

THE UNITED REPUBLIC OF TANZANIA

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THE NATIONAL PROSECUTIONS SERVICE ACT, 2008

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THE UNITED REPUBLIC OF TANZANIA

No. ~~23~~¹ OF 2008

I ASSENT

JAKAYA MRISHO KIKWETE,
*President*4th April, 2008

An Act to make provisions for the establishment of the National Prosecutions Service, to provide for the organisation, management, monitoring, supervision of prosecution and coordination of investigation with a view to promoting and enhancing dispensation of criminal justice, and to provide for related matters.

ENACTED by Parliament of the United Republic of Tanzania

PART I

PRELIMINARY PROVISIONS

- | | |
|---|-------------------------------|
| 1. This Act may be cited as the National Prosecutions Service Act, 2008, and shall come into operation on the date which the Minister may, by notice published in the <i>Gazette</i> , appoint. | Short title, and commencement |
| 2. This Act shall apply in relation to all criminal prosecutions and the coordination of investigation of crimes in Mainland Tanzania. | Application |
| 3. In this Act, unless the context otherwise requires - | Interpretation |

- "Attorney General" means the Attorney General appointed under Article 59 of the Constitution;
- Cap. 2 "Constitution" means the Constitution of the United Republic of Tanzania of 1977;
- "Deputy Attorney General" means the Deputy Attorney General appointed pursuant to sub article (1) of Article 59A of the Constitution;
- "Director" means the Director of Public Prosecutions appointed pursuant to sub-article (1) of Article 59B of the Constitution;
- Cap. 1 "Law Officer" means the Attorney General and every legally qualified member of the Attorney General's Chambers of the rank of or above Senior State Attorney or Senior Parliamentary Draftsman;
- "Minister" means the Minister responsible for legal affairs;
- "public prosecutor" means a person appointed in accordance with this Act to conduct prosecution of a criminal case in the court of law;
- "Service" means the National Prosecutions Service;
- Cap. 268 "State Attorney" has the meaning assigned to it under the Office of the Attorney General (Discharge of Duties) Act, 2005.

PART II

THE NATIONAL PROSECUTIONS SERVICE

(a) *The Service*

National
Prosecu-
tions
Service

4.-(1) There is established a Service to be known as the National Prosecutions Service.

(2) The Service shall consist of the Director, and such other officers appointed to assist the Director to perform the functions of the Service.

(3) The Director shall be the head of operations in the Service in relation to prosecutions and coordination of investigation duties conducted by the investigative organs.

(4) The Director and any officer appointed to exercise the functions of the Service under this Act or any other written law, shall have a *locus standi* in courts of law.

5.-(1) Subject to the Office of the Attorney-General (Discharge of Duties) Act, there shall be appointed such number of State Attorneys as may be necessary for the proper, efficient and effective performance of the functions of the Service.

Appoint-
ment of
State
Attorneys
Cap. 268

(2) Subject to the laws governing the public service, every State Attorney shall be under supervision of the immediate supervisor or in-charge of the work.

(3) Under the superintendence, direction and control of the Director, a State Attorney may exercise general or specific powers and perform general or specific functions of the Director.

(4) Any power exercised or functions performed under this Act by a State Attorney shall be deemed to have been exercised or performed by the Director.

6. The Attorney General shall appoint from amongst qualified Law Officers the Acting Director of Public Prosecutions during the absence of the Director by reason of illness or other cause or vacancy in the office and shall have all the powers and duties, and may exercise any of the functions of the Director.

Appoint-
ment of
Acting
Director

7.-(1) The Deputy Attorney General may appoint such number of other categories of Law Officers as may be necessary for the proper, efficient and effective performance of the functions of the Service.

Appoint-
ment of
officers

(2) A Law Officer so appointed shall exercise powers of the Director and perform the functions of the Service under the general superintendence, direction and control of the Director.

8. In the exercise of powers and performance of his functions, the Director shall observe the following principles-

Guiding
principles

- (a) the need to do justice;
- (b) the need to prevent abuse of legal process; and
- (c) the public interest.

