

DRAFTING NOTE

LEGAL AID ACT 2026

1. Status and purpose of this note

This drafting note is explanatory and is not part of the proposed Assembly Act. It identifies the legislative need, the relationship with earlier Eritrean law, the principal matters retained, the modernization choices made and the place of the draft within the emerging constitutional statute book. The instrument remains a consultation draft and should be finalized only after legal, institutional, fiscal and public review.

2. Legislative need and prior law

The supplied corpus does not provide a comprehensive modern legal-aid statute capable of making constitutional and code-based rights practically enforceable.

3. What the draft retains

The draft retains court appointment, pro bono service and ordinary representation by qualified legal professionals.

4. What the draft updates and modernizes

It creates an independent legal-aid institution, transparent eligibility and merits rules, urgent criminal and rights protection, civil and community services, quality standards, electronic access, regional delivery, sustainable funding and review of refusals.

5. Constitutional, code and treaty fit

The draft is framed under the Constitution of Eritrea 1997 and must be read with the Civil Code, Penal Code, Civil Procedure Code and Criminal Procedure Code of Eritrea 2015 where those Codes govern. It is also coordinated with the other institutional, financial, commercial, land, labour, administrative and sectoral drafts in this collection. References to international or regional standards guide compatibility and implementation; they do not bypass the Treaty-Making Act or convert an unincorporated instrument into domestic law.

6. Scope and organization

The principal divisions address preliminary provisions; legal aid authority; scope and entitlement; eligibility and applications; review and judicial protection; providers and delivery models; quality, ethics and client protection; funding, accountability and planning; transition and final provisions.

7. Transition, implementation and consultation

The draft preserves lawful accrued rights, completed transactions, pending proceedings and institutional continuity where appropriate, while preventing temporary savings from preserving unconstitutional coercion or indefinite executive discretion. Before enactment or issuance, authentic predecessor instruments and amendments should be verified, cross-references and fiscal capacity confirmed, implementing regulations and digital systems prepared, and affected institutions, professions, communities and the public given a practical opportunity to comment.

CONSULTATION DRAFT — NOT ENACTED LAW

ACT NO. ____ OF 2026

LEGAL AID ACT 2026

(ACT)

AN ACT TO GIVE EFFECT TO THE RIGHT OF ACCESS TO JUSTICE AND LEGAL ASSISTANCE; TO ESTABLISH AN INDEPENDENT LEGAL AID AUTHORITY; TO PROVIDE PUBLICLY FUNDED LEGAL INFORMATION, ADVICE, ASSISTANCE AND REPRESENTATION IN CRIMINAL, CIVIL, ADMINISTRATIVE AND CONSTITUTIONAL MATTERS; TO PROVIDE FOR DUTY COUNSEL, COMMUNITY LEGAL SERVICES, QUALITY, FUNDING AND ACCOUNTABILITY; AND TO PROVIDE FOR RELATED MATTERS.

PREAMBLE

WHEREAS Articles 14, 17, 19 and 48 to 50 of the Constitution of Eritrea protect equality, fair proceedings, expression, access to independent courts and the administration of justice;
WHEREAS rights are ineffective where poverty, detention, disability, language, distance, age or vulnerability prevents a person from obtaining timely legal assistance;
WHEREAS publicly funded defence and advice must be independent of the Advocate General, prosecution, police, executive, military and political organizations;
WHEREAS Eritrea's obligations under the International Covenant on Civil and Political Rights, the African Charter on Human and Peoples' Rights, the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child require effective and non-discriminatory access to justice;
NOW, THEREFORE, be it enacted by the National Assembly of Eritrea, acting under Article 32 of the Constitution, as follows:

CHAPTER I
PRELIMINARY PROVISIONS

Article 1 — Short title

1. This Act may be cited as the "Legal Aid Act 2026".
2. It applies throughout Eritrea.

Article 2 — Purposes

1. to make legal assistance practically available;
2. to secure independent representation in criminal and other serious matters;
3. to provide early advice and prevent avoidable disputes;
4. to support rural, vulnerable and underserved communities; and
5. to ensure quality, accountability and sustainable funding.

Article 3 — Interpretation

1. “applicant” means a person seeking legal aid;
2. “Authority” means the Legal Aid Authority established by Article 7;
3. “assisted person” means a person granted legal aid;
4. “legal aid” includes information, advice, assistance, mediation and representation;
5. “provider” means an advocate, employee, clinic or organization authorized under this Act;
and
6. “substantial injustice” includes detention, loss of livelihood, family separation, homelessness or serious rights impairment.

