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THE LEGAL AID ACT, 2016

ARRANGEMENT OF SECTIONS

Section Title

PART I
PRELIMINARY PROVISIONS

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

PART II
ADMINISTRATION AND COORDINATION OF LEGAL AID
PROVIDERS

4. Establishment of the Board.
5. Functions of the Board.
6. The Registrar of legal aid.
7. Functions of the Registrar.
8. Appointment of Assistant Registrars.

PART III
REGISTRATION OF LEGAL AID PROVIDERS

9. Register of legal aid providers.

10. Qualifications for registration as a legal aid provider.
11. Application for registration.
12. Determination of applications.
13. Refusal of registration.
14. Appeals.
15. Certificate of registration.
16. Suspension and cancellation of certificates.
17. Procedure for suspension or cancellation.
18. Supervision of legal aid providers.

PART IV
SPECIAL PROVISIONS ON PARALEGALS

19. Qualifications for paralegals.
20. Legal aid services by paralegals.

PART V
PROVISION OF LEGAL AID

(a) General provisions

21. Application for legal aid.
22. Person who may apply for legal aid.
23. General principles of legal aid.
24. Legal aid to be provided by institutions.
25. Unauthorised payments.
26. Records, monitoring and evaluation

(b) Legal aid in civil proceedings

27. Legal aid in civil proceedings by order of the court.
28. Notification of other parties.
29. Recovery of costs.
30. Execution of judgments.
31. Costs against aided person.
32. Aided person not required to provide security for costs.

(c) Legal aid in criminal matters

33. Legal aid by order of the court.
34. Expenses incurred by advocates.
35. Legal aid for children in police stations or prisons.

36. Legal aid for persons in custody.

PART VI
FINANCIAL PROVISIONS

37. Sources of fund of the Board.
38. Annual estimates.
39. Annual performance report.
40. Books of accounts.

PART VII
MISCELLANEOUS PROVISIONS

41. Registrar may require proof of existence.
42. Obligations relating to professional conduct.
43. Prohibition from political activities.
44. Misuse of funds for legal aid.
45. General offences.
46. Publication of legal aid providers.
47. Powers of the Minister to make regulations.
48. Repeal and saving
49. Transitional arrangement.

NOTICE

This Bill to be submitted to the National Assembly is published for information to the public together with a statement of its objects and reasons.

Dar es Salaam,
7th August, 2016

JOHN W.H.KIJAZI
Secretary to the Cabinet

A Bill

for

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.

ENACTED by Parliament of the United Republic of Tanzania

PART I
PRELIMINARY PROVISIONS

Short title and commencement

1. This Act may be cited as the Legal Aid Act, 2016 and shall come into operation on such date as the Minister may, by notice published in the *Gazette*, appoint.

Application

2. This Act shall apply to Mainland Tanzania.

Interpretation

3. In this Act, unless the context otherwise requires:

“advocate” means a practicing advocate;

“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

Cap. 237

- Administrator appointed under the Judiciary Administration Act;
- “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;
- “legal advice and assistance” means an advice or assistance provided to the indigent person on criminal and civil cases based on the relevant law, legal process, procedures and drafting of documents as may be required;
- “legal aid” or “legal aid service” includes the provision of legal advice, assistance or representation to indigent persons;
- “legal aid provider” means an institution that has been registered under this Act to provide legal aid;
- “Minister” means the Minister responsible for legal affairs;
- “paralegal” means a person who provides legal aid services under the legal aid provider;
- “Permanent Secretary” means a Permanent Secretary of the Ministry responsible for legal affairs; and
- “Registrar” means the Registrar referred to under section 6;
- “Register” means a Register of Legal Aid providers established under this Act.

PART II
ADMINISTRATION AND COORDINATION OF LEGAL AID PROVIDERS

Establishment of the Board

4.-(1) There shall be 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.

(3) Save for the composition of the Board, the Minister shall have power to amend, alter or vary the Schedule.

Functions of the Board

5.-(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;
- (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.

The Registrar of legal aid

6.-(1) There shall be the Registrar of legal aid providers.

(2) The Director responsible for legal aid matters in the Ministry responsible for legal affairs shall be the Registrar.

Functions of the Registrar

7.-(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;
- (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; and
 - (l) determine disputes between legal aid providers other than advocates, and between legal aid providers and aided persons;
 - (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.

Appointment of
Assistant
Registrars

8.-(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

Register of
legal aid
providers

9.-(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.

Qualifications
for registration
as a legal aid
provider

10.-(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 two paralegals; or
 - (iii) 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.

Application for
registration

11.-(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.

Determination
of applications

12.-(1) The Registrar or as the case may be Assistant Registrar, shall consider and make determination of an application for registration within thirty 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.

Refusal of
registration

13.-(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 twenty one days from the date of such decision, notify the applicant of the reasons for such refusal.

Appeals

14.-(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.

Certificate of registration

15.-(1) The Registrar, or Assistant Registrar shall, after registration of an institution as a legal aid provider and upon payment 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.

Suspension and cancellation of certificates

16.-(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 this;
 - (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 engaged in any political activities;
 - (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) Where the Registrar suspends or cancels certificate of registration, he shall-
- (a) notify the relevant legal aid provider of the decision and order such legal aid provider to

- stop operations; or
- (b) as the case may be, remove the name of the legal aid provider from the register.

Procedure for suspension or cancellation

17.-(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.

(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.

Supervision of legal aid providers

18.-(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 practice.

PART IV
SPECIAL PROVISIONS ON PARALEGALS

Qualifications
for paralegals

19.-(1) A paralegal shall be required to possess any of the following:

- (a) a bachelor degree in laws from an accredited institution;
- (b) a bachelor of arts in law enforcement from an accredited institution;
- (c) a diploma in law or paralegal studies from an accredited institution;
- (d) a certificate in law from an accredited institution; or

(2) In addition to the requirement under subsection (1), a paralegal shall undergo necessary training for paralegals.

Legal aid
services by
paralegals

20.-(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) providing advice and assistance in social welfare matters;
- (d) guiding an aided person to a proper forum or to access justice;
- (e) advising the conflicting parties to seek amicable settlement or referring them to dispute settlement institutions; or
- (f) reporting on matters related to breach of peace, violation of law and human rights to relevant 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*

Application for
legal aid

21.-(1) An indigent person who intends to receive legal aid may apply to the Registrar, Assistant Registrar or legal aid provider.

(2) The Registrar or Assistant Registrar shall, upon receipt of the application under subsection (1), refer such application to the legal aid provider for provision of legal aid service to the applicant.

(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.

Person who
may apply for
legal aid

22. 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.

General
principles of
legal aid

23. 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.

Legal aid to be
provided by
institutions

24.-(1) Pursuant to the provisions of this Act, legal aid services shall be provided by an advocate 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 or paralegal attached to a legal aid provider.

(3) Any person who contravenes the provisions 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

both.

Unauthorised
payments

25.-(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.

Records,
monitoring and
evaluation

26.-(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

Legal aid in
civil
proceedings by
order of the
court

27. 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 or magistrate, as the case may be, shall cause such person to obtain legal aid.

Notification of
other parties

28.-(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, the legal aid provider shall immediately notify all parties to the proceedings and the court, of that fact.

Recovery of costs

29. 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.

Execution of judgments

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

Costs against aided person

31.-(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 shall 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.

Aided person not required to provide security for costs

32. 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

Legal aid by

33.-(1) Where in any criminal proceedings, it

order of the
court

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.

Expenses
incurred by
advocates

34.(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.

Legal aid for
children in

35. Where a police officer, a prison officer or any other person charged with a duty of supervising the welfare

police stations
or prisons

of a child, in execution of his duties, deals with a child as an accused or a convict, he shall cause such child to obtain legal aid.

Legal aid for
persons in
custody

36. A police station or prison shall designate a mechanism for facilitating the provisions of legal aid services by legal aid providers to accused or a convict in custody.

PART VI
FINANCIAL PROVISIONS

Sources of fund
of the Board

37. 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.

Annual
estimates

38.-(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.

Annual
performance
report

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

Books of
accounts

40.-(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

Registrar may
require proof of
existence

41.-(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.

Obligations
relating to
professional
conduct

42.-(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) probity and ethical conduct; and
- (g) any other matter connected therewith.

Prohibition
from political
activities

43.-(1) Subject to the provisions of this Act, no legal aid provider, advocate or paralegal shall engage in any political activities.

(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.

Prohibition of
misuse of funds
for legal aid

44.-(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.

General
offences

45. 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.

Publication of
legal aid
providers

46. 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.

Powers of the
Minister to
make
regulations

47.-(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.

Repeal and
saving

48.-(1) The Legal Aid (Criminal Proceedings) Act is hereby repealed.

Cap. 21

(2) Notwithstanding subsection (1), all orders, rules, guidelines, directives and regulations made under the repeal Act, shall have effect until such other subsidiary legislations are made under this Act.

Transitional
arrangement

49.-(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 shall continue to provide the services until the expiry of the period of twelve months from the date of coming into force of this Act and whereupon they shall cease to provide the services and be required to register in accordance with this Act.

SCHEDULE

(Made under section 4(2))

COMPOSITION, TENURE OF OFFICE AND PROCEEDINGS OF THE BOARD

- Composition 1.-(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) the Commissioner for Social Welfare or his representative;
 - (e) the Inspector General of Police or his representative who is not below the rank of the Commissioner;
 - (f) the Commissioner General of Prisons or his representative who is not below the rank of the Commissioner;
 - (g) Director of legal services from the Ministry responsible for Local Government Authority or his representative;
 - (h) a representative of persons with disability; and
 - (i) 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.
- Vice-Chairman 2. 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 Vice-Chairman, hold office for a term of three years from the date of his election.
- Tenure of office 3.-(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.
- Vacancy 4. 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.