(b) Control of Criminal Proceedings

Control
of
prosecu-
tions

9.-(1) Notwithstanding the provisions of any other law, the functions of the Director shall be to-

- (a) decide to prosecute or not to prosecute in relation to an offence;
- (b) institute, conduct and control prosecutions for any offence other than a court martial;
- (c) take over and continue prosecution of any criminal case instituted by another person or authority;
- (d) discontinue at any stage before judgement is delivered any criminal proceeding brought to the court by another person or authority; and
- (e) direct the police and other investigative organs to investigate any information of a criminal nature and to report expeditiously.

Cap. 20
Cap. 11

(2) The functions referred to in sub-section (1) shall include institution and conducting of summary proceedings, committal proceedings or a preliminary hearing under the Criminal Procedure Act, the Magistrates' Courts Act or any other law relating to criminal proceedings.

(3) Nothing in this section shall prevent the Director to take over and continue proceedings in the name of the person or authority that instituted those proceedings.

(4) The Police Officer or the Officer of any other investigative organ in-charge of any area or authority to be specified by the Director shall, in respect of offences alleged to have been committed within that area, report to the Director any-

- (a) offence punishable with death;
- (b) offence in respect of which a prosecution is by law required to be instituted with the consent of the Director;
- (c) case in which a request for information is made by the Director;
- (d) case in which it appears to such Police Officer or the Officer of any other investigative organ that the advice or assistance of the Director is desirable; or
- (e) other offence specified by the Director to be an offence in respect of which a report under this section is necessary.

(5) The term "area" or "authority" as used in subsection (4) means and includes a geographical jurisdiction of a police post, station, district,

region or zone, a corresponding office of any other investigative organ or a person to whom a command or a directive may be issued as the case may be.

10.-(1) Notwithstanding the provisions of any other law relating to appeals, revisions or application, it shall be the function of the Director to-

Appeals,
revision
and
applica-
tions

- (a) institute, conduct and defend criminal proceedings in courts of law; and
- (b) take over an appeal, revision or application arising from private prosecution, whether as appellant, applicant or respondent and where the Director takes over the appeal as appellant or applicant, he may continue or otherwise withdraw the appeal.

(2) Where the Director takes over an appeal, revision or application pursuant to subsection (1)(b) and subsequently decides to withdraw the appeal, revision or application, he shall give reasons for the decision and inform the appellant or applicant as the case may be.

(3) For avoidance of doubt, the functions specified in this section may also be performed by a State Attorney or a public prosecutor in accordance with the provisions of this Act.

11. The Service, in accordance with the provisions of the Extradition Act, the Mutual Assistance in Criminal Matters Act, the Proceeds of Crimes Act, and any other written law shall take the necessary steps to secure-

Assistance
in
Criminal
matters
Caps. No.
254
256
368

- (a) extradition of any person required to answer a charge of an offence;
- (b) facilitate mutual assistance in criminal matters;
- (c) perform any other function related to facilitation of prosecution or any other criminal matter.

(c) Related Functions

12. Where the Service conducts proceedings under any other law in force and as a result of the proceedings a person becomes liable to pay an amount to the Government or property is forfeited to the Government

Payment
and
forfeiture
to the
Govern-
ment

Cap. 254 under a court order, the Director shall take any further proceedings or step that may be required to recover the amount or enforce the forfeiture or order.

Assistance
to officers
of other
jurisdic-
tions

13.-(1) It shall be the function of the Service to provide assistance in Mainland Tanzania in respect of a corresponding function of a corresponding Public Officer from other governments provided that the applicable law or procedures are complied with.

(2) In sub-section (1) of this section-

"corresponding function" means a function similar to a function of the Director;

"corresponding public officer" means a public officer having corresponding functions in another jurisdiction.

Inquests
Cap. 24

14. The Director may participate in proceedings under the Inquest Act, where he is of the opinion that such participation is relevant to the function of the Service and is justified by the circumstances of the case.

Related
functions

15. It shall be a function of the Service to-

- (a) institute, intervene and conduct proceedings that are connected with or arise out of a function of the Service; or
- (b) do anything that is incidental or necessary to the performance of the functions of the Service.