Article 4 — Guiding principles

1. Legal aid shall be independent, accessible, timely, confidential and client-centered.
2. Priority shall reflect seriousness, vulnerability, equality and effective use of resources.
3. An assisted person shall receive the same professional loyalty and competence as a paying client.
4. Administrative convenience shall not defeat a fair hearing.

Article 5 — Non-discrimination and accommodation

1. Legal aid shall be administered without unconstitutional discrimination.
2. Reasonable accommodation, interpretation and accessible formats shall be provided without charge.
3. A person shall not be refused because a claim challenges government or concerns an unpopular cause.
4. Immigration or residence status may be considered only where the law expressly and justifiably makes it relevant.

Article 6 — Relationship with professional independence

1. A provider is governed by the Legal Profession Act and owes duties to the client and court.
2. The Authority shall not direct litigation strategy or concession in an individual case.
3. Funding shall not create a lesser standard of representation.
4. A public official shall not demand privileged information.

CHAPTER II LEGAL AID AUTHORITY

Article 7 — Establishment

1. An independent Legal Aid Authority is established as a body corporate.
2. It is institutionally independent of the Advocate General, police, prosecution, executive, military and political organizations.
3. It may establish regional offices, duty services and digital platforms.

4. Its independence shall be respected by every public authority.

Article 8 — Functions

1. The Authority shall assess applications, fund and provide services, maintain panels, support clinics, set quality standards and collect anonymized data.
2. It shall identify unmet legal need and advise on reform.
3. It may conduct public legal education without partisan advocacy.
4. It shall coordinate services without controlling courts or the legal profession.

Article 9 — Governing Board

1. A Governing Board shall set strategy, budget, standards and institutional policy.
2. It consists of advocates, persons experienced in access to justice, finance and community service, and persons representing users and disability perspectives.
3. A majority shall be independent of government employment.
4. No serving prosecutor, police, military, intelligence or party officer is eligible.

Article 10 — Appointment and tenure

1. Board members shall be selected through public nomination and merit assessment.
2. The President shall appoint from an independent shortlist with approval of the National Assembly.
3. Members serve one non-renewable term of five years with staggered terms.
4. Appointment and reasons shall be published.

Article 11 — Removal and vacancy

1. A member may be removed only for incapacity, serious misconduct, corruption, persistent neglect or ineligibility.
2. Removal requires independent inquiry, notice, hearing and reasons.
3. A vacancy shall be filled through the original process.
4. Political disagreement is not a ground.

Article 12 — Director-General

1. The Board shall appoint a Director-General through open competition.
2. The Director-General administers services and is not a government legal adviser or prosecutor.
3. The term is five years, renewable once after public performance review.
4. Removal requires lawful cause and fair process.

Article 13 — Staff and regional access

1. Staff shall be recruited on merit with appropriate legal, administrative, linguistic and technological skills.

2. Regional offices shall reflect population, distance, detention facilities and legal need.
3. Mobile and remote services shall supplement permanent offices.
4. Staff shall be protected from retaliation for lawful professional work.

Article 14 — Budget and audit

1. The Authority shall submit its budget directly to the National Assembly.
2. Appropriations shall be adequate, predictable and released without case-related conditions.
3. Accounts shall be audited by the Auditor General without access to privileged merits information.
4. Donations shall be disclosed and shall not control cases.

CHAPTER III SCOPE AND ENTITLEMENT

Article 15 — Forms of legal aid

1. Legal aid includes public information, individual advice, document assistance, negotiation, mediation, investigation, expert assistance and representation.
2. It may cover court, tribunal and administrative proceedings and enforcement.
3. It shall be provided at the earliest useful stage.
4. A grant may cover all or a defined part of a matter.

Article 16 — Criminal legal aid

1. A person arrested, detained, charged or facing criminal investigation is entitled where liberty, serious penalty or substantial injustice is at stake and the person cannot reasonably afford representation.
2. Assistance shall be available before interrogation and at first court appearance.
3. Legal aid shall continue through trial, sentence and first appeal where interests of justice require.
4. Serious offence or complexity may require two counsel or expert support.

Article 17 — Mandatory criminal representation

1. Legal representation shall be provided regardless of means to a child, a person facing life imprisonment or another gravest penalty, and a person unable to conduct a defence because of disability or incapacity.
2. A court shall not proceed until effective representation is available unless the accused knowingly and competently waives it where waiver is lawful.
3. Standby counsel may be appointed to protect fairness.
4. Cost recovery shall not be imposed on a person receiving mandatory aid unless fraud is proved.

