

Tanzania

## Legal Aid Act

### Chapter 21

Legislation as at 30 November 2019

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# Tanzania

## Legal Aid Act

### Chapter 21

Commenced on 1 July 2017

*[This is the version of this document at 30 November 2019.]*

*[Note: This legislation has been thoroughly revised and consolidated under the supervision of the Attorney General's Office, in compliance with the Laws Revision Act No. 7 of 1994, the Revised Laws and Annual Revision Act (Chapter 356 (R.L.)), and the Interpretation of Laws and General Clauses Act No. 30 of 1972. This version is up-to-date as at 31st July 2002.]*

*[G.N. No. 217 of 2017; Act No. 1 of 2017]*

**An Act to regulate and coordinate the provision of legal aid services to indigent persons, to recognise paralegals, to repeal the Legal Aid (Criminal Proceedings) Act and to provide for other related matters.**

### Part 1 – Preliminary provisions

#### 1. Short title

This Act may be cited as the Legal Aid Act.

#### 2. Application

This Act shall apply to Mainland Tanzania.

#### 3. Interpretation

In this Act, unless the context otherwise requires—

"**advocate**" has the meaning ascribed to it under the Advocates Act;

*[Cap. 341]*

"**aided person**" means a person who has been granted legal aid under this Act;

"**Assistant Registrar**" means Assistant Registrar referred to under [section 8](#);

"**Board**" means the Board established under [section 4](#);

"**Chief Court Administrator**" means the Chief Court Administrator appointed under the Judiciary Administration Act;

*[Cap. 237]*

"**indigent person**" means a person whose means are insufficient to enable him to engage a private legal practitioner and includes other categories of persons where the interests of justice so require;

"**lawyer**" means any person who is a holder of a bachelor degree in laws or its equivalent and provides legal services under a legal aid provider in accordance with this Act;

"**legal aid services**" includes the provision of legal education and information, legal advice, assistance or legal representation to indigent persons;

"**legal assistance**" means a legal support granted to a person on civil or criminal cases to assist that person to take legal steps in protection of his rights;

"**Minister**" means the Minister responsible for legal affairs;

"**paralegal**" means a person who is accredited and certified to provide legal aid services after completing necessary training in the relevant field of study approved or recognized by this Act;

"**Permanent Secretary**" means a Permanent Secretary of the Ministry responsible for legal affairs;

"**Registrar**" means the Registrar referred to under [section 6](#); and

"**Register**" means a Register of Legal Aid providers established under this Act.

## **Part II – Administration and coordination of legal aid providers**

### **4. Establishment of Board**

- (1) There is established a Board to be known as the National Legal Aid Advisory Board.
- (2) The provisions of the Schedule to this Act shall have effect as to the composition of the Board, tenure of office, proceedings at meetings of the Board and other matters relating to the Board.

### **5. Functions of Board**

- (1) The functions of the Board shall be to—
  - (a) provide policy guidelines to legal aid providers;
  - (b) advise the Minister on policy and other matters of relevance with respect to improving legal aid provision;
  - (c) approve the annual reports of legal aid providers;
  - (d) determine appeals from the decision of the Registrar; and
  - (e) perform such other functions as may be directed by the Minister.
- (2) In performing its functions under this Act, the Board shall maintain as far as practicable, a system of consultation and cooperation with Ministries, Government institutions, legal aid providers or any other public or private bodies established under any written law.

### **6. Registrar of legal aid**

- (1) There shall be the Registrar of legal aid providers.
- (2) A person responsible for legal aid matters in the Ministry responsible for legal affairs shall be the Registrar.

### **7. Functions of Registrar**

- (1) The functions and duties of the Registrar shall be to—
  - (a) register legal aid providers;
  - (b) investigate complaints of malpractice, negligence, misconduct or disobedience against legal aid providers;
  - (c) suspend or cancel registration of any legal aid provider;
  - (d) keep and maintain the Register of legal aid providers;
  - (e) inspect any legal aid provider's office with a view to satisfying himself on the type and quality of legal aid services offered;

