

Tanzania

Office of the Attorney General (Discharge of Duties) Act Chapter 268

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Tanzania

Office of the Attorney General (Discharge of Duties) Act Chapter 268

Commenced on 1 July 2005

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

[GN. No.171 of 2005; Acts Nos. 4 of 2005; 8 of 2017; 7 of 2018; 11 of 2019]

An Act to provide for the discharge of duties and the exercise of powers of the Attorney General, and to provide for the relationship of the Office of the Attorney General with other public offices and officers performing legal functions in the Government and local government authorities and to provide for related matters.

Part I – Preliminary provisions

1. Short title

This Act may be cited as the Office of the Attorney General (Discharge of Duties) Act.

2. Application

This Act shall apply to persons who perform or discharge legal functions in the Office of the Attorney General and other offices in the public service who, by virtue or nature of their job description are required to seek or consult for legal advice from the Office of the Attorney General.

3. Interpretation

In this Act, unless the context otherwise requires—

"**Act**" means the Office of the Attorney General (Discharge of Duties) Act;

[Act No. 7 of 2018 s. 60; Cap. 268]

"**Attorney General**" has the meaning ascribed to it under Article 59 of the Constitution, and shall include, the Deputy Attorney General, Law Officers and State Attorneys when discharging the duties or exercising the powers of the Attorney General;

"**Code of Ethics**" means the Code of Ethics referred to under [section 27](#);

"**Constitution**" means the Constitution of the United Republic of Tanzania, 1977;

"**Court**" means a court of law and includes a tribunal;

"**Deputy Attorney General**" has the meaning ascribed to it under Article 59A of the Constitution;

[Cap. 2]

"**Law Officer**" has the meaning ascribed to it under the Interpretation of Laws Act;

[Cap. 1]

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

"**Office of the Attorney General**" in relation to the functions of the Attorney General, means the Office established by the Article 59(1) of the Constitution;

[Cap. 2]

"**public service**" for purpose of the discharge of the duties of the Office of the Attorney General, means the service in the Ministry of the Government, Government department and Government Agency;

"**State Attorney**" means a person appointed as such under [section 24](#) and includes a Parliamentary Draftsman and a Local Government Solicitor;

3A. Objectives of Act

The objectives of this Act shall be to enhance and strengthen the capacity—

- (a) to deliver advice on matters of law to the Ministries, independent departments, agencies and the local government;
- (b) for efficiency in drafting of legislative instruments and draft resolutions for debate by the National Assembly;
- (c) to deliver advice to Ministries, independent departments, Agencies and the local government on legislative process;
- (d) of the Government in dealing with matters instituted or filed in courts of law or arbitral tribunals; and
- (e) of the Government in the negotiation of agreements of commercial or political nature both local or international in which the Government is a party or has interest.

[Act No. 7 of 2018 s. 61]

Part II – Office of the Attorney General

4. Administration of Office

The administration of the Office of the Attorney General, the discharge of duties, the exercise of the powers and the relationship of the Office of the Attorney General with other officers discharging legal duties in the public service shall be governed by the Constitution, the office of the Attorney General (Re-structure) Order, 2018.

[Act No. 7 of 2018 s. 62; G.N. No. 48 of 2018]

5. Attorney General and his functions

- (1) The Attorney General shall be the head of the Office of the Attorney General.
- (2) The Attorney General shall, by virtue of his office, be the Head of the Bar and shall, through the Solicitor General, take precedence over all civil matters whenever he appears in court.
- (3) Subsection (2) shall apply in relation to the Deputy Solicitor General, Law Officers and State Attorneys appearing in court in the name of the Attorney General.

[Act No. 7 of 2018 s. 63]

6. Powers of Attorney General

In the discharge of the functions under sub-article (3) of Article 59 of the Constitution, the Attorney General shall have and exercise the following powers:

- (a) to require any officer in the public service to furnish any information in relation to any matter which is the subject of legal advice;
- (b) to issue directions to any officer performing legal functions in any Ministry of the Government, Government Department or Government Agency, other than those working in the National Prosecutions Service or the Office of the Solicitor-General.

[Act No. 7 of 2018 s. 64; Cap. 4 s. 8]

7. Deputy Attorney General and his functions

- (1) The Deputy Attorney General shall carry out any function, discharge any duty and exercise any power as may be directed by the Attorney General and shall:
 - (a) be the administrative head of the Office of the Attorney General;
[Act No. 7 of 2018 s. 65]
 - (b) carry out the general supervisory role of the legislative drafting or Bills and other legislative instruments;
 - (c) carry out the general supervision of Law Officers and State Attorney in the Ministries, Government departments, agencies and local government;
 - (d) administer legal functions performed by Law Officers and State Attorneys in the Office of the Attorney General; and
 - (e) be responsible for the discipline of Law Officers and State Attorneys in the Office of the Attorney General.
- (2) In performing the duties stipulated under this Act, the Deputy Attorney General shall uphold the division of duties and functions performed by officers in the Office of the Attorney General independent of others and those reserved to the Attorney.