Meetings of the Board	<p>5.-(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.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p>
Quorum	<p>6. The Quorum at any meeting of the Board shall be at least five members.</p>
Decision of the Board	<p>7.-(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.</p> <p>(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.</p>
Minutes of the meetings	<p>8.-(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 person presiding at the meeting and the secretary.</p> <p>(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.</p>
Vacancies not to invalidate proceedings	<p>9. 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.</p>
Orders and directions of the Board	<p>10. All orders, directions, notices or other documents made or issued on behalf of the Board shall be signed by-</p> <p>(a) the Chairman or Vice-Chairman of the Board, as the case may be; or</p> <p>(b) the Secretary.</p>
Remuneration of members of the Board	<p>11. 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,</p>

Board may
regulate
proceedings

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

OBJECTS AND REASONS

At present there is no legal aid framework in the country to regulate and coordinate the provision of legal aid. The State provides limited assistance to accused persons being tried for capital offences such as murder, manslaughter and treason. However, such assistance is mainly limited to the High Court. Various civil society organisations provide for some services ranging from legal advice to legal representation in court. This work is not coordinated between the various organisations and the Government. The schemes run by the civil society organisations are heavily dependent on donor funding which are not always forthcoming and thus impacts negatively on sustainability.

Further, the increase of legal aid providers and paralegals attracts the need to have them regulated and coordinated.

Thus, the Bill seeks to introduce a comprehensive legal framework that will fill the gap and work as a solution in eliminating the preceding challenges and ensuring that legal aid in the country brings about positive impact in the welfare of individuals especially indigent persons.

For the purpose of appreciating the intended objectives, the Bill is divided into Seven Parts.

Part I contains preliminary provisions which include short title, application and interpretation of various term used in the proposed Bill.

Part II provides for the provisions on administration and coordination of legal aid providers, establishes Legal Aid Advisory Board and its function, also provides for the designation of the Registrar and his functions. Further, it provides for the appointment of the Assistant Registrars and registration of legal aid providers at regional and district level.

Part III provides for the provisions on registration for legal aid providers, outlines the qualifications for registration as legal aid provider, issuance of a certificate of registration to a legal aid provider, circumstances which will lead to suspension or cancellation of certificate of registration, rights to appeal against the decision of suspension or cancelation of certificate.

Part IV of the Bill provides for special provisions on paralegals, their qualifications, duties and the requirement of paralegals to provide legal advice and assistance in accordance with the provisions of the proposed Bill. Paralegals are restricted from charging fees from any aided person and to engage on activity reserved for advocates.

Part V of the Bill provides for persons who may apply for legal aid, general principles of legal aid, legal aid in civil proceedings and criminal proceedings by order of the Court. Further, it provides for legal aid to children and persons in police stations, prison and any other lawfully custody.

Part VI of the Bill deals with financial provisions. It contains provisions relating to sources of funds of the Board, annual estimates, an annual performance report and books of accounts.

Part VII of the Bill provides for Miscellaneous provisions, power of the Registrar to issue notice to require proof of existence of legal aid providers, obligation relating to professional conduct of legal aid providers, powers of the Minister to make regulations and code of conduct for legal aid providers and paralegals. Further, the Part provides for the repeal, savings and transitional arrangements.

Dar es Salaam,
2nd August, 2016

HARRISON G. MWAKYEMBE
Minister for Constitutional and Legal Affairs

SHERIA YA MSAADA WA KISHERIA, 2016

MPANGILIO WA VIFUNGU

SEHEMU YA KWANZA
MASHARTI YA UTANGULIZI

Kifungu *Jina*

1. Jina na tarehe ya kuanza kutumika.
2. Matumizi.
3. Tafsiri.

SEHEMU YA PILI
USIMAMIZI NA URATIBU WA WATOA
HUDUMA YA MSAADA WA KISHERIA

4. Uanzishwaji wa Bodi.
5. Kazi za Bodi.
6. Msajili wa utoaji wa msaada wa kisheria.
7. Kazi za Msajili.
8. Uteuzi wa Wasajili Wasaidizi.

SEHEMU YA TATU
USAJILI WA WATOA HUDUMA YA MSAADA WA KISHERIA

9. Daftari la watoa huduma ya msaada wa kisheria.
10. Sifa za usajili wa mtoa huduma ya msaada wa kisheria.
11. Maombi ya usajili.
12. Ushughulikiaji wa maombi.
13. Kukataliwa kwa usajili.
14. Rufaa.
15. Cheti cha usajili.
16. Kusitishwa na kufutwa kwa cheti.
17. Utaratibu wa kusitisha au kufuta.
18. Usimamizi wa watoa huduma ya msaada wa kisheria.

SEHEMU YA NNE
MASHARTI MAALUM KWA WASAIDIZI WA KISHERIA

19. Sifa za wasaidizi wa sheria.
20. Huduma ya msaada wa kisheria ya wasaidizi wa kisheria.

SEHEMU YA TANO
UTOAJI WA HUDUMA ZA MSAADA WA KISHERIA

(a) Masharti ya Jumla

21. Maombi ya huduma ya msaada wa kisheria.
22. Mtu anayeweza kuomba huduma ya msaada wa kisheria.
23. Kanuni za jumla za huduma ya msaada wa kisheria.
24. Huduma za msaada wa kisheria zinazotolewa na taasisi.
25. Malipo yasiyoruhusiwa.
26. Kumbukumbu, ufuatiliaji na tathmini.

(b) Msaada wa kisheria katika mashauri ya madai

27. Msaada wa kisheria katika mashauri ya madai kwa amri ya mahakama.
28. Taarifa kwa upande mwingine.
29. Urejeshwaji wa gharama.
30. Utekelezaji wa hukumu.
31. Gharama dhidi ya mtu aliyesaidiwa.
32. Mtu anayesaidiwa kutotakiwa kutoa dhamana ya gharama ya shauri.

(c) Msaada wa Kisheria kwenye Mashauri ya Jinai

33. Msaada wa kisheria kwa amri ya mahakama.
34. Gharama atakazopata wakili.
35. Msaada wa kisheria kwa watoto walio katika vituo vya polisi au magereza.
36. Msaada wa kisheria kwa watu walio kizuizini.

SEHEMU YA SITA
MASUALA YA FEDHA

37. Vyanzo vya mapato ya Bodi.
38. Makadirio ya Mwaka.
39. Taarifa ya mwaka ya utekelezaji.
40. Vitabu vya hesabu.

SEHEMU YA SABA
MASHARTI MENGINEYO

41. Msajili anaweza kuhitaji uthibitisho wa uwepo wa mtoa huduma.
42. Wajibu kuhusiana na maadili ya kitaaluma.
43. Katazo kuhusu shughuli za kisiasa.
44. Matumizi mabaya ya fedha za misaada ya kisheria.

45. Makosa ya jumla.
46. Kutangazwa kwa watoa huduma ya msaada wa kisheria.
47. Mamlaka ya Waziri kutengeneza kanuni.
48. Kufutwa Sheria ya Msaada wa Kisheria.
49. Taratibu za mpito.

JEDWALI

TAARIFA

Muswada huu utakaowasilishwa Bungeni unachapishwa kwa ajili ya kutoa taarifa kwa umma ukiwa pamoja na maelezo yake ya madhumuni na sababu.

Dar es Salaam,
7 Agosti, 2016

JOHN N. KIJAZI
Katibu wa Baraza la Mawaziri

MUSWADA

wa

Sheria ya kusimamia na kuratibu utoaji wa huduma ya msaada wa kisheria kwa watu wasiokuwa na uwezo, kuwatambua wasaidizi wa kisheria, kufuta Sheria ya Msaada wa Kisheria (katika Mashauri ya Jinai) na kuweka masharti mengine yanayohusiana na hayo.

IMETUNGWA na Bunge la Jamhuri ya Muungano wa Tanzania.

**SEHEMU YA KWANZA
MASHARTI YA UTANGULIZI**

Jina na tarehe ya
kuanza kutumika

1. Sheria hii itaitwa Sheria ya Huduma ya Msaada wa Kisheria, 2016 na itanza kutumika tarehe ambayo Waziri atateua kupitia Tangazo litakalochapishwa kwenye Gazeti la Serikali.

Matumizi

2. Sheria hii itatumika Tanzania Bara.

Tafsiri

3. Katika Sheria hii, isipokuwa kama muktadha utahitaji vinginevyo:

“wakili” maana yake ni wakili anayefanya kazi za uwakili;

“mtu anayesaidiwa” maana yake ni mtu anayepatiwa msaada wa kisheria chini ya Sheria hii;

“Msajili Msaidizi” maana yake ni Msajili Msaidizi anayetajwa katika kifungu cha 8.