- (f) take appropriate measures for promoting legal literacy and legal awareness among the public and, in particular, educate vulnerable sections of the society about their rights and duties under the Constitution and other laws;
  - (g) coordinate and facilitate formulation and accreditation of curriculum for training of paralegals in consultation with the legal aid providers, education and training accreditation bodies;
  - (h) coordinate, monitor and evaluate the functions of legal aid providers and give general and specific directions for the proper implementation of legal aid programmes;
  - (i) keep records and reports regarding legal aid providers;
  - (j) prepare various reports on legal aid services and other matters for submission before the Board;
  - (k) facilitate information sharing in accessible format and providing guidelines for networking between legal aid providers and the Government;
  - (l) determine disputes between legal aid providers other than advocates, and between legal aid providers and aided persons; and
  - (m) perform any other functions as may be directed by the Minister or the Board as the case may be.
- (2) The Registrar shall be the Secretary to the Board.
- (3) The Registrar shall in the performance and discharge of his functions and duties under this Act—
- (a) be assisted by such number of officers of the Ministry responsible for legal affairs as may be determined; and
  - (b) be answerable to the Permanent Secretary who shall be the link between the Government and legal aid providers.

## **8. Appointment of Assistant Registrars**

- (1) The Permanent Secretary shall, for the purpose of facilitating registration of legal aid providers at the regional and district levels and after consultation with relevant authority, designate for each region or each district, a public officer from amongst public officers within the region or district to be the Assistant Registrar.
- (2) Save for [section 11\(5\)](#), the Assistant Registrar appointed under subsection (1) shall, on behalf of the Registrar, register legal aid provider within the region or district for which he is appointed and issue certificates of registration.
- (3) The Assistant Registrar appointed under this section shall, in the performance of his functions under this Act, be answerable to the Registrar.

## **Part III – Registration of legal aid providers**

### **9. Register of legal aid providers**

- (1) There shall be a Register of legal aid providers which shall contain the names of institutions providing legal aid, the services provided and such other particulars or matters as may be prescribed.
- (2) The Registrar shall cause the Register, whether in printed or electronic form, to be available to members of the public at police stations, courts, prisons and such other public places as may be determined by the Minister.

## 10. Qualifications for registration as legal aid provider

- (1) An institution shall not be registered as a legal aid provider unless it has the following qualifications—
  - (a) it has been registered under the relevant laws;
  - (b) the provision of legal aid services is one of its core functions;
  - (c) it has office premises and office facilities;
  - (d) it has not less than—
    - (i) two advocates;
    - (ii) one advocate and one lawyer;
    - (iii) one lawyer and two paralegals;
    - (iv) one advocate and two paralegals; or
    - (v) three paralegals; and
  - (e) it has been cleared by the body that has registered it as to its records pertaining to management of finances.
- (2) Subject to the provisions of subsection (1), an institution with no advocate shall be required to furnish proof of affiliation with another legal aid provider which has an advocate before being registered.
- (3) Without prejudice to the generality of subsection (1), the provisions of paragraphs (a) and (b) shall not apply to institutions established by an Act of Parliament or any academic institution accredited under any written law.

## 11. Application for registration

- (1) Subject to the provisions of [section 10](#), an institution applying for registration under this Act shall apply in the manner prescribed in the regulations.
- (2) Without prejudice to the generality of subsection (1), an application for registration shall be accompanied by—
  - (a) a copy of the constitution of the institution or any other document establishing the institution;
  - (b) personal particulars of office bearers, advocates or paralegals;
  - (c) particulars relating to address and physical location of the head office of the institution;
  - (d) a copy of a certificate of clearance from a legal provider's registering authority;
  - (e) an application fee prescribed in the regulations; and
  - (f) any other particulars or information as may be required by the Registrar.
- (3) Where an institution intends to operate as a legal aid provider in more than one district or in the whole region, an application for its registration shall be submitted to the Assistant Registrar designated for that region.
- (4) Where an institution intends to operate as a legal aid provider within a certain district, an application for its registration shall be submitted to the Assistant Registrar for that district.



- (5) Where an institution intends to operate as a legal aid provider in more than one region or it has been registered out of the country, an application for its registration shall be submitted to the Registrar.
- (6) Where the Assistant Registrar has registered a legal aid provider, he shall make a report to that effect and submit that report to the Registrar.
- (7) The Minister shall, by regulations, prescribe the procedures for registration and operations of legal aid providers at regional and district levels in terms of this Act.

## 12. Determination of applications

- (1) The Registrar or as the case may be Assistant Registrar, shall consider and make determination of an application for registration within twenty one days after receiving the application.
- (2) Pursuant to the provisions of subsection (1), in determining the application, the Registrar or as the case may be Assistant Registrar, may register or refuse to register an institution as a legal aid provider.

