

CHRI's RECOMMENDATIONS ON THE NATIONAL LEGAL SERVICES AUTHORITY (FREE AND COMPETENT LEGAL SERVICES) REGULATIONS, 2010

A	THEME	RELEVANT REGULATION
	CONSTITUTION OF A PANEL OF LAWYERS	Regulation 8 (5)

Legal services institutions are mandated to constitute a panel of legal aid lawyers. As per Regulation 8(5), they may maintain separate panels dealing with different types of cases.

Recommendations:

1. The phrase 'may' to be amended to 'shall' in Regulation 8(5) about maintaining separate panels.
2. Allocation of cases should be based on the expertise of the panel lawyers. Separate panels based on expertise knowledge of specific laws for example- Narcotic Drugs and Psychotropic Substances Act, 1985 Act, Excise Act 1944, Protection of Children from Sexual Offences Act 2012, The Foreigners Act 1946 etc.

B	THEME	RELEVANT REGULATION
	ROLE OF RETAINER LAWYERS	Regulation 8(10)

The Legal Services Institutions may prepare a list of Retainers among panel lawyers who shall devote their time exclusively for legal aid work. The minimum eligibility criteria to be appointed as Retainer lawyer is the same as that of the Panel lawyers which is three years.

Recommendations:

1. The eligibility criteria of Retainer lawyers should be minimum five **years** of practice.
2. The policy needs to make a clearer distinction in the **role and responsibilities** of the Panel lawyers and the Retainer lawyers to justify the remuneration to Retainer lawyers.
3. Rather than having retainer lawyers exclusively for legal aid work, fixed **hours** for Retainer lawyers with payment commensurate to those hours, the city or taluka in question, and the years of experience of the lawyer.

C	THEME	RELEVANT REGULATION
	TIMELY APPOINTMENT OF PANEL LAWYER	Regulation 7 (4)

As per Regulation 7 (4), after the legal services authority receives the application for legal aid, it has to decide within eight weeks, whether the applicant is entitled to legal services or not. Rendering the accused unrepresented for eight weeks which essentially means continued detention for the said period merely to decide whether the person is eligible for legal aid is unreasonable and against the principle of liberty guaranteed under Article 21

Recommendation:

Amendment to Regulation 7(4): When a legal aid application is received from a person in custody, the legal aid lawyer should be appointed the same day and the legal services institution should ensure that the lawyer visits the inmate in prison within 24 hours. Any verification from the prison or the court should be done right away.

D	THEME	RELEVANT REGULATION
	REPRESENTING THE PERSON IN CUSTODY	

The regulations do not categorically mandate the panel lawyer to visit the inmate in prison and police station.

Recommendation:

1. The panel lawyer should visit the police station as soon as he is intimated by the paralegal volunteer stationed in the police station.
2. Panel lawyers shall visit the inmate in prison **at least twice a month**. One of the visits should be before the hearing and one after the hearing. The legal services institution should reimburse the expenditure incurred by the panel lawyer on travel from the court to the prison.

E	THEME	RELEVANT REGULATION
	ROLE OF THE MONITORING COMMITTEE	Regulation 11 (5)

As per regulation 11(5), the monitoring committee shall seek reports from the panel lawyer on the progress of the assigned legal aid case within such time as may be determined by the committee.

Recommendation:

1. The monitoring committee shall seek monthly **reports** (in writing) from the panel lawyer on the progress of the case. The report should record the work done by the panel lawyer under the scheme. The report should have a specific column to record the date on which the panel lawyer visited the prison during the month. Another column for the signature of the prison authorities for verification of visit would also be required.

F	THEME	RELEVANT REGULATION
	THE ROLE OF THE DLSA/TLSC	Regulation 8 (14)

As per Regulation 8(14), lawyers shall not ask for any remuneration in aided cases, but the regulations do not provide mechanisms to ensure implementation of this regulation.

Recommendations:

1. The **appointment letter** issued by the Legal Services Institution for the panel lawyers should lay down in detail the duties he is expected to perform.
2. **Posters on legal aid** should be put up in jail and it should clearly mention that inmates are not expected to pay any fees to their legal aid lawyer and that they can give their feedback to the DLSA regarding the same through letters. Legal aid poster prepared by CHRI under the aegis of the Directorate of Correctional Services, WB, which is displayed across all CHs in WB has been attached. The paralegal volunteers and jail visiting lawyers, and the magistrate should also advise the inmates about non-payment of any fees.

G	THEME	RELEVANT REGULATION
	THE ROLE OF THE SLISA	Regulation 12

The SLISA is expected to monitoring the implementation of the provisions of all schemes which is a challenging task. Specific to the 2010 scheme, Regulation 12 mandates the Executive Chairman of the SLISA to decide the course of action in each legal aid case brought before it by the monitoring every fortnight. This does not appear to be practicable.

Recommendations:

1. The scheme could specify a **standardised schedule/calendar** for appointment of panel and retainer lawyers in the entire state/country to help SLSA monitor the appointment of lawyers under the schemes.
2. Standardised **formats** for the lawyer’s reports, monitoring committee registers and bi-monthly reports should be formulated by NALSA/ SLSAs. A sample format of lawyer’s report prepared by CHRI has been attached.
3. To remedy the impractical provision of the Executive Chairman of the LSI giving advice on each and every legal aid case, it is suggested that only two types of cases be sent from the Monitoring Committee to the SLSA : (i) As the Executive Chairman of the SLSA is part of the appointing authority for Panel and Retainer lawyers, the first type of cases could be those that require action on their non-performance and continued lack of progress on their cases; (ii) The second category of cases could be those whose progress can be ensured effectively through intervention at High Court level as the Executive Chairman is empowered under this scheme to specially engage special advocates.

H	THEME	RELEVANT REGULATION
	INFORMATION TO THE PERSON IN CUSTODY	

The 2010 Regulation does not provide any mechanism to keep the accused informed about the status of the proceedings and the action taken by the legal aid lawyer on his behalf. NALSA developed a *Legal Services Card* to fill this gap and a specimen of the same was attached in the 2012 National Plan which is reproduced below. The Card would ensure all the information about the case, the lawyer and the proceedings would be kept together at one place. Also other elements like the signature of the panel lawyer and the accused at the prison visit may be added to make the card more functional.

A SPECIMEN OF THE LEGAL SERVICES CARD

Name of the Legal Aided Persons: _____ Plaintiff/Defendant/Petitioner/Respondent/ Appellant/Accused: _____ Title of the Case: _____ Nature of the Case: _____ The Court in which the case is pending: _____ Name of the Legal Aid Counsel: _____ Contact no. and address of the Counsel: _____					
Sl.No.	Date.	Proceedings taken place.	Next hearing date.	Nature of proceedings on the next posting date and instructions to the party (legal aided person).	Name and signature of the PLVs/Panel Advocates manning at the 'Front Office'.