

OFFICE OF THE ATTORNEY GENERAL (DISCHARGE OF  
DUTIES) ACT, 2005

ARRANGEMENT OF SECTIONS

*Section*                      *Title*

PART I

PRELIMINARY PROVISIONS

1. Short title and commencement.
2. Application.
3. Interpretation.

PART II

OFFICE OF THE ATTORNEY GENERAL

4. Administration of the Office.
5. Attorney General and his functions.
6. Powers of the Attorney General.
7. Deputy Attorney General and his functions.
8. Duties of the Offices of the Attorney General.
9. Appointment or employment of officers.

PART III

FUNCTIONS OF THE OFFICE OF THE ATTORNEY GENERAL

*(a) Special Provisions in Relation to the Director of Public Prosecutions*

10. Functions and powers of the Director of Public Prosecutions.
11. Relationship of the Director of Public Prosecutions and Attorney General.

*(b) Provisions in Relation to the Matters of Legal Nature*

12. Drafting and Publication of Bills.
13. Supervision of the Attorney General of the functions under section 8.
14. Discharge of duties of civil nature and constitutional nature.

PART IV

THE ATTORNEY-GENERAL AND OTHER LEGAL OFFICERS IN THE  
PUBLIC SERVICE

15. Provision regarding legal officers and officers in Government.
16. Functions to be performed by persons qualified in law.
17. Audience by Attorney General in matters of public interest, etc.

**PART V****LEGAL FUNCTIONS OF THE LOCAL  
GOVERNMENT AUTHORITIES**

18. Appointment of a Law Officer for local government authorities.

**PART VI****CONTROL OF THE PERFORMANCE OF FUNCTIONS  
AND THE DISCHARGE OF DUTIES OF THE  
ATTORNEY GENERAL**

19. Reserve of matters to the Attorney General.
20. Procedure of sourcing consultancy.
21. Power to issue directives and practice notes.
22. Reference of matter for opinion of the Attorney General.
23. Opinion of the Attorney General to be a position of the Government.

**PART VII****RECRUITMENT AND CODE OF ETHICS FOR LEGAL OFFICERS**

24. Qualification for employment and appointment of Law Officers and State Attorneys.
25. Appointment of Officers in Government to be State Attorney.
26. Register of Law Officers and State Attorneys.
27. Code of Ethics.
28. Sanctions for breach of the Code of Ethics.
29. Regulations.

**PART VIII****CONSEQUENTIAL AMENDMENTS**

30. Amendment of the Advocates Act, Cap. 341.
  31. Amendment of the Local Government (District) Authorities Act, 1982.
  32. Amendment of the Local Government (Urban) Authorities Act, 1982.
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**SCHEDULE**

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**CODE OF ETHICS AND PROFESSIONAL CONDUCT FOR  
LAW OFFICERS, STATE ATTORNEYS AND LEGAL OFFICERS  
IN THE PUBLIC SERVICE**



No. 4 OF 2005

I ASSENT,

*Benjamin W. Mhapa*

.....  
President

*6<sup>th</sup> April, 2005.*  
.....

**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.**

[.....]

ENACTED by Parliament of the United Republic of Tanzania.

PART I

PRELIMINARY PROVISIONS

1.-(1) This Act may be cited as the Office of the Attorney General (Discharge of Duties) Act, 2005.

Short title and commencement

(2) This Act shall come into operation on such date as the Minister may, by notice in the *Gazette*, appoint.

- Application      2. 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.
- Interpretation      3. In this Act, unless the context requires otherwise—
- “Act” means the Office of the Attorney General (Discharge of Duties) Act, 2005;
- “Administrator General” for the purpose of this Act means the person discharging the functions stipulated under subsection (2) of section 8 and includes an officer discharging those functions on his behalf;”
- “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 for Law Officers, State Attorneys and Legal Officers in the public service;
- “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;
- “investigative organs” as used in this Act, means the Police Force, Prevention of Corruption Bureau, Tanzania Revenue Authority, Immigration Department and other Government agencies charged with the functions of detecting crimes;
- “Law Officer” has the meaning ascribed to it under the Interpretation of Laws Act;
- “legal officer” means a holder of a duly recognized degree in law employed in the public service, other than the Office of the Attorney General and includes a solicitor;
- “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 Article 59(1) of the Constitution;
- “public service” for the purpose of the discharge of the duties of the Office of the Attorney General, means the service in the Ministry of the Government, Government Departments and Government Agencies;
- “State Attorney” means a person appointed as such under sections 24 or 25 of this Act; as such pursuant to the provisions of this Act and includes, a Parliamentary Draftsman.
- Cap. 1

## PART II

## OFFICE OF THE ATTORNEY GENERAL

4. 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 this Act.