## 13. Refusal of registration

- (1) The Registrar or Assistant Registrar may refuse to register an institution as a legal aid provider if he is satisfied that—
  - (a) it has not met the conditions prescribed under [section 10](#); or
  - (b) it has given false or fraudulent information in any material particular.
- (2) Where the Registrar or Assistant Registrar has refused to register an institution as a legal aid provider, he shall, within fourteen days from the date of such decision, notify the applicant of the reasons for such refusal.

## 14. Appeals

- (1) An institution which is not satisfied with the decision under [section 13](#) may, within twenty one days:
  - (a) in the case of decision of Assistant Registrar, appeal to the Registrar; and
  - (b) in the case of decision of the Registrar, appeal to the Board.
- (2) The institution which is aggrieved by the decision of the Board may, within thirty days from the date of receiving such decision, appeal to the Minister.
- (3) The Minister shall, within thirty days from the date of receiving the appeal consider and determine the appeal.
- (4) An institution aggrieved by the decision of the Minister may apply to the High Court for redress.

## 15. Certificate of registration

- (1) The Registrar, or Assistant Registrar shall, after registration of an institution as a legal aid provider and upon payment of a prescribed fee issue a certificate of registration in the form prescribed in the regulations.
- (2) The certificate of registration shall contain—
  - (a) the name and address of the legal aid provider;
  - (b) the area of operation of the legal aid provider;
  - (c) legal status of the institution; and

- (d) such terms and conditions in respect of which a certificate is issued.
- (3) A certificate of registration issued under subsection (1) shall be a conclusive evidence for the institution to operate as a legal aid provider under this Act.

## 16. Suspension and cancellation of certificates

- (1) Subject to the provisions of [section 17](#), the Registrar may issue a written warning, suspend or cancel a certificate of registration of the legal aid provider.
- (2) The Registrar may suspend a certificate of registration of a legal aid provider, if he is satisfied that—
  - (a) the legal aid provider has committed a professional misconduct or has failed to admonish its employee for professional misconduct or breach of the code of conduct prescribed by the relevant professional body;
  - (b) the legal aid provider is in breach of the code of conduct prescribed under this Act or under any other written law;
  - (c) the legal aid provider operates in variance to its constitution;
  - (d) the legal aid provider has failed to keep proper records of activities undertaken on behalf of an aided person and the Registrar considers that this shall have an adverse effect on the interests of the aided person generally or in any particular case.
- (3) The Registrar may cancel a certificate of registration of a legal aid provider if he is satisfied that—
  - (a) the registration was obtained by mistake, fraud, undue influence or misrepresentation;
  - (b) the legal aid provider has failed to comply with the conditions of the registration;
  - (c) the qualifications for registration has ceased to exist in respect of the legal aid provider;
  - (d) the office bearer of the legal aid provider has been declared bankrupt, is insolvent or has entered into an arrangement with his creditors;
  - (e) an advocate or paralegal employed by a legal aid provider has regularly breached professional conduct;
  - (f) a legal aid provider has discriminated aided person in terms of gender, religion, race, tribe or political affiliation;
  - (g) the office bearer of the legal aid provider is convicted of an offence which touches on his integrity, accountability, or is subject to an order made under the relevant body; or
  - (h) the legal aid provider is not providing, or has not provided, the service for which he is registered to the prescribed standard.
- (4) Notwithstanding the provision of subsection (3), the Registrar shall not cancel a certificate of registration of the legal aid provider if had notified the Registrar in respect of paragraph (d),(e) and (g) and has taken necessary internal measures to rectify the situation.
- (5) Where the Registrar suspends or cancels certificate of registration, he shall—
  - (a) notify the relevant legal aid provider in writing of the decision and order such legal aid provider to stop operations; or
  - (b) as the case may be and in accordance with the procedure provided in [section 17](#), remove the name of the legal aid provider from the register.