“Bodi” maana yake ni Bodi iliyoanzishwa chini ya kifungu cha 4;

“Mtendaji Mkuu wa Mahakama” maana yake ni Mtendaji Mkuu wa Mahakama aliyeteuliwa chini ya Sheria

- ya Usimamizi wa Mahakama;
- “mtu asiye na uwezo” maana yake ni mtu asiye na uwezo wa kumudu gharama za wakili wa kujitegemea na atajumuisha makundi mengine ya watu kama itakavyohitajika kwa maslahi ya utoaji haki;
- “ushauri na msaada wa kisheria” maana yake ni ushauri na msaada unaotolewa kwa mtu asiye na uwezo katika kesi za jinai na madai kuhusu sheria husika, taratibu za kisheria na uandaaji wa nyaraka za kisheria;
- “msaada wa kisheria” au “huduma ya kisheria” inajumuisha utoaji wa ushauri wa kisheria, usaidizi wa kisheria au uwakilishi kwa watu wasiokuwa na uwezo;
- “mtoa huduma ya msaada wa kisheria” maana yake ni taasisi iliyosajiliwa chini ya Sheria hii kutoa huduma ya msaada wa kisheria;
- “Waziri” maana yake ni Waziri mwenye dhamana na mambo ya sheria;
- “msaidizi wa kisheria” maana yake ni mtu anayetoa huduma ya msaada wa kisheria chini ya mtoa huduma ya msaada wa kisheria;
- “Katibu Mkuu” maana yake ni Katibu Mkuu wa Wizara yenye dhamana na mambo ya sheria; na
- “Msajili” maana yake ni msajili aliyeteuliwa chini ya kifungu cha 6;
- “Rejesta” maana yake ni Rejesta ya watoa msaada wa kisheria iliyoanzishwa chini ya sheria hii.

SEHEMU YA PILI
USIMAMIZI NA URATIBU WA WATOA HUDUMA YA MSAADA
WA KISHERIA

Uanzishwaji wa Bodi

- 4.**-(1) Kutakuwa na Bodi itakayoitwa Bodi ya Taifa ya Ushauri ya Huduma ya Msaada wa Kisheria.
- (2) Masharti ya Jedwali la Sheria hii yatatumika kuainisha muundo wa Bodi, muda wa ukomo wa Bodi, uendeshaji wa mikutano na masuala mengine yanayohusiana na Bodi.
- (3) Isipokuwa kwa wajumbe wa Bodi, Waziri atakuwa na mamlaka ya kurekebisha, kusahihisha au kubadilisha Jedwali.

Kazi za Bodi

- 5.**-(1) Kazi za Bodi zitakuwa ni:
- (a) kutoa miongozo ya kisera kwa watoa huduma ya msaada wa kisheria kwa ajili ya kuoanisha kazi zao na mipango ya maendeleo ya Taifa;

- (b) kumshauri Waziri juu ya masuala ya kisera na mambo mengine yahusianayo na uboreshaji wa utoaji wa huduma ya msaada wa kisheria;
- (c) kuthibitisha taarifa ya mwaka ya watoa huduma ya msaada wa kisheria;
- (d) kuamua rufaa zinazotokana na uamuzi wa Msajili;
- (e) kutekeleza majukumu mengine kadri itakavyoelekezwa na Waziri.

(2) Katika kutekeleza majukumu yake chini ya Sheria hii, Bodi itadumisha kwa kadri itakavyowezekana, mfumo wa mashauriano na ushirikiano na Wizara, taasisi za Serikali, watoa huduma za msaada wa kisheria au vyombo vingine vya umma au binafsi vilivyoanzishwa chini ya sheria yoyote ya Bunge.

Msajili wa utoaji wa msaada wa kisheria

6.-(1) Kutakuwa na Msajili wa watoa huduma ya msaada wa kisheria.

(2) Mkurugenzi anayehusika na masuala ya msaada wa kisheria katika Wizara yenye dhamana na mambo ya sheria atakuwa Msajili.

Kazi za Msajili

7.-(1) Kazi na majukumu ya Msajili yatakuwa ni:

- (a) kusajili watoa huduma za msaada wa kisheria;
- (b) kuchunguza malalamiko ya ukiukwaji wa maadili, uzembe, utovu wa nidhamu au kutotii dhidi ya watoa huduma za msaada wa kisheria;
- (c) kusitisha au kufuta usajili wa mtoa huduma yeyote wa msaada wa kisheria;
- (d) kuhifadhi na kutunza daftari la orodha ya watoa huduma ya msaada wa kisheria;
- (e) kukagua ofisi yoyote ya mtoa huduma ya msaada wa kisheria kwa lengo la kujiridhisha na ubora wa huduma ya msaada wa kisheria inayotolewa;
- (f) kuchukua hatua stahiki kwa ajili ya kukuza uelewa na ufahamu wa masuala ya kisheria kwa umma hususani kuelimisha makundi ya wanyonge kuhusu haki na wajibu chini ya Katiba na sheria nyingine;
- (g) kuratibu na kuwezesha uazishwaji na utambuzi wa mitaala kwa ajili ya mafunzo ya wasaidizi wa kisheria;
- (h) kuratibu, kufuatilia na kutathmini kazi za watoa huduma ya msaada wa kisheria na kutoa miongozo ya jumla na mahsusi kwa utelekezaji

- bora wa programu za huduma ya msaada wa kisheria;
- (i) kutunza kumbukumbu na taarifa kuhusu watoa huduma ya msaada wa kisheria;
 - (j) kuandaa taarifa mbalimbali kuhusu huduma ya msaada wa kisheria na masuala mengine ya kuwasilisha kwenye Bodi;
 - (k) kuwezesha ushirikishwaji wa taarifa kwa njia rafiki na kutoa miongozo ya kimahusiano baina ya watoa huduma za msaada wa kisheria na Serikali; na
 - (l) kutolea uamuzi migogoro baina ya watoa huduma ya msaada wa kisheria isipokuwa mawakili, na migogoro baina ya watoa huduma ya msaada wa kisheria na wapewa huduma ya msaada wa kisheria;
 - (m) kufanya kazi nyingine yoyote kama atakavyoelekezwa na Waziri au Bodi.
- (2) Msajili atakuwa Katibu wa Bodi.
- (3) Msajili katika utendaji na utekelezaji wa kazi na majukumu yake chini ya sheria hii:
- (a) atasaidiwa na maafisa wa wizara yenye dhamana na masuala ya kisheria kama itakavyoamriwa; na
 - (b) atawajibika kwa Katibu Mkuu ambaye atakuwa ni kiungo kati ya Serikali na watoa huduma ya msaada wa kisheria.

Uteuzi wa
Wasajili
Wasaidizi

8.-(1) Katibu Mkuu, kwa madhumuni ya kuwezesha usajili wa watoa huduma ya msaada wa kisheria katika ngazi ya mkoa na wilaya, na baada ya kushauriana na mamlaka husika, atateua katika kila mkoa au wilaya, mtumishi wa umma kutoka miongoni mwa watumishi wa umma ndani ya mkoa au wilaya kuwa Msajili Msaidizi.

(2) Isipokuwa kwa masharti ya kifungu cha 11(5), Msajili Msaidizi aliyeteuliwa chini ya kifungu kidogo cha (1), kwa niaba ya Msajili, atasajili mtoa huduma ya msaada wa kisheria ndani ya Mkoa au Wilaya ambayo ameteuliwa na kutoa cheti cha usajili.

(3) Msajili Msaidizi aliyeteuliwa chini ya kifungu hiki, katika kutekeleza majukumu yake chini ya sheria hii, atawajibika kwa Msajili.

SEHEMU YA TATU
USAJILI WA WATOA HUDUMA YA MSAADA WA KISHERIA

Rejesta ya watoa huduma ya msaada wa kisheria

9.-(1) Kutakuwa na Rejesta ya watoa huduma ya msaada wa kisheria ambayo itakuwa na majina ya taasisi zinazotoa huduma ya msaada wa kisheria, huduma zinazotolewa na mambo mengine kama yatakavyobainishwa.

(2) Msajili atahakikisha kuwa Rejesta iliyo katika nakala mango au nakala tete inapatikana kwa umma katika vituo vya polisi, mahakama, magereza na maeneo mengine ya umma kama itakavyoamuliwa na Waziri.

Sifa za usajili wa mtoa huduma ya msaada wa kisheria

10.-(1) Taasisi haitasajiliwa kama mtoa huduma ya msaada wa kisheria isipokuwa kama itakuwa na sifa zifuatazo:

- (a) imesajiliwa chini ya sheria husika;
- (b) utoaji wa huduma ya msaada wa kisheria ni moja ya majukumu yake ya msingi;
- (c) ina majengo ya ofisi na vifaa vya ofisi;
- (d) ina si chini ya:
 - (i) mawakili wawili;
 - (ii) wakili mmoja na wasaidizi wa kisheria wawili; au
 - (iii) wasaidizi wa kisheria watatu; na
- (e) imepitishwa na taasisi iliyoisajili kuhusu kumbukumbu zake za usimamizi wa fedha na mambo mengine kama yatakavyoainishwa na Waziri.

(2) Kwa mujibu wa kifungu kidogo cha (1), taasisi isiyokuwa na wakili itatakiwa kuwasilisha uthibitisho wa kuwa chini ya uangalizi wa mtoa huduma ya msaada wa kisheria mwingine mwenye wakili kabla ya kusajiliwa.

(3) Bila kuathiri masharti ya jumla ya kifungu kidogo cha kwanza (1) kwa ujumla wake, masharti ya aya (a) na (b) hayatatumika kwa taasisi iliyoanzishwa na sheria ya Bunge au taasisi yoyote ya kitaaluma inayotambulika chini ya sheria nyingine.

