

GOVERNMENT NOTICE NO. 32 published on 20/1/2023

THE OFFICE OF THE ATTORNEY GENERAL (DISCHARGE OF
DUTIES) ACT,
(CAP. 268)

GUIDELINES

(Made under section 21)

THE OFFICE OF THE ATTORNEY GENERAL (DISCHARGE OF DUTIES) (PROVISION OF
LEGAL OPINION BY STATE ATTORNEYS AND LAW OFFICERS IN PUBLIC SERVICE)
GUIDELINES, 2022

Caps. 2 and 268 WHEREAS, under Article 59(3) of the Constitution of
the United Republic and section 8 of the Attorney
General (Discharge of Duties) Act, the Attorney General
is the Chief Legal Adviser to the Government on all legal
matters;

GN. No.
48 of 2018 AND WHEREAS, according to paragraph 7 of the Office
of the Attorney General (Restructure) Order, 2018 all
State Attorneys and Law Officers in public service whose
duty is to provide legal opinion are under the direct
supervision of the Attorney General while discharging
their legal duties;

Cap. 268 AND WHEREAS, section 21 of the Attorney General
(Discharge of Duties) Act gives the Attorney General
powers to issue directives or practice notes to State
Attorneys and Law Officers in public service for the
purpose of maintaining standards and uniformity;

AND WHEREAS, these Guidelines are designed to co-
exist with statutory requirements, policies and procedures
governing the provision of legal opinion in the
Government;

NOW THEREFORE, I, ELIEZER MBUKI FELESHI,
the Attorney General of the United Republic of Tanzania,
do hereby issue the following Guidelines:

PART I
PRELIMINARY PROVISIONS

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| Citation | 1. These Guidelines may be cited as the Office of the Attorney General (Discharge of Duties) (Provision of Legal Opinion by State Attorneys and Law Officers in Public Service) Guidelines, 2022. |
| Application | 2. These Guidelines shall apply to all State Attorneys and Law Officers in Public Service in Mainland Tanzania. |
| Interpretation | 3. In these Guidelines, unless the context otherwise requires-
“Director or Head of Legal Department or Unit” means Director or Head of Legal Department or Unit of any Ministry, local government authority, independent department, agency or other Government organizations; and
“Legal opinion” means a written statement that interprets some aspect of a specific law, rules or procedure and recommends a specific course to be taken by a requesting entity in specific state of affairs. |
| Objectives of Guidelines | 4. These Guidelines shall have the following objectives:
(a) to assist and guide state attorneys and law officers in giving legal opinion;
(b) to ensure proper consideration is made prior to giving legal opinion;
(c) to encourage adherence to ethical standards for those involved in giving legal opinion;
(d) to ensure that existing laws, regulations, rules |

- and standards in place are observed in the course of giving legal opinion; and
(e) to ensure that public interests are most and foremost observed in giving legal opinion.

PART II HANDLING OF REQUEST FOR LEGAL OPINION

Register for
legal opinion

5. Every legal unit or department in Ministry, local government authority, independent department, agency or other Government organizations shall keep and maintain such number of registers reflecting the nature and category of legal opinion such Unit or Department has issued.

Types of
register

6.-(1) Registers shall be kept in electronic and manual form.

(2) In case manual registers, entries shall be made in ink.

(3) The Director or Head of a Legal Department or Unit shall ensure that upon receipt of a request for legal opinion, particulars thereof are entered in the relevant column.

Assignment of
request for legal
opinion

7. The Director or Head of a Legal Department or Unit shall assess the nature and complexity of each request for legal opinion and shall assign it in writing to a State Attorney or Law Officer for his action according to law.

PART III PROVISION OF LEGAL OPINION

Writing legal
opinion

8.-(1) A State Attorney or Law Officer assigned to render a legal opinion shall study the request, conduct legal research and where necessary may consult on the matter and minute his opinion to the Director or Head of the Legal Department or Unit.

(2) The opinion in subparagraph (1) shall contain

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brief facts of the case, issues arising from the facts, analysis of the law and case law, if any, applicable to the facts, proposed course of action to be taken and conclusion.

Request for
further
particulars and
information

9. (1) A State Attorney shall ensure that the request for legal opinion complies with the requirements of the provisions of section 22 of the Office of the Attorney General (Discharge of Duties) Act, Cap 268 and provisions of B.11 of the Standing Orders which requires the requesting entity to state clearly the matter and issues involved together with any opinion that may have been given from within such ministry, local government authority, independent department, government institution, agency or organization.

(2) State Attorneys should always bear in mind that the duty to provide relevant information always lies with the Office requesting the legal opinion.

(3) Where the State Attorney finds that the request for legal opinion is not in conformity with the provisions of section 22 of the Office of the Attorney General (Discharge of Duties) Act, Cap 268 and provisions of B.11 of the Standing Orders, he shall request for further information that may remedy the shortfall.

Matters to be
considered in
providing legal
opinion

10. Subject to paragraph 8, a State Attorney or Law officer, when providing a legal opinion, shall:

- (a). be bound to provide legal opinion pursuant to the provisions of the Office of the Attorney General (Discharge of Duties) Act Cap 268 and the Standing Orders; and
- (b). consider provisions of laws governing the subject at issue and such other aspects connected with the subject matter under consideration.

Contents of

11. For purposes of paragraph 10, a legal opinion

GN. NO.32 (Contd.)

legal opinion

shall contain the following parts:

- (a) the introductory part which shall state briefly and clearly what the subject matter, the request for opinion, is all about;
- (b) material facts which shall be extracted from request for legal opinion and which shall be accurate, comprehensive, clear, precise and composed in order to make the reader understand the matter in questions;
- (c) statement of issues to be addressed in the legal opinion. The formulation of issues determines the legal principles to be employed. The issues shall be listed in logical order and numbered consecutively, be brief and precise;
- (d) analysis of the raised issues in sequence with reference to appropriate legislation, judicial precedents, relevant policy, regulations, legal instruments and legal texts. For each legal issue raised there shall be a corresponding analysis of the same;
- (e) conclusion which shall contain key findings arising from analysis of facts, issues and laws together with legal opinion and recommendations on the matter.

Ethical
considerations

12.- A State Attorney or Law Officer, in giving a legal opinion, shall observe Code of Ethics for Law Officers and State Attorneys in the Public Service as well as laws and regulations governing public service.

Legal opinion
to be in writing

13. Legal opinion shall be given in writing. Where the circumstances of the case dictate that a legal opinion be given verbally, the opinion shall be reduced into writing as soon as possible for purposes of future reference to the institution requesting such legal opinion.

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Limitations in
legal opinion

14. (1) A State Attorney or Law Officer shall not render any legal opinion on any matter reserved to the Attorney General without the approval of the Attorney General in writing, namely-

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

(2) Where a State Attorney receives a request for legal opinion on a matter reserved for the Attorney General, he shall refer such matter to the Attorney General.

Timely issuance
of legal opinion

15. A State Attorney shall render a legal opinion timely preferably not later than fourteen days from the date of assignment unless the nature of subject under consideration requires a longer period.

Dodoma,
8th December, 2022

DR. ELIEZER MBUKI FELESHI,
Attorney General