## 17. Procedure for suspension or cancellation

- (1) Where a legal aid provider is in default of the terms and conditions in respect of which a certificate was issued or is in violation of [section 16](#), the Registrar may serve to the legal aid provider a default notice in writing specifying the nature of the default.
- (2) Upon receipt of the default notice, a legal aid provider shall make representation in writing to the Registrar regarding remedy or rectification of the default within twenty one days.
- (3) Where a legal aid provider has failed to remedy or rectify the default within time specified in the default notice or has not made a representation satisfactory to the Registrar, the Registrar shall suspend or cancel a certificate.
- (4) A legal aid provider whose certificate has been suspended or cancelled may apply to the Registrar for review of the decision to suspend or cancel the certificate if he is dissatisfied by the reasons for such suspension or cancellation.
- (5) A legal aid provider who is aggrieved by the decision of the Registrar to suspend or cancel a certificate may appeal to the Board in accordance with the provisions of [section 14](#).

## 18. Supervision of legal aid providers

- (1) The Assistant Registrar shall, for purposes of this Act, be a supervisor of legal aid providers in the respective region or district.
- (2) In the discharge of supervisory duties, the Assistant Registrar shall—
  - (a) exercise general supervision in accordance with the provisions of this Act;
  - (b) investigate complaints of malpractice, negligence, misconduct or disobedience and make a report to the Registrar of the facts and circumstances of any such complaints; and
  - (c) submit to the Registrar, on annual basis, names of legal aid providers who have ceased to provide legal aid.

## Part IV – Special provisions on paralegals

## 19. Qualifications for paralegals

- (1) A paralegal shall be required to possess any of the following—
  - (a) any bachelor degree in any discipline from an accredited institution, save for a bachelor degree in laws;
  - (b) any diploma or certificate from an accredited institution; or
  - (c) any certificate of secondary education.
- (2) In addition to the requirement under subsection (1), a paralegal shall undergo necessary training as may be prescribed in the regulations.
- (3) Notwithstanding the generality of subsections (1) and (2), any person who has been a paralegal for at least two years and has undergone training under the current arrangement prior to the commencement of this Act, shall qualify as a paralegal for the purpose of this Act.
- (4) Subject to subsection (3) and other provisions of this Act, the Registrar shall recognize and register paralegals trained under a registered legal aid provider—
  - (a) who meets the basic requirement set out in subsection (1); and
  - (b) in accordance with the approved curriculum.

## **20. Legal aid services by paralegals**

- (1) A paralegal may provide legal aid services in accordance with the provisions of this Act.
- (2) Without prejudice to the generality of subsection (1), a paralegal shall have the following duties:
  - (a) carrying out educational programmes in national or local languages on legal issues and procedures of concern to the community;
  - (b) assisting aided person in the procedures to obtain necessary legal documents;
  - (c) guiding an aided person to a proper forum or to access justice; and
  - (d) advising the conflicting parties to seek amicable settlement or referring them to dispute settlement institutions.
- (3) A person who intends to provide legal aid services as a paralegal under this Act, shall apply for the registration to the Registrar or as the case maybe to the Assistant Registrar.
- (4) Procedures for registration of paralegals under this Act, shall be as prescribed under the regulations.
- (5) A paralegal shall not engage in an activity that is reserved for advocates under any written law.
- (6) A paralegal shall not charge any fee from an aided person for the provision of legal aid under this Act.
- (7) A person who contravenes a provision of this section, commits an offence and shall, upon conviction, be liable to a fine not less than one million shillings or to imprisonment for a term not less than three months, or to both.

## **Part V – Provision of legal aid**

### **(a) General provisions**

## **21. Application for legal aid**

- (1) An indigent person who intends to receive legal aid may approach any legal aid provider and apply for legal aid services.
- (2) Upon receipt of an application made under sub section (1), the legal aid provider may proceed processing the case.
- (3) An application under subsection (1) shall, with respect to the applicant's eligibility for legal aid services, be assessed in accordance with the legal aid providers procedures.

## **22. Person who may apply for legal aid**

An application for legal aid may be made by—

- (a) the indigent person;
- (b) any other person authorised by the indigent person; or
- (c) any person or an institution on behalf of the indigent person where the authority of the indigent person cannot be reasonably obtained.

## 23. General principles of legal aid

Subject to sections 20(6) and 25, the legal advice, assistance or representation through legal aid shall not affect the relationship between the rights of an advocate and a client or any privilege arising out of such relationship.

## 24. Legal aid to be provided by institutions

- (1) Pursuant to the provisions of this Act, legal aid services shall be provided by an advocate, a lawyer or a paralegal on behalf of the legal aid provider.
- (2) A person shall not provide legal aid services unless that person is an advocate, a lawyer or paralegal attached to a legal aid provider.
- (3) Any person who contravenes a provision of this section commits an offence and shall, upon conviction be liable to a fine of five million shilling or to twelve months imprisonment or to both.