(d) *Coordination of Investigation*

Powers of
the
Director

16.-(1) Notwithstanding the provisions of any other law in force for the time being, the Director shall have powers to do all things that are necessary to be done for the purpose of performing the functions of the Service including the coordination of criminal investigations.

(2) In the exercise of powers, the Director may require any authority mandated with investigative functions to investigate any criminal allegations that have come to the Director's knowledge and furnish him with a report on the result of such investigations and that the Director shall have power to order that investigation be conducted by an investigative organ named in the order.

(3) Without prejudice to other provisions of this Act or any other law, the Director may order that a State Attorney coordinate an investigation of a crime and every investigating officer shall comply with that order.

(4) The Director shall regularly visit places where inmates are kept such as Prisons, Police Cells and Remand Homes for purposes connected to the administration of criminal justice.

17.-(1) Without prejudice to the provisions of any other law, the Director may, in accordance with sub-section (2), issue a directive in writing to any official as defined in subsection (5) of this section, for the purposes of obtaining information relevant to the investigation or prosecution of an offence.

Director
may
require
informa-
tion

(2) Where the Director has instituted or taken over, or is considering whether to bring or take over a prosecution, appeal, revision or any other proceedings in relation to an offence or suspected offence, a directive may be issued for-

- (a) any specified information, document material or any other relevant information to be furnished to the Director; or
- (b) the provision of assistance, including the carrying out of an investigation or further investigation of a matter, in relation to the offence or suspected offence.

(3) An official to whom a directive is issued under this section shall comply with it and always keep the Director informed of the progress made in complying with the directive.

(4) An official who wilfully refuses or neglects to comply with the directives issued under this section commits an offence and the Director may cause disciplinary measures to be taken against such official by his employer.

(5) Notwithstanding subsection (4), where the offence has caused or is capable of causing infringement of basic human rights to any person or loss to the government, the official shall be liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding twelve months or to both.

(6) For the purpose of this section-

"document" includes data recorded or stored mechanically, photographically or electronically and any tape, disc or other device or medium on which it is recorded or stored;

"official" means-

- (a) a member of the Police Force, Prisons Service or the Prevention and Combating of Corruption Bureau, or a public officer employed in any other Department or Agency of the Government; or
- (b) a person employed by an authority or corporation established under any law and authorized by or under the law to investigate or to make a complaint in relation to an offence against any law in force.

Director
may issue
orders,
guidelines,
instru-
ctions

18.-(1) The Director may, subject to the provisions of this Act, from time to time, issue orders, guidelines or instructions for the observance of all officers in the Service in the execution of their functions in relation to the service.

(2) The Director may issue directions in writing to an official referred to in section 17(1) of this Act to the effect that-

- (a) a prosecution for a specified offence or class of offences shall not be brought by that official; and
- (b) all matters relating to any such offence shall be referred to the Director and any directives so issued shall be complied with.

(3) Notwithstanding the provision of sub-section (2), the Director may direct that proceedings be brought in respect of an offence referred to in that sub-section.

PART III

TENURE, REMOVAL AND RETIREMENT OF THE DIRECTOR

Tenure of
office of
the
Director

19.-(1) The Director of Public Prosecutions shall have terms and conditions of service as those of a High Court judge.

(2) A person shall not be qualified to be appointed the Director of Public Prosecutions unless that person is qualified to be appointed a Judge of the High Court.

(3) The Director shall not be removed from Office except for and on the reason of-

- (a) inability to perform his functions for reasons of illness or any other reason; or
- (b) a conduct inconsistent with the Code of Ethics and Professional Conduct for Law Officers, State Attorneys and Legal Officers in the Public Service provided for in the Office of the Attorney General (Discharge of Duties) Act, or other law concerning ethics of public officials.

Cap. 268

(4) Where the President, acting on advice of the Attorney General, considers that the question of removal of the Director from office needs to be investigated, then the President shall appoint a Special Tribunal.

(5) The Tribunal shall consist of a Chairman and two other persons nominated on the advice of the Attorney General from amongst persons who hold or have held the office of or could have qualified to be appointed a Judge of a High Court or a Court of Appeal.