8. Functions of Office of Attorney General

Without prejudice to the generality of Articles 59 and 59A of the Constitution and the Office of the Attorney General (Re-structure) Order, 2018 the functions of the Office of the Attorney General shall be to:

- (a) advise ministries, independent departments, agencies, local government authorities, public corporations, parastatal organizations and other government institutions and organisations on the legislative process and legal opinion on general issues;
- (b) draft legislative proposals into Bills for enactment into law;
- (c) draft all legislative instruments and resolutions for ratification by the National Assembly;
- (d) advise on proper and purposeful meaning of enactment of Parliament, subsidiary legislation and other legal instruments;
- (e) carry out the general supervision of Law Officers and State Attorneys appointed or employed in the Office of the Attorney General, ministries, local government authorities, independent departments, executive agencies, public corporations, parastatal organisations and government institutions other than those under the National Prosecutions Service and the Office of the Solicitor-General;
- (f) carry out the general supervision of staff employed in the office of the Attorney General;

- (g) administer legal functions performed by Law Officers and State Attorneys in the Office of the Attorney General;
- (h) summon any public officer to give explanation, or information regarding any matter which is the subject of advice;
- (i) prepare and submit biannual report to the Minister;
- (j) appoint or employ and discipline Law Officers, State Attorneys and other staff of the Office of the Attorney General; and
- (k) perform any function as may be necessary for effective discharge of the duties and the exercise of the powers of the Attorney General.

[Act No. 7 of 2018 s. 66; Cap. 2; G.N. No. 48 of 2018]

9. Appointment or employment of officers

There shall be employed or appointed in the Office of the Attorney General, Ministries of the Government, Government Departments and Agencies, Law Officers and State Attorneys of the titles explanatory of their functions and duties as prescribed by this Act or any other written law.

[Act No 7 of 2018 s. 67]

Part III – Functions of the Office of the Attorney General

(a) Special Provisions in relation to the National Prosecutions Service, the Office of the Solicitor General and the Administrator-General

10. Relationship of Office of Attorney General and other offices

- (1) Without prejudice to the generality of Article 59B of the Constitution, the Office of the Attorney General shall advise and maintain a link with the National Prosecutions Service, the Office of the Solicitor-General and the Administrator-General for better carrying out of their respective duties.
- (2) For the purposes of subsection (1), the Office of the Attorney General shall—
 - (a) receive copies of biannual performance reports from the National Prosecutions Service, Office of Solicitor General and the Administrator General;
 - (b) follow-up on the implementation of the decisions reached by the Government Legal Team; and
 - (c) advise the Government, the National Assembly and the Judiciary accordingly.
- (3) The Minister may make rules for better carrying out the provisions of this section.

[Act No. 7 of 2018 s. 68]

11. ***

[Repealed by Act No. 7 of 2018 s. 70]

(b) Provisions in relation to other matters of legal nature

12. Drafting and publication of Bills

- (1) The Attorney General shall, through the Chief Parliamentary Draftsman, define drafting instructions and exercise exclusive mandate on drafting legislative proposals into Government Bills.
- (2) Where drafting instructions are received, the Chief Parliamentary Draftsman shall draft legislative proposals for approval by the Cabinet.
- (3) Where the Cabinet approves the draft legislative proposals, the Chief Parliamentary Draftsman shall cause the Bill to be published in the *Gazette*.
- (4) The term "drafting instructions" as used in this section means, directives given by the Cabinet for drafting legislative proposals into a Bill or by an authority delegated by Parliament through an enactment to make a subsidiary legislation.