## 25. Unauthorised payments

- (1) A legal aid provider shall not demand, request or receive payment from or, in respect of an aided person, in relation to services rendered under this Act, unless such payment is authorised under this Act.
- (2) Any person who contravenes the provisions of subsection (1) commits an offence and shall, upon conviction, be liable to a fine not less than two million shillings or to imprisonment for a term not less than six months, or both.
- (3) In addition to the sentence imposed under subsection (2), a person who is convicted for receiving payment shall be required to refund the amount he received from the aided person.

## 26. Records, monitoring and evaluation

- (1) A legal aid provider shall—
  - (a) provide legal services with a view to protecting the interests of the aided person; and
  - (b) keep proper records of activities undertaken on behalf of an aided person and submit the same to the Registrar annually or as may be directed by the Registrar.
- (2) The Registrar or the Assistant Registrar as the case may be, shall monitor and evaluate the activities and the quality of legal services offered by a legal aid provider under sub-section (1).

### (b) Legal aid in civil proceedings

## 27. Legal aid in civil proceedings by order of the court

Where in any civil proceedings it appears to the presiding judge or magistrate that—

- (a) in the interests of justice a person should have legal aid; and
- (b) such person has insufficient means to enable him to obtain the legal services,

the presiding judge, a magistrate, adjudicatory body or a chairman of the land, labour or tax tribunal and any other tribunal as the Minister may, by Order published in the *Gazette* determine, shall cause such person to obtain legal aid.

**28. Notification of other parties**

- (1) Where a party to civil proceedings is granted legal aid, the legal aid provider shall immediately notify every other party to the proceedings and to the court, of that fact.
- (2) Where any other person subsequently becomes a party to the proceedings, the legal aid provider shall give notice to the new party.
- (3) Where the legal aid provider withdraws or is discharged by the client, the legal aid provider shall immediately notify all parties to the proceedings and the court, of that fact.

**29. Recovery of costs**

Where an aided person has been awarded costs in any proceedings, such person shall be entitled to the costs, provided that the legal aid provider may have the right to deduct from the award, the costs he incurred in respect of the proceedings in the manner prescribed in the regulations.

**30. Execution of judgments**

A legal aid provider shall take necessary measures to execute a judgment or any settlement in order to recover the proceeds of proceedings.

**31. Costs against aided person**

- (1) Where an aided person receives legal aid for civil proceedings and loses the case, the court shall not award an order of costs against the aided person, unless there are exceptional circumstances.
- (2) In determining whether there are exceptional circumstances under subsection (1), the court may take into account any of the following by the aided person—
  - (a) conduct that causes the other party to incur unnecessary costs;
  - (b) unreasonable refusal to negotiate a settlement or participate in alternative dispute resolution;
  - (c) misleading or deceitful conduct; or
  - (d) other conduct that abuses the processes of the court.
- (3) Where costs are awarded against the aided person, the legal aid provider shall not be liable for payment of such costs.

**32. Aided person not required to provide security for costs**

Notwithstanding the provisions of any written law, an aided person shall not be required to furnish security for costs during the trial or appeal proceedings.

**(c) Legal aid in criminal matters****33. Legal aid by order of the court**

- (1) Where in any criminal proceedings, it appears to the presiding judge or magistrate that—
  - (a) in the interests of justice an accused person should have legal aid in the preparation and conduct of his defence or appeal as the case may be; and

- (b) his means are insufficient to enable him to obtain legal services,
- the presiding judge or magistrate, as the case may be, shall certify that the accused ought to have such legal aid and upon such certificate being issued, the Registrar shall assign to the accused a legal aid provider which has an advocate for the purpose of preparation and conduct of his defence or appeal, as the case may be.
- (2) Where in any criminal proceedings a child is an accused, the presiding judge or magistrate shall certify that the accused ought to have such legal aid and upon such certificate being issued the Registrar shall assign to the accused an advocate for the purpose of preparation and conduct of his defence or appeal, as the case may be.
- (3) The Chief Justice shall, by rules published in the *Gazette*, determine the remuneration of advocates assigned to accused person under the provisions of subsection (1) and (2) and the same shall be paid from the Judicial Fund.
- (4) For the purpose of this section "Registrar" means the Registrar of the High Court.

