

LEGAL AID RULES OF BHUTAN

2022



“Enhancing equal access to justice and strengthening rule of law”

**Legal Aid Center
Supreme Court Complex
Lhadrong, Thimphu**

འབྲུག་གི་མངོན་མཐོ་ཁྲིམས་ཀྱི་འདུན་ས།



Supreme Court of Bhutan

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ROYAL COURT OF JUSTICE

CJB-9/2022/3538

14th October 2022

In obedience to the Royal Command dated 17th June 2022, the Bhutan National Legal Institute hereby adopts the Legal Aid Rules of Bhutan 2022. Relevant public, corporate and private organizations including civil society organizations and individuals shall abide by these Rules and assist the Legal Aid Center for the successful implementation of legal aid in Bhutan.

The Rules shall come into force on the 24th Day of the 8th Month of Water Male Tiger Year of the Bhutanese Calendar corresponding to 19th Day of the 10th Month of 2022.

(Chogyal Dago Rigdzin)

CHIEF JUSTICE
Supreme Court of Bhutan
Royal Court of Justice
Thimphu : Bhutan

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Chapter 1 Preliminary

Legal Basis

1. Article 9(6) of the *Constitution of the Kingdom of Bhutan, 2008* envisages that the legal aid at the expense of the State, to vulnerable and indigent persons is indispensable for ensuring equal access to justice.

Short Title, Commencement and Extent

2. These Rules shall:
 - 2.1. Be called the Legal Aid Rules of Bhutan, 2022.
 - 2.2. Come into force with the order of the Chief Justice of Bhutan;
and
 - 2.3. Extend to the whole of the kingdom of Bhutan.

Objectives and Means

3. These Rules aims to enhance access to justice for vulnerable and indigent persons by:
 - 3.1. Adopting fair, accessible, transparent and accountable Legal Aid service;
 - 3.2. Delivering effective and efficient service in terms of time and cost of providing legal aid service; and
 - 3.3. Fostering partnership and collaboration among the relevant stakeholders.

Scope of Application

4. These Rules shall apply to the provisions of legal aid in criminal and civil matters in Bhutan.

Rule of Construction

5. In these Rules, unless the context indicates otherwise, the singular shall include the plural and the masculine gender shall include feminine gender and vice versa.

Chapter 2 Legal Aid Center and the Fund

Establishment of the Legal Aid Center

6. The Bhutan National Legal Institute shall establish a designated Center to facilitate and provide legal aid service covered by these Rules.
7. The Drangpon Rabjam or the Chief Legal Officer shall head the Center.

Functions of the Center

8. The Center shall:
 - 8.1. Frame clear and adaptable eligibility criteria for legal aid;
 - 8.2. Review applications and determine grant of legal aid service;
 - 8.3. Liaise with relevant stakeholders for effective and efficient service; and
 - 8.4. Frame a strategic plan and policy for sustainable legal aid service.

Legal Aid Fund

9. The State shall grant adequate funds to the Center, which shall cover:
 - 9.1. The cost of legal aid service provided under these Rules; and
 - 9.2. Any other expenses which are required to be met by the Center.

Cost of Legal Aid Service

10. Cost of legal aid service means the sum of fees, or charges attributable to the service provider as prescribed under these Rules.
11. Legal aid shall not cover following costs unless determined necessary to promote justice as determined by the Center:
 - 11.1. Court fees;

11.2. Bail bonds;

11.3. Appeal bonds; and

11.4. Other expenses which are beyond the scope of legal aid service.

Minimum Fees Payable to the Service Provider

12. The fees for legal aid service shall be determined on a case-by-case basis, which shall not exceed the maximum limit set by the Center.
13. The service provider shall claim fees only after final disposition of the matter assigned to him/her.
14. In the event that the case is heard in part when legal aid is granted, the Center reserves the right to pay only a portion of the fees from the time the service provider takes up the case.
15. In the event of revocation of legal aid by the Center or withdrawal of service by the service provider, the service provider shall be entitled to remuneration in proportion to the service rendered, rather than full remuneration.
16. If the case assigned to the service provider is resolved through mediation, the service provider shall be paid fair remuneration for their service instead of the actual fee mentioned in the undertaking form.
17. Civil servants and public employees shall not claim service provider's fees under these Rules.