13. ***

[Repealed by Act No. 7 of 2018 s. 70]

14. ***

[Repealed by Act No. 7 of 2018 s. 70]

Part IV – The Attorney General, Law Officers and State Attorneys in the public service

15. Law Officers and State Attorneys

- (1) There shall continue in existence in ministries, local government authorities, independent departments, government institutions, agencies, public corporations, parastatal organizations, Law Officers and State Attorneys who by virtue of their qualifications, job description and duties, perform legal functions.
- (2) The Attorney General may issue directions either general or specific to any Law Officer or State Attorney in public service other than those under the National Prosecutions Service or the Office of the Solicitor-General with regard to the manner of performing the legal functions within their respective offices.
- (3) The Solicitor-General may issue each Law Officer and State Attorney in ministries, local government authorities, independent departments and other government institutions, agencies and organisations with Practice Instrument that will entitle the bearer to appear in court in cases where the Attorney General is a party.
- (4) Without prejudice to subsection (2) the Attorney General may direct Ministries, local Government authorities, independent departments, agencies, public corporations, parastatal organizations or other government organizations to submit reports on the performance of legal functions.

[Act No. 7 of 2018 s. 71, 72]

16. Functions to be performed by Law Officers and State Attorneys

- (1) The functions which are, by the Constitution, this Act or by any other written law, required to be performed by or on behalf of the Attorney General, may be performed by a Law Officer or a State Attorney authorised by the Attorney General pursuant to the provisions of this Act.
- (2) A person shall not become a Law Officer or State Attorney only for the reason that his job description includes performing legal functions.
- (3) For the avoidance of doubt, nothing in this Act shall entitle any officer who is not qualified in law to perform legal functions in the public service.

[Act No. 7 of 2018 s. 73]

16A. Professional association of lawyers in public service

- (1) The Attorney General may establish a professional association of lawyers in the public service.
- (2) The association shall be a professional forum of lawyers in the public service to meet once a year and deliberate on various legal issues including professional development and other matters of concern.
- (3) The report of the meeting shall be submitted to the Minister.
- (4) The Minister may make regulations for the proper management, leadership, organisation and conduct of the business of the association.
- (5) Without prejudice to the foregoing provisions, the Minister may, from time to time, call meetings of lawyers in the public service in order to inform them of policy development issues with regard to the legal sector and the public service in general.

[Act No. 7 of 2018 s. 74]

16B. Roll of State Attorneys

- (1) The Attorney General shall establish and keep a Roll of all State Attorneys.
- (2) The Attorney General shall enter in the Roll the name of every State Attorney and the order of entry of such names shall be according to precedence of such State Attorneys as between themselves.
- (3) Nothing in this section shall prejudice or affect the qualification or status of any person who before the establishment of the Roll of State Attorneys was a State Attorney.

[Act No. 7 of 2018 s. 74]

17. Audience by Attorney General in matters of public interest, etc.

- (1) Notwithstanding the provisions of any written law to the contrary, the Attorney General shall through the Solicitor-General have the right to audience in proceedings of any suit, appeal or petition in court or inquiry on administrative body which the Attorney General considers-
 - (a) to be public interest or involves public property; or
 - (b) to involve the legislative, the judiciary or an independent department or agency of the Government.

- (2) In the exercise of the powers vested in the Attorney General with regards to the provisions of subsection (1), Solicitor-General shall—
 - (a) notify any court, tribunal or any other administrative body of the intention to be joined to the suit, inquiry or administrative proceedings; and
 - (b) satisfy the court, tribunal or any other administrative body of the public interest or public property involved, and comply with any direction of the court, tribunal or any such other administrative body on the nature of pleadings or measures to be taken for purposes of giving effect to the effective discharge of the duties of the Office of the Attorney General.
- (3) Where a suit, inquiry or any other proceeding is pending before the court, tribunal or any other administrative body to which the Solicitor-General does not have a right of audience, it shall be sufficient for the Solicitor-General to file a certificate of the intention of the Attorney General to be joined and the court, tribunal or any such administrative body shall immediately forward the record of the proceedings to the nearest court, tribunal or administrative body for purposes of enabling the Solicitor-General to appear.

[Acts Nos. 8 of 2018 s. 74; 7 of 2018 s. 75]

17A. Restriction to practise as advocate

- (1) A Law Officer or State Attorney shall not, for the whole period of service as a Law Officer or State Attorney, practise as an advocate.
- (2) Notwithstanding subsection (1), the Attorney General may, upon application by a Law Officer or State Attorney or, where in his opinion he considers it necessary, exempt a Law Officer or State Attorney from the application of the provisions of subsection (1).
- (3) Without prejudice to subsection (2), a Law Officer or State Attorney may, subject to the guidelines prescribed by the Attorney General, administer oaths or attest documents as a commissioner for oaths or as a notary public;

Provided that such attestation or administration shall not have potential conflict of interest with his employer.
- (4) The Attorney General shall, by order published in the *Gazette*, issue guidelines to—
 - (a) facilitate the implementation of subsection (3); and
 - (b) prescribe modality for application of exemption referred to under subsection (2).

