
P R E A M B L E

“It is not every man who has the ability to defend himself on his own... He may be tongue tied or nervous, confused or wanting intelligence... if justice is to be done, he ought to have the help of someone to speak for him.”

Denning, M.R. (as he then was) in *Pett v. Greyhound Racing Association Ltd* [1969], Q.B.125

THE COMMISSION

At the time of compiling this report the Commission comprised the following: -

Commissioners

1. Hon. Mr. Justice (Rtd) Anthony N. Bahati - Chairman
2. Hon. Mr. Justice (Rtd) Edward A. Mwesiumo - Full-Time Commissioner I
3. Mr. William J.M. Mdundo - Full-Time Commissioner II
4. Hon. Pius Msekwa - Part-Time Commissioner
5. Hon. Dr.Asha-Rose Migiro - Part-Time Commissioner
6. Mr. Mohamed Ismail - Part-Time Commissioner
7. Mr. Onel Malisa - Part-Time Commissioner
8. Mr. Matt-Chikawe - Commission Secretary

Researchers

1. Ms. Caritas Mushi - Principal Assistant Parliamentary Draftsman
2. Ms. Martha Kisyombe - Senior State Attorney
3. Mr. Adam J. Mambi - State Attorney
4. Mr. Fortunatus Swai - State Attorney
5. Ms. Angela A. Bahati - State Attorney
6. Ms. Agnes Z. Mgeyekwa - State Attorney
7. Mr. Joseph T. Kaare - State Attorney
8. Ms. Flora Tenga - State Attorney
9. Mr. Lusungu Hongoli - State Attorney
10. Mr. Michael R. Makombe - State Attorney
11. Ms. Judith M. Kakongwe - State Attorney
12. Ms. Marlin L. Komba - State Attorney
13. Ms. Janet S. Pima - State Attorney
14. Ms. Mercy Mrutu - State Attorney
15. Ms. Zainabu Chanzi - State Attorney

The Commission's offices are located at Number 8 Luthuli Street, Haki House,
P.O. Box 3580, Dar es Salaam, Tanzania,
Telephone Number +255 22-2123533/4 or +255 22-2111387.
Website: <http://www.lrc-tz.org>

**THE UNITED REPUBLIC OF TANZANIA
THE LAW REFORM COMMISSION OF TANZANIA**

Telegrams "TUMESHERIA".
Telephone 2123533-4/2111387
E-mail tlrc@cats-net.com

P.O. Box 3580,
DAR ES SALAAM.



In reply please quote:
Ref. No. LRC

1 August 2004

Hon. Harith Bakari Mwapachu(MP),
Minister for Justice and Constitutional Affairs,
P.O. Box 9050,
DAR ES SALAAM

**RE: REPORT ON THE SCHEME FOR PROVISION OF LEGAL
SERVICES BY PARALEGALS**

In 2002 the Law Reform Commission of Tanzania, on its own accord, commenced a study on the Scheme for Provision of Legal Services by Paralegals. The study aimed at producing a report that would supplement a report on Private Legal Practice in Tanzania which was presented to the Honourable Attorney General and Minister for Justice in 1987.

The aim for undertaking the said study was to determine: -

- a. whether there is a need for legally establishing the cadre of paralegals
- b. Paralegals' role in the justice system
- c. qualification for paralegals
- d. the need to establish an institution to deal with the procedure of recognising credentials of paralegals, enrolment, conduct, training and the setting of fees for the services of paralegals etc.

The Commission has completed the study and hereby submits to you the report on the subject above pursuant to section 14(1) of the Law Reform Commission of Tanzania Act, 1980 (Act No.11/1980).

.....
Mr. Justice (Rtd) Anthony Bahati,

.....
**Hon. Mr. Justice,(Rtd)
Edward Mwesiumo
Full-Time Commissioner I**

.....
**Mr. William Mdundo,
Full-Time Commissioner II**

.....
**Hon. Pius Msekwa,
Part-Time Commissioner.**

.....
**Hon. Dr. Asha-Rose Migiro,
Part-Time Commissioner**

.....
**Mr. Mohamend Ismail,
Part-Time Commissioner**

.....
**Mr. Onel Malisa,
Part-Time Commissioner**

ACKNOWLEDGEMENTS

The Law Reform Commission of Tanzania appreciates and values contributions from various stakeholders such as the Judiciary, the Faculty of Law of the University of Dar es Salaam, NGOs, the Tanganyika Law Society, to mention just a few whose opinions and comments have enriched this Report.

The Commission is also grateful to the DANIDA for its financial support at all stages of the study.

The Commission however bears full and collective responsibility for both the form and content of this report.



EXECUTIVE SUMMARY

The Commission undertook the study on the Scheme for Provision of Legal Services by Paralegals as part of its core functions in the law reform process as well as to implement a Vision of Accessible and Timely Justice for all in the New Millennium as laid down by the Ministry of Justice and Constitutional Affairs.

It is a well known principle that legal assistance and representation is a constitutional and statutory right, which means that once infringed the person's basic rights are injured.

However, it is evident that most people in Tanzania do not enjoy the right of legal assistance and representation due to various reasons. This is inimical to the attainment of the Vision of Accessible and Timely Justice for all.

There is no legal representation in primary courts at all since advocates are prohibited by law to appear in them and no one else is permitted to do the same. In primary courts, prosecution and defence in criminal cases are carried out privately by individuals who are not experts in the area of prosecution and defence. This certainly stifles the right to legal representation and may result in the miscarriage of justice.

Most of the primary courts are in rural areas where the majority of Tanzanians reside but these courts are distributed within wide geographical locations such that access to justice for the majority is impeded. Ward tribunals that are expected to fill this gap as alternative dispute resolution organs have performed below expectation of the aggrieved parties. This fact indicates that the majority of Tanzanians are systematically denied the right to legal assistance and representation.

Apart from the legal prohibition of representation in primary courts, the number of legal professionals does not match the rapid growth of the population in Tanzania. For instance, currently the number of advocates is below 1000 while the Tanzanian mainland population is above 33 million people. This situation indicates that even in those courts where advocates are allowed to appear, representation cannot be adequate.

Due to the scarcity of advocates and the high cost of hiring them, people in both urban and rural areas have resorted to the services of “bush lawyers” who are not recognised in the Tanzanian legal system. However, some people also appear in courts by using powers of attorney and they normally prepare various legal documents.

The linkage of poverty and access to justice is clearly confirmed in the PRSP and in this regard various interventions have been proposed by the Government. Major among these is the improvement of access to justice by reducing the gap in the number of primary court magistrates so as to speed up the settlement of disputes at this level. [The proposals of instituting the paralegal cadre put forward in this report are efforts towards improving the accessibility of justice for at all this level.]

In other jurisdictions, the cadre of paralegal has been legally recognised to supplement the work by professionals. In the USA for instance there is an adequate number of attorneys, but paralegals are legally permitted to assist them in attending clients. South Africa is moving towards legalising the paralegal cadre to perform all legal activities including representing clients in courts.

In Tanzania, legal representation by paralegals is still a new concept yet to be grasped as compared to the USA and South Africa. In order to attain the vision of the Ministry of Justice and Constitutional Affairs, on “Accessible and Timely Justice for all in the New Millennium”, there is a need to recognise this cadre and institute it in the national legal framework.

This report therefore, makes one major recommendation for the establishment of the paralegal cadre to represent parties in primary courts and perform other legal activities for the sake of ensuring justice is timely and accessible to every Tanzanian.

TABLE OF CONTENTS

	PAGE
Preamble	i
The Commission	ii
Transmittal Letter	iii
Acknowledgements	v
Executive Summary	vi
Table of Contents	viii
Abbreviations and Acronyms	x
List of Legislation	xi
List of Cases	xii

CHAPTER ONE

INTRODUCTION

1.1 Mandate	1
1.2 Background	2
1.3 Rationale	4
1.4 Objectives	8
1.5 Scope	8
1.6 Methodology	9

CHAPTER TWO

THE PARALEGAL CONCEPT

2.4 Genesis of Paralegal Practice in Tanzania	10
2.5 Definition of Paralegal	13
2.6 Experiences from Other Countries	15
2.6.1. United States of America	15
2.6.2. South Africa	21
2.6.3. Uganda	27
2.6.4. Namibia	29
2.6.5. Zimbabwe	30
2.7 Legal Status of Paralegals	31

CHAPTER THREE

RESEARCH FINDINGS

3.3 Paralegal Services by NGOs 33
3.4 The Need for Paralegal Services 35
3.5 The Practice of Professional Paralegals in Tanzania 37
3.6 Power of Attorney 38
3.7 Institutional Structure for Professional Paralegals Cadre 40
3.8 Eligibility for Admission to Professional Paralegals Cadre ... 42
3.9 Services by Paralegals 43
3.10 Paralegal in Criminal Practice 45
3.11 Code of Conduct for Paralegals 45
3.12 Advocates 46

CHAPTER FOUR

CONCLUSION AND RECOMMENDATIONS

4.1 Conclusion 48
4.2 Recommendations 49

REFERENCES 51

APPENDIX I: Draft Bill 53

ABBREVIATIONS AND ACRONYMS

ABA	-	American Bar Association
AIDS	-	Acquired Immune Deficiency Syndrome
AGC	-	Attorney General's Chambers
CAPA	-	California Alliance of Para-legal Associations
CBOs	-	Community Based Organisations
CLE	-	Council for Legal Education
DANIDA	-	Danish International Development Agency
DPP	-	Director of Public Prosecutions
ENVIROCARE	-	Environmental, Human Rights Care and Gender Organisation
FHRI	-	Foundation for Human Rights Initiative
FILMUP	-	Financial and Legal Management Upgrading Project
HIV	-	Humane Immune Virus
ICJ	-	International Commission for Jurists
LAC	-	Legal Assistance Centre (Namibia)
LAC (UDSM)	-	Legal Aid Committee of University of Dar es Salaam Faculty of Law
LAO	-	Legal Aid Office
LGRP	-	Local Government Reform Programme
LHRC	-	Legal and Human Rights Centre
LSRP	-	Legal Sector Reform Programme
LRF	-	Legal Resource Foundation
NCP	-	National Council for Paralegals
NALA	-	National Association of Legal Assistants
NCBPA	-	National Community Based Paralegal Association
NCP	-	National Council for Paralegals
NPI	-	National Paralegal Institute
NFPA	-	National Federation of Paralegal Associations
NGOs	-	Non-Governmental Organisations
NZLR	-	New Zealand Law Report
OUT	-	Open University of Tanzania
PACE	-	Paralegal Advanced Competency Examination
PPs	-	Public Prosecutors
PRSP	-	Poverty Reduction Strategy Paper

TAMWA	-	Tanzania Media Women Association
TANGO	-	Tanzania Non-Governmental Organisations
TAWLA	-	Tanzania Women Lawyers Association
TAWOVA	-	Tanzania Women Volunteers Association
TLC	-	Tanzania Legal Corporation
TLS	-	Tanganyika Law Society
TLR	-	Tanzania Law Reports
ToT	-	Training of Trainers
UDSM	-	University of Dar es Salaam
UGRC	-	Uganda Gender Resources Centre
USA	-	United States of America
WLAC	-	Women Legal Aid Centre

LIST OF LEGISLATION

A: TANZANIA PRINCIPAL LEGISLATION

1. The Advocates Ordinance, 1954 (Cap. 341)
2. The Constitution of the United Republic of Tanzania, 1977
3. The Civil Procedure Code Act, 1966 (Act No. 49 of 1966)
4. The Judicature and Application of Laws Ordinance, 1961(Cap. 453)
5. The Law Reform Commission of Tanzania Act, 1980 (Act No.11 of 1980)
6. The Legal Aid (Criminal Proceedings) Act, 1969 (Act No.21 of 1969)
7. The Magistrates' Courts Act, 1984 (Act No.2 of 1984)
8. The Notaries Public and Commissioners for Oaths Ordinance 1928, (Cap. 12)
9. The Tanganyika Law Society Ordinance, 1956 (Cap. 344)

B: LEGISLATION FROM OTHER JURISDICTIONS

1. The Business and Professions Code of America
www.saccourt.com/criminal/bailsch/felonybail/businessCode.asp...
2. The Business and Professions Code of California
www.leginfo.ca.gov/cgi-in/calawquery?codesection=bpc&codebody=&hits=2

-
3. The Legal Practice Bill (Task Term Proposal) 2002, Republic of South Africa, Minister for Justice and Constitutional Development. (still in draft bill stage),
www.nu.ac.za/indicator/Vol19No3/19.3_feature.htm
 4. The Non-Profit Organisations Act of 1997 (South Africa)

LIST OF CASES

1. Alimasi Kalumbeta vs. Republic [1982] TLR 329
2. Consolo vs. George, 58 F. 3d 791(1st Cir.1995)
3. Mihaka vs. Police [1981] 1 NZLR 54
4. Missouri vs. Jenkins 491 U.S. 274, 109 S.Ct, 2463, 105 L. Ed. 2d 229 (1989)
5. Naiman Moiro vs. Nailejiet K.J. Zablon [1980] TLR 274
6. National Bank of Commerce vs. Vitalis Ayemba, High Court of Tanzania, Civil Case No. 37 of 1988 (Unreported-Mwanza)

CHAPTER ONE

1.0 INTRODUCTION

1.1 Mandate

1.1.1 The Law Reform Commission of Tanzania Act, No. 11 of 1980, established the Law Reform Commission of Tanzania as an independent Government department (in this report referred to as “the Commission”). The Commission is an autonomous body that performs a distinct public service independently from the mainstream government activities. However, the Act provides for procedures through which the Commission can be moved to review laws in the national legal framework. These include: -

- a. References from the Attorney General.¹
- b. The Commission may at its own instance, but subject to informing the Attorney-General, initiate an idea for review.²

1.1.2 Under the establishing Act, the Commission is vested with the mandate of taking and keeping under review, all the law of the United Republic of Tanzania with a view to its systematic development and reform.³ In order to undertake this task, the Commission has in place a strategic plan, based on, among others, the National Development Vision 2025, the Public Service Mission and Vision, as well as the legal sector Vision of Accessible and Timely Justice for all in the New Millennium.⁴ Any decision to review any law in the national legal framework takes into account other on-going interventions such as the Poverty Reduction Strategy Paper, the Legal Sector Reform Programme and the Local Government Reform Programme.