Chapter 3 Eligibility Criteria for Legal Aid

Application for Legal Aid

18. The applicant or any other person authorized by the applicant shall submit an application to the Center by filling in Form No.1 under these Rules.
19. The applicant or any other person authorized by the applicant may request following institutions to assist in the application process:
 - 19.1.Courts;
 - 19.2.Law enforcement agencies;
 - 19.3.Competent authority for women and children;
 - 19.4.Civil Society Organizations;
 - 19.5.The PEMA Center Secretariat; and
 - 19.6.Other relevant institutions.
20. The above law enforcement agencies include, but are not limited to, the Royal Bhutan Police, the Office of the Attorney General, the Anti-Corruption Commission, and others with whom the complaint or charge against the applicant was originally registered.
21. Respective institutions assisting the legal aid applicant shall ensure that all prescribed documents and information pertaining to the case are verified and forwarded to the Center.
22. Respective institutions and individuals assisting the legal aid applicant shall also exercise due diligence to ensure that applicants have provided true and complete information in the legal aid application.

Duty of the Legal Aid Applicant and/or Recipient

23. A legal aid applicant and/or recipient shall:
 - 23.1. Abide by the Oath of Declaration under these Rules;
 - 23.2. Submit necessary information and documents as required by the Center; and

23.3. Notify the Center in writing if the recipient becomes aware:

- a) Of any change in the income or capital that could affect his or her eligibility for legal aid service;
- b) Of change in address or other details; and
- c) Of any Court orders and rulings.

24. Any eligible person shall be granted legal aid on the same issue(s) not more than once.

Tests for Eligibility

25. Eligibility for legal aid shall be determined by:

25.1. Means Test; and

25.2. Merits Test.

26. All applicants shall qualify both the tests except for those applicants covered under Rule 30.

Means Test

27. The means test sets out indicators of financial capacity, which shall be based on the poverty line updated periodically by the National Statistics Bureau of Bhutan.

28. The Center may assess the net worth of disposable capital that is accessible to the applicant and his or her household, which shall be determined on a case-by-case basis.

29. The Center shall request information from relevant public, corporate or private sectors about the applicant's financial capacity.

30. The per capita income of the household shall not exceed the poverty line set by the National Statistics Bureau of Bhutan.

31. Notwithstanding Rule 30, the Center may provide legal advice and assistance to children in conflict with the law and to persons with physical, mental, or social disabilities, regardless of his or her financial capacity, when the interest of justice so requires.

Eligibility Criteria for Legal Aid

32. In matrimonial disputes or any other matter where the household has a contrary interest in the matter for which legal aid is sought, the Center shall not consider the income of the household for eligibility purposes if the Center determines that the income or assets are not available to the applicant.

Merits Test

33. In order to determine merits of the case, the Center shall:
 - 33.1. Require the applicant to furnish information and documents relating to the case;
 - 33.2. Request information from the Court and relevant public and private institutions and CSOs about the applicant's case; and
 - 33.3. Determine if the case has a probable cause of action and merits grant of legal aid.

Legal Aid in Civil and Criminal Cases

34. In criminal cases:
 - 34.1. Only an indigent accused charged with an offence punishable by a felony under the *Penal Code of Bhutan* or other laws are eligible for legal aid; and
 - 34.2. An indigent accused is entitled to only legal representation during trial, although the Center may grant pre-trial legal advice and assistance if the Center determines eligibility immediately during interrogation and investigation.
35. In civil cases, an applicant who is eligible for legal aid shall be provided with legal advice and assistance only. However, the Center may grant legal representation at any time if the interest of justice so requires.

Matters Ineligible for Legal Aid

36. Legal aid shall not be granted in the following matters unless the Center determines that the interest of justice so requires:
 - 36.1. Election petitions under the Parliamentary and Local Government Elections;
 - 36.2. Judgment enforcement proceedings and proceedings where the only question to be brought before the Court is time and mode of payment (including liquidated damages and costs);
 - 36.3. Insolvency proceedings;
 - 36.4. Foreclosure of mortgages;
 - 36.5. Transfer of property and conveyance, except where such transfer of property or conveyance is incidental to or arises out of a matter where legal aid is granted;
 - 36.6. Civil and criminal defamation; and
 - 36.7. Any other matters as deemed appropriate by the Center.