[Act. No. 11 of 2019 s. 44; Cap. 4 s. 8]

Part V – Legal functions of the local government authorities

18. Appointment of a Law Officer for local government authorities

- (1) There shall continue in existence in the Minister responsible for local government authorities, an office of a Law Officer who shall be responsible for the coordination of State Attorneys of the local government authorities.
- (2) Where there is a need for appointing a Law Officer to head or to perform the functions referred to in subsection (1), the Permanent Secretary of the Ministry responsible for local government authorities may, after consultation with the Attorney General and Solicitor-General, appoint the Law Officer from the Ministry responsible for local government authorities, Office of the Attorney General or Office of the Solicitor-General.

- (3) A Law Officer appointed pursuant to the provisions of subsection (2) shall bear a title of any description that depicts the nature of the functions performed and the position held, provided however, that such title is commensurate to the structure of office acceptable by the Public Service Management Office.
- (4) In the coordination of legal functions of the local government authorities, the Attorney General, Director of Public Prosecutions and the Solicitor-General may issue any directive of a general or specific nature concerning professional matters and the Law Officer shall cause such directive to be implemented.
- (5) The Law Officer appointed in accordance with this section or any other Law Officer or State Attorney in the service of the local government authority shall, under the auspices of the Solicitor-General, have the right of audience in any matter before the court in which a local government authority or the Attorney-General is a party.

[Act No. 7 of 2018 s. 76]

Part VI – Control of the performance of functions and the discharge of duties of the Attorney General

19. Reserve of matters to Attorney General

No Law Officer, State Attorney shall render advice in any matter stipulated under this section without approval of the Attorney General, namely—

- (a) interpretation of the Constitution;
- (b) any matter relating to international agreements and treaties;
- (c) any matter which the law reserves to the Attorney General.

[Act No. 7 of 2018 s. 77]

20. Procedure of sourcing consultancy

- (1) The engagement of consultants by any Ministry, Government Department or Agency for rendering legal services shall be made after obtaining written approval of the Attorney General in respect of issues that require consultancy.
- (2) For the purpose of observing standards, maintaining quality or capacity building, the Attorney General may—
 - (a) direct a Law Officer, State Attorney to whom the provisions of this Act apply to participate in the work of the consultant;
 - (b) prescribe the terms and conditions for a Law Officer or State Attorney who participates in such consultancy.

[Act No. 7 of 2018 s. 78; Cap. 4 s. 8]

21. Power to issue directives and practice notes

- (1) The Attorney General shall exercise powers, issue directives or practice notes to any officer to whom this Act applies for the purpose of maintaining standards and uniformity.
- (2) The directives or practice notes issued pursuant to subsection (1) shall be in such form and manner as the Attorney General may determine.

- (3) Notwithstanding the provisions of this section, all matters regarding administration or discipline in respect of Law Officers and State Attorneys in the ministries, local government authorities, independent departments, agencies, public corporations and parastatal organizations shall be under the supervision and control of their respective employers.
- (4) Employers of law officers and state attorneys shall have the duty to notify the Attorney General on all disciplinary cases against law officers and state attorneys under their supervision and control.

[Act No. 7 of 2018 s. 79; Cap. 4 s. 8]

22. Reference of matter for opinion of the Attorney General

- (1) Any ministry, local government authority, independent department, government institution, agency or organisation may refer or seek the opinion of the Attorney General on any legal matter.
- (2) Where the opinion of the Attorney General is requested in relation to any matter reserved to the Attorney General, the ministry, local government authority, independent department, government institution, agency or organisation shall state clearly the matter and issues involved together with any opinion that may have been given from within such ministry, local government authority, independent department, government institution, agency or organisation.

[Act No. 7 of 2018 s. 80]

23. Opinion of Attorney General to be position of Government

- (1) The opinion of the Attorney General given pursuant to the provisions of subsection (2) of this section shall remain the legal position of the Government on the matter unless it is otherwise revised by a court of competent jurisdiction, the Cabinet or otherwise recalled by the Attorney General at the instance of the Attorney General.
- (2) The Attorney General or the Deputy Attorney General may at the instance of the Attorney General recall any opinion given by a Law Officer, State Attorney or any officer in the public which is made in the name of the Attorney General.
- (3) An officer who makes a decision in disregard of the opinion of the Attorney General:
 - (a) on a matter that sustains loss to the Government, shall be surcharged or otherwise made to make good of the loss sustained in addition to other appropriate disciplinary measures that may be taken against such officer;
 - (b) in any other case, shall be a breach of discipline and may be dealt with according to the Public Service Regulations, 2003.

