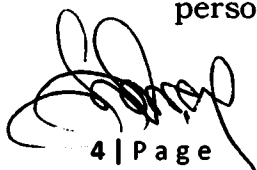
"(c) the condition of a person or group of persons arising from exclusion from meaningful participation in the economic, social, political, cultural and other forms of human activity in their community on the basis of gender, age, disability or any other reason created by history, tradition or custom, for purposes of determining whether the applicant is marginalised;"

(c) by inserting immediately after sub clause (2), the following-

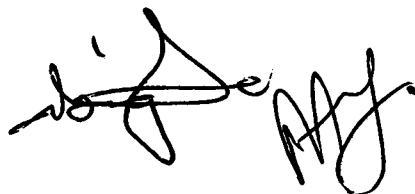
"A legal aid service provider shall only provide legal aid services to a person if the legal aid service provider is satisfied that—



FOA  
107



4 | Page



Donna



- (a) the matter in respect of which legal aid services are sought has a likelihood of success;
- (b) the matter in respect of which legal aid services are sought is not frivolous, vexatious or can easily be settled without incurring expenses;
- (c) the cost for granting legal aid services is justifiable in the light of the expected benefits;
- (d) it is appropriate to offer legal aid services having regard to the present and future demands;
- (e) the nature, seriousness and importance of the matter for which legal aid services is granted justify such expense;
- (f) denial of legal aid services would result in substantial injustice to the applicant; or
- (g) there are reasonable grounds to justify the grant of legal aid services.

**Justification**

- the proposal to amend the head note is for completeness
- the amendment to paragraphs (b) and (c) is intended to harmonize the provision with the definition of the words "marginalised person" and "vulnerable person" as defined in clause 2 of the Bill in order to create clarity in the provisions.
- The insertion of a new sub clause is intended to introduce in the Bill a merits test to enable legal aid service providers assess whether the matter for which legal aid services are sought has a likelihood of success, is not frivolous or vexatious or can be settled without incurring expenses or that there are reasonable grounds for bringing or defending such a matter in order to ensure that the resources available for legal aid services are utilized for the most deserving cases and over matters that warrant the grant of legal aid services.

10A

*[Handwritten signatures]*

*[Handwritten signature]*

*[Handwritten signature]*

*[Handwritten signature]*

*[Handwritten signature]*

*[Handwritten signature]*

*[Handwritten signature]*

*[Handwritten signature]*

**CLAUSE 7: DECISION ON APPLICATION FOR LEGAL AID SERVICES**

Clause 7 of the Bill is amended by substituting for sub clause (5), the following-

“(5) Where a legal aid service provider is not satisfied with an application for legal aid services, the legal aid service provider shall, within twenty four hours of making that decision, inform the applicant, in writing, giving reasons for the refusal.”

**Justification**

- *To include a time line within which a legal aid service provider is to inform an applicant for legal aid services of the decision not to grant legal aid.*
- *To require the decision to be communicated in writing.*

**CLAUSE 8: APPEAL OF DECISION**

Delete clause 8

**Justification**

- *Clause 8 is redundant in light of the constitutional requires under article 42 of the Constitution of the Republic of Uganda which empowers a person to seek for redress in courts of law whenever they are dissatisfied with administrative decisions.*
- *The proposal to restrict appeals to the Law Council as well as the proposal to have the decision of the Law Council being final may be challenged for infringing on article 42 of the Constitution since it will fetter the exercise of judicial power over such disputes.*
- *Clause 8 also has the effect of imposing an onerous obligation on legal aid service providers to provide legal aid services and this may be interpreted as granting a person a right to receive legal aid services yet it is not.*
- *The provision will also result in unreasonable suits and complaints to the Law Council against legal aid service providers which will affect the delivery of legal aid services to eligible persons.*

JOA

*Comberka*

**CLAUSE 9: GRANT OF LEGAL AID SERVICES BY COURT**

Clause 9 of the Bill is amended-

(a) in sub clause (2), by substituting for the word “Chief Justice”, the words “Law Council”;


(b) in sub clause (5), by substituting for the word “Government”, the words “a legal aid service provider”;

(c) by substituting for subsection (6), the following-

“(6) A legal aid service provider to whom an order of court is served shall immediately provide legal aid services to the prisoner named in the order.”

**Justification**

- to remove the monopoly granted to Justice Centres since there are many other legal aid service providers in Uganda, including LDC, advocates, Uganda Law Society and Legal Clinics by public universities thereby making the proposal unfair to other legal aid service providers.
- the proposal to substitute “Chief Justice” for “Law Council” is to recognise the duty imposed on the Law Council under section 77 of the Advocates Act to make regulations governing any matter concerning the professional practice, conduct and discipline of advocates and since legal aid service providers are accredited by the Law Council, then the rules envisaged in clause 9 (2) should be issued by the Law Council.