Chapter 4 Grant of Legal Aid Service

Review of Application

37. Once the Center receives an application it will be assigned for review on a seriatim basis.
38. The reviewer of a particular application shall take all reasonable steps to determine the eligibility of the applicant within five working days from the receipt of application.
39. The reviewer of a particular application shall act as a focal person until the final disposition of the matter for which legal aid was granted.
40. The reviewer shall submit the written report to the Drangpon Rabjam or the Chief Legal Officer of the Center.
41. S/he may decide to grant or refuse legal aid on the basis of the report submitted or seek additional examination if need be.

Making Decision to Grant Service

42. In deciding whether or not to grant legal aid service, the Center shall follow a process where it shall take into account:
 - 42.1. The extent to which full disclosure regarding the means of the applicant has been declared;
 - 42.2. Whether, in the opinion of the Center, the applicant's conduct in relation to the subject-matter of the case is such that s/he should be granted legal aid in the particular circumstances; and
 - 42.3. Where the matter is on appeal, whether the grant of legal aid or further legal aid, is justified in all circumstances of the case.
43. The Center shall provide written notice of grant of legal aid to the applicant stating:

- 43.1. The type of legal aid service to be provided;
 - 43.2. The starting date of legal aid service;
 - 43.3. Conditions for grant of service; and
 - 43.4. The details of the legal aid service provider.
44. The Center may appoint service providers from:
- 44.1. Private lawyers and paralegals;
 - 44.2. Civil Society Organizations;
 - 44.3. Law Clinics of the Jigme Singye Wangchuck School of Law;
 - 44.4. Legal aid volunteers;
 - 44.5. Staff attorneys of the Center; or
 - 44.6. Any other legally trained professional (lawyer, paralegal or other suitably trained person) who is approved by the Center to provide legal aid service.
45. The service provider receiving the case assignment shall sign an undertaking and initiate to provide service on the date and time specified by the Center.
46. If the service provider is a private lawyer or paralegal, s/he shall provide a current practicing certificate issued by the Bar Council of Bhutan and fulfill general conditions under these Rules.
47. If the service provider is an undergraduate law student of the JSW School of Law, s/he shall be the one nominated by the JSW School of Law Clinic and fulfill other general conditions under these Rules.

48. Denial of Legal Aid by the Center

49. The Center shall not grant legal aid service:
- 49.1. If the household per capita income exceeds the poverty line set by the National Statistics Bureau of Bhutan;
 - 49.2. If the net worth of the household disposable capital exceeds the minimum amount determined by the Center on a case-by-case basis;

Grant of Legal Aid Service

- 49.3.If the applicant does not fall under Rule 31.
- 49.4.If the Center observes lack of merits in the applicant's case;
- 49.5.If sufficient detail has not been provided to ascertain eligibility because of the applicant's failure; or
- 49.6.For any other cause where it appears unreasonable that the applicant should receive legal aid in the particular circumstances of the case.

Review of the Center's Decision

- 50. The applicant who is aggrieved by Center's decision in denying legal aid, may request for review to the Review Committee of the Center.
- 51. The Review Committee shall be composed of:
 - a) Director or the Director General of the Institute;
 - b) One member from the Bar Council of Bhutan; and
 - c) One employee of the Center.
- 52. The decision of the Review Committee shall be final and binding.

Legal Aid in Appeal Cases

- 53. If the legal aid recipient under these Rules decides to appeal the case and if the Center determines there is a reasonable ground and merit for appeal, the Center may authorize the service provider to continue legal aid service for the appeal.

Death of the Recipient in Civil Case

- 54. In the event of the death of the recipient of legal aid, the Center may continue to provide legal aid to his or her heirs or authorized representatives.

Mediation Service Under Legal Aid

- 55. The Center shall facilitate mediation services whenever the parties opt for private mediation (mediation other than ordered by the court and/or part of the court process or proceedings).

