



**THE OFFICE OF THE DIRECTOR OF PUBLIC
PROSECUTIONS ACT, NO. 2 OF 2010**

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ACT NO. 2 OF 2010

I ASSENT


{AMANI ABEID KARUME}
PRESIDENT OF ZANZIBAR

AND
CHAIRMAN OF THE REVOLUTIONARY COUNCIL


10th MARCH, 2010

**AN ACT TO MAKE PROVISIONS FOR THE INSTITUTIONAL
ESTABLISHMENT AND OPERATION OF THE OFFICE OF
THE DIRECTOR OF PUBLIC PROSECUTIONS
AND MATTERS RELATED THERETO.**

ENACTED by the House of Representatives of Zanzibar.

**PART I
PRELIMINARY PROVISIONS**

Short title
and
commencement.

1. This Act may be cited as the Office of the Director of Public Prosecutions Act, 2010 and shall come into operation immediately after being assented to by the President.

Application.

2. This Act shall apply in relation to the management and operation of the Office of the Director of Public Prosecutions and to all criminal prosecutions and coordination of investigation of crimes for the purpose of prosecution in Zanzibar.

Interpretation.

3. In this Act unless the context otherwise requires:

“Accountant General” means the Accountant General of Zanzibar Government;

“Attorney General” means the Attorney General of Zanzibar;

“Constitution” means the Constitution of Zanzibar of 1984;



“Committee” means the Consultative Committee established under section 23(1) of this Act;

“Director” means the Director of Public Prosecutions and where appropriate, shall include a person acting on his behalf;

“investigation authority” means any authority charged with the responsibility to conduct criminal investigation either generally, for specific category of offences or for a specific case;

“Minister” means the Minister responsible for the Office of the Director of Public Prosecutions;

“Office” means the Office of the Director of Public Prosecutions established under section 4 of this Act;

“Paymaster General” means the Paymaster General of Zanzibar appointed and his functions provided under the Financial Administration Act;

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

“Public authorities” shall include government ministries, departments, public corporations and any other government agency whether established on permanent term or to discharge functions on temporary or on specified term;

“Public Prosecutor” means any person appointed by the Director whether formally or by written direction to conduct prosecution whether generally, within specified jurisdiction, for specific category of cases or for one specific case and shall include a person appointed to conduct private prosecution;

“State Attorney” means a qualified lawyer employed by the government and assigned to work in the Office.

PART II ESTABLISHMENT AND ADMINISTRATION OF THE OFFICE

Establishment
of office.

4.(1) There is hereby established an Office to be known as the Office of the Director of Public Prosecutions.

(2) The Office shall be an independent and autonomous government agency in the Zanzibar public service.



(3) The head and chief executive officer of the Office shall be the Director who shall be appointed by the President in accordance with the provisions of the Constitution.

(4) The President may appoint a Deputy Director as he shall deem necessary to assist the Director in the execution of his administrative and prosecution functions.

(5) A person shall qualify to be appointed as a Deputy Director if he:

- (a) holds a degree in law; and
- (b) has relevant experience for at least five years; and
- (c) is a person of proven integrity.

(6) A Deputy Director shall hold office for a renewable term of five years and may be removed from Office by the President for misconduct, failure to discharge his duty or incompetence.

(7) A Deputy Director may resign from office upon giving a notice in writing to the President, and such resignation shall be effective upon being approved by the President, save that upon removal or resignation from office he shall remain in the civil service until such time his service is terminated or retires from service.

(8) A Deputy Director shall be paid such salary and other benefits including terminal benefits for a period of service as Deputy Director in accordance with the Civil Service Circular issued for that purpose.

Organization
structure.

5.(1) The Director shall be responsible for efficient and effective operation of the Office and may, for that purpose, and in consultation with the Department responsible for Civil Service, organise the structure of the Office in such units as he may deem necessary.

(2) The Director shall appoint heads of units on such terms and conditions as he deems appropriate and in accordance with the Office Scheme of Service.

Staff of
the Office.