Maombi ya usajili

11.-(1) Kwa mujibu wa kifungu cha 10, taasisi inayoomba usajili chini ya sheria hii, inapaswa kuomba kwa mujibu wa kanuni za Sheria hii.

(2) Bila kuathiri masharti ya jumla ya kifungu kidogo cha (1), maombi ya usajili yanatakiwa kuambatanishwa na-

- (a) nakala ya katiba ya taasisi hiyo au nyaraka

yoyote iliyoianzisha;

- (b) taarifa binafsi za wenye ofisi, mawakili au wasaidizi wa kisheria;
- (c) taarifa zinazohusu anwani ya eneo yalipo makao makuu ya taasisi hiyo;
- (d) nakala ya hati safi kutoka mamlaka ya usajili wa mtoa huduma ya msaada wa kisheria;
- (e) ada ya usajili iliyobainishwa kwenye kanuni; na
- (f) maelezo au taarifa nyingine kama zitakavyohitajika na Msajili.

(3) Pale ambapo taasisi inakusudia kutoa huduma ya msaada wa kisheria katika wilaya zaidi ya moja au katika mkoa mzima, maombi ya usajili wake yatawasilishwa kwa Msajili Msaidizi wa mkoa husika.

(4) Pale ambapo taasisi inakusudia kutoa huduma ya msaada wa kisheria katika wilaya, maombi ya usajili wake yatawasilishwa kwa Msajili Msaidizi wa wilaya husika.

(5) Pale ambapo taasisi inakusudia kutoa huduma ya msaada wa kisheria katika mkoa zaidi ya mmoja au imesajiliwa nje ya nchi, maombi ya usajili wake yatawasilishwa kwa Msajili.

(6) Pale ambapo Msajili Msaidizi amemsajili mtoa huduma ya msaada wa kisheria, ataandaa taarifa na kuiwasilisha taarifa hiyo kwa Msajili;

(7) Waziri, kwa kutumia kanuni, atatoa utaratibu utakaotumiwa na wasajili wasaidizi katika usajili na shughuli za watoa huduma ya msaada wa kisheria waliosajiliwa katika ngazi Mkoa na Wilaya kwa mujibu wa Sheria hii.

Ushughulikiaji
wa maombi

12.-(1) Msajili au kwa kadri itakavyokuwa Msajili Msaidizi, atazingatia na kuamua kuhusu maombi ya usajili ndani ya mwezi mmoja baada ya kupokea maombi hayo.

(2) Kwa mujibu wa masharti ya kifungu kidogo cha (1), katika kuamua kuhusu maombi, Msajili au kwa kadri itakavyokuwa Msajili Msaidizi, anaweza kusajili au kutosajili taasisi kuwa mtoa huduma ya msaada wa kisheria.

Kukataliwa kwa
usajili

13.-(1) Msajili au Msajili Msaidizi anaweza kukataa kusajili taasisi kuwa mtoa huduma ya msaada wa kisheria endapo atajiridhisha kwamba-

- (a) haijatimiza masharti yaliyoainishwa katika kifungu cha 10; au
- (b) imetoa taarifa za uongo au za kupotosha kwa

namna yoyote ile.

(2) Endapo Msajili au Msajili Msaidizi amekataa kusajili taasisi kama mtoa huduma ya msaada wa kisheria, anatakiwa ndani ya siku ishirini na moja tangu tarehe ya maamuzi, kumtaarifu mwombaji sababu za kukataa kwake.

Rufaa

14.-(1) Taasisi ambayo haitaridhika na uamuzi wa Msajili au Msajili Msaidizi chini ya kifungu cha 13 inaweza, ndani ya siku thelathini tangu tarehe ya kupokea uamuzi huo kukata rufaa kwa Bodi au kwa Msajili kwa kadri itakavyokuwa.

(2) Taasisi ambayo haitaridhishwa na uamuzi wa Bodi inaweza, ndani ya siku thelathini tangu tarehe aliyopokea uamuzi huo, kukata rufaa kwa Waziri.

(3) Waziri, ndani ya siku thelathini tangu tarehe ya kupokea rufaa, atapitia na kutoa uamuzi kuhusu rufaa hiyo.

Cheti cha usajili

15.-(1) Msajili au Msajili Msaidizi baada ya kuisajili taasisi kama mtoa huduma ya msaada wa kisheria na baada ya kupokea malipo ya ada itakayoainishwa, atatoa cheti cha usajili kama itakayoainishwa kwenye kanuni.

(2) Cheti cha usajili kitakuwa na-

(a) jina na anwani ya mtoa huduma ya msaada wa kisheria;

(b) eneo la kutolea huduma ya msaada wa kisheria;

(c) hadhi ya taasisi; na

(d) vigezo na masharti ambayo cheti hicho kimetolewa.

(3) Cheti cha usajili kilichotolewa chini ya kifungu kidogo cha (1) kitakuwa uthibitisho wa mwisho kwa taasisi kufanya kazi kama mtoa huduma za msaada wa kisheria chini ya Sheria hii.

Kusitishwa na
kufutwa kwa
cheti

16.-(1) Kwa mujibu wa masharti ya kifungu cha 17, Msajili anaweza kutoa onyo la maandishi, kusitisha au kufuta cheti cha usajili cha mtoa huduma za msaada wa kisheria.

(2) Msajili anaweza kusitisha cheti cha usajili cha mtoa huduma ya msaada wa kisheria iwapo atajiridhisha kwamba:

(a) mtoa huduma ya msaada wa kisheria ametenda kosa la kitaaluma au ameshindwa kumchukulia hatua za kinidhamu mtumishi wake kwa kukiuka taratibu za kitaaluma au kukiuka maadili yaliyowekwa na chombo husika cha kitaalum;

- (b) mtoa huduma ya msaada wa kisheria amekiuka miiko ya kinidhamu iliyoainishwa chini ya Sheria hii au chini ya sheria nyingine yoyote;
 - (c) mtoa huduma ya msaada wa kisheria anatekeleza majukumu yake kinyume na katiba yake; au
 - (d) mtoa huduma ya msaada wa kisheria ameshindwa kuhifadhi kumbukumbu sahihi za kazi zilizofanywa kwa niaba ya mtu aliyesaidiwa na Msajili anaona kwamba kitendo hicho kitaathiri maslahi ya mtu aliyesaidiwa kwa ujumla au kwa namna nyingine yoyote.
- (3) Msajili anaweza kufuta cheti cha usajili cha mtoa huduma ya msaada wa kisheria iwapo ataridhika kwamba-
- (a) usajili umepatikana kimakosa, kwa udanganyifu, kwa ujanja, ushawishi usio halali au kwa taarifa za kupotosha;
 - (b) mtoa huduma ya msaada wa kisheria ameshindwa kutimiza masharti ya usajili;
 - (c) sifa za kusajiliwa zimekoma kwa mtoa huduma ya msaada wa kisheria;
 - (d) mwenye ofisi ya mtoa huduma ya msaada wa kisheria ametangazwa kufilisika, amefilisika au ameingia katika makubaliano na wadeni wake;
 - (e) wakili au msaidizi wa kisheria aliyeajiriwa na mtoa msaada wa kisheria amekuwa akikiuka mara kwa mara maadili ya kitaaluma;
 - (f) mtoa msaada wa kisheria amekuwa akijishughulisha na shughuli za kisiasa;
 - (g) mwenye ofisi ya kutoa huduma za msaada wa kisheria ametiwa hatiani kwa makosa yanayohusu uadilifu, uwajibikaji wake au amepewa amri chini ya chombo husika; au
 - (h) mtoa huduma ya msaada wa kisheria hatoi, au hajatoa huduma ambayo amesajiliwa kuitoa kwa kiwango kilichowekwa.
- (4) Pale ambapo Msajili atasitisha au kufuta cheti cha usajili:
- (a) atamtaarifu mtoa huduma ya msaada wa kisheria kuhusu uamuzi wake na kuamuru mtoa huduma za msaada wa kisheria husika kuacha kufanya kazi hiyo; au
 - (b) kuondoa jina lake kwenye Rejesta, kadri itakavyokuwa.

Utaratibu wa kusitisha au kufuta

17.-(1) Pale ambapo mtoa huduma za msaada wa kisheria atakiuka vigezo na masharti yanayohusiana na kutolewa kwa cheti, au amekiuka masharti ya kifungu cha 16, Msajili anaweza kumpatia mtoa huduma za msaada wa kisheria taarifa ya ukiukwaji kwa maandishi akieleza aina ya ukiukwaji.

(2) Baada ya kupokea taarifa ya ukiukwaji, mtoa huduma za msaada wa kisheria atawasilisha maelezo kwa maandishi kwa Msajili kuhusu kushughulikia au kurekebisha makosa.

(3) Pale ambapo mtoa huduma za msaada wa kisheria atashindwa kushughulikia au kurekebisha makosa ndani ya muda uliowekwa kwenye taarifa ya ukiukwaji au hakuwasilisha maelezo yanayoridhisha kwa Msajili, Msajili atasitisha au kufuta cheti husika.

(4) Mtoa huduma za msaada wa kisheria ambaye cheti chake kimesitishwa au kufutwa anaweza kuomba kwa Msajili kufanya mapitio ya uamuzi wa kusitisha au kufuta cheti endapo hakuridhika na sababu za kusitishwa au kufutwa kwa cheti.

(5) Mtoa huduma za msaada wa kisheria ambaye hajaridhika na uamuzi wa Msajili wa kusitisha au kufuta cheti anaweza kukata rufaa kwa Bodi kwa mujibu wa kifungu cha 14.