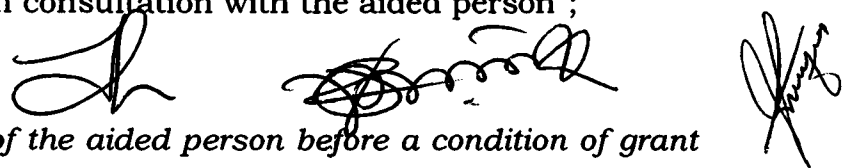


**CLAUSE 10: VARIATION OF CONDITIONS FOR PROVIDING LEGAL AID SERVICES**

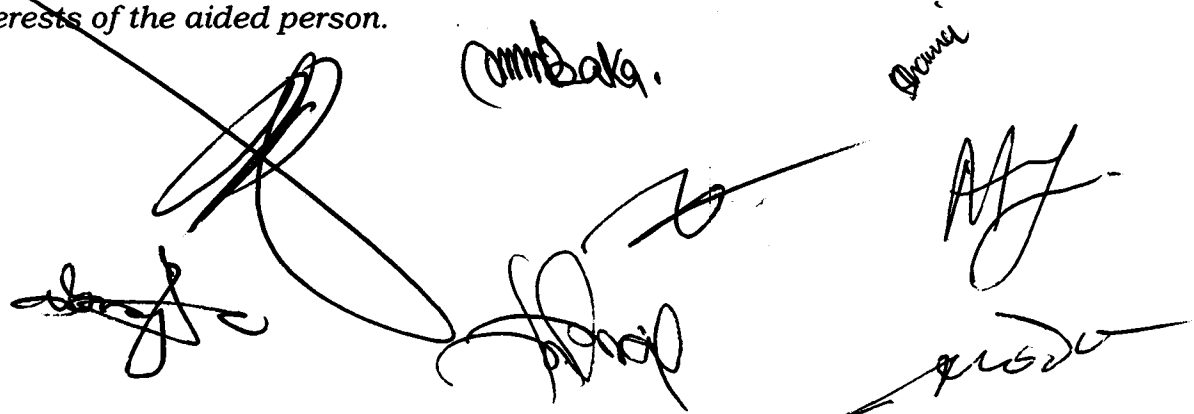
Clause 10 of the Bill is amended in sub clause (1) by inserting immediately after the word “may”, the words “in consultation with the aided person”;

**Justification**

- To require the consultation of the aided person before a condition of grant of legal aid is made by the legal aid service provider in order to ensure that such decisions are not arbitrary in nature and do consider the views and interests of the aided person.



JOA



**CLAUSE 12: TERMINATION OF LEGAL AID SERVICES**

Clause 12 of the Bill is amended-

(a) In sub clause (1)-

(i) by substituting for paragraph (a), the following-

“(a) on the death of the aided person, except where the legal aid service provider determines that the estate of the deceased aided person is likely to suffer a miscarriage of justice or the interest of justice so require that legal aid services continue;”

