



**AN ACT TO PROVIDE FOR PROVISIONS TO REGULATE THE DELIVERY
OF LEGAL AID SERVICES, TO FACILITATE ACCESS TO JUSTICE
AND TO PROVIDE FOR OTHER MATTERS RELATED
THERE TO**

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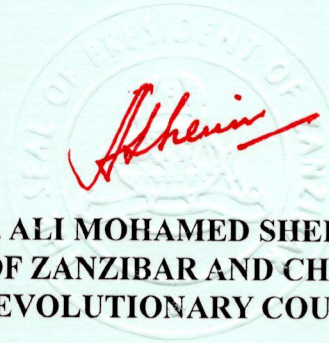
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ACT NO. 13 OF 2018

I ASSENT



{DR. ALI MOHAMED SHEIN}
PRESIDENT OF ZANZIBAR AND CHAIRMAN OF
THE REVOLUTIONARY COUNCIL

31st December....., 2018

**AN ACT TO PROVIDE FOR PROVISIONS TO REGULATE THE DELIVERY
OF LEGAL AID SERVICES, TO FACILITATE ACCESS TO
JUSTICE AND TO PROVIDE FOR OTHER
MATTERS RELATED THERETO**

ENACTED by the House of Representatives of Zanzibar.

**PART ONE
PRELIMINARY PROVISIONS**

- Short title and Commencement. **1.** This Act may be cited as Legal Aid Act, 2018 and shall come into operation on such date as the Minister may, by notice published in Gazette appoint.
- Interpretation. **2.** In this Act, unless the context otherwise requires:
- “advocate” has the meaning ascribed to it under the law that regulates admission and practice of advocates;
- “Department” means the Department established under this Act;
- “Director” means the Director of the Department appointed under this Act;
- “Government” means the Revolutionary Government of Zanzibar;
- “indigent person” means a person who cannot afford to pay for legal services;



“lawyer” means a person who is a holder of a bachelor degree in laws or its equivalent from a recognized university and provides legal services under a legal aid provider in accordance with this Act;

“legal aid officer” means a public officer assigned by the Director to coordinate legal aid services within the jurisdiction of the relevant local Government authority;

“legal aid provider” means a person, institution or organization registered under section 9 of this Act to provide for legal aid;

“legal aid services” include the provision of legal advice, assistance or legal representation, legal education and information to indigent persons;

“Minister” means the Minister responsible for legal aid;

“paralegal” means a person who is registered to provide legal aid services after completing necessary training in the relevant field of study approved or recognized by this Act;

“President” means the President of Zanzibar and the Chairman of the Revolutionary Council;

“Principal Secretary” means the Principal Secretary of the Ministry responsible for legal aid;

“Register” means a Register of legal aid providers established under this Act;

“Registrar” means the Registrar of the High Court;

“vakil” has the meaning prescribed to it under the law that regulates admission and practice of vakils.

PART TWO LEGAL AID DEPARTMENT

Establishment
of Legal Aid
Department.

3. There is established a Department to be known as the Legal Aid Department within the Ministry which shall be responsible for coordinating, administering and regulating the delivery of legal aid.



Functions
of the
Department.

4.-(1) The Department shall have the following functions to:

- (a) provide policy guidelines to legal aid providers;
- (b) advise the Minister on policy and other important relating matters to improving legal aid provision;
- (c) register legal aid providers;
- (d) keep and maintain the Register of legal aid providers, and keep records and reports regarding legal aid providers;
- (e) require a legal aid provider to provide legal aid services to an indigent person;
- (f) receive and consolidate quarterly reports on legal aid services from legal aid providers;
- (g) prepare various reports on legal aid services and other matters for submission before the Principal Secretary;
- (h) facilitate information sharing in accessible format and providing guidelines for cooperation and networking between legal aid providers and the Government;
- (i) coordinate, monitor and evaluate the functions of legal aid providers and give general directives for the proper implementation of legal aid programmes according to the set standards and quality of legal aid services;
- (j) receive and consolidate the annual reports of legal aid providers;
- (k) coordinate and facilitate formulation and accreditation of curriculum for training of paralegals in consultation with the legal aid providers and education and training institutions;
- (l) encourage and facilitate the settlement of disputes through alternative dispute resolution;
- (m) take appropriate measures for promoting legal literacy and legal awareness among the public and, in particular, educate vulnerable groups about the availability of legal aid;



- (n) establish and develop programs for legal aid education and the training and certification of paralegals;
- (o) receive and investigate complaints and misconduct against legal aid providers; and
- (p) perform any other functions as may be directed by the Minister on matters relating to this Act.