Usimamizi wa watoa huduma ya msaada wa kisheria

18.-(1) Msajili Msaidizi, kwa madhumuni ya Sheria hii, atakuwa ndiye msimamizi wa watoa huduma ya msaada wa kisheria katika mkoa au wilaya husika.

(2) Katika kutekeleza majukumu yake ya usimamizi, Msajili Msaidizi-

- (a) atakuwa na usimamizi wa jumla kwa mujibu wa masharti ya Sheria hii;
- (b) atachunguza malalamiko ya ukiukwaji wa maadili, uzembe, utovu wa nidhamu au kutotii na kutoa taarifa kwa Msajili kuhusu maelezo na hali ya malalamiko hayo; na
- (c) atawasilisha kwa Msajili kila mwaka, majina ya watoa huduma ya msaada wa kisheria ambao wameacha kutoa huduma hiyo.

SEHEMU YA NNE MASHARTI MAALUM KWA WASAIDIZI WA KISHERIA

Sifa za wasaidizi wa sheria

19.-(1) Msaidizi wa kisheria atatakiwa kuwa na moja kati ya yafuatayo:

- (a) shahada ya sheria kutoka katika chuo

- kinachotambuliwa;
- (b) shahada ya sanaa ya utekelezaji wa sheria kutoka katika chuo kinachotambuliwa;
 - (c) stashahada ya sheria au mafunzo ya usaidizi wa sheria kutoka kwenye chuo kinachotambuliwa;
 - (d) astashahada ya sheria kutoka kwenye chuo kinachotambuliwa; au
- (2) Pamoja na sifa zilizoainishwa chini ya kifungu kidogo cha (1), msaidizi wa kisheria atatakiwa kupata mafunzo mahsusi ya wasaidizi wa kisheria.

Huduma ya msaada wa kisheria wa wasaidizi wa kisheria

20.-(1) Msaidizi wa kisheria anaweza kutoa huduma ya msaada wa kisheria kwa kuzingatia masharti ya Sheria hii.

(2) Bila kujali masharti ya ujumla ya kifungu kidogo cha (1), msaidizi wa kisheria atakuwa na majukumu yafuatayo:

- (a) kuendesha mafunzo kwa lugha ya taifa au ya asili kuhusu masuala ya kisheria na taratibu zinazohusu jamii husika;
- (b) kumsaidia mtu anayehusika kuhusu taratibu za kupata nyaraka muhimu za kisheria;
- (c) kutoa ushauri na msaada katika masuala ya ustawi wa jamii;
- (d) kumwelekeza mtu anayesaidiwa njia sahihi ya kupata haki yake;
- (e) kushauri pande zinazopingana kutafuta suluhu ya migogoro au kuwaelekeza kwenye vyombo vinavyohusika na usuluhishi wa migogoro; au
- (f) kutoa taarifa zinazohusu uvunjifu wa amani, ukiukwaji wa sheria na haki za binadamu kwa taasisi husika.

(3) Mtu anayetaka kutoa huduma ya msaada wa kisheria kama msaidizi wa kisheria chini ya Sheria hii, atawasilisha maombi ya kusajiliwa kwa Msajili au kwa kadri itakavyokuwa kwa Msajili Msaidizi.

(4) Utaratibu wa usajili wa wasaidizi wa sheria chini ya Sheria hii utakuwa kama utakavyofafanuliwa kwenye kanuni.

(5) Msaidizi wa kisheria hatajihusisha na kazi zilizotengwa mahsusi kwa ajili ya wakili chini ya sheria yoyote nyingine.

(6) Msaidizi wa kisheria hatamtoza mtu anayesaidiwa gharama yoyote ya kitaaluma kwa huduma ya msaada wa kisheria inayotolewa chini ya Sheria hii.

(7) Mtu anakayekiuka sharti la kifungu hiki,

anatenda kosa na akitiwa hatiani atalipa faini isiyopungua shilingi milioni moja au kifungo kisichopungua miezi mitatu au vyote kwa pamoja.

SEHEMU YA TANO
UTOAJI WA HUDUMA ZA MSAADA WA KISHERIA

(a) *Masharti ya Jumla*

Maombi ya
huduma ya
msaada wa
kisheria

21.-(1) Mtu anayehitaji kupata huduma ya msaada wa kisheria atawasilisha maombi kwa Msajili, Msajili Msaidizi au mtoa huduma ya msaada wa kisheria.

(2) Msajili au Msajili Msaidizi, baada ya kupokea maombi chini ya kifungu kidogo cha (1), atawasilisha kwa mtoa huduma ya Msaada wa kisheria kwa ajili ya kutoa huduma ya kisheria kwa mwombaji.

(3) Maombi chini ya kifungu kidogo cha (1) yatatathminiwa, kuhusiana na sifa za mwombaji wa huduma ya msaada wa kisheria, kwa mujibu wa taratibu za mtoa huduma ya msaada wa kisheria.

Mtu anayeweza
kuomba huduma
ya msaada wa
kisheriaa

22. Maombi ya huduma ya msaada wa kisheria yanaweza kufanywa na-

- (a) mwombaji mwenyewe;
- (b) mtu mwingine yeyote aliyeruhusiwa na mwombaji; au
- (c) mtu au taasisi yoyote:
 - (i) iliyoruhusiwa na mwombaji, kwa niaba ya mwombaji; au
 - (ii) kwa niaba ya mwombaji endapo idhini ya mwombaji ni vigumu kupatikana.

Kanuni za jumla
za huduma ya
msaada wa
kisheria

23. Kwa kuzingatia masharti ya kifungu cha 20(6) na cha 25, ushauri wa kisheria, usaidizi au uwakilishi katika huduma ya msaada wa kisheria hautaathiri uhusiano kati ya haki za wakili na mteja au nafuu au upendeleo unaotokana na uhusiano huo.

Huduma za
msaada wa
kisheria
kutolewa na
taasisi

24.-(1) Kwa mujibu wa masharti ya Sheria hii, huduma za msaada wa kisheria zitatolewa na wakili au msaidizi wa kisheria kwa niaba ya mtoa huduma ya msaada wa kisheria.

(2) Mtu hatatoa huduma za msaada wa kisheria isipokuwa kama mtu huyo ni wakili au msaidizi wa kisheria aliye chini ya mtoa huduma za msaada wa kisheria.

(3) Mtu yeyote atakayekiuka masharti ya kifungu hiki anatenda kosa na, akitiwa hatiani, atatozwa faini isiyopungua shilingi milioni moja au kifungo kisichopungua miezi mitatu au vyote kwa pamoja.

Malipo
yasiyoruhusiwa

25.-(1) Mtoa huduma ya msaada wa kisheria hatadai, kuomba au kupokea malipo kutoka au kwa niaba ya mtu anayesaidiwa kuhusiana na huduma inayotolewa chini ya Sheria hii, isipokuwa kama malipo hayo yameruhusiwa chini ya Sheria hii.

(2) Mtu yeyote anayekiuka masharti ya kifungu kidogo cha (1) anatenda kosa na akitiwa hatiani atatozwa faini isiyopungua shilingi milioni mbili au kutumikia kifungo kisichopungua miezi mitatu au vyote kwa pamoja.

(3) Pamoja na adhabu iliyotolewa chini ya kifungu kidogo cha (2) mtu ambaye atakuwa ametiwa hatiani kwa kupokea malipo yasiyoruhusiwa atatakiwa kurejesha kiasi alichopokea.

Kumbukumbu,
ufuatiliaji na
tathmini

26.-(1) Mtoa huduma ya msaada wa kisheria-

(a) atatoa huduma za sheria kwa lengo la kulinda maslahi ya mtu anayesaidiwa; na

(b) atatumia kumbukumbu sahihi za shughuli zilizofanywa kwa niaba ya mtu aliyesaidiwa na kuwasilisha kumbukumbu hizo kwa Msajili kwa mwaka au kadri itakavyoelekezwa na Msajili.

(2) Msajili au msajili msaidizi kwa kadri itakavyokuwa, atafuatilia na kutathmini kazi na ubora wa huduma za kisheria zinazotolewa na mtoa huduma ya msaada wa kisheria chini ya kifungu kidogo cha (1).

(b) Msaada wa kisheria katika mashauri ya madai

Msaada wa
kisheria katika
mashauri ya
madai kwa amri
ya mahakama

27. Pale ambapo katika shauri la madai, Jaji au hakimu anayeendesha shauri ataona kwamba-

(a) kwa maslahi ya haki mtu anatakiwa kupata huduma ya msaada wa kisheria; na

(b) mtu huyo hana uwezo wa kugharamia huduma za kisheria,

Jaji au hakimu anayeendesha shauri, kadiri itakavyokuwa, ataamuru mtu huyo kupata huduma ya msaada wa kisheria.

Taarifa kwa
upande
mwingine

28.-(1) Pale ambapo mdaawa katika shauri la madai amepewa huduma ya msaada wa kisheria, mtoa huduma ya msaada wa kisheria atatakiwa kutoa taarifa kwa upande

mwingine wowote na kwa mahakama, kuhusu suala hilo.

(2) Pale ambapo mtu mwingine yeyote ambaye amekuwa sehemu katika shauri, mtoa huduma ya msaada wa kisheria atatoa taarifa kwa mdaawa mpya.

(3) Pale ambapo mtoa huduma ya msaada wa kisheria anajiondoa katika shauri, mtoa huduma ya msaada wa kisheria atatakiwa kutoa taarifa kwa wadaawa wengine katika shauri na kwa mahakama, kuhusu suala hilo.

