



## **Policy Brief on Legal Aid Fund in Tanzania: Need for Legal Reform**

### **Executive Summary**

This policy brief reflects an analysis of the report on the implementation of the Legal Aid Act<sup>1</sup> conducted by the Tanzania Network of Legal Aid Providers (TANLAP)<sup>2</sup> through the support of the United States Agency for International Development (USAID). The main focus of this policy brief is to identify the gap in the Legal Aid Act<sup>3</sup> regarding legal aid funds in Tanzania.

Legal aid is firmly set within the international human rights framework. It can be provided in various ways and by various models and actors, both state and non-state actors, including paralegals. Only a small number of those needing legal aid have access to it throughout Africa.<sup>4</sup>

In most East African countries, legal Aid services are recognized as an essential aspect of access to justice. Legal aid services are essential to indigent persons who cannot afford the cost of hiring legal services offered by Advocates. However, the study<sup>5</sup> shows that Kenya has gone one step ahead in providing legal Aid services. An important lesson to learn through the Kenya Legal Aid Act 2016 is that the Act has a specific provision<sup>6</sup> that establishes a legal Aid Fund.

The Constitution of the United Republic of Tanzania (URT)<sup>7</sup> and the Legal Aid Act<sup>8</sup> recognize the provision of legal aid services in civil and criminal matters; however, unlike Kenya, the Act lacks specific provisions on legal Aid funds.

The Legal Aid Act No 1 of 2017 has been reviewed, and observations have been made to maintain the provision of legal aid in Tanzania. Even after enacting the new Legal Aid Act, legal aid funding has no legal framework. Unlike other laws governing legal aid in other jurisdictions<sup>9</sup>

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<sup>1</sup> Legal Aid Act No 1 of 2017; An act to regulate and coordinate the provision of legal Aid service to indigent persons, to recognize paralegals, to repeal the Legal Aid (criminal proceedings) Act and to provide for other related matters.

<sup>2</sup> The analysis of the implementation of the Legal Aid Act (LAA) 2017 conducted by TANLAP

<sup>3</sup> Legal Aid Act No 1 of 2017

<sup>4</sup> The analysis of the implementation of the Legal Aid Act (LAA) 2017 conducted by TANLAP page 4, Article 7 of the Lilongwe Declaration

<sup>5</sup> The analysis of the implementation of the Legal Aid Act (LAA) 2017 conducted by TANLAP

<sup>6</sup> Section 29 of Kenya Legal Aid Act 2016

<sup>7</sup> Article 13 of the Constitution of United Republic of Tanzania 1977

<sup>8</sup> Legal Aid Act No 1 of 2017

<sup>9</sup> The Kenya legal aid act no. 6 of 2016 section 29 and 30

that provide for legal aid fund, the Legal Aid Act does not provide for legal aid funding. In practice, the Government of Tanzania does not provide legal aid funding. Instead, legal aid funding is provided by local and international donors.

Apart from the right to equality before the law, which in Tanzania includes other rights like the right to fair hearing, legal aid, and legal representation, the situation on the ground is far from reality.

While there is an increase in the number of cases of access to legal services, there are challenges in enforcing the Legal Aid Act, including inadequate funding to meet the high demand for legal services.

The Government sets aside no funds to support legal aid services. This has led legal aid providers to rely mainly on donor support from development partners like USAID Tanzania, Legal Services Facility (LSF), etc.<sup>10</sup>

Lack of funds has made some of the paralegals engage in other income-generating activities like becoming motorcycle riders or rickshaw drivers, tent-hiring business, chicken farming, brick-making and so on<sup>11</sup>. Thus, access to justice for all may not be sustainable if the fund issue is not adequately addressed. It may jeopardize the rights of those needing legal aid and access to justice.

The policy has identified some flaws by enforcing the Legal Aid Act No 1 of 2017. For instance, the law stipulates the establishment of the Legal Aid Board, which is supported by government funds as provided for under Section 37(a-c)<sup>12</sup>. The law<sup>13</sup> does not provide the fund for legal aid providers.