¹ The Law Reform Commission of Tanzania Act, 1980, (No.11 of 1980). Section 8(1).

² Ibid. Section. 9(1)

³ Ibid. Section.4

⁴ Issued by the Ministry of Justice and Constitutional Affairs

1.2 Background

- 1.2.1 The basis of the Paralegal study was a reference received from the Minister for Justice. On the 17th November 1983 the Honourable the Attorney General and Minister for Justice wrote to the then Chairman of the Law Reform Commission of Tanzania, the late Mr. Justice of Appeal, Yona M. M. Mwakasendo, forwarding five references to which the Commission was to work on. Among the five references sent to the Commission, is reference No. 3, which is the subject of this report. The Commission considered the presented terms of reference, and prepared and finally delivered a report on "Private Legal Practice in Tanzania" which was respectfully presented to the Honourable Attorney General and Minister for Justice in 1987.
- 1.2.2 Part of the above mentioned report carries two important recommendations on undertaking the study which justify the importance of the introduction of the paralegal cadre. They read as follows: -

"2. On the question of legal representation by advocates and paralegal personnel in Primary Courts, both in urban as well as in rural areas, we have the following observations: -

- (a) ... That Paralegals be allowed to represent parties in Primary Courts presided by any competent magistrate provided that such paralegals act as agents of the respective parties and not purporting to be advocates.

We have, however, decided that there is a need for the Commission to carry out further studies on the question of the provision of legal services by paralegals. It is necessary, for example, to collect statistics and other data on the number of persons currently engaged in the preparation of various types of legal documents, their basic qualifications or level of training and their spread in the country (emphasis added). Upon completion of these additional studies the Commission will prepare a supplementary report in answer to point (b) of the terms of reference on

ensuring that members of the public in urban as well as in rural areas are availed an opportunity to obtain legal assistance and representation”.⁵

- 1.2.3 Having regard to the above recommendations and the need to bridge the gap between the supply of lawyers and demand for legal assistance and representation, the Commission found it necessary to undertake this study. The aim was to look into the various possibilities of legally introducing, enhancing and consolidating the existing cadre of “professional paralegals” into the legal profession in Tanzania so as to provide legal services appropriate and commensurate to their qualifications and status.
- 1.2.4 The Commission strongly believes that the recommendations on the Private Legal Practice Report given at that time are even more pertinent at present. The current economic realities and the greater need for access to the legal system and the interventions being introduced by various sectors, demand that alternative ways to meet those needs be found. Currently, the gap between the supply of practising lawyers and the demand for legal services is very wide, making it impossible for all who need it to access the same.
- 1.2.5 The need for legal assistance and representation was also emphasised by Hon. Justice Samatta (as he then was) in *Almasi Kalumbeta v/s Republic* when he said : -
"Legal representation for an accused is a right which is almost universally recognised. In some jurisdictions the right is a constitutional right ... That right is so jealously guarded by the law that if an accused is deprived of it through no fault of his own and through no fault of his advocate and he is, in the end convicted, that conviction cannot be allowed to stand on appeal; ..."⁶
- 1.2.6 As far as the Tanzania legal system is concerned, the right of persons to legal assistance and representation is a constitutional and statutory right, which means, once jeopardised, the person’s basic right is injured.⁷

⁵ Extract from the Report on Private Legal Practice, FILMUP, 1987, Dar es Salaam, pg.8.

⁶ *Almasi Kalumbeta v. Republic* (1982) TLR 329 at pg. 330 -332.

⁷ *Kasimu Hamis Manywele v. Republic*, Criminal Appeal No. 39 of 1990, high Court of Dodoma.

-
- 1.2.7 By 2003 the Mainland had barely 668 enrolled advocates⁸ for a population of 34,569,232 million.⁹ This means that there is one advocate handling 51,750 clients. Therefore, the fact that the legal professionals in Tanzania are comparatively limited in numbers cannot be denied as the situation has not changed exponentially, taking into account that the situation of Kenya on the number of advocates is in the ratio of 8000 to 31,138,735,¹⁰ or one advocate handling 3,892 clients. Therefore, the situation in Tanzania is still unsatisfactory despite the fact that the number of training institutions has multiplied resulting in increased production of lawyers and enrolment of advocates. The increase does not match the growing population.
- 1.2.8 The paralegal cadre is not legally recognised in the Tanzania legal system. There are no professionals called paralegals as such. However, there are non-lawyers who provide legal services and they are commonly referred to as “bush lawyers” or “public writers.” These are equally not recognised. For the purposes of this report and for its better understanding, these people will be referred to as “professional paralegals.”

1.3 Rationale

- 1.3.1 The importance of legal services to the Tanzania society is self-evident. The public needs access to adequate, effective and affordable legal services. To increase access to justice in a manner that protects the public must be the aim of the legal profession and a cherished goal of society in its fight against poverty.
- 1.3.2 Legal assistance and representation are among the basic rights, which are very important to any individual during a trial, although they have suffered from neglect over decades. These rights are firmly cemented in our legal system in the 1984 Constitutional amendments that introduced a Bill of Rights as the Basic Rights. The relevant article in the Constitution provides as follows: -

⁸ Tanganyika Law Society, 2003

⁹ 2002 Population and Housing Census General Report, 2003, Government Printer, D.S.M, pg. 203

¹⁰ Google.com/pp/Kenya.

“13 (6) To ensure equality before the law, the state authority shall make procedures which are appropriate or which take into account the following principles, namely: -

a. When the right and duties of any person are being determined by the court or any agency, that person shall be entitled to a fair hearing and the right to appeal or other legal remedy against the decision of the court or of the other agency concerned;”

1.3.3 The right to legal assistance and representation does not necessarily mean that an advocate must represent a person in court. What is important is to have a trusted person whom one can rely on for purposes of representing his/her interests and pursuit of the same. This type of a representative may be called a paralegal. The term paralegal has been used to refer to a non-lawyer who is a layman as far as law is concerned, although there are other paralegals who are lawyers but not practising advocates.

1.3.4 As revealed above, the right to legal assistance and representation is incorporated under the constitutional rights that embrace, among others, the right to a fair hearing, the right to have legal counsel of one's choice and personal freedom respectively. The importance of the above referred to article is that it is necessary in any hearing in a court of law that the parties to it understand clearly the entire proceedings. Undoubtedly this may not always be easy since the lawyers involved will inevitably use legal technicalities that may not be easily understood by laymen.

1.3.5 The nexus between poverty and poor access to justice has been officially confirmed in the country's Poverty Reduction Strategy where it is stated “the well being of the poor is also dependent on personal security afforded by the state.” In the provision of personal security, the most important factors are personal safety, access to justice, overall efficiency, fairness, and transparency of the administrative system. Speeding up the settlement of cases in primary courts by, among other things, reducing the estimated shortage of magistrates (approximately 700) by half is one way towards improving access to justice by many.

1.3.6 Because of the importance of legal assistance and representation there is a need to evolve legislation as part of the national legal framework

that will provide for the institution and management of a professional paralegal cadre in Tanzania. This, like the increase of magistrates as propounded above, will enhance accessibility and affordability of justice to the majority of the people in a timely manner.

- 1.3.7 The introduction of a paralegal cadre in Tanzania will not be the proverbial reinvention of the wheel. Within the Commonwealth, it is gratifying to see that courts of law in some jurisdictions have indicated willingness to give limited *locus standi* to lay representatives. In New Zealand for example, Hardie Boys, J. in recognition of the importance of having a paralegal to render assistance to a litigant explained the restricted role that such a person can play in the process of searching for justice. These roles includes: -
- a. To sit beside him in court; to take notes; quietly make suggestions to the litigant and give advice;
 - b. To propose questions and submission to the litigant or accused person, who may put the same before the court.¹¹
- 1.3.8 In some states in the United State of America, paralegals are referred to as "Legal-para professionals" and they are accepted and have a long history of working in the court helping litigants.¹²
- 1.3.9 In Tanzania there are incompetent and irresponsible individuals claiming to be paralegals whose conduct is disgraceful. Their actions mislead the public and disrupt the proceedings of courts. There are also able, conscientious and efficient persons serving as paralegals, who provide much needed services to the public in various areas.
- 1.3.10 In Tanzania, paralegals perform some of the legal tasks done by lawyers, such as carrying out legal education and providing legal advice. Moreover, various NGOs, in acknowledging the fact that the Government is not capable of providing legal assistance and representation to all poor sections of the society, have come up with a variety of programmes to assist poor persons. One of their programmes is the provision of legal aid by trained voluntary paralegals. Today the practice by these paralegals continues to mature and expand. However, it is worth of note that these services are sadly limited to women and children.

¹¹ See the case of *Mihaka v. Police* (1981) INZLR 54 as cited in C.P. Maina, "Human Rights in Tanzania: Selected Cases and Material", 1997, p.339

¹² BRICKMAN, Lester, "Expansion of the Lawyering Process through a New Delivery System: The Emergence and State of Legal Para professionalism," Volume 71 No. 7 Columbia Law Review, 1971, pg.1153.

1.3.11 Currently, the provision of legal assistance and representation is urban centres oriented. There is neglect of the rural areas where most of the Courts, particularly Primary Courts are situated, and where the majority of people live. This means that the bulk of the work transacted in courts is in rural areas and at the Primary Courts level.¹³

1.3.12 The Magistrates' Courts Act, No. 2 of 1984, which is partly governing advocates or legal practitioners in Tanzania, restricts them from appearing in Primary Courts to represent parties. The relevant section 33(1) provides as follows: -

“No advocate or public prosecutor as such may appear or act for any party in a Primary Court.”

1.3.13 The statutory prohibition of advocates in Primary Courts without providing for an alternative deprives representation in these courts. This shows that there is an imbalance in the administration of justice. Furthermore, the same restriction has been provided in section 41(1) of the Advocates Ordinance, Cap 341as follows: -

“No unqualified person shall act as an advocate, or agent for suitors, or as such sue out any summons sic or other process, or commence, carry on or defend any action, suit or other proceeding in the name of any other person or in his own name, in any Court of civil or criminal jurisdiction, or act as an advocate in any cause or matter, civil or criminal.”

1.3.14 It is evident therefore, that there is a representation vacuum to be filled in the Primary Courts, as the above legislation reveals. The irony is that any person who does not comply with the above restriction is upon conviction liable to a fine.

1.3.15 The effect of the poverty factor in the Tanzania society contributes immensely to justice being a preserve of the few. Most people cannot afford the prohibitive fee charged by advocates and thus justice becomes out of reach and selective, available only to those who can afford to pay exorbitantly for it. To the majority of the people justice is an expensive commodity only to be desired but never attained. It is due to these facts that the Commission recommended

¹³ Report on Private Legal Practice of 1987, Dar es Salaam, pg.3

for the introduction of the paralegal cadre in Tanzania in its report on Private Legal Practice of 1987. It is for these same reasons that the Commission has decided to undertake this study.

1.4 Objectives

1.4.1 The overall objective of the study is to examine the role and activities of paralegals in the Tanzania legal system, to review their efficacy and effectiveness and to recommend the introduction of an appropriate and befitting legal and regulatory framework. The specific objectives are to collect statistics and other relevant data and analyse them as recommended in the Commission's report in 1987.¹⁴ Other specific objectives include: -

- a. Determining the number of existing non-lawyers engaged in the field, their level of training, their spread in the country and the kind of legal services they offer; and
- b. Proposing an institutional setup for the establishment, management, examination, registration, accreditation and discipline of the paralegal cadre.

1.5 Scope

1.5.1 The report analyses how the provision of legal services by the paralegals would be in Tanzania. The report also strategically focuses on proposing to the Government for the creation of the legal and regulatory framework for the introduction of a cadre of paralegals and provision of paralegal services in Tanzania.

1.5.2 The report does not venture into analysing whether a paralegal cadre should be introduced or not because the issue has already been covered in the Report of Private Legal Practice where the need for paralegal services was strongly recommended.¹⁵ This report takes these recommendations a step further. Attention has been given to identification of issues having a bearing on the paralegal system generally such as the duties, code of conduct, qualifications, admission, working system, fees, regulations etc.

¹⁴ Ibid. pg.9.

¹⁵ Ibid.