Urejeshwaji wa gharama

29. Pale ambapo katika shauri lolote tuzo imetolewa kwa mtu anayesaidiwa, mtu huyo atakuwa na haki ya malipo, isipokuwa mtoa huduma ya msaada wa kisheria anaweza kupunguza kiasi kutoka kwenye tuzo, gharama alizotumia katika kuendesha shauri hilo.

Utekelezaji wa hukumu

30. Mtoa huduma ya msaada wa kisheria atachukua hatua muhimu za kutekeleza hukumu au usuluhishi ili kurejesha gharama za shauri.

Gharama dhidi ya mtu aliyesaidiwa

31.-(1) Pale ambapo mtu anayesaidiwa atapokea huduma ya msaada wa kisheria katika shauri la madai na akashindwa katika shauri hilo, mahakama haitatoa amri ya tuzo ya gharama dhidi ya mtu aliyesaidiwa isipokuwa tu katika mazingira maalum.

(2) Katika kuamua kama kuna mazingira maalum chini ya kifungu kidogo cha (1), mahakama itazingatia yafuatao kwa mtu aliyesaidiwa-

- (a) mwenendo uliosababisha upande mwingine kuingia gharama zisizo za lazima;
- (b) kukataa bila sababu kujadiliana, usuluhishi au kushiriki katika njia mbadala ya utatuzi wa mgogoro;
- (c) mwenendo wa upotoshaji au udanganyifu; au
- (d) mwenendo wowote ambao unakiuka taratibu za mahakama.

(3) Pale ambapo tuzo za gharama zitatolewa dhidi ya mtu aliyesaidiwa, mtoa huduma ya msaada wa kisheria hatawajibika kulipa gharama hizo.

Mtu anayesaidiwa kutotakiwa kutoa dhamana ya gharama ya shauri

32. Bila ya kujali masharti ya sheria nyingine yoyote, mtu anayesaidiwa hatatakiwa kuweka dhamana ya gharama ya shauri wakati wa uendeshaji wa shauri au rufaa.

(c) Msaada wa Kisheria katika Masuala ya Jinai

Msaada wa
kisheria kwa
amri ya
mahakama

33.-(1) Pale ambapo katika shauri lolote la jinai, jaji au hakimumu anayeendesha shauri hilo ataona kwamba-

- (a) kwa maslahi ya haki mshitakiwa atatakiwa kupata huduma ya msaada wa kisheria katika kuandaa na kuendesha utetezi au rufaa yake kadiri itakavyokuwa; na
- (b) hali yake ya kipato haimuwezeshi kupata huduma za kisheria,

Jaji au hakimumu anayeendesha shauri, kadri itakavyokuwa, ataidhinisha kuwa mshtakiwa apatiwe huduma ya msaada wa kisheria na mara baada ya kuidhinisha huduma hiyo kwa mshtakiwa, Msajili atateua mtoa huduma ya msaada wa kisheria mwenye wakili kwa ajili ya kuandaa na kuendesha utetezi au rufaa hiyo, kadri itakavyokuwa.

(2) Bila ya kujali masharti ya kifungu kidogo cha (1), endapo katika shauri lolote la jinai mtoto anashtakiwa, Jaji au hakimumu atahakikisha mshtakiwa huyo anapata huduma ya msaada wa kisheria na mara baada ya kuridhia msaada huo Msajili atateua mtoa huduma ya msaada wa kisheria mwenye wakili kwa ajili ya kuandaa na kuendesha utetezi au rufaa, kadiri itakavyokuwa.

(3) Jaji Mkuu, kupitia kanuni zitakazochapishwa katika *Gazeti* la Serikali, atainisha malipo ambayo yanastahili kulipwa wakili aliyeteuliwa kumsaidia mshtakiwa chini ya kifungu kidogo cha (1) na cha (2), na malipo hayo yatatoka kwenye Mfuko wa Mahakama.

(4) Kwa madhumuni ya kifungu hiki “Msajili” maana yake ni Msajili wa Mahakama Kuu.

Gharama
atakazopata
wakili

34.-(1) Pale ambapo mtoa huduma ya msaada wa kisheria aliyeteuliwa kusimamia shauri la mshtakiwa chini ya Sheria hii anatumia gharama zaidi kutokana na kutekeleza majukumu yake, anaweza kuwasilisha madai kwa Mtendaji Mkuu wa Mahakama.

(2) Mtendaji Mkuu wa Mahakama, endapo atajiridhisha kwamba, sehemu au madai yote ni ya msingi, ataidhinisha malipo yote au sehemu ya madai ya mtoa huduma ya msaada wa kisheria, kadiri itakavyokuwa.

(3) Mgogoro wowote utakaotokana na uamuzi wa Mtendaji Mkuu wa Mahakama chini ya kifungu kidogo cha (2) unaweza kuwasilishwa kwa Jaji Mkuu, ambaye uamuzi wake utakuwa wa mwisho.

Msaada wa
kisheria kwa
watoto walio

35. Pale ambapo afisa wa polisi, afisa wa magereza au mtu mwingine yeyote mwenye jukumu la kusimamia

katika vituo vya polisi au magereza

ustawi wa mtoto, katika kutekeleza majukumu yake, anashughulika na mtoto ambaye kama mtuhumiwa au mfungwa, atahakikisha mtoto huyo anapata huduma ya msaada wa kisheria.

Msaada wa kisheria kwa watu walio kizuizini

36. Kituo cha polisi au magereza kitaandaa mazingira wezeshi kwa ajili ya utoaji wa huduma za msaada wa kisheria kwa watoa huduma ya msaada wa kisheria kwa washtakiwa na watu walio kizuizini.

SEHEMU YA SITA MASUALA YA FEDHA

Vyanzo vya mapato ya Bodi

- 37.** Fedha za Bodi zitajumuisha-
- (a) fedha zozote zitakazotengwa na Bunge;
 - (b) fedha zozote zitakazopatikana kwa njia ya michango au misaada ya ndani na nje ya Jamhuri ya Muungano wa Tanzania;
 - (c) kiasi chochote cha fedha au mali ambacho Bodi inaweza kumiliki au kupata kutokana na ada, tozo, misaada au kwa njia nyingine zozote chini ya Sheria hii au sheria nyingine yoyote ya Bunge kwa ajili ya utekelezaji wa majukumu yake;
 - (d) fedha nyingine zozote zinazoweza kukopwa na Bodi kwa ajili yake.

Makadirio ya Mwaka

38.-(1) Bodi, kabla ya kuanza kwa mwaka wa fedha itatayarisha makadirio na mapato na matumizi ya mwaka huo.

(2) Makadirio ya mwaka yataainisha makadirio ya matumizi ya Bodi kwa mwaka husika, na Bodi kwa madhumuni hayo itathibitisha matumizi ya kawaida na matumizi ya maendeleo.

(3) Makadirio ya mwaka yatawasilishwa kwa Waziri ambaye atayawasilisha Bungeni ndani ya miezi mitatu kutoka tarehe ya kuwasilishwa kwake.

Taarifa ya utekelezaji ya mwaka

39. Msajili, ndani ya miezi mitatu ataandaa na kuwasilisha kwa waziri, taarifa ya utekelezaji ya mwaka ya Bodi kwa kipindi cha mwaka wa fedha na Waziri atawasilisha nakala ya taarifa hiyo Bungeni.

Vitabu vya hesabu

40.-(1) Bodi itatunza vitabu sahihi vya hesabu.

(2) Ndani ya miezi mitatu tangu kumalizika kwa kila mwaka wa fedha, Bodi itawasilisha kwa Mdhibiti na

Mkaguzi Mkuu wa Hesabu za Serikali taarifa ya hesabu za Bodi pamoja na:

- (a) taarifa ya shughuli za fedha na mapato na maptumizi katika kipindi hicho cha mwaka wa fedha; na
- (b) taarifa ya mali na madeni ya Bodi yaliyopo mwishoni mwa mwaka wa fedha husika.
- (3) Akaunti za Bodi zitakaguliwa na Mdhibiti na

Mkaguzi Mkuu wa Hesabu za Serikali.

SEHEMU YA SABA MASHARTI MENGINEYO

Msajili anaweza kuhitaji uthibitisho wa uwepo wa mtoa huduma

41.-(1) Pale ambapo Msajili atakuwa na sababu za kutilia shaka kuwa mtoa huduma ya msaada wa kisheria hayupo au hatoi tena huduma ya msaada wa kisheria anaweza kutoa taarifa ya maandishi kwa mmiliki wa ofisi ya mtoa huduma ya msaada wa kisheria au kuchapisha taarifa katika gazeti linalosambazwa kwa wingi Tanzania Bara, ikimtaka kuwasilisha kwa Msajili uthibitisho wa uwepo wake ndani ya kipindi cha siku thelathini.

(2) Pale ambapo mtoa huduma ya msaada wa kisheria atashindwa kuwasilisha uthibitisho wa uwepo wake kwa Msajili, Msajili atafuta cheti cha usajili na kuliondoa jina lake kwenye Rejesta.

Wajibu kuhusiana na maadili ya kitaaluma

42.-(1) Wakili anayetoa msaada wa kisheria chini ya Sheria hii atatakiwa kuzingatia kanuni au miiko ya maadili ya kitaaluma ya chombo kilichomsajili na haki, wajibu wa majukumu yake kama mwanachama wa chombo hicho kwa namna yoyote hayataathiriwa na masharti ya Sheria hii.