Article 18 — Civil and administrative legal aid

1. Aid may be granted where a matter concerns safety, family integrity, housing, livelihood, employment, land, social protection, health, education, disability, immigration, asylum or serious public power.
2. Priority shall reflect likely harm and inability to proceed effectively.
3. Representation is not limited to cases with monetary value.
4. Early advice and settlement shall be supported where appropriate.

Article 19 — Constitutional and public-interest matters

1. Aid may support a substantial constitutional or systemic rights matter affecting the applicant or an identifiable disadvantaged group.
2. Novelty, public importance and lack of alternative representation may be considered.
3. Political sensitivity is irrelevant.
4. The Authority shall not dictate the legal position advanced.

Article 20 — Children

1. A child's best interests, participation, privacy and timely resolution are primary.
2. A child in conflict with the law shall receive specialized representation from first contact.
3. A child whose interests conflict with a parent or State shall receive independent representation.
4. Age assessment and guardianship disputes may receive urgent aid.

Article 21 — Victims and vulnerable persons

1. Victims of trafficking, torture, family or sexual violence and grave abuse may receive advice, protection-order and participation assistance.
2. Services shall be trauma-informed and preserve choice and safety.
3. Disability, detention, displacement and risk of retaliation increase priority.
4. Aid to a victim shall not compromise defence rights.

Article 22 — Asylum, removal and statelessness

1. A person facing removal, return, expulsion, extradition or statelessness determination may receive aid where life, liberty, family or non-refoulement is at stake.
2. Urgent aid shall be available before irreversible transfer.
3. Nationality and migration status do not defeat protection.
4. Confidential information shall not be shared with a persecuting authority.

CHAPTER IV

ELIGIBILITY AND APPLICATIONS

Article 23 — Financial eligibility

1. The Authority shall publish a simple means test considering income, assets, dependants, debt, cost of living and likely legal expense.
2. A home, essential tools, disability support and inaccessible property shall not be treated mechanically as available funds.
3. A person receiving defined social assistance may qualify presumptively.
4. Thresholds shall be reviewed annually.

Article 24 — Merits and interests of justice

1. For non-mandatory aid, the Authority may consider legal plausibility, importance, likely benefit, proportionality and available alternatives.
2. The test shall not require certainty of success.
3. A credible rights claim against a powerful institution shall receive realistic assessment.
4. Urgency and inequality of arms may outweigh modest monetary value.

Article 25 — Application process

1. An application may be oral, written, electronic or made through a court, detention facility or authorized helper.
2. Only information reasonably necessary shall be requested.
3. Assistance shall be provided to complete the application.
4. No application fee may be charged.

Article 26 — Emergency grant

1. A provider or designated officer may authorize immediate limited aid to prevent detention, removal, violence, evidence loss or expiry of a right.
2. Eligibility may be verified afterward.
3. Emergency assistance shall not be delayed for documents unavailable to the applicant.
4. The decision and scope shall be recorded.

Article 27 — Decision and reasons

1. The Authority shall decide promptly within published time limits.
2. A decision shall state scope, provider, contribution if any, duration and review rights.
3. Refusal or limitation requires intelligible reasons.
4. Failure to decide within an urgent timeframe may be taken directly for review.

Article 28 — Contribution and recovery

1. A person with partial ability may be required to make a fair contribution.

2. Contribution shall not prevent subsistence or effective representation.
3. Recovery from an award or property requires prior notice and proportionate rules.
4. No provider may demand an unauthorized supplementary fee.

Article 29 — Change of circumstances

1. An assisted person shall report a material financial change reasonably known to affect eligibility.
2. The Authority may vary aid prospectively after notice.
3. Aid shall not be terminated at a critical stage without protecting fairness.
4. Innocent error shall not be treated as fraud.

Article 30 — Refusal and termination

1. Aid may be refused or terminated for ineligibility, material fraud, abuse or loss of reasonable legal basis.
2. Disagreement with counsel, government criticism or rejection of settlement is not by itself a ground.
3. The client and provider shall be heard.
4. The file and urgent rights shall be protected during transition.

CHAPTER V REVIEW AND JUDICIAL PROTECTION

Article 31 — Internal reconsideration

1. An applicant may request prompt reconsideration by an officer not involved in the original decision.
2. New information and alleged error shall be considered.
3. An urgent matter shall be decided within twenty-four hours where necessary.
4. Reconsideration shall not bar court review.

Article 32 — Independent review panel

1. An independent Legal Aid Review Panel shall hear appeals from refusal, limitation, contribution and termination.
2. Members shall include legal and public-interest expertise and have no case conflict.
3. Procedure shall be informal, confidential and timely.
4. The Panel may affirm, vary, set aside or remit.