Administra-  
tion of the  
Office

5.-(1) The Attorney General shall be the head of the Office of the Attorney General.

Attorney  
General  
and his  
functions

(2) The Attorney General shall, by virtue of his office, be the head of the bar and shall take precedence in court in all matters whenever he appears.

(3) The provisions of subsection (2) shall apply in relation to the Deputy Attorney General, Law Officers and State Attorneys appearing in court on behalf of the Attorney General.

6. 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:

Powers  
of the  
Attorney  
General

- (a) to appear at any stage of any proceedings, appeal, execution or any incidental proceedings before any court or tribunal in which by law the Attorney General's right of audience is excluded;
- (b) where a case in relation to any of the issues referred to in paragraph (a) is pending before a primary court, the Attorney General, a Law Officer or a State Attorney may file a certificate in the court requiring it to transfer the matter to the District Court with competent jurisdiction for further directions;
- (c) to require any officer in the public service to furnish any information in relation to any matter which is the subject of legal advice;
- (d) to summon any officer in the public service to explain any matter which is the subject of litigation by or against the Government;

- (e) to issue directions to any officer performing legal functions in any Ministry of the Government, Government Departments or Government Agencies.

Deputy  
Attorney  
General  
and his  
functions

7.—(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;
- (b) take up and conduct litigation on behalf of the Attorney General and for that purpose, to direct Law Officers and State Attorneys who conduct litigation on that behalf;
- (c) carry out the general supervisory role of legislative drafting of Bills and other legislative instruments;
- (d) carry out the general supervision of Law Officers and State Attorneys;
- (e) administer legal functions performed by Law Officers and State Attorneys in the Office of the Attorney General; and
- (f) 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 General.

Duties  
of the  
Office  
of the  
Attorney  
General

8.—(1) Without prejudice to the general provisions of Articles 59, 59B of the constitution and any other provisions of this Act, the duties of the Office of the Attorney General shall be as follows to:

- (a) perform the functions of public prosecutions in accordance with the Constitution and any other written law;
- (b) control all criminal prosecutions in the country;
- (c) draft legislative proposals into Bills for enactment by Parliament;
- (d) advise the Government on any matter of a civil nature including contracts, international agreements and treaties;
- (e) advise the Government on all matters relating to the Constitution and human rights;

- (f) represent the Government in courts of law and tribunals in any suit or matter to which the Government is a party or has interest;
- (g) advice Government Ministries, Government Department and other Government institution and organisation on legislative process;
- (h) draft all legislative instruments and resolutions for ratification by the National Assembly;
- (i) to advise and find meaning out of Parliamentary enactments;
- (j) perform any function as may be necessary for effective discharge of the duties and the exercise of the powers of the Attorney General.

(2) In addition to the functions stipulated under subsection (1) of this Act, the Attorney General shall perform the functions of -

- (a) the Administrator General as stipulated under the Administrator General Ordinance, the Probate and Administration Ordinance and the Trustees Incorporation Ordinance; Cap. 27  
Cap. 445  
Cap. 375
- (b) the Registrar General as stipulated under the Births and Deaths Ordinance, Law of Marriage Act, 1971 and the Adoption Ordinance; Cap. 108  
Act No. 5  
of 1971  
Cap. 335
- (c) the Official Receiver as stipulated under the Bankruptcy Ordinance and the Companies Act, 2002; and Cap. 25  
Cap. 212  
Act No. 12  
of 2002
- (d) the Public Trustee as stipulated under the Public Trustee Ordinance. Cap. 31

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

Appointment or employment of officers

### PART III

#### FUNCTIONS OF THE OFFICE OF THE ATTORNEY GENERAL

##### (a) *Special Provisions in Relation to the Director of Public Prosecutions*

10.—(1) In addition to the functions stipulated under Article 59B of the Constitution, the Criminal Procedure Act, 1985 or any other written

Functions and powers of the Director of Public Prosecutions Act No. 9 of 1985

law, the Director of Public Prosecutions shall perform the following functions:

- (a) to supervise:
  - (i) officers in the Directorate of Public Prosecutions in the discharge of prosecution duties;
  - (ii) other officers or persons who conduct prosecutions on behalf of the Director of Public Prosecutions by delegated authority or by specific appointment;
- (b) to coordinate investigation duties conducted by the investigative organs;
- (c) subject to the provisions of section 7(1)(e) to enforce discipline of officers conducting prosecutions under the directions of the Director of Public Prosecutions; and
- (d) to do any thing or matter incidental to the conduct of prosecution.