(2) Waziri, kupitia *Gazeti* la Serikali, atatunga kanuni za miiko ya maadili kwa watoa huduma ya msaada wa kisheria na wasaidizi wa kisheria.

(3) Kanuni za miiko ya maadili zilizotajwa chini ya kifungu kidogo cha (2) zitaainisha-

- (a) ulinzi wa haki na maslahi ya mtu anayesaidiwa;
- (b) wajibu kwa mtu anayesaidiwa, Msajili na mahakama;
- (c) mgongano wa maslahi;
- (d) uzingatiaji wa usiri;
- (e) kwa wanataaluma, wajibu wa kuzingatia viwango vya miiko ya maadili vilivyowekwa na vyombo vyao vya kitaaluma;
- (f) usahihi na mienendo ya kimaadili; na

- (g) masuala mengine yoyote yanayohusiana na hayo.

Katazo kuhusu shughuli za kisiasa

43.-(1) Kwa kuzingatia masharti ya sheria hii, mtoa huduma ya kisheria, wakili au msaidizi wa kisheria hatajihusisha na shughuli yoyote ya kisiasa.

(2) Mtu atakayekiuka masharti ya kifungu kidogo cha (1) atakuwa ametenda kosa, na akipatikana na hatia atalipa faini isiyopungua shilingi milioni tano lakini isiyozidi shilingi milioni kumi au kutumikia kifungo kisichopungua miezi sita lakini kisichozidi miezi kumi na mbili au vyote viwili.

Matumizi mabaya ya fedha za msaada wa kisheria

44.-(1) Kila mtoa huduma ya msaada wa kisheria, au mtu yeyote aliyepokea fedha au msaada wowote kwa madhumuni ya kutoa msaada wa kisheria chini ya sheria hii, atahakikisha kuwa fedha au msaada huo aliopokea unatumika kwa ajili kutoa msaada wa kisheria chini ya sheria hii.

(2) Mtu yeyote atakayekiuka masharti ya kifungu kidogo cha (1) atakuwa ametenda kosa na akipatikana na hatia atalipa faini isiyopungua shilingi milioni kumi lakini isiyozidi shilingi milioni kumi na tano au kutumikia kifungo kisichopungua miezi sita lakini kisichozidi miezi kumi na miwili au vyote kwa pamoja.

Makosa ya jumla

45. Mtu ambaye-

- (a) kwa udanganyifu, atasababisha au kuruhusu kuingizwa kwa taarifa yoyote ya uongo au isiyo sahihi katika Rejesta au nakala yake yoyote;
- (b) atatoa msaada wa kisheria bila ya kuwa na sifa zilizoainishwa chini ya Sheria hii;
- (c) anayetoa taarifa ya uongo au kupotosha kwa nia ya kupata nafuu, faida au manufaa chini ya Sheria hii;
- (d) anayejifanya amesajiliwa au anajionesha kuwa amesajiliwa chini ya Sheria hii;
- (e) anakataa au anashindwa pasipo sababu za msingi kutokea baada ya kupokea wito wa kuitwa katika shauri na Msajili chini ya sheria hii; na
- (f) anamzuia au kumkwamisha mjumbe wa Bodi au Msajili au mtu mwingine yeyote katika kutekeleza mamlaka au majukumu yake chini ya Sheria hii;
- (g) anatenda kosa na akitiwa hatiani atatozwa faini

isiyopungua shilingi milioni moja au kifungu cha miezi sita au vyote kwa pamoja.

Kutangazwa kwa watoa huduma ya msaada wa kisheria

46. Msajili, kila baada ya miezi kumi na mbili, atatangaza kupitia *Gazeti* la Serikali, magazeti yanayosambazwa kwa wingi Tanzania Bara na njia nyingine yoyote ya mawasiliano, majina ya watoa huduma ya msaada wa kisheria waliosajiliwa na watoa huduma ya msaada wa kisheria waliofutiwa usajili.

Mamlaka ya Waziri kutengeneza kanuni

47.-(1) Waziri anaweza kutunga kanuni kwa lengo la utekelezaji bora wa masharti ya Sheria hii.

(2) Bila kuathiri masharti ya jumla ya kifungu kidogo cha (1), kanuni zitakazotungwa chini ya Sheria hii zitaainisha-

- (a) utaratibu wa utoaji huduma ya msaada wa kisheria kwa watu wanaoshikiliwa katika vituo vya polisi, rumande, magereza au wanaozuliwa kisheria katika sehemu nyingine;
- (b) taratibu, vigezo na masharti ya usajili wa watoa huduma na wasaidizi wa sheria;
- (c) taratibu za ukaguzi kwa watoa huduma ya msaada wa kisheria;
- (d) ada zitakazolipwa chini ya Sheria hii;
- (e) taratibu za kushughulikia migogoro na malalamiko chini ya Sheria hii;
- (f) kumbukumbu zitakazohifadhiwa na watoa huduma za msaada wa kisheria kuhusiana na huduma ya msaada wa kisheria na taarifa zitakazowasilishwa kwa Msajili;
- (g) kiasi kitakacholipwa na mtu aliyesaidiwa;
- (h) taratibu za rufaa chini ya Sheria hii; na
- (i) masuala mengine yoyote yatakayopaswa kuainishwa chini ya Sheria hii.

Kufutwa Sheria ya Msaada wa Kisheria Sura ya 21

48.-(1) Sheria ya Msaada wa Kisheria katika Mashauri ya Jinai inafutwa.

(2) Bila ya kujali masharti ya kifungu kidogo cha (1), amri, kanuni, miongozo, maelekezo na kanuni zote zilizotolewa chini ya Sheria iliyofutwa zitaendelea kutumika hadi sheria ndogo nyingine zitakapotengenezwa chini ya Sheria hii.

Taratibu za mpito

49.-(1) Bila ya kujali masharti ya Sheria hii, taratibu zote za huduma ya msaada wa kisheria zilizopo hadi tarehe ya kuanza kutumika kwa Sheria hii zitaendelea na

kukamilishwa kama vile Sheria hii haijapitishwa.

(2) Taasisi zote zinazotoa huduma za msaada wa kisheria zitaendelea kutoa huduma mpaka itakapoisha miezi kumi na mbili kutoka tarehe ya kuanza kutumika kwa Sheria hii ambapo zitasitisha kutoa huduma na kuhitajika kujisajili kwa mujibu wa Sheria hii.

JEDWALI

(Limetengenezwa chini ya Kifungu cha 4(2))

MUUNDO, MUHULA NA UTARATIBU WA BODI

Muundo

1.-(1) Bodi ya Taifa ya Ushauri ya Huduma ya Msaada wa Kisheria itaundwa na Mwenyekiti pamoja na wajumbe wengine saba watakaoteuliwa na Waziri kama ifuatavyo:

- (a) Mwenyekiti ambaye atakuwa Jaji wa Mahakama Kuu atakayeteuliwa na Waziri kwa kushauriana na Jaji Mkuu;
- (b) Mwanasheria Mkuu wa Serikali au mwakilishi wake mwenye cheo cha ngazi si chini ya Afisa wa Sheria;
- (c) mwakilishi kutoka taasisi za watoa huduma ya msaada wa kisheria;
- (d) Kamishna wa Ustawi wa Jamii au mwakilishi wake;
- (e) Inspekta Jenerali wa Polisi au mwakilishi wake mwenye cheo si chini ya ngazi ya Kamishna wa Polisi;
- (f) Kamishna Jenerali wa Magereza au mwakilishi wake mwenye cheo si chini ya ngazi ya Kamishna wa Magereza;
- (g) Mkurugenzi wa Sheria kutoka wizara yenye dhamana na Serikali za Mitaa;
- (h) mwakilishi wa watu wenye ulemavu; na
- (i) mwakilishi kutoka taasisi zinazowakilisha wasaidizi wa kisheria.

(2) Mamlaka ya uteuzi katika kuteua wajumbe chini ya aya ya (1) itahakikisha kuwa kuna uwakilishi wa kijinsia katika Bodi.

(3) Bodi inaweza kualika idadi ya watu kuwasilisha maslahi yoyote kama itakavyoona inafaa, isipokuwa mtu aliyealikwa hatakuwa na haki ya kupiga kura.

Makamu
Mwenyekiti

2. Wajumbe wataamchagua mmoja miongoni mwa idadi yao kuwa Makamu Mwenyekiti wa Bodi, na mjumbe yeyote aliyechaguliwa kuwa Makamu Mwenyekiti, anaweza kwa mujibu nafasi yake kama Makamu Mwenyekiti kushikilia ofisi kwa kipindi cha miaka mitatu tangu tarehe ya kuchaguliwa kwake.

Muda wa
kuwa
madarakani

3.-(1) Wajumbe wa Bodi watakuwa madarakani kwa kipindi cha miaka mitatu na watakuwa na sifa za kuteuliwa kwa kipindi kingine cha miaka mitatu.

(2) Mjumbe wa bodi anaweza kwa wakati wowote kujiuzulu kwa kutoa taarifa ya maandishi kwa Waziri, kuanzia

tarehe aliyotoa taarifa au kama hakuna tarehe iliyotajwa, kuanzia tarehe ya kupokelewa taarifa hiyo, Mjumbe huyo atakoma kuwa mjumbe.