### **34. Expenses incurred by advocates**

- (1) Where a legal aid provider which is assigned to an accused person under the provisions of this Act incurs any special expenditure arising out of the performance of its duties, it may submit a claim to the Chief Court Administrator.
- (2) The Chief Court Administrator may, if he is satisfied that the full claim or the portion thereof is reasonable, authorize payment to the legal aid provider of such claim or such portion, as the case may be.
- (3) Any dispute arising out of the decision of the Chief Court Administrator under subsection (2) may be referred to the Chief Justice, whose decision thereon shall be final.
- (4) The Chief Justice may, in writing, delegate any of his functions under this subpart to the Principal Judge either generally or for any specific proceeding.

### **35. Legal aid for children in conflict with the law**

Where any person is charged with the duty of supervising the welfare of the child, in execution of his duties deals with the child who has come into a conflict of the law, he shall cause such child to obtain legal aid immediately.

### **36. Legal aid for persons in custody**

- (1) The Police Force or Prison Services shall designate mechanism for facilitating the provision of legal aid services by legal aid providers to accused or convicts in custody in the manner to be prescribed in the regulations.
- (2) The regulations made under subsection (1) shall be prepared in consultation with the Minister responsible for Home Affairs.

## **Part VI – Financial provisions**

### **37. Sources of fund of the Board**

The funds of the Board shall consist of—

- (a) any sums that may be appropriated by the Parliament;
- (b) any monies raised by way of donations or grants made within and outside the United Republic of Tanzania; and

- (c) such sums of money or assets which may vest in or accrue to the Board from other sources by way of fees, grants or in any other way under this Act or any other written law or in respect of the matter incidental to the carrying out of its functions.

### **38. Annual estimates**

- (1) The Board shall, before the commencement of a financial year, cause to be prepared, estimates of the revenue and expenditure for the year.
- (2) The annual estimates shall make provision for all estimated expenditure of the Board for a financial year concerned, and the Board shall in particular, approve recurrent and development expenditure.
- (3) The annual estimates shall be submitted to the Minister who shall cause them to be laid before the National Assembly within three months from the date of their submission to him.

### **39. Annual performance report**

The Registrar shall, within three months, prepare and submit to the Board an annual report on the performance of the Board during the financial year and the Board shall submit the same to the Minister who shall cause a copy of the report to be laid before the National Assembly.

### **40. Books of accounts**

- (1) The Board shall keep proper books of accounts.
- (2) Within three months from the end of each financial year, the Board shall submit to the Controller and Auditor General accounts of the Board together with—
  - (a) a statement of financial activities and income and expenditure during that financial year; and
  - (b) a statement of assets and liabilities of the Board existing at the end of such financial year.
- (3) The accounts of the Board shall be audited by the Controller and Auditor General.

## **Part VII – Miscellaneous provisions**

### **41. Registrar may require proof of existence**

- (1) Where the Registrar has reason to suspect that a legal aid provider has ceased to exist or he is no longer providing legal aid, he may issue a notice in writing to the office bearers of that legal aid provider or publish a notice in a newspaper widely circulating in Mainland Tanzania, requiring him to submit to the Registrar within a period of thirty days, proof of his existence.
- (2) Where the legal aid provider fails to submit to the Registrar proof of his existence, the Registrar shall cancel the certificate of its registration and remove its name from the register.

### **42. Obligations relating to professional conduct**

- (1) An advocate who provides legal aid under this Act shall be required to adhere to any rules or codes of conduct of a professional body to which he belongs and his rights, obligations, responsibilities, or duties as a member of such body shall not in any way be affected by the provisions of this Act.
- (2) The Minister shall, by notice published in the *Gazette*, provide a code of conduct for legal aid providers and paralegals.
- (3) The code of conduct referred to under subsection (2) shall provide for—
  - (a) the protection of the rights and interests of an aided person;



- (b) duties to the aided person, the Registrar and court;
- (c) conflict of interest;
- (d) observance of confidentiality;
- (e) in the case of professionals, the duty to observe prescribed ethical standards of their respective professional bodies;
- (f) non discrimination;
- (g) probity and ethical conduct; and
- (h) any other matter connected with legal aid.

