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ORDINANCE NO.V OF 2009

AN

ORDINANCE

to make provisions for free legal assistance to the indigent persons

WHEREAS it is necessary to establish and maintain a public defender and legal aid office to promote justice throughout Pakistan by providing quality and compassionate legal services, protecting individual rights, and advocating as a justice partner for effective defender services and a fair and rational justice system and to ensure equal protection of law to such persons through free legal assistance, advice and representation in the Courts or outside, in the manner hereinafter appearing;

It is hereby enacted as follows:—

CHAPTER-1

PRELIMINARY

1. **Short title, extent and commencement.**—(1) This Ordinance may be called the Public Defender and legal Aid Office Ordinance, 2009.

- (2) It extends to the whole of Pakistan.
- (3) It shall come into force at once.

2. Definitions.—In this Ordinance, unless there is anything repugnant in the subject or context,—

- (a) “Additional Chief Public Defender” means the Additional Chief Public Defender appointed under section 8;
- (b) “Advocate” shall have the same meaning as in the Legal Practitioners and Bar Council Act, 1973 (XXXV of 1973);
- (c) “any other person” means a person for whom the court directs to be represented;
- (d) “Chief Public Defender” means the Chief Public Defender appointed under section 5;
- (e) “Court” includes all courts and tribunals established under the Constitution or under any law;
- (f) “District Public Defender” means the district Public Defender appointed under section 10;
- (g) “Government” means the Government of Pakistan;
- (h) “indigent person” means a person, including a convict or accused of an offence who can not afford to engage an Advocate to represent him/her in any stage of proceedings or case in a Court or under investigation before police;
- (i) “prescribed” means prescribed by the rules or the regulations made under this Ordinance;

- (j) "Public Defender" means a Public Defender appointed under section 12;
- (k) "regulations" means the regulations made under this Ordinance;
- (l) "rules" means the rules made under this Ordinance;
- (m) "office" means the Public Defender and Legal Aid Office established under section 3; and
- (n) "Ordinance" means The Public Defender and Legal Aid Ordinance, 2009.

CHAPTER-II

ESTABLISHMENT, CONSTITUTION AND ADMINISTRATION OF OFFICE

3. **Establishment of the office.** — The Government shall, by notification in the official gazette, establish and maintain an office to be called the Public Defender and Legal Aid Office.

4. **Constitution of the Office.**—(1) The office shall consist of the Chief Public Defender, the Additional Chief Public Defenders, the District Public Defenders and the Public Defenders.

(2) The Additional Chief Public Defenders, the District Public Defenders and the Public Defenders shall perform their duties under the administrative control of the Chief Public Defender.

(3) The Government may make appointments under the Ordinance in accordance with the Contract Recruitment Policy of the Government or as may be prescribed.

(4) The promotion or transfer in the office shall be made in the manner as may be prescribed.

(5) The Government shall exercise the general control and supervision over the office.

(6) The Government may direct the Chief Public Defender, an Additional Chief Public Defender, a District Public Defender or a Public Defender to represent an indigent person in a Court or provide him free legal assistance or advice.

(7) Any court may direct the Chief Public Defender, an Additional Chief Public Defender, a District Public Defender or a Public Defender to represent any person including indigent person in Court for whom the court considers, on any ground that such person should be represented by such officer.

CHAPTER-III

CHIEF PUBLIC DEFENDER AND ADDITIONAL CHIEF PUBLIC DEFENDERS

5. **Chief Public Defender.**—(1) The Chief Public Defender, who shall be the head of the office, shall be appointed by the Government, on such terms and conditions as may be determined.

(2) The Chief Public Defender shall hold office for non-renewable term of three years.

(3) The terms and conditions of the Chief Public Defender shall not be varied during his term in office.

(4) The Chief Public Defender may resign his office by writing under his hand addressed to the Government and shall cease to hold office upon acceptance of his resignation.

(5) The Government may, after providing an opportunity of being heard, remove the Chief Public Defender during the term of his office on the grounds and following the procedure provided under Governments Servants (Efficiency and Discipline) Rules, 1973.

6. **Qualifications of Chief Public Defender.**—A person shall not be appointed as the Chief Public Defender unless he is a citizen of Pakistan, is not less than forty five years of age, is of high prominence and his integrity is beyond doubt and he has, for a period of, or for the periods aggregating, not less than 15 years, been an Advocate of the Supreme Court or High Court.