Ujazaji wa nafasi iliyo wazi

4. Pale ambapo mjumbe yeyote atakoma kuwa mjumbe kwa sababu yoyote kabla ya kumalizika kwa muda wake, Mamlaka ya uteuzi inaweza kumteua mtu mwingine katika nafasi yake na atakayeteuliwa atashika madaraka kwa kipindi kilichosalia cha mtangulizi wake.

Vikao vya Bodi

5.-(1) Bodi itakutana kwa shunguli zake za kawaida kwa wakati na mahali itakapoamua, lakini itakutana angalau mara moja katika kila miezi mitatu.

(2) Mwenyekiti au asipokuwepo, Makamu mwenyekiti, ataongoza kila mkutano wa Bodi na kama wote Mwenyekiti na Makamu Mwenyekiti hawatakuwepo, wajumbe waliopo watamteua mmoja miongoni mwao kuongoza mkutano huo.

(3) Mwenyekiti au asipokuwepo, Makamu Mwenyekiti anaweza kwa muda wowote anaweza kuitisha mkutano maaalum wa Bodi kujadili Suala lolote ambalo anaona ni la dharura

(4) Mwenyekiti au asipokuwepo, Makamu Mwenyekiti anaweza kumualika mtu yeyote ambaye siyo mjumbe katika majadiliano katika mkutano wowote wa Bodi, lakini mtu huyo aliye alikwa hataruhusiwa kupiga kura.

Akidi

6. Katika mkutano wowote wa Bodi Akidi ya mkutano itatakiwa kuwa na angalau wajumbe watatu.

Uamuzi wa Bodi

7.-(1) Masuala yaliyopendekezwa wakati wa mkutano wa Bodi yataamuliwa kwa uwingi wa kura za wajumbe wa Bodi waliohudhuria na kupiga kura na ikitokea usawa wa kura mtu anayeongoza mkutano atakuwa na kura ya uamuzi wa pili ili kuondoa usawa katika kura za awali.

(2) Uamuzi unaweza kufanywa na Bodi bila mkutano kwa kusambaza karatasi au nyaraka husika miongoni mwa wajumbe, na maoni ya wajumbe waliowengi yaliyo katika maandishi yataheshimika lakini mjumbe yeyote anaweza akaomba maamuzi hayo yaahirishwe na suala hilo lijadiliwe kwenye Mkutano wa Bodi.

Kumbukumbu za Vikao

8.-(1) Bodi itaandika, kutunza na kuhifadhi kumbukumbu za shughuli zilizofanywa katika vikao, na kumbukumbu za kila mkutano wa Bodi zitasomwa na kuthibitishwa, au kurekebishwa na kuthibitishwa kwenye kikao kijacho cha Bodi na kusainiwa na mtu aliyeongoza kikao hicho.

(2) Kumbukumbu zozote zitakazosainiwa na mtu atakayekuwa anaongoza mkutano wa Bodi, baada ya kuthibitishwa kuwa hazina makosa, zitachukuliwa kuwa ndiyo kumbukumbu sahihi za mkutano.

Nafasi wazi kutobatilisha mwenendo

9. Uhalali wa kitendo chochote au uendeshaji wa Bodi hautaathiriwa na nafasi yoyote ya mjumbe iliyoachwa wazi miongoni mwa wajumbe au kasoro za uteuzi wa yeyote kati yao.

Amri na

10. Amri, maelekezo, taarifa au nyaraka zote

maelekezo ya Bodi zilizoandaliwa au kutolewa kwa niaba ya Bodi zitasainiwa na-
(a) Mwenyekiti au Makamu wa Bodi, kwa vyovyote itakavyo kuwa; au
(b) Katibu.

Maslahi ya wajumbe wa Bodi **11.** Mjumbe wa Bodi atastahili kulipwa ujira, ada au posho za gharama kama Waziri, baada ya kushauriana na Bodi, atakavyokuwa anaelekeza mara kwa mara.

Bodi kujiwekea kanuni zake **12.** Kwa kuzingatia vifungu vya Jedwali hili, Bodi inaweza kujiwekea kanuni za kuendesha vikao vyake.

MADHUMUNI NA SABABU

Muswada huu unakusudiwa kupendekeza kutungwa kwa Sheria ya Msaada wa Kisheria ya mwaka 2016. Sheria inayopendekezwa ina madhumuni ya kuanzisha mfumo wa kisheria wa kutoa, kusimamia na kuratibu utoaji wa huduma ya msaada wa kisheria kwa mashauri ya jinai na madai kwa watu wasiyo na uwezo wa kumudu gharama za huduma za kisheria kwa malipo. Aidha, awali Serikali imekuwa ikitoa huduma ya msaada wa kisheria kwa watuhumiwa wanaoshtakiwa kwa makosa makubwa tu kama vile mauaji, kuua bila kukusudia na uhaini. Huduma hiyo imekuwa ikitolewa na Mahakama Kuu pekee. Asasi mbalimbali za kiraia zimekuwa zikitoa baadhi ya huduma za kisheria kuanzia ushauri wa kisheria na uwakilishi mahakamani. Kazi hii inafanywa pasipokuwa na uratibu baina ya taasisi hizo na Serikali. Utaratibu unaotumiwa na asasi za kiraia kwa kiasi kikubwa unategemea wafadhili ambao si wa kudumu na una matokeo ya muda mfupi.

Kutokana na ongezeko la mahitaji, idadi ya watoa huduma ya msaada wa kisheria na wasaidizi wa kisheria Serikali imelazimika kuanzisha mfumo huu ili kuboresha huduma hiyo kuwasimamia na kuwaratibu.

Kwa mantiki hiyo, Muswada huu unalenga kuweka mfumo madhubuti na endelevu ambao utaziba ombwe lililopo na kutoa suluhisho la changamoto zilizopo na kuhakikisha kuwa huduma ya msaada wa kisheria nchini inaleta matokeo chanya kwa ustawi wa wananchi, hususani, wa vijijini na wasiokuwa na uwezo wa kumudu gharama za mawakili.

Muswada huu umegawanyika katika Sehemu Kuu na Saba.

Sehemu ya Kwanza ya Muswada inajumuisha masharti ya utangulizi ikiwa ni pamoja na jina la Sheria inayopendekezwa, matumizi na tafsiri ya misamiati na maneno mbalimbali yaliyotumika katika Muswada unaopendekezwa.

Sehemu ya Pili inaweka masharti ya usimamizi na uratibu wa watoa huduma ya msaada wa kisheria. Inaanzisha Bodi ya Ushauri ya Huduma ya Msaada wa Kisheria na kuainisha majukumu yake. Vilevile, inaweka utaratibu wa uteuzi wa Msajili na majukumu yake.

Sehemu ya Tatu ya Muswada inaweka masharti ya usajili wa watoa huduma ya msaada wa kisheria, inaainisha sifa za kusajiliwa kama mtoa huduma ya msaada wa kisheria, utoaji wa cheti cha usajili mara baada ya kusajiliwa kama mtoa huduma ya msaada wa kisheria, mazingira yatakayopelekea kusitishwa au kufutwa kwa cheti cha usajili. Aidha, Sehemu hii pia inaainisha haki ya rufaa dhidi ya uamuzi wa kusitishwa au

kuftwa kwa cheti. Vilevile, inaweka masharti ya uteuzi wa Msajili Msaidizi katika ngazi ya Mkoa na Wilaya.

Sehemu ya Nne inaainisha masharti mahsusi kwa wasaidizi wa kisheria, sifa, majukumu na masharti ya wasaidizi wa kisheria kutoa ushauri na usaidizi wa kisheria kwa mujibu wa masharti ya Muswada unaopendekezwa. Aidha, inaweka katazo kwa wasaidizi wa kisheria kutoza ada kwa mtu anayesaidiwa na kujihusisha na shughuli zilizotengwa kwa ajili ya mawakili.

Sehemu ya Tano ya Muswada inaainisha masharti ya mtu anayeweza kuomba huduma ya msaada wa kisheria, masharti ya jumla ya huduma ya msaada wa kisheria, huduma ya msaada wa kisheria katika mashauri ya madai na jinai kwa amri ya mahakama. Aidha, Sehemu hii inatoa masharti ya upatikanaji wa huduma ya msaada wa kisheria kwa watoto na watu walio katika vituo vya polisi, magereza na vizuizi mbalimbali.

Sehemu ya Sita ya Muswada inahusu masharti ya fedha. Masharti hayo yanajumuisha vyanzo vya mapato ya Bodi, makadirio ya mwaka na vitabu vya hesabu. Vilevile, inaainisha mamlaka ya Mkaguzi Mkuu wa Hesabu za Serikali kukagua hesabu za Bodi.

Sehemu ya Saba inaainisha masharti mengineyo. Masharti hayo yanajumuisha mamlaka ya Msajili kutoa tangazo kwa mtoa huduma ya msaada wa kisheria kuthibisha uwepo wake, wajibu kuhusiana na miiko ya maadili ya kitaaluma kwa watoa huduma ya msaada wa kisheria na mamlaka ya Waziri kutunga kanuni na kanuni za maadili ya watoa huduma ya msaada wa kisheria na wasaidizi wa kisheria. Vilevile, sehemu hii inaainisha masharti ya kuifuta Sheria ya Msaada wa Kisheria katika Mashauri ya Jinai, Sura ya 21 na kuainisha Masharti Yatokanayo na Masharti ya Mpito.

Dar es Salaam,
2 Agosti, 2016

HARRISON G. MWAKYEMBE
Waziri wa Katiba na Sheria