There are recommendations concerning legal aid fund to make access to aid services and justice possible for all, mainly indigent persons in Tanzania.

In particular, there is a need for the Legal Aid Act to include specific provisions on the establishment of legal aid funds in order to meet the high demand for legal services in Tanzania.

## **1.2 Introduction/Background**

Tanzania Network of Legal Aid Providers (TANLAP) is a Non-Governmental Organization founded in 2006 by eight organizations: Comprehensive Community Based Rehabilitation in Tanzania (CCBRT), Disabled Organization for Legal Affairs and Social Economic Development (DOLASED), Lawyers Environmental Action Team (LEAT), Legal and Human Rights Centre (LHRC), Tanzania Women Lawyers Association (TAWLA), Women in Law and Development in Africa (WiLDAF), Women's Legal Aid Centre (WLAC) and the National Organization for Legal Assistance (NOLA)<sup>14</sup>.

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<sup>10</sup> The analysis of the implementation of the Legal Aid Act (LAA) 2017 conducted by TANLAP page 14 and 15

<sup>11</sup> Ibid page 15

<sup>12</sup> The funds of the Board shall consist of any sums that may be appropriated by the parliament

<sup>13</sup> The Legal Aid Act (LAA) 2017

<sup>14</sup> The analysis of the implementation of the Legal Aid Act (LAA) 2017 conducted by TANLAP page 1

It is an umbrella network that coordinates legal aid providers (civil society organizations in Tanzania) that provides legal aid services to members of the public. Its main objective is to coordinate legal aid providers in the country. It also builds the capacity of its members through institutional support. It has contributed to improved coordination mechanisms such as identification, registration and harmonization of legal aid providers.

Currently, TANLAP is implementing the "Mwanamke Imara Project", which aims at providing legal aid services to members of the public (under activity outcome No 1 – access to justice). The project is implemented in three regions: Kilimanjaro, Rungwe and Mbeya. The focus for the past four years has been to review the relevance and applicability of the Legal Aid Act.

With support from USAID Tanzania, TANLAP analyzed Legal Aid Act No 1 of 2017 to identify key achievements, lessons learnt, areas that require improvement, stakeholders' engagement, and challenges associated with the implementation.

This policy brief provides a summary of these gaps that needed legal reforms.

### Keywords

- i. **Advocate firms:** An advocate firm is any law office registered and licensed to practice law under Tanzania laws. This policy brief explores the gap that exists in the policy and law, particularly affecting the right advocate firm to provide legal aid to indigent persons. Advocate firms in Tanzania are neither allowed to provide legal aid nor eligible for the application of legal aid funds from donors.
- ii. **An indigent person is a person whose means are insufficient to enable him to engage a private legal practitioner and includes other categories of persons where the interests of justice are required**<sup>15</sup>. Constructively other people in need of legal aid, such as refugees and stateless people, are denied legal aid partly on a lack of provision that sets aside funds to provide them with legal aid under the law.
- iii. **Lawyer:** any person who holds a bachelor's degree in laws or its equivalent and provides legal services under the legal aid providers under the Legal Aid Act<sup>16</sup>. Some lawyers are ready to provide legal aid to the indigent but may not do that due to the absence of legal aid funds to facilitate the same.
- iv. **The Legal Aid Fund:** Legal Aid Fund is neither provided nor defined anywhere in the Legal Aid Act no 1 of 2017. The legal aid Fund should be the backbone of legal aid provision in the country in order to ensure legal aid sustainability.
- v. **Misuse of funds for Legal Aid:** The Legal Aid Act prohibits the misuse of funds for legal aid. This provision may not be executable in the present legal aid provision, where most legal aid providers operate under directives of donors who direct them on how the funds should be used.

### Key highlights

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<sup>15</sup> The Legal Aid Act No 1 2017 section 3 (interpretation section)

<sup>16</sup> *ibid*

The Legal Aid Act No 1 of 2017 neither provides any provision on legal aid funding nor its legal framework.