Revocation of Legal Aid

56. Legal aid may be revoked by the Center in the following circumstances:
 - 56.1. At the request of the legal aid recipient;
 - 56.2. When the legal aid recipient willfully made a false statement regarding his/her means;
 - 56.3. Where the financial circumstances of the recipient have improved to such an extent that s/he no longer requires legal aid;
 - 56.4. If the Center becomes aware that the recipient no longer has reasonable grounds for instituting, defending or being a party to the proceedings in respect of which s/he was granted legal aid;
 - 56.5. The Center is satisfied that the legal aid recipient has willfully failed to comply with these Rules or the order of the Center;
 - 56.6. On review of the case, the recipient is found ineligible for legal aid;
 - 56.7. The legal aid recipient cannot be contacted after the final review of the case; or
 - 56.8. Any other grounds deemed appropriate by the Center to do so.
57. The Center shall, as soon as practicable, issue a written notice of revocation to the legal aid recipient with proper justifications.

Chapter 5 Service Standards and Accountability

Quality Service

58. The service provider shall ensure that they provide efficient, ethical and high-quality service.
59. A quality legal aid service encompasses technical competency of a service provider and utility of service to the legal aid recipient.

General Conditions for the Service Provider

60. The service provider under these Rules shall:
 - 60.1. Have an appropriate level of knowledge, experience and competency in areas of law to provide relevant service;
 - 60.2. Have genuine interest in addressing the needs of indigent persons requiring legal aid;
 - 60.3. Declare conflict of interest (if any); and
 - 60.4. Disclose any disciplinary actions or sanctions imposed or held against the service provider along with reasons, to the Center.

Duties and Responsibilities of the Service Provider

61. The service provider shall be bound by duties and responsibilities of *jabmi* as per the *Jabmi Act of Bhutan* and/or other applicable professional conduct and practice standards made in relation to legal aid in Bhutan.
62. The Center shall study complaints received against the service provider who has violated or breached the duties and responsibilities of *jabmi* and forward to the Bar Council of Bhutan for necessary action.

Obligations of the Service Provider

63. The service providers shall:

- 63.1. Apply to their legal aid cases the same skill and care they would apply to a case for a fee-paying client;
- 63.2. Ensure that costs are not incurred unnecessarily or unreasonably;
- 63.3. Ensure that any matters concerning legal aid are lodged promptly, and whenever possible prior to any event that incurs costs, accompanied by all relevant information and supporting documentation;
- 63.4. Inform the legal aid recipient of the obligations in relation to the grant of legal aid service;
- 63.5. Ensure that a contact is established and a meeting arranged with the legal aid recipient within a reasonable time of receiving an assignment having regard to the nature and urgency of the matter;
- 63.6. Provide the legal aid recipient with information and advice about their matter, outcome of the matter, any actions a legal aid recipient is to take to the extent reasonably necessary to permit them to make informed decisions regarding the matter, and advise legal aid recipients of what they are expected to do to assist the conduct of the case;
- 63.7. Inform the Center of any circumstances of which they are aware that might be relevant to the legal aid recipient's continued eligibility for service (including any matter that materially decreases the prospects of success of the recipient's matter, or the merits of any appeal);
- 63.8. Maximize the use of information and communication technology in a secure and confidential manner in dealings with the Center, legal aid recipients and others;
- 63.9. Submit to the Center an invoice for professional costs in sufficient detail that does not exceed the amount of funds committed to the case;

- 63.10. Avoid entering into any form of agreement beyond the scope of the legal aid (without the express approval of the Center) with the legal aid recipient or any other person in relation to the matter assigned to the service provider; and
- 63.11. Provide a report to the Center on the completion of the matter and ensure:
 - a) Reports contain details of court appearances for which fee is sought including outcomes and orders made, an outline of the work completed under the legal aid grant; and
 - b) Any other information that the Center reasonably requires or that the service provider considers relevant.