1.6 Methodology

- 16.1 The methodology applied for accumulation of appropriate and sufficient facts for this report was mainly twofold; library research and field research. Through library research, various materials were consulted such as relevant texts, articles, case law, legislation and the Internet.
- 1.6.2 Through field research, researchers visited various regions, which were identified in the research sample. Those regions were Morogoro, Dodoma, Singida, Tabora, Shinyanga, Mwanza and Mara. Through focused group discussions and interviews, researchers managed to collect general and specific relevant information from various stakeholders.
- 1.6.3 Visits to the sample regions proved to be quite fruitful as stakeholders provided researchers with resourceful inputs. However, in other regions stakeholders could not give much input as most of the respondents appeared to be uninformed of the relevant issues.
- 1.6.4 In the visited regions, the targeted stakeholders included Judges, Magistrates, advocates, NGOs dealing with legal matters and advocating for Human Rights “paralegals” themselves, and the public.
- 1.6.5 Stakeholders in this field were duly consulted and a workshop was conducted where views of the stakeholders were sought after presentation of the Discussion Paper. These views were highly considered and are built into this report.

CHAPTER TWO

2.0 THE PARALEGAL CONCEPT

- 2.1 This chapter discusses the practice of paralegals in Tanzania and juxtaposes it to the experience from the United State of America and some African jurisdictions where legal services are also provided by paralegals. The selected jurisdictions are Uganda, South Africa, Namibia and Zimbabwe.
- 2.2 In examining the paralegal systems in the above sample countries the Commission has concentrated in the following areas: -
- a. Training and admission of paralegals,
 - b. Regulatory Boards,
 - c. Institutions and paralegal organisations,
 - d. Duties of paralegals
 - e. Code of conduct, and
 - f. Fees.
- 2.3 In the above mentioned African countries, legal services that are provided by paralegals are not recognised by law. Efforts are currently under way in South Africa where there is a proposed Bill titled: “South Africa Legal Practice Bill, 2002” (referred to as “the South Africa Bill” in this study) which seeks to regulate legal practitioners as well as paralegals. Some of the proposals in the South African Bill have been extracted and discussed in this chapter.
- 2.4 Genesis of Paralegal Practice in Tanzania**
- 2.4.1 The need for legal services depends on the existence of legal problems that require a solution by recourse to the law either in the form of advice or judicial proceedings. Experience shows that the first people to be approached by persons with legal problems are often not lawyers at all. People seek advice from relatives or friends who have had similar experiences in the past, or from relatives or friends working in legal establishments. It is only as a last resort that

people with problems go to consult lawyers. The actual decision as to whether or not to engage a lawyer depends upon several factors, including the monetary value of the claim or right at stake; whether the matter at issue is contentious, and the likelihood of success or failure in pursuance of the claim or right, the severity of the burden of the problem to the individual concerned and the ability to pay the necessary professional fees.

2.4.2 In Tanzania, experience has shown that there is a great need for legal assistance at the advisory stage. Persons with the experience of working in the judicial system can attest to the existence in the community of a multitude of unlicensed advisors in law who go by such names as "public writers" and "bush lawyers". These people came into being only because there was an unmet need for legal services, particularly in the form of personal advice and preparation of simple documents. These duties are supposed to be carried out by advocates and not by unqualified persons.¹⁶ Concentration of advocates in urban centres and the exorbitant fees that they charge, force people, mostly in rural areas, to resort to the services offered by unqualified persons, known as "bush lawyers."

2.4.3 These unqualified persons are prohibited by law to undertake most of the functions that are being undertaken by advocates except for some which have to be undertaken free of charge.¹⁷ Since most people who have legal problems consult "bush lawyers" and as the need for these services increase, these "bush lawyers" often go beyond the limits prescribed by the Advocates Ordinance by advising, drawing pleadings and sometimes even representing "their clients" in courts by use of the power of attorney. They do all these things because they are easily accessible and their charges are affordable.

2.4.4 Legislation governing legal services in Tanzania, contributes to some extent to the demand for paralegal services. The laws prohibit advocates from appearing in Primary Courts,¹⁸ most of which, are in rural areas where many people lack legal representation. Thus a person who has a matter in a Primary Court and fears to face a "black suited Magistrate" or a person who fails to utter even a word

¹⁶ Advocates Ordinance, Cap 341, - s.39(1) defines unqualified person to mean a person whose name is not registered in advocates roll and has no practising certificate.

¹⁷ Ibid. Section. 43.

¹⁸ The Magistrates' Courts Act, 1984 (Act No. 2 of 199984), Section.33 (1)

before a magistrate, decide to hire a person and give him power of attorney to handle their matter.

- 2.4.5 The legal assistance offered in Tanzania by paralegals, is delivered by two groups; first is that group of individuals who provide legal services through experience and/or acquired knowledge and they normally charge a fee for their services. The Commission refers to this group as the “professional paralegals”. The second group is the one organised by NGOs and this group is based on the provision of legal aid and so offers its services free of charge. This group is referred to as “voluntary paralegals.” Persons who have some experience or acquired knowledge include serving and retired Court clerks, ex-Magistrates, ex-police officers, labour officers, university graduates who are not enrolled as advocates and holders of Diplomas and Certificates in Law.
- 2.4.6 Currently the voluntary paralegal sector in Tanzania is spearheaded by NGO’s which include Tanzania Media Women Association (TAMWA), Women Legal Aid Centre (WLAC), Tanzania Women Lawyers Association (TAWLA), Legal and Human Rights Centre (LHRC), Environmental, Human Rights Care and Gender Organisation (ENVIROCARE), Kivulini Women Rights Organisation, Tanzania Women Volunteers Association (TAWOVA), Faraja Trust Fund, etc. These organisations concentrate on providing paralegal training and legal aid to the poor and disadvantaged in both rural and urban areas. In so far as the training aid provision of paralegal services is concerned, one notes that there are no set and agreed procedures or regulations for the identification of paralegals, their training or course content for the same.
- 2.4.7 The Medium Term Strategy of the Legal Sector Reform Programme for the year 2004/05-2006/07, April 2004 edition, has evolved a strategy for the training by voluntary paralegals with the first 100 paralegals ToT trained by 30/6/06. These trainers are expected to go out and train more paralegals. It is also expected that before this period, the course content for this training will have been evolved by the NGOs in consultation with Legal Training Institutions.
- 2.4.8 Since this strategy deals only with voluntary paralegals, the professional paralegals who have been giving their services for gain

need to be taken care of. It is for this group of paralegals that the Commission is making proposals for their institution, management and coordination.

2.5 Definition of Paralegal

2.5.1 In the United State of America, the terms paralegal and legal assistant are used interchangeably, much like the terms attorney and lawyer. It has been difficult to define the term paralegal without mentioning the qualifications and duties of paralegals, as a result there are different definitions of the word paralegal, depending on the nature of the service provided. Various American Associations have variously defined the terms as herein below.

2.5.2 The National Federation of Paralegal Associations (NFPA) has defined paralegal thus: -

“Paralegal is a person qualified through education, training or work experience to perform substantive legal work that requires knowledge of legal concepts and is customarily, but not exclusively, performed by a lawyer. This person may be retained or employed by a lawyer, law office, governmental agency or other entity or may be authorised by administrative, statutory or Court authority to perform this work.”¹⁹

2.5.3 The National Association of Legal Assistants (NALA) has defined legal assistants as follows: -

“Legal assistants are a distinguished group of persons who assist attorneys in the delivery of legal services. Through formal education, training and experience legal assistants have knowledge and expertise regarding the legal system and substantive and procedural law, which qualify them to do work of a legal nature under the supervision of an attorney. (Within this occupational category, individuals are also known as "paralegal.")”²⁰

2.5.4 The American Bar Association (ABA) has defined legal assistant /paralegal as follows: -

¹⁹ The National Federation of Paralegal Associations, “Draft Definition of the Practice of Law”, Chicago, Illinois 60611, pg.3
²⁰ Adopted by the NALA membership, July 1984

“A legal assistant or paralegal is a person, qualified by education, training or work experience who is employed or retained by a lawyer, law office, corporation, governmental agency or other entity and who performs specifically delegated substantive legal work for which a lawyer is responsible. OR

Legal assistants, also known as paralegal, are a distinguishable group of persons who assist attorneys in the delivery of legal services. Through formal education, training and experience, legal assistants have knowledge and expertise regarding the legal system and substantive and procedural law, which qualify them to do work of legal nature under the supervision of an attorney.”²¹

2.5.5 The State Bar of California has defined paralegal as follows: -

“Paralegal means a person who either contracts with or is employed by an attorney, law firm, corporation, governmental agency, or other entity and who performs substantial legal work under the direction and supervision of an active member of the State Bar of California, as defined in Section 6060, or an attorney practising law in the federal Courts of this state, that has been specifically delegated by the attorney to him or her.”²²

2.5.6 From the definitions of the terms paralegal and legal assistant given above, it is apparent that both have some common features, in terms of qualification and status. The basic qualification in order for a person to be identified as paralegal is having undergone paralegal training and working for and under the supervision of an attorney, a law office, a corporation, a governmental agency or other entity.

2.5.7 The South African proposed Bill ²³ has defined a paralegal practitioner to mean a person who may render legal services as contemplated in section 43.²⁴ The section referred to proposes regulations for rendering legal services. The section proposes that the Minister after consultation with the Council and the Paralegal Committee shall make regulation to regulate the rendering of legal

²¹ The current definition as recommended by the Standing Committee on Legal Assistants and adopted by the American Bar Association, pg.1.

²² The Business and Professions code of California, Section 6450 (a).

²³ The Legal Practice Bill (Task Team Proposal) 2002.

²⁴ Ibid Section. 1 (1)

services to the public by paralegal practitioners. This definition is similar to ones used in Uganda, Zambia, Zimbabwe and Namibia to the extent where it refers to paralegals that undertake voluntary activities.

- 2.5.8 The definitions above do not fit well in the Tanzanian context where individuals, who are not necessarily under the supervision of an advocate, although there are also voluntary paralegals that work under the umbrella of NGOs, conduct paralegal work independently.

2.6 Experience from Other Countries

2.6.1 United States of America

2.6.1.1 The legal assistant concept began to develop in the United States of America in the late 1960's when law firms and individual practitioners sought ways to improve the efficiency and cost effectiveness of delivery of legal services. Other factors entered into the development of the legal assistant field including the growing volume of work due to increased public awareness of legal remedies. Today corporations, government agencies and private law firms, both large and small are hiring paralegals as consultants. Others cater directly for the public, helping clients achieve results in legal matters without actually representing the clients in Court.

2.6.1.2 The paralegal profession is in a state of rapid growth, and paralegals are gaining prestige and clout. In other states, Federal and State Prosecutors, Public Defender's Offices and Civil Agencies are delegating increasing amounts of work to paralegals. Rewarding paralegal jobs exist in abundance in Federal, State and Local Governments. American paralegals prefer to be employed by Local Governments because these Government jobs are stable and provide excellent compensation and benefits. Paralegals are found in all types of organisations, including law firms where they work under supervision of an attorney. It has frequently been recognised in the lower Courts of New Jersey that paralegals are capable of carrying out

many tasks under the supervision of an attorney that might otherwise be performed by lawyers.²⁵

2.6.1.3 An attorney who uses the services of paralegals is liable for any harm caused as the result of the paralegal's negligence, misconduct or violation of law.²⁶ This is because the legal assistant's work product (under supervision of attorney) is merged with and becomes part of the attorney's work product. But a lawyer shall not practise with or in the form of a professional corporation, limited liability company or association, if: -

- a. A paralegal owns any interest in it (except as a fiduciary representative of the estate of a lawyer);
- b. A paralegal is a corporate director, officer or manager of the limited liability; or
- c. A paralegal has the right to direct or control the professional Judgement of the lawyer.

2.6.1.4 The duties of paralegals differ widely based on the type of organisation in which they are employed. The specific tasks assigned to paralegals vary according to the area of practice and level of experience and education.

2.6.1.5 Under the supervision of an attorney, a legal assistant may: -

- a. Conduct client interviews and maintain general contact with the client, so long as the client is aware of the status and function of the legal assistant;
- b. Locate and interview witnesses;
- c. Conduct investigations and statistical and documentary research;
- d. Conduct legal research, draft legal documents, correspondence and pleadings;
- e. Summarise depositions, interrogatories and testimony; Attend executions of wills, real estate closings, depositions, Court or administrative hearings and trials with the attorney;

²⁵ Brickman, Lester "Expansion of the Lawyering Process through a New Delivery System: The emergence and state of Legal Para professionalism," Vol. 71, No. 7 Columbia Law Review 1971.