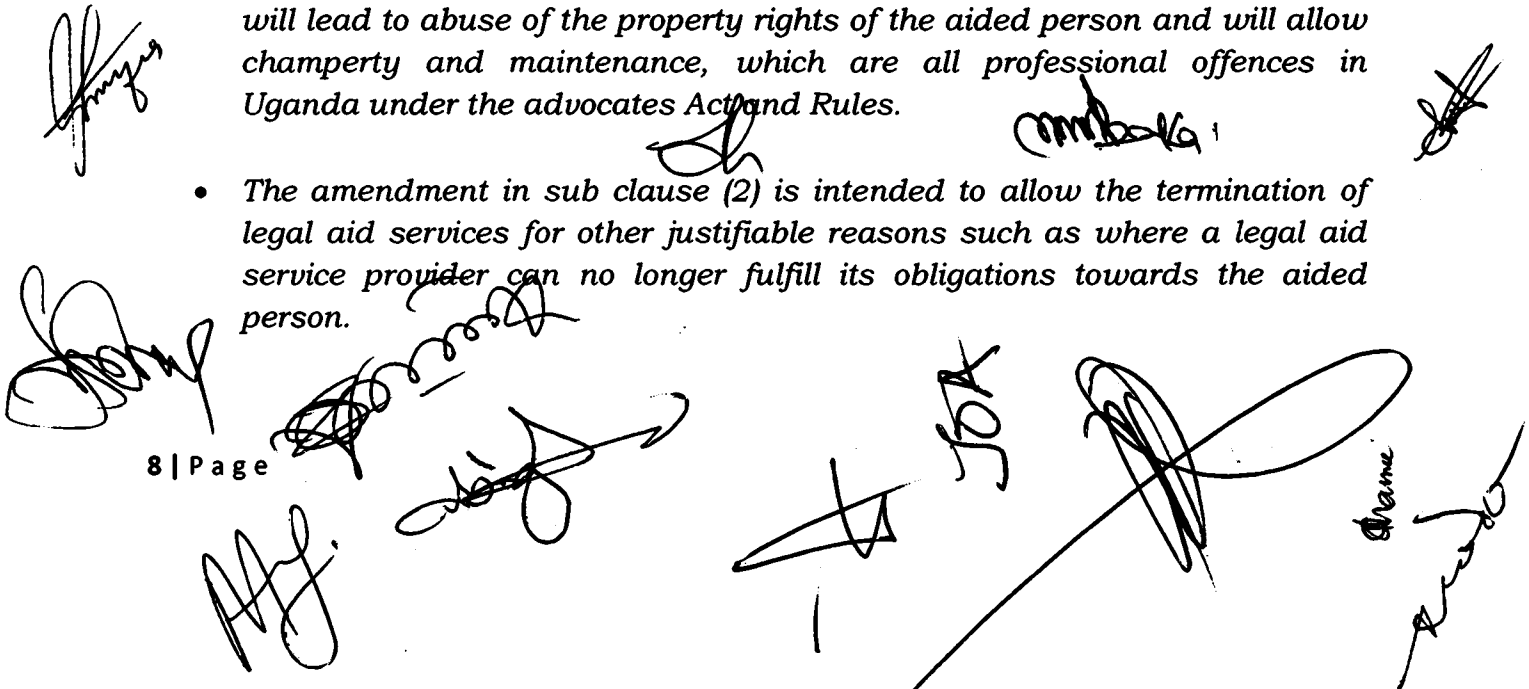
(ii) by deleting paragraph (c);

(b) in sub clause (2), by inserting immediately after paragraph (vi), the following-

“the legal aid service provider, for any reason, can no longer fulfill its obligations towards the aided person;”

**Justification**

- *to allow the continuation of legal aid services in case of the death of the aided person where a legal aid service provider determines that the estate of the deceased aided person is likely suffer a miscarriage of justice or the interest of justice so require that legal aid services continue.*
- *The deletion of paragraph (c) is to protect the property interest of the aided person in the judgement since a judgement of court constitutes property to the aided person. Allowing legal aid service providers to enforce judgement will lead to abuse of the property rights of the aided person and will allow champerty and maintenance, which are all professional offences in Uganda under the advocates Act and Rules.*
- *The amendment in sub clause (2) is intended to allow the termination of legal aid services for other justifiable reasons such as where a legal aid service provider can no longer fulfill its obligations towards the aided person.*





**CLAUSE 14: WITHDRAWAL OF THE SERVICES OF LEGAL PERSONNEL**

Delete clause 14

**Justification**

*The provision is redundant since the withdrawal of legal personnel is an administrative arrangement, details of which need not be in the law.*

**CLAUSE 17: DEDUCTIONS FROM AWARDS ARISING FROM A SETTLEMENT**

Delete clause 17

**Justification**

*The provision legalizes champerty and maintenance, which are all professional offences in Uganda and are specifically, prohibited under Regulation 26 of the Advocates (professional Conduct regulations) SI 267-2 which bars an advocate from entering into any agreement for the sharing of a proportion of the proceeds of a judgment whether by way of percentage or otherwise either as part of or the entire amount of his or her professional fees or in consideration of advancing to a client, funds for disbursements.*

**CLAUSE 18: ENFORCEMENT OF JUDGMENT**

Delete clause 18

**Justification**

- *Execution of judgement of court is already catered for in various laws making the provision redundant.*

**CLAUSE 19: ACCOUNTING FOR FUNDS RECEIVED**

Delete clause 19.

**Justification**

- *The proposal in clause 19 to allow the holding and retention of monies meant for aided persons will lead to abuse of the provision by legal*

*JOA*

*[Handwritten signatures and initials: SH, [unclear], [unclear], [unclear], [unclear], [unclear], [unclear], [unclear], [unclear], [unclear]]*

personnel who might hold and retain monies without accounting for the same to the aided person.

- The provision is redundant since there already exists provisions under the Advocates Act and under the Advocates (Legal Aid to Indigent Persons) Regulations, 2007 on holding and remitting funds belonging to aided persons.