Record-Keeping Obligations

- 64. The service provider shall maintain a file of each assigned case and ensure that all relevant documents are maintained electronically or in hard copy, including:
 - 64.1. All correspondence with the Center and the legal aid recipient;
 - 64.2. A copy of court documents filed, served, or issued; and
 - 64.3. Any other documents material to the assigned case.
- 65. When the Center assigns one or more of the cases to an alternate service provider for any reason specified under these Rules, the service provider shall comply with any directions from the Center for the transfer of files(s), and shall:
 - 65.1. Ensure that each file is up to date and complies with the obligations of record-keeping;
 - 65.2. Promptly transfer the file(s) in a manner that ensures the interests of legal aid recipients are not prejudiced;
 - 65.3. Ensure that the alternate service provider should be able to ascertain the current status of the matter, including progress of mediations, court proceedings and the legal costs incurred to date;

65.4.Ensure documents are maintained categorically; and

65.5.Ensure adequate file notes are kept of all communication and correspondence and other attendances, including court attendances and a summary of any mediation or court orders and time spent on the case.

Discharge of Duty by the Service Provider

66. The service provider shall continue to provide service till the final disposition of the matter unless the Center revokes legal aid based on these Rules.

67. The service provider shall not withdraw from providing service unless on the grounds of some infirmity or disability preventing him or her from discharging functions undertaken under these Rules.

68. In the event where the assigned service provider is unable to perform, s/he shall notify the Center in writing with reasonable justification.

Appointment of an Alternate Service Provider

69. The service provider shall appoint the alternate service provider at the earliest practical time, if s/he withdraws from providing the service according to Rule 68.

70. The Center shall reserve the right to approve the alternate service provider and ensure that s/he has appropriate competencies to undertake such service initially assigned to the service provider.

71. The service provider shall retain overall responsibility for transfer of files to the alternate service provider.

72. The alternate service provider shall not reassign the matter to another service provider.

73. In the event where the service provider has to be substituted on disciplinary grounds, the Center shall appoint an alternate service provider at the earliest practical time.

Monitoring and Evaluation of Service

74. The Center shall monitor the performance of the service provider at any time to determine whether service is delivered in an effective, efficient and ethical manner, but excluding substantive aspects of the case.
75. The service provider shall provide timely updates to the Center on the cases assigned to them.
76. The service provider shall provide all documentation and other information requested by the Center.
77. If the Center has reasonable grounds to believe that the service provider is in breach of their service, the Center may, depending on the circumstances, revoke his/her service without payment and take necessary actions.
78. If the matter is severe the service provider shall be barred from future legal aid service.
79. The Center shall provide notice of breach by specifying the nature of the breach.
80. If the Center is of the opinion that the breach is capable of being remedied and the service provider is required to remedy the breach, specify:
 - 80.1. Any legal aid complaint received by the Center as soon as reasonably practicable;
 - 80.2. The submissions on the complaint;
 - 80.3. Directions to remedy the breach; and
 - 80.4. The period, within which the breach must be remedied, being a reasonable period taking into account the nature of the breach.
81. The Center shall conduct evaluation of service rendered by a particular service provider after the final disposition of the matter.
82. The Center may consider legal aid recipient's feedback for the purpose of evaluation of the service.

Chapter 6 Miscellaneous

Confidentiality of Information

83. The Center, the service provider and others shall take all reasonable steps to maintain the confidentiality of information concerning individuals and institutions in relation to legal aid service and related matters.

Breach of these Rules and Penalties

84. Any individual or institution found to have breached any provision of these Rules shall be dealt as per the provisions of applicable laws of the country.

Authority for Amendment and Interpretation

85. Amendments to these Rules shall be made upon the approval of the Chief Justice of Bhutan.
86. Interpretation of any provision under these Rules shall vest with the Legal Aid Center and its interpretation shall be final and binding.
87. The Center may issue instructions, manuals, guidelines, etc. as may be necessary to give effect to and implement the provision of these Rules.