(6) The Tribunal shall investigate the matter and recommend to the President on whether the Director be removed or not.

(7) Where the Tribunal recommends for the removal of the Director, then the President shall remove the Director.

(8) In carrying out its functions, the Tribunal shall have regard to the rules of natural justice, constitutional safeguards and the need to uphold the integrity of the public service.

20. The Director shall retire from office upon attaining the age of compulsory retirement with retirement benefits which are similar to those of a Judge of the High Court.

Retire-
ment
from
office

21. The Director may resign from office by tendering a letter of resignation signed by him to the President.

Resigna-
tion

PART IV

ADMINISTRATIVE PROVISIONS

Power to
appoint
public
prosecu-
tors

22.-(1) The Director may, appoint a person to be a public prosecutor from other departments of the Government, local government authority or private practice to prosecute a specified case or cases on his behalf.

(2) A person appointed as public prosecutor shall be required to comply with directives, instructions and guidelines issued by the Director.

(3) Every public prosecutor shall be under superintendence and control of the Director, Law Officer or a State Attorney in charge of the zone, region, district or any other geographical division within which any such public prosecutor is situated in respect of all prosecution matters and shall be required to submit periodic returns to the Director, Law Officer or respective State Attorney.

Delega-
tion of
powers

23.-(1) The Director may by instrument delegate to a member of the Service or a public prosecutor any of the Director's powers and functions other than his power of delegation.

(2) Any power or function delegated under this section, when exercised or performed by a delegatee, shall be deemed to have been exercised or performed by the Director.

(3) A delegation under this section shall not prevent the exercise of such power or performance of such function by the Director.

Coordina-
tion of
investiga-
tion of
crimes

24.-(1) The Director shall coordinate the investigation of crimes.

(2) The Director in consultation with the investigative organs shall develop guidelines to facilitate the effective participation of the Director in the investigative process.

Inspection
of the
prosecu-
tion
offices

25.-(1) The Attorney General shall appoint a team of inspectors comprising persons with experience in prosecution and investigation matters.

(2) The team shall visit and inspect any specified public prosecution office, zonal, regional or district in which the Service has office as the Attorney General may instruct and shall-

- (a) inspect the available facilities and records to satisfy itself that they are being kept and utilised in accordance with the applicable guidelines or instructions;
- (b) assess the public perception on the performance of the Service in terms of care rendered to victim and witness, handling of complaints and its community links;
- (c) make recommendations aimed at enhancing the efficiency and effectiveness of the Service; and
- (d) report on any matter connected with the Service which the Attorney General has referred to the team.

(3) At the conclusion of every visit of inspection the team shall prepare a report and submit it to the Attorney General and a copy to the Director.

PART V

GENERAL PROVISIONS

26. All person acting in judicial capacity shall be required to take judicial notice of-

Judicial
notice

- (a) the official signature of a person who is or has been the Director, or a person acting or has acted on that behalf on any document tendered before the court; and
- (b) the fact that a person is or was the Director, or act or acted on that behalf as the case may be.

27.-(1) There is established a National Criminal Justice Forum whose role shall be to create an opportunity for actors in the criminal justice to meet and discuss strategic issues involved in the administration of criminal justice.

National
Criminal
Justice
Forum

(2) The Forum shall consist of the members appointed by the Minister as follows-

- (a) the Director who shall be the Chairman;
- (b) the Director of Criminal Investigation who shall be the Secretary;
- (c) the Registrar of the High Court;
- (d) the Director General of Tanzania Intelligence and Security Service;
- (e) the Director of Operations of the Prevention and Combating of Corruption Bureau;
- (f) the Commissioner of Financial Intelligence Unit;
- (g) the Principal Commissioner of Prisons;
- (h) the National Coordinator of Community Service;
- (i) the Chairman of the National Parole Board;
- (j) the Commissioner of Social Welfare;
- (k) the Director of Legal Services in the Ministry responsible for Local Governments;
- (l) the Director of Immigration Services;
- (m) the Chief Government Chemist;
- (n) two legal experts one from an association of public universities and another from an association of private universities;
- (o) two representatives of civil society organisations dealing with human rights recommended by the umbrella non-governmental organization; and
- (p) two senior practising advocates recommended by the Tanganyika Law Society..