²⁶ The Business and Profession Code of America, Section 6452 (b)

-
- f. Author and sign correspondence provided the legal assistant status is clearly indicated and the correspondence does not contain independent legal opinions or legal advice.
- 2.6.1.6 Litigation paralegals interview witnesses, analyse and digest legal documents, investigate facts, perform legal and factual research, draft pleadings, legal memoranda and briefs, obtain and manage information to assist in trial preparation, assist at trial and aid in preparing appeals.²⁷
- 2.6.1.7 A probate paralegal's responsibilities could include interviewing clients, arranging for collection, valuing and transferring assets, administering estate accounts, analysing the best treatment of asset and distribution to obtain the greatest tax benefit and preparing tax returns.²⁸
- 2.6.1.8 A corporate paralegal is likely to be involved in drafting agreements and employee benefits plans, fulfilling securities reporting requirement and conducting patent and trademark searches.²⁹
- 2.6.1.9 A real estate paralegal drafts transaction documents, prepares foreclosings, and researches title and administrative processes involved in land and environmental issues.³⁰
- 2.6.1.10 A government paralegal works for the Federal Trade Commission, the Justice Department, or even the White House. Depending upon the agency or area of practice, government paralegals perform a wide range of duties, including collecting and evaluating evidence, conducting hearings, drafting proposed legislation and answering inquires about federal laws and regulations.
- 2.6.1.11 Employment law paralegal can draft employee policy and procedures manuals, help facilitate positions in organised labour

²⁷ California alliance of paralegal associations "Paralegal Duties and Skills" Duties and Responsibilities, 5/27/04, www.caparalegal.org/duties.html, pg.2.

²⁸ Ibid.pg.3.

²⁹ Ibid.pg.1.

³⁰ Ibid.pg.3.

campaigns, prepare position papers, complaints and affidavits in discrimination cases and perform work similar to litigation paralegals.

- 2.6.1.12 Paralegals' salaries vary depending on education and experience the paralegal brings to the job, the type of employer, and the geographic location of the job. Generally, a paralegal working for a large law firm in metropolitan areas earns more than a paralegal working for a smaller firm or in a less populated area. Law firms may give paralegals pensions, profit sharing plans and salary increases based upon the firm's profitability. These benefits can be given based upon individual performance and/or the firm's profitability. However, a firm may not base compensation upon the outcome of a case.
- 2.6.1.13 The substantive legal work of a paralegal may be billed directly to the client in the same way an attorney's work is billed. To be billable, however, the work that a paralegal performs must not be clerical or ministerial. In circumstances where "attorneys' fees" are reviewed or awarded by a Court, the paralegals' hours may be recovered as part of the attorney's fee.
- 2.6.1.14 The role of a paralegal in the delivery of legal service is noted widely as it was held in the judgement for costs in the case of *Missouri v. Jenkins*,³¹ that an award of attorney's fee may include the market value of services rendered by paralegals; stating that paralegals are capable of carrying out many tasks, under the supervision of an attorney, that might otherwise be performed by a lawyer and billed at a higher rate.
- 2.6.1.15 Apart from a paralegal being remunerated by clients, Courts also must award costs of the case conducted by a paralegal by evaluating the work performed by the paralegal, its reasonableness and its productivity.³² and not as an element of service fee.
- 2.6.1.16 In the United State of America, and in Los Angeles in particular, it is unlawful for a person to identify himself/herself as a paralegal on any advertisement, letterhead, business card or elsewhere,

³¹ 491 U.S. 274, 109 S.Ct. 2463, 105 L.Ed. 2d 229 (1989).

³² *Consolo v. Geogre*, 58 F.3d 791 (1st Cir.1995).

unless s/he has a training certificate and performs all services under the direction and supervision of an attorney who is an active member of the state bar or an attorney practising law in federal Courts and who is responsible for all of the services performed by the paralegal.³³ The business card of a paralegal shall include the name of the law firm where s/he is employed or a statement that s/he is employed by or contracting with a licensed attorney.

2.6.1.17 Today, there are an estimated 600 paralegal education programs in the United State of America. Paralegal education programs are offered in many formats and lengths. Various kinds of public and private institutions offer paralegal education, including community colleges, four-years colleges and universities, business colleges and proprietary institutions. These institutions make it possible for persons with diverse backgrounds to enter the profession. The most common types of programs are:

- a. Associate Degree Programs: These programs are offered for two years by community colleges, and for four years in colleges, universities and some business schools. Upon successful completion of 60 - 70 semester units, a student earns an associate degree. The curriculum usually consists of approximately half paralegal courses and half courses in general education and related areas. Prospective students should consider whether they might continue their education to earn a four-years degree at another college and, if so, should investigate the transferability of courses in the programs they are considering.
- b. Bachelor Degree Programs: Paralegal education is also offered for four-year colleges and universities which have a paralegal studies major, minor or concentration within a major. Programs are usually about 120 - 130 semester units, including 30 - 60 semester units in paralegal and related courses. Upon successful completion of the program, the student is awarded a baccalaureate degree.

³³ The Business and Profession Code of America, Section 6452.

-
- c. **Certificate Programs:** Various kinds of educational institutions offer paralegal certificate programs ranging from 18 - 60 semester units. Longer programs usually include both general education and paralegal courses similar to associate degree programs. Certificate programs are usually designed for students who already hold an associate or baccalaureate degree.
 - d. **Masters Degree Programs:** A few colleges and universities that offer undergraduate paralegal degree programs are now offering an advanced degree in paralegal studies. Other universities offer advanced degree programs and law-related areas such as legal administration and legal studies.
- 2.6.1.18 The ABA has a program of approving legal assistant training programs, which meet their guidelines. Seeking ABA approval is voluntary on the part of the institution. However, the ABA guidelines are useful in evaluation of a program.
- 2.6.1.19 The Rules of Professional Conduct and Guidelines do not regulate paralegals. These were made nation-wide specifically for lawyers by profession. Paralegals who are members of national, state and local paralegal associations are required to follow the Codes of Ethics of those associations. These codes were made with consideration of requirements of the government ethical conduct of lawyers, which are: -
- a. Maintaining a high level of competence, personal and professional integrity;
 - b. Maintaining a high standard of professional conduct;
 - c. Serving the public interest by contributing to the delivery of quality legal services and the improvement of the legal system;
 - d. Preserving all confidential information provided by the client or acquired from other sources before, during and after the course of the professional relationship;
 - e. Disclosing one's status and title;
 - f. Avoiding the unauthorised practice of law;
 - g. Avoiding conflicts of interest and disclosing conflicts to employers/clients and prospective employers/clients.

2.6.1.20 For example, the California Alliance of Paralegal Association (CAPA) developed the following ethics to guide paralegals in due course of practice: -

- a. That paralegal shall maintain the highest standards of professional and ethical conduct;
- b. A paralegal shall participate in continuing education in order to ensure the highest degree of professional competence;
- c. A paralegal shall always disclose his/her status as a non-lawyer;
- d. A paralegal shall not establish an attorney - client relationship, set fees, sign documents, which require an attorney's signature, or appear in court on behalf of a client, unless authorised by law;
- e. A paralegal shall preserve and protect the confidences, secrets, and information written or oral of a potential, current or prior client and/or attorney, which have been disclosed to the paralegal;
- f. A paralegal shall preserve and protect as privileged all communications of the attorney and the client, which have been disclosed to the paralegal;
- g. A paralegal shall avoid conflicts of interest and immediately disclose in writing any potential conflicts;
- h. A paralegal shall exercise great care and professional judgement in determining the extent to which a client may be assisted without requiring the presence of a licensed attorney; and
- i. A paralegal may communicate legal advice authorised by the attorney to a client so long as they do not interpret or expand upon that advice.³⁴

2.6.2 South Africa

2.6.2.1 Paralegal practice in South Africa traces its origins from the apartheid era in which black people were seeking ways to provide relief to the oppressed natives.³⁵ They decided to introduce the cadre of paralegals to fight against oppression. Black Sash was the first organisation to link formation of the paralegals' movement in South Africa in the year 1955³⁶

³⁴ California Alliance of Paralegal Associations "CAPA's Ethics and Guidelines" www.caparalegal.org/ethics.htm,5/27/04

³⁵ Report of Study Tours conducted by the Paralegal Alliance Zambia, www.ccej.org.zm/ccjp/study_tour.htm,5/27/2004, pg.3.

³⁶ Ibid. pg.4.

2.6.2.2 There are also other organisations, which are involved with the development of paralegal practice in South Africa. These include: -

- a. Legal Resource Centre,
- b. National Community Based Paralegal Association (NCBPA),
and
- c. National Paralegal Institute (NPI).

2.6.2.3 NCBPA is the mother of all paralegal organisations in South Africa. The creation of this organisation brought a lot of relief to paralegal profession that existed under no definite recognition despite being useful in the access to justice, though their objective vary depending on the type of organisation. The main activities of paralegals as set out by NCBP are: -

- a. Counselling, advise and referral;
- b. Demystification and simplification of the law;
- c. Negotiation and mediation;
- d. Accessing social services such as grants and other entitlements for the poor;
- e. Case work on non litigious civil matters;
- f. Research;
- g. Facilitation on community development initiatives;
- h. Advocacy and lobbying;
- i. Representation in conciliation boards and dispute resolution meetings; and
- j. Human Rights education.

2.6.2.4 NCBPA conducts different programmes, which differ in range in which they are executed in providing services to the poor. Some programmes offer free legal advice, case handling, outreach and Human Rights education and referral of clients to other relevant institutions that provide services according to their needs.

2.6.2.5 Until now in South Africa, paralegals are non-recognised cadre nation-wide though their services are recognised. There is neither a code of conduct nor a standard condition of service. However, since there is national campaign for national recognition of paralegals, the NCBPA is expected to fight for national identification of the paralegal cadre and include these important tools when the legislation

to recognise paralegals will be enacted by the South African Parliament.

- 2.6.2.6 Originally, there was no formal training for paralegals in South Africa. The main method used was empowering the communities through informal education. Currently, the paralegals are trained through the National Paralegal Institute, which provides, among other things, a training curriculum. With its committees, this organisation serves as a resource for capacity building. The most recognised training provided is of three months for full time studying and that of part time distance study runs for six months. Some universities also offer paralegal training programmes, for example, Rhodes University.
- 2.6.2.7 Another type of training that the South African paralegals undergo is that of information sharing whereby the paralegals from different organisations sit together and exchange ideas on how paralegals conduct their work and methods used in the discharge of their duties. Paralegal training organisations do provide certificates of attendance, which are not accredited because they are not recognised by law. There is no recognised and established standard of accreditation of paralegal and even universities that have been training the paralegal face the same problem.
- 2.6.2.8 This accreditation problem is in the process of getting a solution as the NPI has undertaken the responsibility of finding a solution by developing a uniform curriculum for paralegals' training. The NPI is also lobbying for the appearance of paralegals in Court as well.³⁷
- 2.6.2.9 As indicated elsewhere in this chapter, South Africa has a Bill that is more relevant as far as Tanzania is concerned. For this reason this part seeks to extract some proposals from the South African Bill.
- 2.6.2.10 The South African Bill makes proposals for the establishment of a Paralegal Committee as a substructure of the Legal Practice Council of South Africa (referred as the Council in this report) with the following objectives: -
- a. To promote access to justice for disadvantaged communities;

³⁷ Ibid. pg.5

-
- b. To promote the development of the paralegal sector;
 - c. To make recommendations to the Council and the Minister on matters pertaining to paralegal practice; and
 - d. To perform such functions as may be prescribed.³⁸

2.6.2.11 The South African Bill provides further that members of Paralegal Committees shall be appointed by the Minister with due consideration of the principle of openness and transparency, the need for fair representation, especially in relation to race, gender and provincial distribution; and the degree of support which each nominee has from relevant constituencies.³⁹

2.6.2.12 The South African Bill provides that the Committee is expected to: -

- a. Make recommendations to the Council and the Minister regarding the regulation of rendering legal services to the public by paralegal practitioners, and on what should be the required qualifications for paralegal practitioners;
- b. Provide training or training programmes for candidates of, paralegal practitioners and to promote the provision of such training by other institutions;
- c. Receive, consider and make recommendations to the Council with regard to applications for the enrolment of paralegal practitioners and to levy a reasonable fee in respect of such applications;
- d. Establish disciplinary committees for considering complaints of misconduct against paralegal practitioners and make recommendations to the Council as to what action should be taken in respect of such complaints;
- e. Monitor the legal service needs of disadvantaged communities and make recommendations to the Council as to how such needs can best be addressed; and
- f. Promote the Paralegal Sector with the object of promoting access to justice for all communities and empowering disadvantaged communities; and on behalf of the Council, maintain a Roll of Registered Practitioners.⁴⁰

³⁸ South Africa Draft Legal Practice Bill, 2002, Section.44(2)

³⁹ Ibid. Section. 45(1).

⁴⁰ Ibid. Section. 46.

2.6.2.13 It is proposed further by the South African Bill that in making a decision concerning the qualification of paralegals or applications for enrolment, all functionaries must take into account academic qualifications, course work training and experiential acquisition of knowledge and skills and have due regard to paralegal practitioners to be able to: -

- a. Communicate effectively orally and in writing;
- b. Assist clients to comply with administrative requirements, such as the completion of official forms;
- c. Understand fundamental legal concepts;
- d. Provide basic legal advice;
- e. Understand the circumstances in which it is appropriate to refer matters to a legal practitioner;
- f. Advise and educate members of communities on Human Rights issues;
- g. Provide services in a specialised area of law, to research, understand and apply the relevant law;
- h. In the case of applications for limited right of appearance in court, understand the legal practitioner's duties as an officer of the court and competently represent the client in the relevant proceedings;
- i. Understand and apply rules of professional conduct and practice management; and
- j. Promote access to justice.⁴¹

2.6.2.14 The South African Bill also proposes that the Code of Conduct for legal practitioners and paralegal practitioners be drawn by the Council, and be made available to all members of the public at all reasonable times. The Council may amend the code from time to time and all legal practitioners and paralegal practitioners are supposed to comply with the code. Failure to do so constitutes misconduct.⁴²

2.6.2.15 The South African Bill also establishes an Investigating Committee with the duty to conduct preliminary investigations of complaints. If satisfied that a practitioner may have been guilty of misconduct, it shall refer the matter to a Disciplinary Committee; if not, it shall inform the complainant and the practitioner of its findings and the

⁴¹ Ibid. Section. 47.