Definition

In these Rules, unless the context requires otherwise, the reference to:

1. **“Disposable Capital”** means the moveable and immovable property (including corporeal or intellectual rights to property) which a legal aid applicant or his or her household is entitled to possess in present or in future, excluding:
 - a) The subject-matter of the proceedings;
 - b) The wearing apparel;
 - c) The tools of trade;
 - d) Household furniture and utensils; and
 - e) A dwelling house owned and exclusively used as home.
2. **“Household”** means *“a group of persons living together, sharing a living space, having common arrangements for food, and sharing family resources. A person who lives alone and makes his or her own meal arrangements is considered to be a single-member household.”*
3. **“Income”** includes income from salary, real and intellectual property, dividends, interests, cash crops, remittances, and income from any other sources, which is accessible to the legal aid applicant.
4. **“Indigent person”** means someone who cannot provide the necessities of life (food, cloth, decent shelter) for himself/herself because s/he is extremely disadvantaged economically, socially and/or other conditions.
5. **“Legal Advice”** means advice or evaluation regarding the legal issues involved in the case. One who is providing legal advice has to give professional or formal advice to a client on how to solve a legal problem. The provision of legal advice will often involve analyzing a set of facts and advising a person to take a specific course of action based on applicable laws.

6. **“Legal Aid”** means the provision of legal advice, assistance, and representation to the indigent person at the expense of the State.
7. **“Legal Aid Volunteer”** means legal professionals who are registered with the Center to render legal aid service without claiming payment of fees.
8. **“Legal Assistance”** means and includes writing court submissions, filling up legal forms and legal drafting.
9. **“Legal Representation”** means representing a legal aid recipient before a Court, and the one representing the case shall provide both legal advice and legal assistance.

Legal Aid Application Form

Form 1: Legal Aid Application

- Please write/print legible letters and numbers and answer all questions that apply to you and your household. If a question does not apply to you then insert NA (Not Applicable).
- Incomplete forms may be returned.

* Required

Email:

A. PERSONAL INFORMATION AND DETAILS OF APPLICANT

1. Name:*
2. CID NO.*
3. Occupation Details: *
4. Contact No./Emergency Contact No.*
5. Current Address*

Village:

Gewog:

Dzongkhag:

6. Permanent Address *

Village:

Gewog:

Dzongkhag:

B. Public institutions and other relevant institutions, which facilitates the application for legal aid (if any).

| Name of the Institution | Dealing Official/Staff Details (Name, Contact No., Email) |
|-------------------------|---|
| | |

C. Total Household Income (Nu.) *

D. Per capita income/month (Nu)*

E. Oath Of Declaration*

I hereby submit that the information provided above is true to the best of my knowledge and belief. I am aware that if I make false declarations, legal aid shall be denied or revoked immediately, and I shall be prosecuted as per the laws of Bhutan.

Please read carefully before you tick and check all that apply.

☐ I confirm that all the information I have given on this form is correct and I have not deliberately left anything out.

☐ I understand that if it is later found that I gave incorrect information on this form or have left out any information asked for on this form, the Center can take away my legal aid and I can be held liable for the cost of the service it provided up until that point.

Legal Aid Application Form

- ☐ I give the Center permission to obtain any details or other information about my case which the Center might require.
- ☐ I understand that the Center may contact relevant Public, Private and other institutions to obtain or verify any details of payments they make to me or any other information about means test.
- ☐ If any details on this form change, I will inform the Center.
- ☐ I understand that the Board may re-assess disposable income and capital at any time while it is providing me with legal aid, until final disposition of the matter. The Center may, based on the outcome of that re-assessment, decide to withdraw my legal aid.
- ☐ I shall be liable at any point of time if I have made any false declarations herein.

Affix Legal
Stamp

Applicant's Signature

F. CHECKLIST OF DOCUMENTS*

Please check that you have attached with your application:

1. ☐ CID or Valid Passport.
2. ☐ Details of the household members (*if any, Name: Relationship: Occupation: Contact Details: Address*)*.
3. ☐ Provide attachment for household income.
4. ☐ Provide attachment for household disposable capital.
5. ☐ Brief Background of the Case*. *Please provide and attach a separate sheet of paper to this application specifying details of the case (covering the nature of the charge/allegation, etc., whether the case is registered in the court or police, type of legal aid required, etc.)*
6. ☐ Evidence of any form of disability.
7. Any other documents relevant to your application such as Court Orders and petitions (specify the description and quantity of documents attached).