6.(1) Recruitment of the staff of the Office, both professional and supporting shall be made in accordance with the civil service regulations except that in any case the recruitment procedures shall be adopted that will ensure obtaining the best personnel for the Office.

(2) For the purpose of upholding constitutional independence and integrity of the Office, a person, except on Presidential appointment, shall not be transferred to or from the Office without prior consent of the Director.



(3) For the purpose of this section, the staff of the Office shall consist of State Attorneys, public prosecutors, law clerks, administrative, finance and other supporting staff serving the Office on permanent, temporary or other terms of service.

Functions of
the Office.

7. The Office shall have the following functions:

- (a) to facilitate the execution of the functions and powers vested to the Director as provided in the Constitution and other relevant laws;
- (b) in collaboration with other government agencies, to provide appropriate support and advice to victims of crime and witnesses of criminal cases;
- (c) to conduct research and advise the Government through the Minister on matters relating to criminal justice;
- (d) to promote, sponsor, and encourage studies, public dialogue and any other activity for the purpose of improving administration of criminal justice in general and prosecution service in particular;
- (e) to conduct training on any aspect of public law and criminal justice in particular;
- (f) to provide any other service not inconsistent with the independence of the Office, to public authorities, non governmental organizations and private institutions for the purpose of improving administration of justice whether free of charge or on payment basis;
- (g) to conduct any other activity incidental or related to its main functions.

Funds and
budget of
the Office.

8.(1) The Office shall hold its own budget vote through which all the funds appropriated or accrued for the use of the Office shall be disbursed.

(2) The Paymaster General shall appoint an accounting officer for the Office Vote and the Accountant General shall, subject to section 6 of this Act, allocate adequate staff to undertake the accounting work for the Vote.

(3) The funds of the Office shall include:

- (a) such amount of money appropriated by the House of Representatives in each financial year for the use of the Office;
- (b) grants, donation and other funds received by the Office from other eligible sources;



- (c) money accrued or earned by the Office from publications, trainings, consultancies and other activities conducted by the Office through its training centre.

PART III CONTROL AND COORDINATION OF PROSECUTION

Functions and powers of the Director.

9.(1) The Director shall perform all the functions and exercise all the powers conferred upon him under section 56A of the Constitution.

(2) In addition and incidental to the functions and powers mentioned under subsection (1) of this section, the Director shall perform functions and exercise the following powers:

- (a) subject to the provisions of section 56A (7) and (8) of the Constitution and subject to the Prosecution Policy adopted by the Office, decide to prosecute or not to prosecute in relation to an offence;
- (b) direct the Police and any other investigation authority to investigate any information of a criminal nature and report to him expeditiously;
- (c) issue directive on categories of offences for which a charge may not be preferred against an accused person before any court without his prior authority;
- (d) issue circular and other written directives on any matter which he deems appropriate for the purpose of orderly and efficient conduct of prosecution.

Delegation of powers.

10. (1) Subject to the provisions of section 56A (5) of the Constitution, the Director may, by notice published in the Official Gazette, delegate functions and powers conferred upon him to any State Attorney or other public officer, except the powers conferred under paragraph (b), (c) and (d) of section 9 of this Act.

(2) Notwithstanding the provision of subsection (1) of this section and any other law, the powers reserved to the Director under subsection (1) of section 9 of this Act or under any other law, may be exercised by an officer acting as Director.

Appointment of Public Prosecutors.

11.(1) Any State Attorney or public officer to whom the functions and powers of the Director are delegated under the Constitution and section 10 of this Act, shall be a public prosecutor by virtue of such delegated powers and shall cease to be a public prosecutor upon such delegated powers being revoked by the Director.



(2) The Director may appoint generally, for a specific case, for specified category of cases or for a prescribed local area one or more officers employed in the public service to be public prosecutors.

(3) The Director may appoint any advocate of the High Court or any person whether a local or foreign citizen to be public prosecutor for the purpose of any case.