⁴² Ibid. Section. 49

reasons for it. An appeal tribunal is also proposed in the Bill. Procedures to be followed by these Disciplinary Bodies have to be gazetted by the Council.⁴³

- 2.6.2.16 The South African Bill proposes that the paralegal practitioners be governed by regulations, which shall be made by the Minister after consultation with the Council and the Paralegal Committee. They propose further for appearance in courts after determination of some conditions. The Minister may authorise so after consultation with the Chief Justice and in consultation with the Council and the Paralegal Committee through notice in the Gazette.⁴⁴
- 2.6.2.17 In authorising a paralegal practitioner to appear in court, the parties concerned must have regard to the need to ensure that persons appearing in court are represented, where the interests of justice so require; the need to ensure that such representation is adequate and competent; the availability of registered legal practitioners to represent persons in particular courts and in particular areas; and other aspects of the Public interest. The authority of appearance may be given in respect of a stipulated area, court, class or type of case and period.⁴⁵
- 2.6.2.18 The South African Bill also proposes for accreditation of legal advice office in South Africa. It proposes that applicants must be registered in terms of the Non-Profit Organisations Act of 1997 and shall perform all activities in an independent manner in order to be accredited as legal adviser, the applicant must have paralegal and acceptable code of conduct.⁴⁶
- 2.6.2.19 The government of South Africa has taken measures to recognise the paralegal cadre through the Ministry of Justice. The Ministry assists in soliciting for funds for the national body (NCBPA) from the International Commission for Jurists (ICJ) and has been persuading the government to enact a legislation that will recognise paralegals in South Africa.⁴⁷

⁴³ Ibid. Section. 50.

⁴⁴ Ibid. Section. 43 (2).

⁴⁵ Ibid. Section. 43 (4)

⁴⁶ Ibid. Section. 48.

⁴⁷ Op.cit pg.6.

2.6.3 Uganda

- 2.6.3.1 Like many other developing countries, Uganda has characteristics of underdeveloped countries in Africa, let alone the world. The vast majority of Ugandans lack awareness of their constitutional rights and a means of seeking redress for violation of those rights; this and the exorbitant legal fees lead to the quest for legal aid. Worse still is the fact that most legal professionals are situated in major urban centres and the majority of Ugandans do not possess the legal literacy to pursue legal redress *per se*. Because of these reasons and in order to empower rural communities to create accessibility to various avenues of redress for human rights violations, the Foundation for Human Rights Initiative (FHRI)⁴⁸ is one of the most powerful organisations which introduced paralegal services in Uganda. The FHRI was formed in 1991 and established a bedrock paralegal-training programme in order to fulfil the above need.
- 2.6.3.2 For nearly seven years, FHRI conducted paralegal training workshops in different rural districts bearing in mind the gender balance. The targeted group for this training includes responsible community leaders such as sub county chiefs, civil servants, religious leaders, journalists, teachers and NGOs representatives. Rural women are the greatest beneficiaries of the paralegal training programme in several respects.
- 2.6.3.3 Training of paralegals in Uganda is sponsored by NGOs, one among them, is Uganda Gender Resources Centre (UGRC). Training by this NGO aims at bringing gender equity and equality. This organisation visits paralegals and share experience with them. Paralegal training has been successful because of the spirit of volunteerism, which exists in Uganda.⁴⁹
- 2.6.3.4 For a person to be recruited as a paralegal s/he must be proficient in English, motivating, possess organisation skills and must be a community leader. Thereafter the trained paralegal helps to resolve problems in the community through mediation and negotiations; educate community members about their basic statutory, constitutional and international Human Rights; apprise citizens of available legal

⁴⁸ An Independent, Non-Profit Organization committed to the Protection and Promotion of Human Rights and Democracy in Uganda.

⁴⁹ www.dhgender.org/sites/mazing/intern.htm-material.

and non-legal remedies and assist them in accessing these remedies; help find ways of linking aggrieved community members with relevant authorities to seek redress; and ascertain when a particular case should be referred to a legal professional or a Legal Aid Clinic. In short, paralegals are trained to serve as the eyes, ears and voice of the community.

- 2.6.3.5 Uganda has Paralegal Committees, which are established in each county. The Committee consists of five members and has specific mandate of monitoring Human Rights activities in the county and reports, co-ordinates paralegal activities in the county and links paralegals with other agencies and Government Departments. They also organise and conduct Human Rights education in their areas.
- 2.6.3.6 After recruitment, paralegals participate in a three day evaluation workshop. The advantage of this workshop is to give a chance to paralegals to discuss their respective experiences in the field; relate problems they have encountered and devise possible solutions; share client counselling techniques and mediation strategies; collaborate with other paralegals and provide constructive feed back to FHRI Paralegal Support Team. Through this workshop FHRI measures the impact of its training.
- 2.6.3.7 FHRI has "Strategic Assessment Mission Training" where it makes visits to some Districts and sensitise people on basic laws and how to interpret them, develop meaningful networks in their communities to promote and protect Human Rights. Its visits are designed to refresh the paralegals on their training and to assess the progress of their work. In addition, it attempts to understand the paralegals' problems in fighting Human Rights violations and to link the paralegals to the District leaders and to other useful institutions and individuals in their communities.
- 2.6.3.8 Due to Human Rights violations, which exist in Uganda, Ugandans through FHRI introduced the Training of Trainers (ToT) programme with the objectives of empowering participants with better methods of accessing justice at the grass roots. ToT aims at creating a team of cadres, which will sensitise the rural communities about their rights and how to protect and defend them. The team of the paralegal cadre

should be equipped with human rights concepts and skills of disseminating them.⁵⁰

2.6.3.9 It is not clear whether the Ugandan Government is aware or recognises the system of paralegal services, which is spread in many parts of the country. This is so because there is no accreditation programme by government, and there is only one Non Governmental Institution that conducts the training. There is neither a code of conduct governing this cadre nor a regulatory board.

2.6.4 Namibia

2.6.4.1 Unlike in other African countries where paralegals are in great demand and there are proposals to enact legislation to recognise the cadre, paralegal practice in Namibia is at the risk of diminishing due to the increase of the number of practising lawyers.⁵¹

2.6.4.2 There is only one organisation in Namibia, the Legal Assistance Centre (LAC) that was founded in 1989 governing paralegal services.

2.6.4.3 Training of paralegals is done at legal advice centres, which are based in communities and conducted by a paralegal staff that is employed by the centres. LAC is involved in advocacy on legislation and questions of human rights through units. The strong units are gender and juvenile justice.

2.6.4.4 In Namibia, paralegals or/and any body are allowed to argue cases, especially labour matters on behalf of other people or individuals when cases are being reviewed at the level of community tribunals or labour courts. Paralegals are not allowed to represent anybody in courts.

2.6.4.5 All Legal Services Centres in Namibia are financed by LAC, which has no adequate resources. As it becomes expensive to run the centres, some of them are progressively being closed, a phenomenon, which increases the risk of paralegal practice being marginalized.

2.6.4.6 In trying to rescue this cadre, LAC has identified areas of weakness and proposed solutions to overcome the risk and created room where

⁵⁰ www.hri.ca/partners/fhri/activities/cettl.htm.

⁵¹ Op.cit pg.8.

the paralegal services can be rendered efficiently. The following solutions have been identified: -

- a. That there is need for training in special areas within the curriculum, for instance in gender and juvenile.
- b. The need to set up specialised units like gender and street children in paralegal work to support the general paralegal programme.
- c. To set minimum education for paralegals preferably tertiary education.
- d. Generating proactive approaches in community legal empowerment e.g. through education and advocacy for law reforms.
- e. To advocate for the paralegal service to be recognised by the government.

2.6.5 Zimbabwe

2.6.5.1 The paralegal cadre was introduced in 1984.⁵² Following a discussion by legal experts on the need for legal aid and ways to meet the need. It was recommended to set up an organisation, which would help to meet the need for legal aid, by educating people about the law, their rights and duties. For this reason, the Legal Resource Foundation was formed (LRF).

2.6.5.2 Bearing in mind the need for legal aid, LRF prepares programmes to empower disadvantaged people to use the legal system, improve the quality of justice for all Zimbabweans, increase legal awareness in Zimbabwe particularly among the disadvantaged, and make positive input to legislation that supports the development of democratic institutions in Zimbabwe and promotes the growth of human rights culture.

2.6.5.3 This organisation has a paralegal programme under which it runs legal project centres and legal advice centres. These centres offer legal advice to disadvantaged groups of people so that they can know their rights and make a positive contribution to the nation.

⁵² www.ccjp.org.zm/ccjp/study_tour.htm.

-
- 2.6.5.4 Training paralegals is important as it allows them to perform their duties well. In Zimbabwe, paralegals are trained for almost two years, which include in-house training at the centre as well as short residential courses. The training is conducted using a paralegal training manual while a draft long distance training manual for people who cannot afford to pay for the full-time residential training has also been adopted.
- 2.6.5.5 There is a system of four stages training where the trainee is introduced to paralegal work ethics and conduct; taught the basic law, coached on how to handle cases, to conduct interviews, to write will, to conduct negotiations and to carry out mediation and to draft affidavits. He/she is also trained in human rights and community mobilisation, counselling techniques and how to identify people who need counselling and where to refer them. After completing the training stages, paralegals have to attend specialised seminars and workshops on various topics of importance to their work.
- 2.6.5.6 Paralegals promote human rights at grassroots level. Their work is to advise, mediate and counsel but they do not institute any proceedings in court.
- 2.6.5.7 Accreditation of the paralegal cadre seems to be a problem in many countries in Africa, including Zimbabwe. Most African governments have not set mechanisms for accreditation of this cadre. So far, there is no institution to accredit paralegal programmes in Zimbabwe. This is probably due to lack of an umbrella infrastructure that is responsible for the development and coordination of the paralegal cadre. Like other countries, Zimbabwe has no code of conduct for paralegals, although, it is in the process of developing one.⁵³

2.7 Legal Status of Paralegals

- 2.7.1 All of the jurisdictions studied in this chapter with the distinct exception of the United States of America have neither a code of conduct nor standard conditions governing paralegals. This fact has contributed to the accreditation problem. Zimbabwe for instance has just started preparing a code of conduct for paralegals, in spite of

⁵³ *op.cit* pg. 10.

having a well developed curriculum and other training materials, a good system of specific workshops to enhance paralegals' knowledge and a well established publications unit.

- 2.7.2 Provision of legal services by paralegals seems to be picking up fast in Africa even though in Namibia it is diminishing. All the reviewed jurisdictions use paralegals in the provision of legal services and others like Zambia are in the process of recognising and introducing the cadre of paralegals. Paralegals' services that are provided in these countries are not recognised by law with the exception of South Africa where there is at least a Bill⁵⁴
- 2.7.3 Among the reviewed jurisdictions where paralegals provide legal assistance, all are doing so under the umbrella of NGOs. Individual paralegals have to be recognized by these NGOs. By doing this, they attain informal recognition.
- 2.7.4 All jurisdictions under study with the exception of South Africa, do not allow professional or voluntary paralegals to represent clients in courts of law on their own.

⁵⁴ www.cjcp.org.zm/ccjp/study_tour.htm.

CHAPTER THREE

3.0 RESEARCH FINDINGS

- 3.1 This chapter analyses in a comparative perspective, research findings from the field and the practice in other foreign countries that recognize the cadre of paralegals. The main objective is for the Commission to eventually come up with analytical recommendations on the whole question of recognising and instituting a paralegal cadre in Tanzania and on areas of enrolment, qualifications, activities and code of conduct for paralegals.
- 3.2 The chapter goes further to deal with other issues that have a direct bearing on the institution of the paralegal cadre and in particular the question of enrolment of advocates.

3.3 Paralegal Services by NGOs:-

- 3.3.1 It was observed in field research that, in Tanzania paralegal services are provided for by different NGOs. These NGOs offer their services in the form of legal aid, legal awareness campaigns through radio and television programmes and publications; sensitisation of the public on the question of human rights, civic rights and gender rights. Some of the active NGOs are: -
- a. FARAJA Trust Fund based in Morogoro. Its main objective is to fight against HIV/AIDS by counselling and providing financial assistance to the victims as well as widows, orphans and other disadvantaged women.
 - b. TAMWA based in Dar es Salaam. Its main objective is to sensitise the society on gender issues, advocate and lobby for policy and legal changes, which favour the promotion of human rights of women and children through the media.

-
- c. LAC (UDSM) based in Dar es Salaam. The committee concentrates on legal literacy through legal aid clinics and a legal bulletin know as HAKI.
 - d. TAWLA based in Dar es Salaam. The main objective of this organisation is to assist women and children in matters related to their legal rights.
 - e. LHRC based in Dar es Salaam. The main objectives of the centre is to create legal and human rights awareness among the general public and in particular the disadvantaged group through legal and human rights education, civic education and the provision of legal aid.
 - f. KULEANA, based in Mwanza. This organisation as its main objective, the provision of social asylum to street children. This involves counselling as well as offering legal assistance to the children whose rights could be obtained by recourse to the court.
 - g. KIVULINI, Women Volunteers based in Mwanza. This NGO uses paralegals in giving legal aid to the society. It was noted that clients are assisted by the organization in drawing documents and paying court fees for litigants who are unable to do so.