[G.N. No. 168 of 2003]

[Act No. 7 of 2018 s. 81]

Part VII – Attorney General, Law Officers and other State Attorneys in the public service

[Act No.7 of 2018 s.82; Cap. 4 s.8]

24. Qualifications for employment and appointment of Law Officers and State Attorneys

- (1) Subject to the procedure determined by the Public Service Management, the ministry, local government authority, independent department, government institution, agency or organisation shall employ legally qualified officer in law to be a Law Officer or a State Attorney.

- (2) A person shall be qualified for appointment as a Law Officer or a State Attorney who possesses a minimum of a first degree in law or the equivalent qualification from an institution of higher learning accredited or recognized as such by the competent authority.
- (3) Where a person takes up employment as a Law Officer or a State Attorney, the Attorney General shall, by an instrument under his hand, appoint that person to be a Law Officer or State Attorney, and in the same or subsequent instruments direct on the nature of functions the officer will discharge.
- (4) The Deputy Attorney General shall cause to be published in the *Gazette*, the names of all persons appointed to be Law Officers and State Attorneys.

[Act No. 7 of 2018 s. 83]

25. Government Legal Team

- (1) There is established a Team to be known as the Government Legal Team which shall undertake strategic legal analysis and forecast with regard to legal services rendered as well as prosecutorial and adjudicatory services provided.
- (2) The Team shall consist of—
 - (a) the Attorney-General who shall be the Chairman;
 - (b) the Director of Public Prosecutions;
 - (c) the Solicitor-General;
 - (d) the Administrator-General;
 - (e) the Executive Secretary of the Law Reform Commission of Tanzania;
 - (f) the Chief Parliamentary Draftsman;
 - (g) the Director of Legal Services in the Ministry responsible for legal affairs; and
 - (h) the Director of Legal Services in the Ministry responsible for local governments.
- (3) The Attorney General shall appoint a Law Officer from the Office of the Attorney General to be a Secretary to the Team.
- (4) The Team may co-opt any person as it deems necessary.
- (5) The Team shall meet at least twice a year but may meet at any time if there is any issue to be discussed for the purpose of improving the legal services.
- (6) The quorum at any meeting of the Team shall be half of the members.
- (7) The Team may regulate its own proceedings.
- (8) The Team shall prepare a report of its deliberations and submit the same to the Minister.

[Act No. 7 of 2018 s. 84]

26. Register of Law Officers and State Attorneys

- (1) There shall a Register into which shall be entered and kept particulars of Law Officers and State Attorneys in the public service.
- (2) The Deputy Attorney General shall keep and maintain the Register of the Law Officers and State Attorneys in public service who perform the functions in accordance with this Act.

- (3) The Register shall contain names, qualifications titles and occupation of each of such officers.

[Act No. 7 of 2018 s. 85; Cap. 4 s. 8]

27. Code of Ethics

- (1) There shall be a Code of Ethics for Law Officers and State Attorneys in the public service to be prescribed by the Minister.
- (2) All matters regarding administration or enforcement of the Code of Ethics for Law Officers and State Attorneys in the public service shall be under the supervision and control of their respective employers.
- (3) Notwithstanding the Public Service Regulations, 2003 the Attorney General may refer allegations of professional misconduct against a Law Officer or a State Attorney to the Advocates Committee.

[G.N. No. 168 of 2003]

- (4) Each Permanent Secretary and every head of the independent department, government institution, agency or organisation shall liaise with the Ministry in the administration of the Code of Ethics in respect of Law Officers and State Attorneys employed in their respective offices.
- (5) The Chief Justice may, in consultation with the Minister, make rules for better carrying out referrals to the Advocates Committee by the Attorney General under subsection (3) of this section.

[Act No. 7 of 2018 s. 86]

28. Orders, etc and sanctions for breach of Code of Ethics

- (1) The Attorney General may issue General or Standing Orders, Practice Notes and other instruments as he may deem fit for purposes of better management and organisation of the Office of the Attorney General.
- (2) Any Law Officer or State Attorney who breaches the Code of Ethics commits a professional misconduct and shall be liable to disciplinary actions through the employer in accordance to the Public Service Regulations, 2003.

[Act No. 7 of 2018 s. 86; G.N. No. 168 of 2003]

29. Regulations

The Minister may make regulations for the better carrying out of the provisions of this Act.

30. Omitted

Amend various written laws.

31. Omitted

Amend various written laws.

32. Omitted

Amend various written laws.

33. Omitted

Amend various written laws.

Schedule

[Repealed by Act No. 7 of 2018 s. 87]