Article 33 — Judicial review

1. A directly affected person may seek judicial review for illegality, unfairness, irrationality or constitutional violation.
2. A court may order interim representation and preserve proceedings.
3. Privileged merits information shall receive protected handling.

4. Review shall not permit executive substitution of a provider.

Article 34 — Court duty to protect fairness

1. A court shall inquire into representation where fairness appears at risk.
2. It may adjourn briefly, refer urgently, appoint provisional counsel where authorized, or stay a proceeding.
3. A court shall not pressure an accused to waive counsel to manage delay.
4. Institutional failure shall be reported for correction.

CHAPTER VI PROVIDERS AND DELIVERY MODELS

Article 35 — Salaried public defenders

1. The Authority may employ salaried advocates in an independent Public Defender Service.
2. Defenders shall have professional autonomy, manageable caseloads and parity of necessary resources with prosecution.
3. Employment evaluation shall not reward pleas, convictions or political outcomes.
4. A defender shall not be assigned conflicting clients.

Article 36 — Private-practitioner panel

1. The Authority shall maintain transparent panels of qualified private advocates.
2. Selection shall consider competence, integrity, availability, language and regional access.
3. Assignments shall be fair, auditable and free of favoritism.
4. Rates shall be published and paid timely.

Article 37 — Choice and assignment of provider

1. An assisted person may express a reasonable provider preference.
2. Choice may be limited by availability, conflict, competence and cost, with reasons.
3. A person shall not be assigned counsel employed by an adverse institution.
4. Replacement is available where relationship breakdown threatens effective representation.

Article 38 — Clinics and civil-society providers

1. The Authority may fund accredited university clinics, nonprofit centers and specialist organizations.
2. Funding shall preserve independence and client confidentiality.
3. Supervision, competence, insurance and conflict standards apply.
4. Government criticism shall not affect eligibility for funding.

Article 39 — Community legal workers

1. Trained community legal workers may provide information, forms, navigation, referral and other services authorized by law.
2. They shall not misrepresent themselves as advocates or conduct reserved litigation.
3. Programs shall provide supervision, confidentiality and referral.
4. Their role is particularly important in rural and linguistic access.

Article 40 — Duty counsel

1. Duty counsel shall be available at police stations, detention facilities and courts according to need.
2. Police and custodians shall notify a person and facilitate confidential contact.
3. A first consultation shall not depend on completed means testing.
4. Duty counsel may continue or arrange full representation.

Article 41 — Specialist panels

1. The Authority shall develop specialist panels for serious crime, children, family violence, asylum, disability, land and complex constitutional matters.
2. Accreditation shall require relevant training and experience.
3. A rural matter may receive remote specialist support with local assistance.
4. Specialization shall not create monopoly or unreasonable delay.

CHAPTER VII QUALITY, ETHICS AND CLIENT PROTECTION

Article 42 — Professional standards

1. Every advocate provider is subject to the Legal Profession Act and applicable code.
2. Additional legal-aid standards may address timeliness, communication, investigation and continuity.
3. Standards shall be developed with the Bar, judiciary and service users.
4. They shall not control lawful strategy.

Article 43 — Caseload and resources

1. The Authority shall set evidence-based maximum or warning caseload standards.
2. A provider shall decline or report assignment that cannot be handled competently.
3. No adverse employment action shall follow a good-faith overload report.
4. The Authority shall publish workload data and corrective action.

Article 44 — Confidentiality and privilege

1. Applications and files are confidential and protected by legal professional privilege where applicable.

2. Eligibility data shall be separated from merits files.
3. Disclosure requires client authority or specific law and necessity.
4. The Auditor General shall audit money without reviewing privileged strategy.

Article 45 — Client information and participation

1. An assisted person shall receive provider identity, scope, rights, responsibilities, complaint route and material case information.
2. Decisions shall be explained in understandable language.
3. The client shall participate in objectives and major choices.
4. Disability, detention or illiteracy shall receive accommodation.

Article 46 — Complaints about service

1. A client may complain to the provider, Authority or Bar without losing representation.
2. Urgent continuity and file protection shall be addressed first.
3. Professional misconduct shall be referred independently.
4. Anonymized complaint patterns shall improve quality.

Article 47 — Quality review

1. The Authority may conduct peer review, file audit and outcome-neutral evaluation subject to privilege.
2. Reviewers shall be independent and qualified.
3. Providers shall receive findings and opportunity to respond.
4. Sanctions and improvement measures shall be proportionate.

Article 48 — Technology and artificial intelligence

1. Services may use secure remote consultation, electronic files and automated administrative assistance.
2. A provider remains responsible for advice, accuracy, confidentiality and professional judgment.
3. No eligibility or merits refusal shall be made solely by an automated system.
4. Systems shall be accessible, explainable, tested for bias and independently audited.