(2) In performing its functions under this Act, the Department 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.

(3) The Department shall serve impartially and independently and shall exercise its powers and discharge its duties and perform its functions in good faith and without fear, favour, bias and prejudice.

Appointment
of Director.

5.-(1) There is a Director of the Department who shall be appointed by the President.

(2) A person shall qualify to be a Director if that person:

- (a) is a Zanzibari;
- (b) is a holder of at least a first degree in law from a university recognized by the Government;
- (c) has qualifications to be a Judge of the High Court; and
- (d) has a high level of integrity.

Functions and
powers of the
Director.

6.-(1) The Director of the Department shall, subject to the provisions of this Act, be the head of the Department and shall, in his capacity, be responsible to the Principal Secretary for the day-to-day operations.

(2) The Director shall administer the implementation of functions of the Department prescribed under section 4 of this Act.

(3) The Director may, with the approval of the Principal Secretary, delegate in writing any of his powers or functions under this Act or any other written law to any other officer or member of staff of the Department on the terms specified in the instrument of delegation.



Staff of the Department.

7. Staff of the Department shall be employed in accordance with the provisions of the Public Service Act.

Assignment of coordination functions.

8. The Director, in consultation with a Local Government Authority, may assign a legal officer of a Local Government to be a legal aid officer to effectively coordinate legal aid services within the jurisdiction of the relevant Local Government Authority.

PART THREE REGISTRATION OF LEGAL AID SERVICE PROVIDERS

Application for registration.

9.-(1) Person, organisation or institution shall not engage in providing legal aid to the indigent person unless that person, organisation or institution is registered with the Department as a legal aid provider.

(2) A person may be registered as a legal aid provider if that person is either an advocate, lawyer, vakil or paralegal.

(3) An organisation or institution shall be registered as a legal aid provider if:

- (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 one of the following:
 - (i) two advocates;
 - (ii) one advocate and one lawyer;
 - (iii) one lawyer and two vakils or one lawyer and three paralegals;
 - (iv) one advocate and one vakil or one advocate and two paralegals; or
 - (v) two vakils; and
- (e) it has been cleared by the authority that has registered it as to its records pertaining to its operations and management of finances, and its legal aid providers have been registered under this Act.

(4) Person, organisation or institution that applies for registration as legal aid provider shall indicate:



- (a) full name and address of the applicant;
- (b) physical location of the premises of the applicant;
- (c) the nature of the organization or institution and the particulars of its registration;
- (d) nature of services provided;
- (e) geographical area of operation;
- (f) name and qualifications of legal personnel; and
- (g) whether the applicant meets the requirements under subsection (2) or (3) of this section.

Deter-
mination of
application.

10.-(1) The Director shall consider and make determination of an application for registration within fourteen (14) days after receiving the application.

(2) Pursuant to the provisions of subsection (1) of this section, in determining the application, the Director may register or refuse to register a person, or organisation or institution as a legal aid provider.

(3) Where the Director is satisfied that an applicant for registration has fulfilled all requirements specified under section 9 of this Act, he shall issue a certificate of registration which shall entitle the holder to provide legal aid services.

(4) Where the Director refuses to register an applicant for registration as a legal aid provider, shall give reasons for the refusal.

Appeals.

11.-(1) An applicant for registration who is not satisfied with the decision under section 10 may, within fourteen (14) days, appeal to the Minister.

(2) The Minister shall, within fourteen (14) days from the date of receiving the appeal, consider and determine the appeal.

(3) An applicant for registration who is not satisfied with the decision under subsection (2) of this section, may go to Court for judicial review.



Qualifications for Paralegal.

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

- (a) a bachelor degree in any discipline from an institution recognized by the Government, save for a bachelor degree in laws;
- (b) a certificate or diploma from an institution recognized by the Government; or
- (c) any certificate of secondary education.

(2) In addition to the requirement under subsection (1) of this section, a paralegal shall undergo necessary training as may be prescribed in the Regulations.

(3) Notwithstanding the generality of subsections (1) and (2) of this section, a person who has been a paralegal for at least two (2) years and has undergone training under the current arrangement prior to the commencement of this Act, shall qualify as a paralegal for the purpose of this Act.

(4) Subject to subsection (3) of this section and other provisions of this Act, the Director shall recognize and register paralegals trained under a registered legal aid provider:

- (a) who meets the basic requirement set out in subsection (1) of this section; and
- (b) in accordance with the approved curriculum.

Establishment of the register.