(3) The Forum may co-opt any other person as it deems necessary.

(4) The Forum shall meet at least twice a year but may meet at any time if there is any issue to discuss for the purpose of improving the administration of criminal justice.

(5) The quorum at any meeting of the Forum shall be half of the members.

(6) The Forum may regulate its own proceedings.

(7) The Forum shall prepare a report on its deliberation and submit to the Deputy Attorney General who shall work on the recommendations and give any direction as he deems fit or take action with respect to scrutiny and implementation.

28.—(1) The Minister may make regulations as may be necessary for the better carrying out of the provisions of this Act.

Powers to
make
Regula-
tions

(2) Without prejudice to subsection (1), the Minister may, after consultation with the Attorney General, make regulations providing for-

- (a) administration of the Service; and
- (b) such other matter as may or are required to be prescribed under this Act or as may be necessary for expedient and effective exercise of such powers and performance of the functions by the Service.

29.—(1) The application of this Act, shall extend to offences committed, prosecutions commenced, appeals or revisions preferred in courts of law before the date of coming into operation of this Act.

Transi-
tional and
savings

(2) Upon the coming into operation of this Act-

- (a) the Service shall gradually take over from Government departments or authorities the conduct of criminal proceedings instituted before the commencement of this Act;
- (b) all acts, matters and things lawfully made or done by or on behalf of or in the name of the Republic in relation to criminal proceedings shall be deemed to have been made or done by or on behalf of or in the name of the Director;
- (c) all documents served on or by or on behalf of or in the name of any other person in connection with criminal proceedings shall be deemed to have been served on or by or on behalf of the Director; and
- (d) all appointments of public prosecutors under the Criminal Procedure Act, shall be treated as if they were made under this Act unless any of such appointment is revoked by the Director.

Cap. 20

(3) Notwithstanding the provisions of sub-sections (1) and (2), the powers of any authority, sanction or consent given before the date of

coming into operation of this Act by the Attorney General, the Director, or any other person so empowered to commence proceedings in relation to an offence under any written law shall not abate or be otherwise affected.

PART VI

CONSEQUENTIAL AMENDMENTS

Construction

30. The laws specified under this Part are amended in the manner specified therein.

Amendment of the Criminal Procedure Act Cap. 20

31. The Criminal Procedure Act is amended-

(a) in section 2 which relates to interpretation by deleting the definition "Public Prosecutor" and substituting for it the following-

"public prosecutor" means any person appointed under section 22(1) of the National Prosecutions Service Act, 2008 and includes the Director of Public Prosecutions, the Attorney General, the Deputy Attorney General, a Parliamentary Draftsman, a State Attorney and any other person acting in criminal proceedings under the directions of the Director of Public Prosecutions;

(b) by repealing section 95 of the principal Act;

(c) by repealing section 96 of the principal Act;

(d) by repealing section 89 of the principal Act;

(e) by repealing section 90 of the principal Act;

(f) in section 201 by inserting the phrase "or a person acting under his instruction" appearing in the third line between the words "prosecution" and "when" and delete the phrase "when appearing as an advocate";

(g) in subsection (1) of section 379 by-

(i) adding immediately after the word "Prosecutions" appearing at the end of the opening words of that subsection the phrase "or a person acting under his instructions";

(ii) inserting between the word "appeal" and the punctuation ":", appearing in paragraph (a) the phrase "and the notice of appeal shall institute the appeal".