CHAPTER VIII FUNDING, ACCOUNTABILITY AND PLANNING

Article 49 — Sources of funding

1. Legal aid may be financed by parliamentary appropriation, court-ordered recoveries, lawful grants and other transparent sources.
2. A criminal fine or forfeiture may contribute only where an Assembly Act so provides.
3. Funding shall not depend on results in individual cases.
4. Restricted donations inconsistent with independence shall be refused.

Article 50 — Legal Aid Fund

1. A Legal Aid Fund is established and held solely for functions under this Act.
2. All receipts and expenditures shall be recorded through approved public financial systems.
3. Money shall be invested only under public-finance law.
4. Unspent money shall not be diverted without an Assembly Act.

Article 51 — Planning and priorities

1. The Board shall adopt a five-year strategy and annual service plan after consultation.
2. Priorities shall use legal-needs data, rights impact, geography and vulnerability.
3. A priority policy shall not categorically exclude government challenges or unpopular groups.
4. Plans, assumptions and performance measures shall be published.

Article 52 — Contracts and procurement

1. Provider contracts shall be awarded transparently under public-procurement law, subject to professional quality.
2. Lowest price alone shall not determine legal representation.
3. Contracts shall protect independence, continuity and fair payment.
4. Beneficial ownership and conflicts shall be disclosed.

Article 53 — Annual report

1. The Authority shall report to the National Assembly within four months after each financial year.
2. The report shall cover demand, grants, refusals, time, geography, case type, expenditure, quality, complaints and unmet need.
3. Data shall be anonymized and disaggregated appropriately.
4. The Assembly may examine administration but not direct cases.

Article 54 — Research and law reform

1. The Authority may publish evidence on barriers, detention, delay, recurring disputes and service gaps.
2. It may recommend legislation and administrative reform.
3. Research shall protect client identity and litigation.
4. Findings shall be publicly accessible.

CHAPTER IX TRANSITION AND FINAL PROVISIONS

Article 55 — Initial establishment

1. The Board shall be constituted within six months and the Authority operational within nine months.
2. An interim establishment team shall be selected transparently and shall not control cases.
3. Priority services shall begin at major detention facilities and courts.
4. A published national rollout shall follow.

Article 56 — Transition of existing services

1. Existing lawful public-defence, court-assigned and community services may continue temporarily under written arrangements.
2. Clients, files, privilege and payment claims shall be protected.
3. No prosecution or security unit shall transfer supervisory authority over defenders.
4. Providers shall meet this Act within twelve months.

Article 57 — Records and urgent-case audit

1. Every detention facility and court shall identify unrepresented detained persons within thirty days.
2. The Authority and courts shall arrange urgent review.
3. Existing legal-aid files shall be secured from destruction or political access.
4. A person shall not remain detained solely because transition delayed counsel.

Article 58 — Regulations and standards

1. The Board may issue regulations on eligibility, contributions, panels, payment, review, data and administration after consultation.
2. Regulations shall not restrict constitutional entitlement, create offences or direct representation.
3. Eligibility thresholds and provider rates shall be published.
4. Emergency transitional regulations expire within twelve months unless lawfully remade.

Article 59 — Relationship with other laws

1. The Criminal Procedure Code, civil procedure laws, Legal Profession Act and Courts Act apply consistently with this Act.
2. Where a more protective right to counsel exists, it prevails.
3. The Advocate General Act does not authorize prosecution control of legal aid.
4. A court retains inherent authority to protect a fair proceeding.

Article 60 — Repeal and savings

1. Prior legal-aid instruments are repealed only when verified in the statute-law revision schedule.
2. Lawful appointments, client rights, privilege and payment claims continue subject to this Act.
3. Political screening, forced waiver and prosecutor-controlled defence are not preserved.
4. Inconsistent unpublished directives have no effect.

Article 61 — Independent review

1. After three years, an independent review shall assess coverage, quality, independence, costs, outcomes and unmet need.
2. The review shall consult assisted persons, providers, courts and affected communities.
3. The report and government response shall be submitted to the National Assembly.
4. Review shall not expose privileged client information.

Article 62 — Commencement

1. This Act enters into force ninety days after publication in the Gazette.
2. Articles 4 to 6, 16, 17, 34, 40, 44 and 57 apply immediately to the extent institutions can give effect.
3. Full implementation shall follow the published rollout within twenty-four months.

Made at Asmara, this ____ day of _____ 2026.

THE NATIONAL ASSEMBLY OF ERITREA