13.-(1) There shall be a Register of legal aid providers which shall contain particulars prescribed under section 9 of this Act and include number of cases being handled by the legal aid provider at any given time and any other matter prescribed by Regulations.

(2) The Director shall cause the Register, whether in printed or electronic form, to be available to members of the public at Police Stations, Courts, the Offenders Education Center and such other public places as may be determined by the Minister.

Suspension of the certificate.

14.-(1) The Director may suspend a certificate of registration of a legal aid provider for a specified period if the registered legal aid provider:

- (a) fails to comply with standards prescribed in this Act;
- (b) is in breach of the codes of conduct prescribed under this Act, the Regulations or codes of conduct prescribed under any other written law; or



(c) fails to keep proper records of activities undertaken on behalf of an indigent person or to provide legal aid, and the Director considers that this shall have an adverse effect on the interests of the indigent person generally or in any particular case.

(2) Prior to the suspension of a certificate, the Director shall give the legal aid provider notice in writing of his intention to suspend, specifying the grounds for suspension.

(3) A legal aid provider who is given notice under subsection (2) of this section may, within fourteen (14) days of receipt of the notice, submit to the Director a written statement of objection to the suspension.

(4) The Director shall notify the legal aid provider of his decision within seven (7) days of receipt of the statement of objection.

(5) A legal aid provider whose registration is suspended shall cease to provide the relevant legal aid.

(6) The specified period referred to under subsection (1) of this section shall not exceed six (6) months.

Request for
the review.

15.-(1) A legal aid provider whose registration is suspended, may request the Director to review his decision within fourteen (14) days of receipt of the notice of suspension.

(2) The Director shall, within fourteen (14) days of receipt of the request specified in subsection (1) of this section, determine and notify the legal aid provider of his decision.

Addressing
grounds for
suspension.

16. If a legal aid provider:

(a) during suspension, addresses the grounds which led the certificate to be suspended under paragraph (a), (b) or (c) of section 14(1) of this Act, the Director may remove the suspension; or

(b) has failed to address, within specified period, the grounds which led the certificate to be suspended under paragraph (a), (b) or (c) of section 14(1) of this Act, the Director may cancel the certificate of registration.

Cancellation of
the certificate.

17.-(1) The Director may cancel the registration of a legal aid provider on any of the following grounds, if:



- (a) the registration was obtained by mistake, fraud, undue influence or misrepresentation;
- (b) the legal aid provider:
 - (i) has ceased to have qualifications for registration;
 - (ii) is not providing, or has not provided the service for which he is registered to provide under the prescribed standard;
 - (iii) has been adjudged bankrupt, is insolvent or has entered into an arrangement with his creditors;
 - (iv) has failed to comply with one or more of the requirements of the registration;
 - (v) is convicted of an offence involving dishonesty, fraud or any other offence involving moral turpitude;
 - (vi) has regularly breached professional conduct; or
 - (vii) has discriminated indigent person in terms of gender, religion, race, tribe, disability or political affiliation.

(2) Prior to the cancellation of a certificate, the Director shall give the legal aid provider notice in writing of his intention to cancel, specifying the grounds for cancellation.

(3) A legal aid provider who is given notice under subsection (2) of this section may, within fourteen (14) days of receipt of the notice, submit to the Director a written statement of objection to the cancellation.

(4) The Director shall notify the legal aid provider of his decision within seven (7) days of receipt of the statement of objection.

(5) A legal aid provider whose registration is cancelled, shall cease to provide the relevant legal aid.

(6) A legal aid provider who is aggrieved by the decision of the Director to cancel a certificate, may appeal to the Minister within fourteen (14) days from the date of receipt of the cancellation.

(7) The Minister shall, within twenty one (21) days from the date of receiving the appeal, determine the appeal.



Legal aid services by paralegals.

18.-(1) A paralegal shall not engage in an activity that is reserved for advocates and vakils under any written law.

(2) A paralegal shall not charge any fee from an indigent person for the provision of legal aid under this Act.

PART FOUR LEGAL AID SERVICES

Nature of legal aid.

19.-(1) Legal aid shall include:

- (a) legal advice;
- (b) legal assistance;
- (c) representation in Court or Tribunal; and
- (d) legal education and awareness.

(2) The legal aid providers shall provide legal aid services in:

- (a) civil matters;
- (b) criminal matters;
- (c) matters relating to children;
- (d) constitutional matters on fundamental individual rights;
- (e) social action litigations; or
- (f) any other type of case or type of law that the Department may approve.

(3) The 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.