(4) Every public prosecutor shall immediately after his appointment or delegation of powers, sign a declaration of acceptance of appointment to signify his understanding of the Code of Conduct for Public Prosecutors and willingness to be bound by the terms of the Code of Conduct, the declaration of acceptance shall be in the form prescribed in the schedule to this Act.

(5) The appointment of public prosecutor shall not be invalid by mere reason of irregularity in the appointment and no prosecutor shall be barred or prevented from exercising any of his function or powers for such reason except by express order of the Director.

(6) The appointment of public prosecutor may be revoked or suspended by the Director on grounds of incompetence, misconduct, failure to discharge duty for any reason, retirement from service or for any other reason the Director may deem appropriate.

(7) Where the ground of revocation or suspension is misconduct, a prosecutor against whom revocation or suspension of appointment is to be made shall, prior to revocation or suspension of appointment, be given the opportunity to understand the nature of allegation of misconduct and have opportunity to give his defence against the allegation.

(8) Every public prosecutor shall be subject to the express directions of the Director and shall be bound by the Code of Conduct of Public Prosecutors.

Prosecution
policy and
guidelines.

12. (1) The Director shall develop and adopt prosecution policy and issue guidelines on the manner in which the policy shall be executed and the manner in which the whole process of prosecution shall be handled before and after the commencement of the trial.

(2) The prosecution policy and the guidelines shall be binding procedures to guide the exercise of the powers of a public prosecutor and in the handling of the relationship between the investigation authorities and prosecutors.

Coordination
of
investigation.

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



(2) The Director may direct any investigation authority to investigate any criminal allegation that has come to his knowledge and such investigation authority shall furnish the Director with a report on the outcome of such investigation.

(3) Where prosecution has been instituted or is intended to be instituted or where the Director has taken over prosecution from any person or authority, he may direct the investigation authority to conduct further investigation and may give specific areas of investigation or specific information to be collected and upon completion of such investigation or collection of specific information the report shall be brought to him for decision.

(4) The Director shall, in consultation with the investigation authorities, develop guidelines on the involvement of the Director or State Attorneys during the investigation of serious or complex crimes.

Delegation
of
prosecution
function.

14.(1) The Director may delegate prosecution of specific category of offences to any public authority.

(2) Any public authority to which delegated prosecution function is delegated by the Director, shall be responsible to employ persons who qualify to be appointed as prosecutor and shall coordinate such function in accordance with prosecution policy and guidelines and any other directive issued by the Director and shall give the Director regular prosecution reports and any other information relevant to its delegated mandate, for avoidance of doubt, it is hereby expressly provided that appointment of prosecutors for public authority exercising delegated function shall remain in the hands of the Director.

(3) The Director may revoke delegated function granted to any authority for reasons he deems appropriate.

Private
prosecution.

15.(1) The Director may, on application or *suo motto* permit prosecution of any case or appeal to be conducted by a private person.

(2) Any application to conduct private prosecution shall be supported by an affidavit of an applicant and attached with a summary of evidence to be relied upon during the trial.

(3) The Director may require a letter of indemnity or any other form of liability cover from the applicant against any civil liability that may arise out the case.

(4) The Director may grant or refuse an application or may direct further evidence to be collected before the application is granted.



(5) Where the application is refused, the applicant may petition to the High Court for review of the decision of the Director, save that no appeal against the decision of the Director to refuse private person to conduct an appeal of a case originally conducted by the Director or public prosecutor shall be entertained.

(6) Any person authorised to conduct private prosecution may do so personally or, upon prior authorization of the Director, by an advocate and may change and replace such advocate as he deems appropriate upon obtaining authorisation of the Director.

(7) A person authorised to conduct private prosecution shall, on the instruction of the Director, have the right to statement of witnesses, documents, articles and other items likely to be used as evidence which are in the custody of any investigation authority and where such document or item may not be handed to such person for any justifiable reason, arrangement shall be made for its production and be tendered as evidence during the trial.