3.3.2 Some NGOs represent parties in courts through advocates who are employed by such NGOs on a permanent or part time basis. On the other hand bush lawyers and public writers who met with the Commission have shown to be able to appear in court and adequately represent interest of clients. They are able to do so because most of them are ex-magistrates, current as well as ex-court clerks, ex-Police Prosecutors, lawyers who are not in the Roll of advocates and well educated individuals.

3.3.3 The issue of recognition of paralegal services by the law was warmly welcomed by most NGOs visited as well as “professional paralegals”. NGOs were of the opinion that they should be accredited

for the provision of paralegal training and services. There should be a paralegal regulatory body with the mandate to categorise the services of the paralegal organisations on what they could do depending on the required standards. Most NGOs offer training to paralegals in the outreach posts. The functions of paralegals in the outreach offices are more focused in provision of legal aid and the provision of public legal awareness programme.

- 3.3.4 Experience in Uganda shows that paralegal training is offered mostly by NGOs. The training offered focuses on the grassroots on rural areas where the observance of human and civic rights is at stake. NGOs organise training for trainers of paralegals who in turn go to train paralegals who offers to provide the services at the grassroots level.

3.3.5 The Commission is of the view that paralegal training could be offered by NGOs only where the purpose is to offer public legal awareness and the provision of legal aid specifically for the disadvantaged.

- 3.3.6 However, when the provisions of the legal services by an individual paralegal or a paralegal organisation are offered for gain it makes sense to establish an institution for the provision of paralegal accreditation. The said institution will be responsible for the coordination of training curriculum, registration and certification and accreditation of other paralegal training institutions.

3.4 The Need for Paralegal Services

- 3.4.1 Stakeholders had differing views on the need for recognizing the paralegal cadre. While most of them including NGOs, paralegals themselves, judges of the High Court and magistrates supported the concept of having paralegal as part of the legal practising profession. Advocates strongly opposed this move and gave their reasons.

-
- 3.4.2 They argued that, since there is an increase of Universities that have faculties of law and that this increase leads to a corresponding increase in law graduates who can be deployed in primary courts as magistrates, which fact will allow advocates to appear in these courts.
- 3.4.3 They further argued that the idea of introducing paralegals in the legal system was mooted some fifteen years ago and yet they have not been so introduced to date. They reckoned that it could take another ten years before they are introduced, by which time the Judiciary will have trained enough Primary Court Magistrates with diplomas before whom advocates may appear.
- 3.4.4 The advocates argued that, the ongoing legal sector reforms will eventually produce enough advocates as well as Primary Court Magistrates to cover the entire country. Generally, advocates argued that there is no need for the institution of the cadre of paralegals because in the time it will take to institute it, there will be enough law graduates and diplomates to do all the work which could be done by paralegals.
- 3.4.5 The need for establishing the paralegal cadre was made abundantly clear in the Commission's Report on the Private Legal Practice in 1987. The situation since that time has not significantly changed. The ratio of the population per advocate has not improved, and the provision of legal services to the disadvantaged has not made any significant strides. There is still great need for legal services in the countryside as well as in urban centres.
- 3.4.6 The admission procedures for advocates into the Roll have contributed a great deal to the small number of advocates in Tanzania. This is why in spite of the fact that Tanzania had the first training institution for lawyers in East Africa; it is the one with the lowest number of advocates. The increase of graduates from the increased number of law training institutions is not a guarantee for having a large number of advocates. It is only a guarantee for having a large number of law graduates, but not necessarily advocates.

3.4.7 The Commission is of the view that in order to provide access of legal services to the large majority of the people, there is need to recognize the existing cadre of “professional paralegals”. The Commission recognizes interventions of the Legal Sector Reform Program, The Local Government Reform Program and The Non Governmental Organizations efforts in the area of improving and providing such services particularly to the poor and disadvantaged groups and in accordance with the PRSP. The Commission however believes that the provision of paralegal services by professional as well as voluntary para legals is still a necessary intervention that is needed to fill the existing gap in the provision of legal services at the grassroots level.

3.5 The Practice of “Professional Paralegals” in Tanzania

3.5.1 In Tanzania there is a large number of people with diverse backgrounds who practise as paralegal for gain. Research has revealed that most of the paralegals use the power of attorney to appear in courts. Besides such appearances of paralegals in courts most of them prepare different documents such as complaints, written statements of defence, transfer deeds, sale documents etc. In such documents, they do not normally indicate that such documents have been drawn by a paralegal.

3.5.2 It was not possible to collect the actual number of those who practice as paralegals, their qualifications, spread in the country and the volume of their business. The reason for this is that “professional paralegals” practise in contravention of the law governing legal practice and as such, they operate underground. However there is no denying that this cadre exists and it is providing a service that has a demand due to the affordable fees charged.

3.5.3 In Musoma where there are more daring “active professional paralegals”, the Resident Magistrate in charge revealed that it is easy for a

document drawn by a paralegal to be identified because most of the necessary requirements are flouted. Most “professional paralegals” in Musoma offer their services in chambers in a style that is similar to that of advocates. They possess a business licence as consultants and in case of drafting legal documents their names do not appear in such documents.

- 3.5.4 Researchers learnt that most “paralegals” hang around court premises pretending to sympathise with litigants who are not represented. Sometimes they attend court proceedings to lure litigants. Sometime these paralegals act as conduits in corruption deals involving magistrates as they pose as friends of the corrupt magistrate.

3.6 Power of Attorney

- 3.6.1 Research has revealed that most of the paralegals appear in courts by using a power of attorney. The Civil Procedure Code, 1966 and Magistrates’ Courts Act, 1984 provide for procedures of representation of parties in the court. Section 33(2) of the Magistrates’ Courts Act, provides for the representation of a party in a civil case by a relative or a member of a household of a party in the Primary Court. The section reads as follows: -

“subject to the provision of subsections (1) and (3) of this section and to any rules of court relating to the representation of parties, a primary court may permit any relative or any member of the household of any party to any proceeding of a civil nature, upon the request of such party, to appear and act for such party.”

- 3.6.2 The Civil Procedure Code under Order III rules 1 and 2 provides for the representation by a person holding powers of attorney.

- 3.6.3 Rule 1 provides that: -

“Any appearance by a party to a suit may be made or done by a party in person or by his recognised agent or by an advocate, duly appointed to act on his behalf.

3.6.4 And rule 2(a) provides as follow: -

“The recognised agent of parties by whom such appearances, applications and acts be made or done by a person holding powers of attorney, authorising them to make and do such appearances, applications and acts on behalf of such parties.”

3.6.5 The point of divergence between the two laws cited above is that, in Primary Courts a person who is allowed to hold a power of attorney should be a relative or a member of a party’s household whereas in other courts, such condition is not stipulated.

3.6.6 It is also important to note the difference between representation by an advocate and by a person holding powers of attorney. In the case of the *National Bank of Commerce v. Vitalis Ayemba*.⁵⁵ a famous paralegal one Makongolo represented the defendant. An objection was raised as to whether a person who holds a power of attorney can represent the party to the proceedings while the party himself is present in court. In interpreting the law cited above, Mwalusanya J. directed his reasoning to the legal maxim: *lex semper intendit quod convenit rationi* (i.e. the law must be taken to intend what is reasonable) Mwalusanya, J. reasoned that: -

“...the reasons as to why one may engage an advocate or a recognised agent are varied. It may be because he is deaf or because he is ill at ease in conducting the case or simply because of legal illiteracy...the party appoints an advocate or recognised agent because of his disability to conduct a case properly.”

Furthermore, the honourable Judge pointed out that both advocates and the recognised agents have just been delegated the same powers: one by virtue of his qualifications as a lawyer, and the other by a deed of special power of attorney. He decided therefore that the question of presence or absence of the represented party in court does not disqualify a person who holds a power of attorney to make representation. This decision, however, was overruled by the Court of

⁵⁵ High Court of Tanzania at Mwanza, High Court Civil Case No. 37 of 1988 (unreported).

Appeal in the case of *Naiman Moiro v. Nailejiet K.J Zablon*.⁵⁶ where Nyalali C.J. had this to say: -

“I am not aware of any provision of law permitting the conduct of a case by a person holding power of attorney where the party concerned is also present in Court.”

3.6.8 With regard to the above decisions of the courts, Chris Peter Maina in his book on Human Rights in Tanzania.⁵⁷ Observed that: -

“this is a legal position which not many advocates would like to hear and live with. This is because, like everybody else in such situation, they jealously guard their profession and would do anything at their power to maintain monopoly over it. And in this struggle they seem to have won the support of the highest Court of the land, which would not like to be bored by lay officers trying to address them, even at the expense of justice.”

3.6.9 In view of the above position of the Court of Appeal, the Commission posits that the use of the power of Attorney by paralegals in court of law where the party is present in court should be legislated against. Instead, the paralegal cadre should be instituted legally and their right to represent parties be clearly spelt out as this report proposes.

3.7 Institutional Structure for “Professional Paralegals” Cadre

3.7.1 Some stakeholders recommended that the registration of paralegals should be under the administration of the Judge in-charge of the High Court District Registry having jurisdiction in the area where the application is made and the applicants should be made to sit for examination before the Judge. The Judge in-charge of such zone should be the Chairman assisted by a Secretariat of four people.

⁵⁶ (1980), TLR 274.

⁵⁷ Pg. 341.

-
- 3.7.2 Other stakeholders, and these were the majority, were of the view that the paralegal cadre should be centrally institutionalised by having a paralegal apex body preferably a council that will deal with the institution, management, co-ordination, accreditation, training, curriculum and discipline of the paralegal cadre.
- 3.7.3 Under the South African Bill referred to above, it is provided that the Minister responsible for the administration of justice may, after consultation with the Council and the Paralegal Committee, make regulations to regulate the rendering of legal services to the public by paralegal practitioners.⁵⁸
- 3.7.4 The bill further proposes that the regulatory body for paralegals would be a Paralegal Committee. This Committee would be a sub structure of the Legal Practice Council.⁵⁹ The composition of the Paralegal Committee includes members of the Legal Practice Council; representatives of paralegals; members from institutions, which offer paralegal training; and representatives of the people benefiting from paralegal services.⁶⁰
- 3.7.5 According to the bill among the powers and functions of a Paralegal Committee are to receive, consider and make recommendations to the Council with regard to applications for the enrolment of paralegal practitioners and to levy reasonable fees in respect of such applications. The Committee is also empowered to establish disciplinary committees to consider complaints of misconduct against paralegal practitioners and make recommendation to the Council as to what action should be taken in respect of such complaints.⁶¹
- 3.7.6 With regard to the institutionalisation of a paralegal cadre, the Commission is of the view that there must be a national institution to be known as National Paralegal Authority (NPA) whose composition is recommended to be: -
- (a) Attorney General Chambers;
 - (b) Judiciary;

⁵⁸ The South African Draft Legal Practice Bill, 2002. Section.43.

⁵⁹ Ibid. Section. 44(1).

⁶⁰ Ibid. Section. 45.

⁶¹ Ibid. Section.46.

-
- (c) Members from the higher learning institution specifically the faculty of law;
 - (d) Tanganyika Law Society;
 - (e) Tanzania Non-Governmental Organisations-TANGO; and
 - (f) Members from paralegals society.

3.7.7 Furthermore the Commission is of the view that the authority should be structured as follows: -

- (a) Chairman;
- (b) Vice Chairman;
- (c) Registrar;
- (d) Counsellors who will be not more than ten; and
- (e) Council's Support Staff.

3.8 Eligibility for Admission to Professional Paralegals Cadre.

3.8.1 It was recommended by stakeholders that a paralegal should have a Certificate in Law and/or Diploma in Law, because the level of education of magistrates in the Primary Courts is equivalent to such qualification. It was further suggested that those who are interested to be enrolled as paralegals should sit for a qualifying examination. The examination should be oral as opposed to written examinations. In the alternative, there should be a panel organised along the lines of the Council for Legal Education at the regional level, but not necessarily of exactly the same composition.

3.8.2 With regard to training the South African bill proposes that the Paralegal Committee would provide training or training programmes for candidates of paralegal practitioners and to promote the provision of such training by other institutions. In addition, the committee is empowered to make recommendations to the council regarding applications by institutions for accreditation as training institutions for paralegal practitioners.

3.8.3 Moreover, the South African bill proposes that the enrolment of paralegals has to take into account academic qualifications, course work training and experiential acquisition of knowledge and skills, and due regard to the need for paralegal practitioners.

3.8.4 The Commission concurs with the proposals in the South African Bill and is of the view that the recommended authority should design the curriculum and examinations for paralegals at the national level. It shall set academic qualifications, knowledge and skills and promote and accredit training of paralegals by training institutions. The number of people with such qualifications still needs to be trained as paralegals. Special training is inevitable. Even retired personnel such as Magistrates should not be enrolled without training.