#### **43. Necessary order to be issued in case of professional misconduct**

- (1) Where an advocate has committed a professional misconduct which is likely to occasion failure of justice to the aided person, the presiding judge, shall issue necessary order to rectify the situation.
- (2) For the purpose of subsection (1) necessary order may include to—
  - (a) summon the advocate to appear and continue with the case;
  - (b) order the advocate to ensure proper preparation of the case as may be required;
  - (c) relinquish the advocate from his duties and substitute him with another advocate; or
  - (d) make such other orders in respect of the advocate as provided for under the Advocates Act.

*[Cap. 341]*
- (3) Where professional misconduct has been committed before the magistrate or any chairman of the tribunal as the case may be, in addition to orders under subsection (2)(a), (b) or (c), the magistrate or any chairman of the tribunal as the case may be, shall refer the matter relating to the professional misconduct to the High Court for necessary action.
- (4) For the purpose of this section, acts which constitute professional misconduct include—
  - (a) non appearance of the advocate in court or tribunal;
  - (b) non compliance of advocate with procedural orders of the court or tribunal; or
  - (c) any other acts to be prescribed in the regulations or in any other Act regulating the conduct of advocates.

#### **44. Prohibition against discrimination**

- (1) Subject to the provisions of this Act, no a legal aid provider, advocate, lawyer or paralegal shall provide legal aid on the basis of discriminating aided person on his gender, religion race, tribe or political affiliation.
- (2) A person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine of not less than five million shillings but not more than ten million shillings or to imprisonment for a term not less than six months but not more than twelve months or to both.

#### **45. Prohibition of misuse of funds for legal aid**

- (1) Every legal aid provider or any person receiving funds, aid or other kind of assistance for the purpose of providing legal aid under this Act, shall ensure that such funds, aid or assistance received is used for the provision of legal aid under this Act.

- (2) Any person who contravenes this section commits an offence and shall, on conviction, be liable to a fine of not less than ten million shillings but not exceeding fifteen million or to imprisonment for a term of not less than six months but not exceeding twelve months or to both.

#### 46. General offences

A person who:

- (a) fraudulently makes, causes or permits to be made, any false or incorrect entry in the Register or any copy of it;
- (b) provides legal aid without having qualifications as prescribed under this Act;
- (c) makes any statement which is false in a material particular or misleading, with a view to gaining any advantage or privilege under this Act;
- (d) impersonates any person registered or deemed to be registered in terms of this Act;
- (e) refuses or fails without lawful cause to appear, having been duly summoned to appear, at an inquiry by the Registrar under this Act; and
- (f) obstructs or hinders a member of the Board or the Registrar or of any other person in the exercise of his powers or the performance of his functions under this Act,

commits an offence, and upon conviction, shall be liable to a fine of not less than one million shillings or imprisonment for a term of not less than six months or both.

#### 47. Publication of legal aid providers

The Registrar shall, annually, publish in the *Gazette*, in widely circulating newspapers in Mainland Tanzania, and in any other means of communication the names of registered legal aid providers, and legal aid providers whose names have been cancelled.

#### 48. Powers of Minister to make regulations

- (1) The Minister may make regulations for the better carrying into effect of the provisions of this Act.
- (2) Notwithstanding the generality of subsection (1), the Regulations made under this Act may provide for—
  - (a) the procedures for the provision of legal aid to persons detained at police stations, or in remand, prison or other places of lawful custody;
  - (b) procedures, terms and conditions of registration of legal aid providers and paralegals;
  - (c) procedures for inspection of legal aid providers;
  - (d) fees to be paid under this Act;
  - (e) procedures for management of disputes and complaints under this Act;
  - (f) the records to be kept by legal aid providers in relation to legal aid assignments and the reports to be submitted to the Registrar;
  - (g) the amount payable by an aided person;
  - (h) procedures for appeal under this Act, and
  - (i) any other matter which is required to be prescribed under this Act.

#### 49. Repeal and saving

- (1) Repeals the Legal Aid (Criminal Proceedings) Act.  
*[Act No. 21 of 1969]*
- (2) Notwithstanding subsection (1), all orders, rules, guidelines, directives and regulations made under the repealed Act, shall have effect until such other subsidiary legislations are made under this Act.

#### 50. Transitional arrangement

- (1) Notwithstanding the provisions of this Act, all legal aid arrangements which are in existence on the date of commencement of this Act shall be continued and concluded as if this Act had not been passed.
- (2) All institutions that provide legal aid services prior to the commencement of this Act, shall within twelve months of the coming into operation of this Act, register in accordance with this Act.
- (3) Without prejudice to the generality of subsection (2), legal aid providers who have been registered and awarded legal aid certificate by Chief Justice shall be deemed to have been registered under this Act.