(4) Without prejudice to the powers of the High Court under the Criminal Procedure Act and subject to provisions of this Act, the nature of legal aid provided to an indigent person in any particular case shall be the discretion of the legal aid provider, taking into account the needs of the person concerned and the resources available to the legal aid provider.



Legal aid not available in certain civil matters.

20. The legal aid providers shall not provide legal aid services in respect of the following civil proceedings:

- (a) to a company, corporation, trust, public institution, civil society, Non-Governmental Organization or other artificial person;
- (b) in matters relating to tax;
- (c) in matters relating to the recovery of debts; and
- (d) in bankruptcy and insolvency proceedings.

Standards for legal aid service providers.

21.-(1) A legal aid provider shall ensure that indigent persons are provided with high quality, effective and timely legal aid services which include:

- (a) hospitality, accessible and appropriate services;
- (b) conducive environment for confidentiality;
- (c) professional and sensitive handling of juveniles, people with disabilities, elderly, or vulnerable people;
- (d) provision of information about availability and nature of services provided and any other information; and
- (e) acting on indigent person's instructions, or if not practical, in the best interest of the indigent person.

(2) A legal aid provider under this Act shall be required to adhere to any rules or codes of conduct governing a profession to which he belongs and his rights, obligations, responsibilities, or duties as a member of such profession shall not in any way be affected by the provisions of this Act.

(3) The Minister shall, by notice published in the Gazette, provide codes of conduct for legal aid providers.

(4) The code of conduct referred to under subsection (3) of this section shall provide for:

- (a) the protection of the rights and interests of an indigent person;
- (b) duties to the indigent person;
- (c) conflict of interest;



- (d) observance of confidentiality;
- (e) in the case of professionals, the duty to observe prescribed ethical standards of their respective profession;
- (f) non discrimination;
- (g) probity and ethical conduct; and
- (h) any other matter connected with legal aid.

Application for
Legal Aid.

22.-(1) An indigent person who intends to receive legal aid may approach any legal aid provider and apply for legal aid services.

(2) A legal aid provider shall, on receipt of an application for legal aid, consider the application and:

- (a) grant the application and provide the legal aid to the applicant, if the legal aid provider is satisfied that:
 - (i) the applicant meets the eligibility test; and
 - (ii) the legal aid provider has, at that material time, sufficient resources to provide the legal aid required; or
- (b) if the legal aid provider is not satisfied that the applicant is eligible for legal aid, reject the application.

(3) A legal aid provider may at any time, reconsider any decision made under subsection (2) of this section concerning the eligibility of any person to receive legal aid.

Person who
may apply
for legal aid.

23. Without prejudice to the provisions of section 22 of this Act, 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.

Eligibility
for legal aid.

24. A person is eligible to receive legal aid services if that person is indigent person and in the opinion of the legal aid provider:



- (a) has insufficient means to afford the services of an advocate or wakil on his own account;
- (b) has reasonable grounds for initiating, carrying on, or defending the matter for which he applies for legal aid, or the matter is of public interest;
- (c) the claim in respect of which legal aid is sought has a probability of success;
- (d) the indigent person is in need of or would benefit from the legal aid;
- (e) denial of legal aid would result in substantial injustice to the indigent person; or
- (f) there exists any other reasonable ground to justify the grant of legal aid.

Assessment
of means.

25. In assessing the means of any person for the purposes of determining whether that person qualifies for legal aid, a legal aid provider shall take into account the income and assets of the indigent person.

PART FIVE LEGAL AID IN CIVIL PROCEEDINGS

Legal aid
in Civil
Proceedings
by order of the
court.

26. Where in civil proceedings, on matters not excluded under section 20, it appears to the presiding judge or magistrate that:

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

the presiding judge or magistrate, shall cause such person to obtain legal aid.

Notification
of other
parties to the
proceedings.

27.-(1) Where a party to civil proceedings is granted a legal aid, the legal aid provider shall immediately notify every other party to the proceedings and to the court, of that fact.

(2) Where any other person subsequently becomes a party to the proceedings, the legal aid provider shall give notice to the new party.

(3) Where the legal aid provider withdraws or is discharged by the indigent person, the legal aid provider shall immediately notify all parties to the proceedings and the court, of that fact.



Recovery of costs.

28.-(1) Where an indigent person has been awarded costs in any proceedings, that indigent person shall be entitled to the costs.

(2) The legal aid provider may have the right to deduct from the award, the costs which he incurred in respect of the proceedings.

Deductions from awards.