(2) In the performance of the functions stipulated in this section, the Director of Public Prosecutions shall have the power to:

Act No. 9  
of 1985

- (a) delegate to any Law Officer, State Attorney, officer employed in the service or any other person the powers to prosecute stipulated in the Constitution, the Criminal Procedure Act, 1985 or any other written law;
- (b) call any file from any organ charged with the duty to investigate crime;
- (c) appoint prosecutors in accordance with any other written law;
- (d) give directions to any officer to whom powers of the Director of Public Prosecutions have been delegated; and
- (e) direct investigative organs on any matter of a general or specific nature relating to investigation of crime.

(3) The Director of Public Prosecutions shall represent the Government in criminal appeals filed in the High Court and Court of Appeal.

Relation-  
ship of the  
Director  
of Public  
Prosecu-  
tions and  
Attorney  
General

**11.—(1)** The Director of Public Prosecutions shall have regard to directions of a general or specific nature as may be given by the Attorney General or the Deputy Attorney General in relation to implementation of Government policy or supervision of officers within the Directorate of Public Prosecutions.

(2) Nothing in this section shall be construed as abrogating or in any way limiting the powers of the Director of Public Prosecutions in relation to the control of public prosecutions.

*(b) Provisions in Relation to Other Matters of Legal Nature*

12.—(1) The Attorney General shall, through the Chief Parliamentary Draftsman, define drafting instructions and exercise exclusive mandate on drafting legislative proposals into Government Bills.

Drafting  
and  
publica-  
tion of  
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. The Attorney General shall supervise the Administrator General in the performance of the functions stipulated under subsection (2) of section 8 of this Act.

Supervision  
of the  
Attorney  
General  
of this  
Functions  
under  
section 8

14. In addition to the functions stipulated under the provisions of sections 12 and 13 of this Act, the Attorney General shall perform the following functions:

Discharge  
of duties  
of civil  
nature  
and  
constitu-  
tional  
nature

- (a) advising the Government on civil, commercial and international matters;
- (b) negotiating agreements on behalf of the Government;
- (c) advising the Government on Constitutional and human rights matters;
- (d) representing the Government in Courts and tribunals;
- (e) controlling delivery of advice on matters of law to the Government, Government Departments, and Agencies; and

- (f) coordinating reporting obligations to international human rights treaty bodies to which Tanzania is a member or on any matter which member states are required to report.

#### PART IV

##### THE ATTORNEY GENERAL AND OTHER LEGAL OFFICERS IN THE PUBLIC SERVICE

Provision  
regarding  
legal  
officers and  
officers in  
Govern-  
ment

**15.—(1)** There shall continue in existence in Ministries, Government Departments and Agencies, legal officers who by virtue of their qualifications, job description and duties, perform legal functions.

(2) The Attorney General shall have the power to issue directions either general or specific to any legal officer referred to in subsection (1) with regard to the manner of performing the legal functions within their respective places of employment.

Functions  
to be  
performed  
by  
persons  
qualified  
in law

**16.—(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 legal officer employed in the public service authorized by the Attorney General to perform the functions stipulated under subsection (2) of section 8.

(2) The Deputy Attorney General may, after consultation with administrative head of any Ministry, Government Department or Agency, advise the Attorney General to:

- (a) appoint any person from within such Ministry, Government Department or Agency who possesses the requisite qualifications in law, to be a State Attorney; or
- (b) place in the Ministry, Government Department or Agency a Law Officer or a State Attorney who is ordinarily employed in the Office of the Attorney General.

(3) A person shall not become a Law Officer or a State Attorney only for the reason that his job description includes performing legal functions unless that person has been appointed or placed as such in accordance with subsection (2).

(4) 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.