3.9 Services by Paralegals

- 3.9.1 During the research, it was observed that there are several activities that are performed by paralegals. According to recommendations from the field, paralegals could give legal advice, draw different documents and make court appearance in primary courts. If it should happen that a case goes on appeal, the appellant should hire an advocate because a paralegal is not entitled to appear in higher courts. It was further recommended that paralegals should not be Commissioners for Oaths because they might misuse that power.
- 3.9.2 It was further suggested that paralegals should be working under the supervision of advocates. Where a case is reported in the advocate's chamber and it is decided that it be filed in primary court, a paralegal is assigned to such case. The idea of attaching paralegals to advocates is important because it maintains discipline. It is easy to take disciplinary action on an advocate than on a paralegal that performs his duties independently.
- 3.9.3 According to the 1996 Bomani Report,⁶² it was recommended that properly qualified paralegals should be allowed to appear in primary courts at the first instance and after an appropriate review of the system, they could graduate to represent clients in all subordinate courts. Apart from this specific function of paralegals, the report intimated that the role of the paralegals would not only be that of

⁶² P.68.

supporting legal practitioners but also in filling the void created by the limited size of the legal profession and in particular, public legal awareness.⁶³

3.9.4 As observed in the USA, a paralegal can be employed in a private law firm as well as in the Government. The duties of paralegals also differ widely based on the type of organisation in which they are employed. Paralegals who work for corporations often assist attorneys with employees' contracts, shareholder agreements and employment benefit plans etc. A paralegal often monitors and reviews Government regulations to ensure that the corporation operates within the law.

3.9.5 Under the South African Bill, it was recommended that paralegals would, among other activities, provide basic legal advice, advise and educate members of the community on human rights issues and assist clients to comply with administrative requirements such as completion of official forms. The Bill further recommends that in case of application limited right of appearance in court, paralegal can assume the role as an officer of the court and competently represent the client in court proceedings. However, it is proposed that the appearance of paralegals in courts should be authorised only when the Minister responsible for administration of justice consults with the Chief Justice, Legal Practice Council and the Paralegal Committee.

3.9.6 The Commission recommends the amendment of section 33 of The Magistrates' Courts Act, 1984, Section 41(1) of the Advocates Ordinance, Cap 341 and Section 3 of the Notaries Public and Commissioners for Oaths Ordinance, Cap. 12 to take on board the appearance of paralegals in primary courts. Further, paralegals should be permitted to provide legal advice, and work independently so long as the intention of having paralegals is to make it possible for them to offer representation in primary courts.

⁶³ Ibid.

3.10 Paralegal in Criminal Practice

3.10.1 In field research, it was recommended that paralegals should not entertain criminal cases; instead the DPP should find a way of getting PPs in the primary courts. However, they cautioned that the introduction of PPs in primary courts would cause delay of the determination of cases, a scenario that appears in other courts. It was suggested that the law should specifically prevent paralegals appearing in criminal cases.

3.10.2 The Commission is of the view that there is a need for paralegals to be prosecutors because in primary courts Police Prosecutors are not permitted. The Commission is therefore proposing that parties in primary courts, in defence as well as in prosecution, be represented by paralegals in both criminal and civil matters.

3.11 Code of Conduct for Paralegals

3.11.1 It was recommended in the field that paralegals have to be governed by a code of conduct like advocates. This is in line with the requirement that a paralegal should be working in advocates' chambers. On the question of monitoring the ethics for paralegals, it was suggested that the same body for advocates would discharge such a role.

3.11.2 In South the African bill, it is proposed that the Paralegal Committee is empowered to establish disciplinary committees to consider complaints of misconduct against paralegal practitioners and make recommendations to the Legal Practice Council as to what action should be taken in respect of such complaints.⁶⁴

3.11.3 The Commission is of the view that the National Paralegal Authority should formulate a code of conduct.

⁶⁴ The South African Draft Legal Practice Bill, section 46(g)

3.12 Advocates

- 3.12.1 The practice of advocates was identified in the field to have a close relationship with the establishment of a cadre of paralegals. In this regard it was intimated that the current system of enrolment of advocates is cumbersome and unrealistic as there is no transparent marking scheme, and it is not certain as to how regularly the council sits to interview petitioners. It was noted that in other jurisdictions like Zambia, Kenya and Uganda there are no bar examinations, they have instead established Law Schools that train future advocates follow the pupillage system before enrolment.
- 3.12.2 It was further expressed that most lawyers who are employed in the Public Sector are underpaid; so, in order for them to survive under such situation there is a need for them to be allowed to practice like the case of lecturers of Faculties of Law from the various universities. It was pointed out that not all lawyers in the Public Sector could practice without compromising their duties in the public service. However, it was proposed that such lawyers should only be allowed to engage in private legal practice if their activities will not be in conflict public interest. It was recommended that there is need to establish a Law School in order to hasten the enrolment and increase the number of advocates.
- 3.12.3 According to the Bomani Report, the Council of Legal Education should be entrusted with the responsibility for determining all aspects of applications for admission to the Bar, and that the admission procedures should include these basic elements: -
- a. A person who has successfully completed his/her vocational professional training at the proposed Law School may apply to the Council for Legal Education for admission to the Roll of Advocates.
 - b. The Council for Legal Education should determine the professional competence of the applicant and where necessary the suitability of his/her character for the purposes of the enrolment.

-
- c. All prospective legal practitioners whether in private, in Government service or with the TLC would first be admitted to the Roll of Advocates before engaging in any form of legal practice. This is in consonance with the practice in most Commonwealth countries such as Nigeria, Sierra Leone and Ghana.⁶⁵

3.12.4 The Commission adopts the recommendations of the Bomani Report on the establishment of a Law School; however, the Commission differs on the same report about the role of the Council for Legal Education. The Commission is of the view that a person who has successfully completed his/her vocational professional training at the proposed Law School should be admitted to the Roll of Advocates without undergoing any bar examinations. The role of CLE should be to set and administer curriculum for law school. Furthermore, the Commission is of the view that the ethics for public servants would be in jeopardy should they be allowed to pursue private legal practice.

⁶⁵ Bomani Report pg.67.

CHAPTER FOUR

4.0 CONCLUSION AND RECOMMENDATIONS

4.1 Conclusion

- 4.1.1 The Commission undertook this study in order to propose a legal framework for paralegal practice. The inception of this project is in line with the Commission's strategy of implementation of its public legal awareness programme that entails the provision of legal education at the grassroots level, and availing the legal right of representation to the majority.
- 4.1.2 The Advocates Ordinance prohibits unqualified persons to draft some legal documents.⁶⁶ However, they are allowed to do so if such service is not intended for income generation. While most NGOs' use this opportunity to offer their services free, "professional paralegals" clandestinely offer their services for gain. The establishment of a professional paralegal cadre will legalise what is happening on the ground.
- 4.1.3 It has been learnt from other countries that the motive behind the recognition of the paralegal cadre differs from one jurisdiction to another. In the USA, it was for creating a cadre for assisting attorneys in both private and public institutions. In the USA, a paralegal can neither work as an independent practitioner nor appear in court alone.
- 4.1.4 In the African countries under reference apart from South Africa, the only paralegals operating are voluntary paralegals. The institution and management of these paralegals is NGO based and as far as the functions are concerned, they concentrate strictly in legal aid and public awareness provision and they offer no representation.

⁶⁶ The Advocates Ordinance, Cap 341, Section 43.

-
- 4.1.5 In South Africa, paralegals have been providing legal advice to the disadvantaged groups but they do not appear before the courts. However under the South African Bill the government has proposed that paralegals should appear before the court to represent the parties and perform their activities independently.
- 4.1.6 The Commission has noted that the main reason for the small number of advocates in the country is that the enrollment processes is cumbersome and the system cannot enroll many advocates at one go. The enrollment system used in the East African Community partner states of Kenya and Uganda could prove to be the best option instead of the current crash programme efforts being undertaken.
- 4.1.7 The desire for introducing a cadre of paralegals in Tanzania was prompted by the intention to have representation at the level of Primary Courts and facilitating the expansion of legal services closer to the people.

4.2 Recommendations

- 4.2.1 The Commission recommends that there be enacted a law that will establish the cadre of paralegals. The law so established should take cognisance of the views expressed in this report and the draft bill attached hereto.
- 4.2.2 The Commission recommends that “professional paralegals” be allowed to represent clients in primary courts in both criminal and civil matters. And in this regard the Commission recommends that the Magistrates’ Court Act and the Advocates Ordinance be amended accordingly.
- 4.2.3 That there be establish a body to be known as the National Paralegal Authority that will have the following functions.
- a. Make regulations and rules for the management of paralegals;
 - b. Enrol professional paralegals in a National system;
 - c. Set pan territorial standards for paralegals;
 - d. Design a training curriculum for paralegals;

-
- e. Set National professional examination and certification for paralegals;
 - f. Accredit other training institution;
 - g. Design and institute a code of conduct and ethics for professional paralegals;
 - h. Act as disciplinary authority for paralegals; and
 - i. Set fees for paralegals' service.
- 4.2.4 The Commission recommends that the duties and functions of paralegals shall be specified by the Minister of Justice and Constitutional Affairs in consultation with National Paralegal Authority and by notice in the Gazette.
- 4.2.5 The law to be enacted should prohibit the practice of unregistered and unlicensed paralegals to work as professional paralegals.
- 4.2.6 There is a need to establish a Law School where upon successful completion a lawyer should be subjected to only character vetting before being enrolled.
- 4.2.7 The Commission recommends that Notaries Public and Commissioners for Oaths Ordinance, Cap. 12 be amended so as to permit "professional paralegals" to attest legal documents.

REFERENCES

1. BOOKS:

BRICKMAN, Lester, "Expansion of the Lawyering Process through a New Delivery System: The Emergence and State of Legal Para professionalism," Volume 71, No.7 Columbia Law Review, 1971.

HURLBURT, W. H., The Self-Regulation of the Legal Profession in Canada and in England and Wales, Law Society of Alberta, Alberta Law reform Institute, Canada, 2000.

JACOB, J.I.H., The Fabric of English Civil Justice, London: Stevens & Sons, 1987.

OSBORNE, C., ILEX: Introduction to Legal Practice, Vol. 1, 3rd ed, Sweet & Maxwell, London, 1989.

PETER, C. M., Human Rights in Tanzania: Selected Cases and Materials, Köln: Köppe, 1997.

2. REPORTS:

Law Reform Commission of Tanzania, Report on Private Legal Practice, Dar es Salaam, Tanzania, 1987.

Legal Task Force, Legal Sector Report, Financial and Legal Management Upgrading Project (FILMUP), Dar es Salaam, Tanzania, 1996.

3. WEBSITE MATERIALS:

See the National Association of Legal Assistants Membership, July 1984.

www.nalacampus.com

www.ink.org/public/kala

www.tala.org

See the National Federation of Paralegal Associations, Draft Definition of the Practice of Law, Chicago, Illinois 60611.

www.paralegals.org

www.paralegals.com/Development/modelcode.html

www.paralegals.org/Products

www.geocities.com/empirestateparalegals

See Standing Committee on Legal Assistants: American Bar Association.

www.abanet.org/legalassts/home.html

www.lad.org/TPJ/04/beck.html

www.nala.org/whatis.htm

www.fresnoparalegal.org/membership/membershipapp20011.PDF

See Report of Study Tours: The Paralegal Alliance of Zambia.

www.ccjp.org.zm/study_tour.htm

See California Alliance of Paralegal Association – CAPA: Ethics to Guide Paralegal in their Due Cause of Practice.

www.irell.com/practice/resource_california.html

www.taxlawsb.com/resume/green.htm

www.muw.edu/~dsmith

See Uganda’s Impoverishment in Rural Countries in Africa.

<http://www.hri.ca/partners/fhri/activities/cettl.htm>

See ToT who sensitise others in the rural communities about their rights, how to protect and defend them and also be better equipped with Human Rights concepts and skills of disseminating them.

<http://www.hri.ca/partners/fhri/activities/cettl.htm>

A Draft Bill
For

An Act to establish the National Paralegal Authority and make provisions for the institution, management and development of paralegals, and to provide for other related matters.

(.....)

Enacted by the Parliament of the United Republic of Tanzania

PART I
PRELIMINARY PROVISIONS

Short title and commencement

1. (1) This Act may be cited as the National Paralegals Authority Act, 2004 and shall come into operation on such date as the Minister may, by notice published in the Gazette, appoint.
(2) Notwithstanding subsection (1), the Minister may appoint different dates for the commencement of different Parts or provisions of the Act.

Interpretation

2. In this Act, unless the context otherwise requires:
“Authority” means the National Paralegals Authority established under section 3.
“Chairman” means the chairman of the National Paralegals Authority appointed by the Minister under section;
“Code of Conduct and Ethics” means a written code setting out rules and standards relating to ethics conduct and practice for paralegals. “Councillors” means persons appointed to the Council in terms of section 5(1);
“Court” means a primary court;
“Legal Services” means the provision of assistance or representation to the public relating to the enforcement, protection or interpretation of legal rights or obligations;
“Minister” means the Minister responsible for paralegal services.

“Paralegal”, means a person holding a practicing certificate and registered by the Registrar to National Paralegals Authority; “Practising Certificate” means a qualifying certificate granted to a paralegal. “Registrar” means the Registrar of the Authority appointed under section 6(1).