### **3.1 Contextual Analysis**

The Legal Aid Act is Tanzania's main legal instrument governing legal aid provision. It is one of the new laws in Tanzania, but it poses some gaps, including the absence of a specific provision on legal aid fund. The law<sup>17</sup> prohibits the misuse of funds for legal aid despite the Government providing no provision for legal aid fund.

Legal aid in Tanzania is funded by various development partners, including USAID (United States Agency for International Development), CCBRT (Comprehensive Community Based Rehabilitation in Tanzania), LEAT (Lawyers Action Tanzania), LHRC (Legal and Human Rights Center), TAWLA (Tanzania Women Lawyers Association), DOLASED (The Disabled Organization for Legal Affairs and Social Economic Development) and LSF (Legal Service Facility). These donors fund the Government of Tanzania to provide legal services to indigent persons.

#### **Reasons for Policy Reform**

The Legal Aid Act No 1 of 2017 needs to be reviewed to address existing gaps related to legal aid funding.

The following are key areas that must be taken into account:

##### **1. Provision for legal aid fund.**

Both the Constitution of the United Republic of Tanzania (URT) of 1977 and the Legal Aid Act, of 2017 recognize the provision of legal aid on civil and criminal matters. Despite the good intentions of the laws, without the provision of financial support from the government sustainability of legal aid in Tanzania is at stake.

##### **2. Criteria for access to legal aid funds from Government.**

The Legal Aid Act and regulations should clearly provide the criteria that should be used for the Legal Aid Provider to avail legal aid funds for the sustainability of legal aid and for meeting the high demand for legal aid in the country.

##### **3. Funding of paralegals and legal aid providers and paralegal organizations.**

The Legal Aid Act does not provide a mechanism for funding paralegals and paralegal organizations' legal aid providers. The Legal aid fund must be established to support paralegals, legal aid providers, and indigent persons. As a result, these organizations depend on mentor organizations for direction on how to apply for funding from different donors. In order to make these paralegal organizations institutionalized and stable, their registration fees should be reduced, or they should be exempted from paying fees for at least two years when they are well established. Registration fees must be exempted or paid by the Government since LAA, and its regulations require paralegals to provide legal aid for free.

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<sup>17</sup> The Legal Aid Act No 1 2017 section 45(1)

*That inadequate funding to meet the high demand for legal services as well as compliance issues been a major challenge, led the legal aid providers to rely on donor funds vastly and forced some of the paralegals to engage in other income-generating activities like becoming motorbike drivers (boda boda drivers), venturing into the tent-hiring business, chicken farming and so on.*

### **Sources of funds for Legal Aid Fund**

The Legal Aid Act needs to be amended to add a provision for the establishment of the Legal Aid Fund, which should be under the supervision of the Registrar of Legal Aid in the Ministry of the Constitution and Legal Affairs. The fund from the National budget needs to be allocated for the Legal Aid fund after the consultation with the legal aid stakeholders.

#### **4. Costs of training and registration of paralegals**

The costs of training and registration of paralegals must be set aside from the legal aid fund. Currently, within the legal framework, paralegals are required to provide legal aid services for free; there are no proper mechanisms for funding their training and registration fees.

## References

### *Binding Documents*

#### *International*

- The African Commission on Human and Peoples' Rights adopted the Lilongwe Declaration in a Resolution at its 40th Ordinary Session held in November 2006

#### *National*

- The Constitution of the United Republic of Tanzania of 1977 (as amended from time to time)
- Legal Aid Act, 2017 [Act No. 1 of 2017]
- Legal Aid Regulations of 2018, G.N No. 44 of 2018
- Advocate Act, Cap. 341 [R.E. 2019]
- Kenya Legal Aid Act, 2016, Act No. 6 of 2016

### *Persuasive Documents or Agreements*

- The United Nations Office on Drugs and Crime (UNODC) hand book, 2014 titled "*Early access to legal aid in criminal justice processes*"
- The Lilongwe Declaration on Accessing Legal Aid in Criminal Justice System in Africa, 2006
- The Tanzania 2020 Human Rights Report
- Report on Analysis of the Implementation of the Legal Aid Act (LAA), 2017
- The Tanzania 2021 Human Rights Report
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