### Schedule (Section 4(2))

#### Composition, tenure of office and proceedings of the Board

##### 1. Composition

- (1) The National Legal Aid Advisory Board shall consist of the Chairman and other seven members appointed by the Minister as follows:
  - (a) a Chairman who is a Judge of the High Court of Tanzania appointed by the Minister in consultation with the Chief Justice;
  - (b) the Attorney General or his representative not below the rank of law officer;
  - (c) one representative from legal aid providers;
  - (d) one representative from the National Criminal Justice Forum;
  - (e) one representative from the Tanganyika Law Society;
  - (f) Director of legal services from the Ministry responsible for Local Government Authority or his representative;
  - (g) a representative of persons with disability; and
  - (h) one representative from paralegal organisations umbrella body.
- (2) The appointing authority shall in appointing members under subparagraph (1) ensure that there is gender representation in the Board.
- (3) The Board may co-opt such number of persons to represent any interest as the Board may determine except that the co-opted member shall not have the right to vote.

##### 2. Vice-Chairman

The members shall elect one amongst their number to be Vice-Chairman of Board, and any member elected as Vice-Chairman, may subject to his continuing to be a member, hold office for a term of three years from the date of his election.

### 3. Tenure of office

- (1) The members of the Board shall hold office for a period of three years and shall be eligible for re-appointment for a further period of three years.
- (2) A member of the Board may at any time resign his office by giving notice in writing addressed to the Minister, and from the date specified in the notice or, if no date is so specified, from the date of the receipt of the notice by the Minister, he shall cease to be a member.

### 4. Vacancy

Where any member ceases to be a member for any reason before the expiration of his term of office, the appointing authority may appoint another person in his place and the person so appointed shall hold office for the remainder of the term of his predecessor.

### 5. Meetings of Board

- (1) The Board shall ordinarily meet for the transaction of its business at the time and at the place determined by it, but shall meet at least once in every three months.
- (2) The Chairman, or in his absence the Vice-Chairman, shall preside at every meeting of the Board and in the absence of both, the Chairman and the Vice-Chairman, the members present shall appoint one of their number to preside over the meeting.
- (3) The Chairman or in his absence the Vice-Chairman, may at any time call special meeting of the Board to deliberate on any matter which he considers to be urgent.
- (4) The Chairman, or in his absence the Vice-Chairman may invite any person who is not a member to participate in the deliberations at any meeting of the Board, but the person so invited shall not be entitled to vote.

### 6. Quorum

The Quorum at any meeting of the Board shall be at least one third of the members.

### 7. Decision of Board

- (1) Matters proposed at a meeting of the Board shall be decided by a majority of the votes of the members present and voting and in the event of any equality of votes the person presiding shall have a second casting vote in addition to his original or deliberative vote.
- (2) A decision may be made by the Board without a meeting by a circulation of the relevant papers amongst the members and the expression of the views of the majority of the members in writing shall be honoured but any member may require that the decision be deferred and the subject matter be considered at a meeting of the Board.

### 8. Minutes of meetings

- (1) The Board shall cause to be recorded and kept minutes of all business conducted or transacted at its meetings, and the minutes of each meeting of the Board shall be read and confirmed, or amended and confirmed, at the next meeting of the Board and signed by the chairman and the secretary.
- (2) Any minutes purporting to be signed by the person presiding at a meeting of the Board shall, in the absence of proof of error, be deemed to be a correct record of the meeting whose minutes they purport to be.

**9. Vacancies not to invalidate proceedings**

The validity of any act or proceeding of the Board shall not be affected by any vacancy among its member or by any defect proceedings in the appointment of any of them.

**10. Orders and directions of Board**

All orders, directions, notices or other documents made or issued on behalf of the Board shall be dated and signed by—

- (a) the Chairman or Vice-Chairman of the Board, as the case may be; or
- (b) the Secretary.

**11. Remuneration of members of Board**

A member of the Board shall be entitled to such remuneration, fees or allowances for expenses as the Minister may, upon recommendations of the Board prescribe from time to time,

**12. Board may regulate proceedings**

Subject to the provisions of this Schedule, the Board may regulate its own proceedings.