### **CLAUSE 21: CONTRIBUTIONS TOWARDS LEGAL AID**

Delete clause 21

#### **Justification**

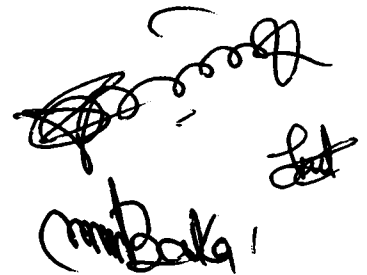
- The provision goes against the spirit of legal aid by requiring aided persons to contribute to legal aid provision yet they are indigent, thereby making the provision impractical.

### **CLAUSE 23: LEGAL AID FUNDING ACCOUNT**

Clause 23 is amended in subsection (2), by inserting the words “in accordance with the Public Finance Management Act, 2015” immediately after the word “council”.

#### **Justification**

- To require compliance of the Law Council with the provisions of the Public Finance Management Act.



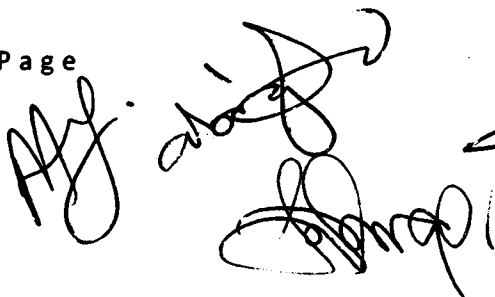
### **CLAUSE 25: SOURCES OF FUNDS OF THE ACCOUNT**

Clause 25 of the Bill is amended-

- (a) by substituting for paragraph (a), the following-

“(a) grants, gifts, loans or other endowments and donations made with the approval of the Minister and the Minister responsible for finance from any source within and outside Uganda;”

- (b) in paragraph (d), by inserting immediately after the word “recovered”, the words “from legal aid service providers”



(c) in paragraph (f), by deleting the words “and other services provided by the Law Council”;

**Justification**

- to comply with section 44 of the Public Finance Management Act on receipt of grants, gifts, loans or other endowments and donations.
- To delete words that makes the provision too broad in order to limit the funds of the Account to only fees and charges arising from accreditation.
- for clarity, to specify from whom the penalties and fines are to be recovered;

**CLAUSE 29: REQUIREMENT TO PROVIDE PRO BONO**

Delete clause 29

**Justification**

*It's a redundant provision since the obligation on advocates to provide pro bono is well established under the Advocates (Pro bono Service to Indigent persons) regulations, 2009.*

**CLAUSE 31: LEGAL AID SERVICES TO PERSONS IN CUSTODY**

Clause 31 is amended-

(a) by substituting for the head note, the following-

“Legal aid services to a person charged with an offence or in custody”

(b) by inserting immediately before sub clause (1), the following-

“A person arrested, detained or charged with an offence shall be informed of the availability of legal aid services and facilities shall be availed to that person to apply for legal aid services from a legal aid service provider of his or her choice.”

**Justification**

- To require a person arrested or charged with an offence to be informed of the availability of legal aid services.

**CLAUSE 33: LIABILITY OF LEGAL AID SERVICE PROVIDERS**

Delete clause 33

**Justification**

- The provision is redundant since the standards required of a legal aid service provider are prescribed under the Advocates (Legal Aid to Indigent persons) Regulations and under the Advocates (professional Conduct regulations) SI 267-2.

**CLAUSE 41: CODE OF CONDUCT**

Delete clause 41

**Justification**

- A code of conduct already exists in form of regulations made under the Advocates Act, including the Advocates (Legal Aid to Indigent persons) Regulations and the Advocates (Student Practice) Regulations and in case of Advocates, the Advocates (Professional Conduct) Regulations.

**CLAUSE 45: REGULATIONS**

Clause 45 is amended by substituting for sub clause (1),1 the following-

“(1) The Law Council may, in consultation with the Minister, by statutory instrument make regulations for better carrying into effect the provisions of this Act.”

**Justification**

- The proposal to substitute “Minister” for “Law Council” is to recognise the duty imposed on the Law Council under section 77 of the Advocates Act to make regulations governing any matter concerning the professional practice, conduct and discipline of advocates and since legal aid service

*providers are accredited by the Law Council, then the rules should be made by the law council.*

**CLAUSE 50: AMENDMENT OF CAP. 20**

Delete clause 50

**Justification**

- *The proposals in clause 50 are all catered for under clause 9 of the Bill, making the provisions redundant.*

Handwritten signatures and initials scattered across the page, including 'JOA', 'mp', 'sh', 'AJF', and others.