(8) A person or advocate conducting private prosecution shall be subject to general or specific direction of the Director and he shall have the duty to furnish the Director with regular report on the progress of the case and at the conclusion of the trial shall inform the Director in writing on the outcome of the case.

Conduct of
related
functions.

16.(1) The Director shall perform such other functions that are incidental or directly related to his core functions, in particular, he shall be responsible for all or any of the following:

- (a) to conduct extradition proceedings in relation to fugitive offender or accused person in Zanzibar;
- (b) to participate in an inquest proceedings in any situation he deems necessary to do so;
- (c) to conduct any forfeiture proceedings under the law relating to money laundering and proceeds of crime;
- (d) to provide assistance to any foreign law enforcement or prosecution agency under the law applicable to mutual assistance in criminal matters.

(2) The Director may, if he considers it appropriate, for the purpose of securing cooperation from a person having important evidence which is likely to be withheld by such person in apprehension of self implication, may undertake not to prosecute such a person for a specific offence or in respect of act or omission that may constitute an offence under the laws of Zanzibar and such undertaking shall be a bar to any prosecution against such a person on facts falling within the undertaking.



(3) An undertaking made under subsection (2) of this section may be subject to such conditions as the Director may consider appropriate and breach of such condition shall invalidate such undertaking.

(4) Where there is any ambiguity in the interpretation of the Constitution or of any law, the Director shall seek clarification from the Attorney General and the interpretation given by the Attorney General shall be conclusive until such time when the court of law gives a binding interpretation on the matter.

PART IV ACCOUNTABILITY AND TRANSPANRENCY

Transparency in prosecutorial decisions. **17.** The Director shall take such measures and initiatives to make his prosecutorial decisions transparent in order to maintain public confidence in exercise of prosecutorial decisions, and in particular shall do the following:

- (a) give regular briefing to the Minister in relation to the status of prosecution and in particular prosecutorial decisions on cases which seem to attract public interest;
- (b) issue regular briefing to public on matters related to prosecution;
- (c) advise the victims, including public and private institutions on prosecutorial decisions made on cases to which the victim or such institutions have interest;
- (d) issue annual prosecution reports detailing various aspects of prosecution for the respective year including reasons for decisions made on cases which deem to attract public interest.

Exercise of powers in good faith. **18.** The Diretor and every public prosecutor shall exercise functions and powers conferred to him in good faith for the purpose of end of justice, and in particular shall:

- (a) not himself handle any case which he has business, property or pecuniary interest;
- (b) declare his interest on any case which he has such interest as prescribed under paragraph (a) or any case which involves his spouse or next of kin.

(2) Where there is any attempt to influence a prosecutor by way of corrupt means, coercion or undue influence, it shall be the duty of such prosecutor to report the matter formally to the Director.



Code of
Conduct.

19.(1) The Director shall conduct himself in a manner which observe the highest degree of integrity, and in particular, shall not:

- (a) be a member of any political party or a member of any organization which is an affiliate of any political party;
- (b) participate in any activity which is likely to reflect his political affiliation;
- (c) engage in any business or service which is likely to directly cause conflict of interest;
- (d) use his position for personal gain or to obtain an improper relief, benefit or concession for himself, his spouse or next of kin;
- (e) in any manner, conduct himself in a manner which undermines the integrity of the Office or the impartiality required of the position.

(2) Allegation of breach of code of conduct against the Director shall be officially addressed to the President, who upon consideration of the nature of the allegation, may decide to either open a formal inquiry or not, in any case no inquiry shall be opened before the Director is given opportunity to understand the nature of the allegation and has opportunity to give his account on the allegation.

(3) Any inquiry under this section shall be deemed to be an inquiry for the purpose of articles 56A (9) and 95 (5) of the Constitution as such, shall observe the provisions of article 95(6) and(7) of the Constitution in terms of composition of the committee of inquiry and decision made on the recommendations of the committee.

(4) The Director shall issue Code of Conduct for Prosecutors and may update the same as he may deem necessary.

(5) The Code of Conduct shall apply to all State Attorneys and public prosecutors whether employed by the Office or otherwise.