32. The Bankruptcy Act is amended in section 148 by deleting the marginal note "Attorney General to act in certain cases" and substituting for it the new marginal note "The Director of Public Prosecutions to act in certain cases".
- Amendment of the Bankruptcy Act
Cap. 25
33. The National Social Security Fund Act is amended in-
- (a) sub-section (3) of section 72 by deleting that subsection and substituting for it the following-
- "(3) Where the Director General is of the opinion that an offence has been committed or is about to be committed under this Act, he shall commence investigation, in relation to that offence and on completion of such an investigation submit the report to the Director of Public Prosecutions."
- (b) section 74 by deleting the phrase "and all criminal proceedings under section 72".
- Amendment of the National Social Security Fund Act
Cap. 50
34. The Marine Park Reserves Act is amended by repealing section 31.
- Amendment of the Marine Park Reserves Act
Cap. 146
35. The Excise (Management and Tariff) Act is amended by repealing section 147.
- Amendment of the Excise (Management and Tariff) Act
Cap. 147
36. The Merchant Shipping Act is amended by repealing section 287.
- Amendment of the Merchant Shipping Act
Cap. 165
37. The Economic and Organised Crimes Control Act is amended by repealing section 27.
- Amendment of the Economic and Organised Crimes Control Act
Cap. 200

Amendment of the Companies Act Cap. 212

38. The Companies Act is amended in section 137 by deleting all reference to the "Attorney General" appearing in sub-section (1), (2) and in paragraph (a) of subsection (3) and substituting for it the reference "Director of Public Prosecutions".

Amendment of the Beekeeping Act Cap. 224

39. The Beekeeping Act is amended by repealing section 48.

Amendment of the Dairy Industry Act. Cap. 262

40. The Dairy Industry Act is amended by repealing section 16.

Amendment of the National Parks Act. Cap. 282

41. The National Parks Act is amended by repealing section 27.

Amendment of the Wildlife Conservation Act Cap. 283

42. The Wildlife Conservation Act is amended by repealing section 81.

Amendment of the Ngorongoro Conservation Act Cap. 284

43. The Ngorongoro Conservation Act is amended by repealing section 40.

Amendment of the Factories Act. Cap. 297

44. The Factories Act is amended by repealing section 70.

45. The Forest Act is amended by repelling section 96. Amend-
ment of
the Forest
Act, Cap.
323
46. The Income Tax Act is amended by repealing section 124. Amend-
ment of
the
Income
Tax Act
Cap. 332
47. The Public Health (Sewerage and Drainage) Act is amended- Amend-
ment of
the Public
Health
(Sewerage
and
Drainage)
Act
Cap. 336
- (a) in the marginal notes, by deleting that marginal note and substituting for it with the following "Recovery proceedings";
- (b) by deleting the phrases "or prosecute for any contravention of any offence against" appearing in the second and third lines of that section and the phrase "if the contravention, offence" appearing in the third and fourth lines respectively.
48. The Public Service Retirement Benefits Act is amended in section 20(3)(b) by deleting the word "and" and the punctuation mark, ";," appearing at the end of that paragraph and adding the following designation, and phrase "and the Director of Public Prosecutions". Amend-
ment of
the Public
Service
Retire-
ment
Benefits
Act Cap.
371
49. The Parastatal Organisation Pensions Scheme Act is amended by deleting the phrase "and all criminal proceeding under section 45" which appears in section 47. Amend-
ment of
the
Parastatal
Organisa-
tion
Pensions
Scheme
Act Cap.
372
50. The National Health Insurance Fund Act is amended in sub-section (2) of section 43 by deleting that subsection and substituting for it the following:- Amend-
ment of
the
National
Health
Insurance
Fund Act
Cap. 395

"(2) Where the Director General is of the opinion that an offence he has been committed or is about to be committed against this Act, he shall commence investigation and on completion of such an investigation submit the report to the Director of Public Prosecutions."

Amend-
ment of
the
Customs
(Manage-
ment and
Tariff)
Act Cap.
403

51. The Customs (Management and Tariff) Act is amended by repealing section 172.

Amend-
ment of
the Local
Authori-
ties
Pensions
Fund
Act Cap.
407

52. The Local Authorities Pensions Fund Act is amended in section 47 by deleting subsection (3) and substituting for it the following:

"(3) The Director General shall commence investigation for an offence where he believes or he is of the opinion that an offence against this Act has been committed or is about to be committed and shall, on completion of investigation, submit the report to the Director Public of Prosecutions."

Passed in the National Assembly on 30th January, 2008.

DAMIAN S. L. FOKA,
Clerk of the National Assembly