PART II NATIONAL PARALEGAL AUTHORITY

- Establishment of Authority 3.
- (1) There is hereby established an Authority to be known as the National Paralegal Authority or by its acronym, “NAPA”.
 - (2) The Authority shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of:
 - a. suing and being sued;
 - b. acquiring, holding and disposing real and personal property;
 - c. exercising the powers and performing the functions conferred upon it by or under this Act;
 - d. entering into any contract or any other transactions, and doing or suffering to do all such other acts and things which a body corporate may lawfully perform, do or suffer to be done.
 - (3) The common seal of the Authority shall be duly affixed if witnessed under hand by the Registrar of the Authority and any other person duly authorised on that behalf.
 - (4) A document in writing recording acts or decisions of the Authority may be executed or authenticated on behalf of the Authority under the hand of the Chairman, or Registrar of the Authority.
 - (5) Notwithstanding the preceding provisions of this section the Attorney General shall have the right to intervene in any suit or matter instituted by or against the Authority.

Act No. 16 of
1967

- (6) Where the Attorney General intervenes in any matter in pursuance of subsection (5) the provisions of the Government Proceedings Act, 1967, shall apply in relation to the proceedings of that suit or matter as if it had been instituted by or against the Government.

Functions of the
Authority

4. (1) The functions of the Authority shall be: -
Regulating the rendering of legal services by paralegals.
(2) In particular, but without prejudice to the generality of subsection (1), and in addition to the functions assigned to the Authority under this Act, the Authority shall:
- a. make regulations and rules for the management of paralegals;
 - b. draw up a code of conduct for paralegals.
 - c. design curriculum for paralegal training institutions
 - d. set qualifying examinations, issue certificates and enrol paralegals;
 - e. accredit paralegal training institutions;
 - f. set fees for paralegal services; and
 - g. act as a disciplinary authority for paralegals

Establishment of
the Council

5. (1) There is hereby established a Council, which shall be the governing body of the Authority.
(2) The provisions of the Schedule to this Act shall have effect as to the composition of the Council, tenure of office of its members, terminations of their appointment, the proceedings of the Council and other matters in relation to the council and its members.

Register

6. (1) There shall be a Registrar of the Authority who shall be appointed by the Minister, from amongst a list of three names submitted by the Council.
(2) A person shall not be qualified for appointment as Registrar unless he-
- a. is a law graduate of a recognized university;

-
- b. possesses at least five years experience in legal practice or management of a Non Governmental Organization that deals with paralegals; and
 - c. is willing to serve as the Registrar

- (3) The Registrar shall be appointed to serve on such terms and conditions as shall be set out in the letter of his appointment or as may from time to time be determined by the Council with the approval of the Minister.
- (4) The Registrar shall be the chief executive officer of the Authority and shall not engage in any other paid employment.
- (5) The Registrar shall not participate in any deliberations or decisions of the Council relating to his terms and conditions of employment.
- (6) The Registrar's tenure of office may be terminated in accordance with the Public Service Act for-
 - (a) misconduct;
 - (b) failure or inability to perform the functions of his office arising from infirmity of body or mind; or
 - (c) incompetence.

Act No. 6 of 2002

- (7) The Registrar if aggrieved by the decision to terminate him shall appeal in accordance with the procedure laid down in the Public Service Act, 2002 and regulations.

Duties of the Register

- 7. The Registrar shall-
 - a. be responsible for the day to day operations of the Authority, the proper management of its funds, property and business and for the discipline of the employees of the Authority;
 - b. manage the affairs of the Authority in an efficient and cost effective manner and in accordance with modern management practices and techniques and, in

particular, to apply to its operations the best standards of financial management and accounting;

- c. ensure that the services provided to the Authority's customers are of the highest standard and in accordance with the agreements made with them;
- d. carry out other duties which the Minister or the Council may consider desirable.

Staff and
conditions of
service

- 8. (1) There shall be employed by the Authority such other officers, staff and employees of the Authority of such number and titles as may be necessary for the efficient discharge of the functions of the Authority and on such terms and conditions as may be determined by the Council.
- (2). The Authority may appoint consultants and experts of the Authority in various disciplines on such terms and conditions as the Authority may from time to time determine.
- (3). The Authority shall establish a competitive selection procedure for the appointment of all employees, consultants and experts.

PART III POWERS OF THE AUTHORITY

General power

- 9. Subject to the provisions of this Act the Authority shall have power to do all things, which are necessary for or in connection with the performance of its functions, or to enable it to discharge its duties.

Powers of the
Authority to
borrow

- 10. The Authority may, from time to time borrow money for the purposes of the Authority by way of loans or overdrafts, and upon such security and such terms and conditions relating to the repayment of the principal sum and payment of interest as the Authority may consider fit.

-
- Act No. 33 of 1967
11. The Council may, from time to time, invest any part of the monies available in any funds of the Authority in investments authorized by the Trustees Investments Act, 1967 for investment of any trust fund.
- Delegation of powers
12. Notwithstanding the powers conferred to the Authority to delegate, the Authority shall not delegate any of the following powers, namely to-
- (a) make any rule or declaration;
 - (b) fix the method of calculating and reviewing fees chargeable by paralegals;
 - (c) make a decision to hold an inquiry;
 - (d) adopt a code of conduct; and
 - (e) do such other matters as the Minister may by notice in the Gazette determine.

PART IV

APPLICATION AND REGISTRATION OF PARALEGALS

- Registration of paralegals
13. (1) The application for paralegal practice shall be made to the Registrar.
- (2) The Registrar shall register a paralegal practitioner if he is satisfied that he has met all the conditions for registration as provided by regulations made under this Act and he shall issue a practising certificate to that effect.
- Suspension and removal from Roll
14. (1) A paralegal may be suspended from practising and his name may be removed from the roll by order of the Registrar if he is found guilty of unprofessional conduct.
- (2) Where a paralegal is suspended under this Act, any certificate issued to him under the provisions of section 13 (2) shall be deemed to be suspended for the duration of such period as shall be prescribed by the Registrar.

-
- (3) Any person so suspended or his name has been removed from the roll shall be at liberty to appeal to the chairman against such order within (30) thirty days.
- (4) Pending the hearing of such appeal, the paralegal shall not be entitled to practice.
- (5) On appeal the chairman may confirm or set aside the order appealed against or may vary the period thereof and may make any order incidental to the foregoing that he may deem necessary.
- Offences 15 (1) It shall be an offence for a paralegal to represent two adverse parties in the same suit.
- (2) It shall be an offence for any person to practise without a valid certificate.
- Penalty 16. Any person found guilty under this Act shall be liable to a fine of not less than fifty thousand shillings and for any subsequent offence to a term of imprisonment for a period not exceeding six months.

PART VI MISCELLANEOUS PROVISIONS

- Code of conduct 17 (1) The Authority shall, following consultation with the Minister, draw up a code of conduct in respect of controls on paralegal interests and ethical behaviour to apply to each member of the paralegal cadre.
- (2) The Authority shall publish the code of conduct drawn up under subsection (1).
- Continuation of disciplinary proceedings 18 (1) Where on the effective date-
- a. any proceedings have been initiated against any person and such proceedings are still pending before a court of law or any other authority in the course of being heard or investigated by a court of law or the authority,

-
- had been heard or investigated by any Authority and no order or decision had been rendered thereon; or,
- b. any such person has been interdicted or suspended, the court or authority shall-
- (i) in the case of paragraph (a) carry on and complete the hearing or investigation and make an order or render a decision as the case may be, and
 - (ii) in the case of paragraph (b) deal with such employee in such manner as it thinks appropriate bearing regard to the offence against him, including the disciplinary proceedings and the making of an order or the rendering of a decision, as the case may be.

- (2) Where on the effective date, any penalty (other than a dismissal) has been imposed on any employee of any Authority pursuant to disciplinary proceedings against him and the penalty has not been or remains to be served by such employee, he shall, serve or continue to serve such penalty to its full term as if it had been imposed by the Authority and the penalty shall remain valid against the employee and shall continue in full force and effect until he has served the penalty in full.

Protection of
action taken in
good faith

19. No suit, prosecution or other legal proceeding shall lie against the Authority or any councillor or any officer or other employee of the Authority for anything which is in good faith done or intended to be done in pursuance of this Act or of any rule or regulation made there under.

Regulations

20. The Minister in consultation with the Authority may make regulations for the better carrying out of the provisions of this Act.

Amendment of
certain written
laws

21. The laws specified in the Second Schedule are hereby amended in the manner specified in that Schedule.

FIRST SCHEDULE
(Made under Section 5(2))

COMPOSITION AND PROCEEDING OF THE COUNCIL

- Composition
1. (1) The Council shall consist of:
 - a. The Chairman who shall be appointed by the Minister;
 - b. a vice chairman who shall be appointed by the Minister
 - c. not more than six members, all of whom shall be appointed by the Minister, whether or not in the public service, who possess the necessary qualifications and expertise in respect matters related to the Authority; and
 - d. the Registrar of the Authority
 - (2) In appointing the persons referred to in paragraph (1) (c) the Minister shall have regard to the desirability of appointing persons with experience or qualifications in matters relating to the practice of law and specifically persons associated with the practice of paralegals.
 - (3) The Registrar shall attend all meetings of the Council and may participate in its deliberations, except in matters affecting his own interests, but he shall have no right to vote.
- Secretarial Services
2. The Authority shall provide secretarial services to the Council.
- Vacancy not to invalidate proceeding
3. No act or proceeding of the Council shall be invalid by reason only of the number of members not being complete at the time of such act or proceeding, or of any defect in the appointment of any member or of the fact that any member was at the time disqualified or disentitled as such.
- Terms of tenure
4. A member of the Council, other than an ex-officio member shall, unless his appointment is sooner terminated by the

appointing authority, or he ceases in any other way to be a member, hold office for a period not exceeding three years or for such shorter period as may be in his instrument of appointment and shall be eligible for reappointment for another which final.

- Absence from meetings
5. Where any councillor absents himself from three consecutive meetings of the Council without reasonable excuse, the Council shall advise the Minister of the fact and the Minister shall terminate the appointment of the councillor and appoint another councillor in his place.
- Cessation of office
6. Where any councillor is because of illness, infirmity or absence from the United Republic unable to attend any meeting of the Council, the Minister may appoint a temporary councillor in his place and any such temporary councillor shall cease to hold office on the resumption of office of the substantive councillor.
- Meetings
7. (1) The Council shall hold its meetings as often as the Chairman may determine, but not less than twice in each financial year.
- (2) Any ordinary meeting of the Council shall be convened by the Chairman and the notice specifying the provisional agenda, explanatory memorandum, the place, date and time shall be sent to each councillor at his usual place of business or residence not less than fourteen days before the date of such meeting.
- (2) The Chairman shall be bound to convene a special meeting of the Council upon receipt of a request in writing in that behalf signed by not less than three councillors of the Council within fourteen days before the date of such meeting.
- (3) The Chairman presiding at any meeting of the Council may invite any person who is not a councillor to participate in the deliberations of the Council, but any such person shall not be entitled to vote.

-
- | | |
|--|--|
| Quorum | 8. Four councillors shall form a quorum for a meeting of the Council |
| Council shall regulate its own proceedings | 9. Subject to the provisions of this Schedule and subsection 5(2), the Council shall regulate its own proceedings. |

SECOND SCHEDULE
AMENDMENTS OF CERTAIN WRITTEN LAWS

- | | |
|---|--|
| Amendment of the Magistrates' Courts Act, 1984 (Act No... of 1984 | 1. The Magistrates' Courts Act, 1984 is hereby amended -
(a) in section 2 by adding in its alphabetical order the following definition "paralegal" means a person registered to practice as a paralegal in accordance with the provisions of the National Paralegal Authority Act, 2004; and
(b) in section 33-
(i) in subsection (2) by inserting immediately after the word "a primary court may permit" the words "a paralegal"; and
(ii) in subsection (3) by inserting immediately after the words "duly authorized in that behalf" the words "or a paralegal."
(c) by adding immediately after subsection (3) the following subsection (4)-
"In any proceedings in a primary court, the court shall permit a paralegal to represent any party to any proceeding of a civil or criminal nature upon the request of such party to the proceeding". |
| Amendment of the Advocates ordinance (Cap. 341) | 1. The Advocates Ordinance Cap. 341 is hereby amended-
a. in section 41 by adding immediately after subsection (2) the following subsection (3)-
"Without prejudice to subsections 1 and 2, a paralegal shall act as an agent for suitors, issue out summons, commence, carry on or defend any action, suit or other proceeding in the name of any other person or his own in any cause or matter, civil or criminal in a primary court." |

-
- (b) in subsection (1) of section 43 by inserting immediately after the words “Any unqualified person the following words-“other than a paralegal”

Amendments of
the Notaries
Public and
Commissioners
for Oath
Ordinance
(Cap 12)

1. The Notaries Public and Commissioners for Oaths Ordinance is hereby amended-

- (a) by deleting paragraph (b) of subsection(1) of section 3 and substituting for it the following-
“any person entitled to practice as a paralegal under the National Paralegal Authority Act, 2004”;
- (b) in paragraph (a) of subsection (2) of section 3 by inserting immediately after the words “any advocate” the words “or paralegal”;
- (c) in paragraph (b) of subsection (2) of section 3-
 - (i) by inserting immediately after the words” the roll of advocates” the words “or paralegals”;
 - (ii) by inserting immediately after the word “advocates” the word “paralegal”.