(6) Breach of code of conduct may attract summary dismissal from service, suspension, revocation of appointment of public prosecutor and in the event of such suspension or revocation, a person whose appointment is suspended or revoked may remain in the employment of public service but shall not engage in any prosecutorial work for the whole period stated in the suspension or revocation order.

Performance
appraisal.

20.(1) The Director shall, develop standards of performance to be observed and achieved by every prosecution unit, whether such unit is under the Office or not.



(2) The Director shall, at least once in every two years appoint a qualified person or firm to conduct performance appraisal for the purpose of determining whether the performance standards are achieved and whether such standards are adequate.

(3) Upon receiving performance appraisal report, the Director shall prepare a performance report and submit the same to the Minister and other relevant authorities he considers necessary.

PART V MISCELLANEOUS PROVISIONS

Immunity
of
officers.

21.(1) Any act or thing done or omission made in good faith by the Director, State Attorney, Public Prosecutor or any person assisting the Director in discharging, exercising or performing any function, power or authority under this Act or any other law shall not attract civil or criminal liability at law in respect thereof.

(2) The Director, State Attorney or Public Prosecutor shall not be required to give evidence in any judicial or administrative proceedings on any fact relating to the decision made by any of them in exercise of prosecutorial discretion except where such proceedings relate directly to judicial review before the High Court against the decision made by the Director.

Promotion
of efficient
criminal
justice
system.

22.(1) The Office shall be the government centre of excellence in the promotion of policies, laws, programs, skills and public awareness in all aspects of criminal justice and the Director shall seek financial and technical resources and utilize the same in discharging this responsibility.

(2) Without prejudice to the generality of subsection (1) of this section, the Office and the Director shall, in particular, do all or any of the following in furtherance of the purpose provided under subsection (1) of this section:

- (a) design and publish any type of publication relevant to its mission and purpose;
- (b) commission or undertake any research or study;
- (c) organize any forum, assembly or meeting and participate in any forum organized by other institutions;
- (d) establish training centre under its auspices either alone or in collaboration with any institution or firm;
- (e) design and provide relevant training programs;



- (f) provide training faculty for any institution with similar or relevant programs;
- (g) provide consultancy or research service to any institution whether governmental or non-governmental; and
- (h) design and execute public awareness programs.

Consultative
Committee.

23.(1) For the purpose of providing efficient administration of criminal justice and prosecution service there is hereby established a Consultative Committee which shall be constituted as follows:

- (a) Chairman who shall be appointed by the Minister;
- (b) Judge of the High Court recommended by the Chief Justice appointed by the Minister;
- (c) Director;
- (d) Commissioner of Offenders Educational Centres;
- (e) Deputy Director of Criminal Investigation;
- (f) Registrar of High Court;
- (g) Chief Government Chemist;
- (h) Chief Medical Officer;
- (i) Representative of the Zanzibar Law Society;
- (j) Three other members appointed by the Minister to represent organizations or institutions having interest in the prosecution service or criminal justice generally.

(2) The Chairman and Members appointed under paragraphs (h) and (i) shall serve for a period of three years but shall be eligible for reappointment.

(3) The Committee shall appoint a Vice Chairperson from among its members and a Secretary of the Committee who shall be appointed from among the officers of the Office.

(4) The Office shall provide secretariat service to the Committee and facilitate its functions.



(5) The Committee shall adopt its own procedure for conducting its affairs including proceedings.

(6) The Committee may either co-opt or invite any other person it deems necessary for its function.

(7) The Committee shall meet at least twice a year but may meet as frequent as may deem necessary.

(8) The main functions of the Committee shall be:

(a) to review the administration of criminal justice in general and conduct of prosecution in particular;

(b) to develop and oversee standard of performance to be met by each institution involved in the administration of criminal justice;

(c) to deliberate on problems facing the administration of criminal justice and advise the government through the Minister, on interventions required to remove or minimize those problems;

(d) to issue directives, not inconsistent with constitutional independence of the judiciary and other institutions on measures to be taken to minimize delays and backlog of cases;

(e) to do any other thing incidental to the above functions.