29. A legal aid provider may, in the provision of legal aid, deduct from any:

- (a) damages awarded to an indigent person by a court; or
- (b) amounts payable to an indigent person pursuant to a settlement negotiated with assistance provided under this Act, an amount not exceeding 5% of the damages or the amounts paid pursuant to a settlement, as the case may be.

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 indigent person.

31. Where an indigent person receives legal aid for civil proceedings and loses the case, the court shall not award an order of costs against the indigent person.

Security for costs.

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

PART SIX LEGAL AID IN CRIMINAL PROCEEDINGS

Legal aid by order of the court.

33.-(1) A court in criminal proceedings may, except in economic crimes or cases of sexual offences, drugs and corruption, certify that a person be provided with legal representation at state expense, if the court has taken into account:

- (a) insufficient means of the accused to obtain legal services;
- (b) the interests of justice in the preparation and conduct of defence or appeal;
- (c) the nature and gravity of the charge on which the accused is to be tried or of which he has been convicted;
- (d) whether any other legal representation at state expense is available or has been provided;



- (e) whether the accused has applied for legal representation and has not received any response to the application within a reasonable time; or
- (f) any other factor which in the opinion of the court should be taken into account.

(2) Upon such certification under subsection (1) of this section, the Registrar or the Magistrate in charge in consultation with the Registrar, shall assign to the accused a legal practitioner 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 legal practitioner assigned to accused person under the provisions of subsections (1) and (2) of this section.

Legal aid for children in custody.

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

Legal aid for persons in custody.

35.-(1) The Police Force, Offenders Education Center or remand home for children shall designate mechanism for facilitating the provision of legal aid services by legal aid providers to accused persons or convicts in custody.

(2). The officer-in-charge of the Offenders Education Center, police station, remand home for children or other place of lawful custody shall ensure that a person held in custody, is informed, in a language that the person understands, of the availability of legal aid on being admitted to custody and is asked whether he desires to seek legal aid.

PART SEVEN NOTIFICATION OF CHANGES AND TERMINATION OF LEGAL AID

Notification of changes in circumstances.

36.-(1) An indigent person or a person acting for an indigent person shall notify the legal aid provider of:

- (a) any increase in his income or disposable capital by an amount that may affect his eligibility for legal aid; and
- (b) any change in his address.



(2) If an indigent person or a person acting for an indigent person contravenes provisions of subsection (1) of this section, the legal aid provider may terminate the legal aid service.

Termination
of legal aid.

37.-(1) A legal aid provider may, at any time, terminate a legal aid service which is provided by that legal aid provider to an indigent person in accordance with this Act for any of the following reasons:

- (a) where an indigent person shows lack of co-operation with the legal aid provider;
- (b) where an indigent person fails to appear, without reasonable cause when called upon to do so by the legal aid provider or by the court;
- (c) where an indigent person gives false information to the legal aid provider;
- (d) where the legal aid provider has a proof that an indigent person has taken the matter to either another legal aid provider or to an advocate in private practice;
- (e) where an indigent person ceases to be indigent; or
- (f) for any other sufficient reason.

(2) A legal aid provider shall not terminate legal aid service provided to an indigent person under this Act, unless the legal aid provider has given thirty days (30) notice to an indigent person and has given an opportunity to that indigent person to show cause why the legal aid should not be terminated.

(3) Where a matter is in court or tribunal, a legal aid provider shall notify the court or tribunal of the termination.

Termination
of legal aid
by an indigent
person.

38. Notwithstanding anything to the contrary under this Act, an indigent person may at any time dispense with legal aid service provided to him.



PART EIGHT MISCELLANEOUS PROVISIONS

Offences and penalties.

39. Any person who:

- (a) operates as a legal aid provider without a certificate of registration granted by the Director;
- (b) operates as a legal aid provider while the certificate of registration is suspended; or
- (c) willfully, obstructs a person held in lawful custody from applying legal aid,

commits an offence and is liable on conviction, to a fine of not less than Two Hundred and Fifty Thousand Shillings but not exceeding Five Hundred Thousand Shillings or imprisonment for a term of not less than three months but not exceeding six months.

Regulations.

40.-(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) of this section, the Regulations made under this Act may provide for:

- (a) procedures, terms and conditions of registration of legal aid providers and paralegals;
- (b) the records to be kept by legal aid providers in relation to legal aid assignments and the reports to be submitted to the Director;
- (c) procedures for appeal under this Act; and
- (d) any other matter which is required to be prescribed under this Act.

PASSED by the House of Representatives of Zanzibar on 28th November, 2018.

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(RAYA ISSA MSELLEM)

Clerk of the House of Representatives of Zanzibar.