(9) The Committee may direct any institution to furnish any information it deems necessary for its functions.

Offences
and
penalties.

24.(1) Any person whose appointment as public prosecutor is suspended who engages in any prosecutorial duty shall be guilty of an offence and upon conviction shall be sentenced to a fine of not less than one million shillings or to imprisonment for a term not exceeding one year.

(2) For the purpose of this section prosecutorial duty includes drafting of a charge or information for the purpose of submitting the same to any court or appearing for the prosecution in any criminal proceedings for any duration.



(3) Any person who for the purpose of obstructing investigation of any crime without any lawful reason prevents any investigation officer from obtaining any information, document or item that such officer requires in connection with such investigation or makes it unduly difficult for such officer to obtain such information, document or item shall be guilty of an offence.

(4) Any person who for the purpose of obstructing or delaying decision being made on prosecution or to prevent or delay any criminal trial or appeal cause, assist or abets any witness to abscond or not to appear before the court, conceals any document related to investigation, trial or appeal or without any lawful reason prevents or delays the Director, State Attorney, public prosecutor or any officer acting in that behalf, from obtaining any document or item relating to such investigation, trial or appeal shall be guilty of an offence.

(5) Any person who threatens any investigation officer for discharging his duty in relation to investigation of crime or assaults, threatens or do any thing to the injury of the investigation officer after the investigation or as a result of investigation of any crime shall be guilty of an offence.

(6) Any person who threatens, assaults or does anything to the injury of the Director, State Attorney or public prosecutor for the purpose of preventing or discouraging him from discharging his duty in relation to any case under investigation or any criminal trial or appeal shall be guilty of an offence.

(7) Any person who is convicted of an offence under subsection (1) or (3) or (4) or (5) or (6) of this section shall be sentenced to to a fine of not less than one million shillings or imprisonment for a term not exceeding three years or to both, such fine and imprisonment.

Rules. **25.**(1) The Minister may make rules for the purpose of better carrying out of the purpose of this Act.

(2) Without prejudice to the generality of subsection (1) of this section, the Minister may make rules in relation to the following:

- (a) rules on procedure of inquiry on misconduct of public prosecutor;
- (b) rules on the establishment, structure, management and operations of training centre provided under this Act;

Consequential amendments. **26.** The Criminal Procedure Act is hereby amended by repealing sections 96, 98 and 101 thereof.



Saving
and
transitional
provisions.

27.(1) Notwithstanding the repeal of the provisions of the Criminal Procedure Act under section 26 of this Act, any act done or powers exercised under the repealed provisions shall be deemed to have been properly done or exercised and if any matter is pending and any part of such matter uses any document or order issued under the repealed provisions, such document or order shall be used in the pending matter and no new document or order shall be issued in respect of the same matter.

(2) Declaration required to be made by appointed prosecutors under section 11(4) of this Act, shall be made by the existing prosecutors immediately upon coming into force of this Act but shall be deemed to commence from the date of their appointment or in the case of State Attorneys, from the date on which they are vested with delegated powers.

SCHEDULE

(Under section 11 (4))

DECLARATION OF ACCEPTANCE BY PUBLIC PROSECUTOR

I,..... appointed as public prosecutor by the Director of Public Prosecutions on the Day of..... 20.... Hereby makes this declaration of acceptance of appointment as public prosecutor and that I understand the Code of Conduct for Public Prosecutors and agree to be bound by the same. Further, I undertake to observe and uphold the Code of Conduct and integrity required of a public prosecutor in the discharge of my responsibility.

MADE this day of20.....

.....
PROSECUTOR

IN THE presence of

Director of Public Prosecutions

PASSED in the House of Representatives of Zanzibar on 22nd day of January, 2010.

{IBRAHIM MZEE IBRAHIM}
CLERK OF THE HOUSE OF REPRESENTATIVES
ZANZIBAR.