7. **Functions and powers of Chief Public Defender.**—(1) The Chief Public Defender shall—

- (a) administer and manage the office under the general supervision and control of the Government;
- (b) allocate work to the Additional Chief Public Defenders, the District Public Defenders and the Public Defenders;

- (c) Keep the Government informed about the performance of the office;
- (d) Evaluate and monitor the performance and conduct of the Additional Chief Public Defenders, the District Public Defenders and the Public Defenders; and
- (e) Perform such other functions as may be assigned to him by the Government.

(2) The Chief Public Defender may—

- (a) represent an indigent person or any other person before a Court;
- (b) give legal assistance or advice to the indigent person;
- (c) refer cases of an indigent person to an Additional Chief Public Defender, District Public Defender or a Public Defender; and
- (d) refer a matter to the Government for initiating a disciplinary action against an Additional Chief Public Defender, a District Public Defender or a Public Defender on the grounds and following the procedure provided under the Government Servants (Efficiency and Discipline) Rules, 1973.

(3) The Chief Public Defender may delegate any of his powers to an Additional Chief Public Defender or a District Public Defender.

8. Appointment of Additional Chief Public Defenders.— (1) The Government may appoint such number of Additional Chief Public Defenders on the terms and conditions as it may determine.

(2) The Additional Chief Public Defender shall be a person who has, for a period of ten years, been an Advocate of the High Court.

9. Functions of Additional Chief Public Defender. — The Additional Chief Public Defender shall —

- (a) assist the Chief Public Defender in discharge of his official duties;
- (b) give free legal assistance or advice to indigent person;
- (c) represent an indigent person or any other person before a Court;

- (d) submit a monthly performance report to the Chief Public Defender; and
- (e) perform such other functions as may be assigned to him by the Chief Public Defender.

CHAPTER-IV

DISTRICT PUBLIC DEFENDERS AND PUBLIC DEFENDERS

10. Appointment of District Public Defender.— (1) The Government may appoint a District Public Defender in a district on such terms and conditions as it may determine.

(2) The District Public Defender shall be a person who has, for a period of not less than seven years, been an Advocate of the High Court.

11. Functions of District Public Defender. — (1) The District Public Defender shall—

- (a) assist the Chief Public Defender and Additional Chief Public Defender in discharge of his official duties;
- (b) have authority to visit the Jails of his District during the office hours with prior intimation for identification of indigent persons, where there is no Jail in a district shall have authority to visit the Jails, where the prisoners of that district are officially kept;
- (c) submit a monthly performance report to the Chief Public Defender, Additional Chief Public Defender; and
- (d) perform such other functions as may be assigned to him by the Chief Public Defender / Additional Chief Public Defender.

(2) The District Public Defender may—

- (a) determine a person as an indigent for entitlement to free legal assistance or advice within his district; and
- (b) represent an indigent person or any other person before a Court.

12. Appointment of Public Defenders.—(1) The Government may appoint at least one Public Defender in each Tehsil of District and such number of

Public Defenders as may be determined keeping in view the work load at the District headquarter or Tehsil in a district on such terms and conditions as it may determine.

(2) The Public Defender shall be a person who has, for a period of at least three years, been an Advocate.

13. **Functions of Public Defenders.**— A Public Defender shall—

(a) At Tehsil level—

- (i) determine a person residing within his jurisdiction as an indigent person for entitlement to free legal assistance and advice;
- (ii) give free legal assistance or advice to indigent person;
- (iii) represent an indigent person or any other person in a Court;
- (iv) submit a monthly performance report to the District Public Defender; and
- (v) perform such other functions as may be assigned to him by the District Public Defender.

(b) At District level

- (i) assist the District Public Defender in discharge of his official duties; and
- (ii) Perform such functions as may be assigned to him by District Public Defender.

CHAPTER-V

PROCEDURE, DETERMINATION AND REPRESENTATION

14. **Procedure for legal assistance.**—(1) An indigent person who desires to avail free legal assistance or advice may submit an application to the Government, the Chief Public or Additional Chief Public Defender or the District Public Defender or the Public Defender at Tehsil and on receipt of the application such person shall be entitled to free legal assistance or advice. The Government, the Chief Public Defender or Additional Chief Public Defender, or the District Public Defender or the Public Defender at Tehsil, as the case may be, shall arrange for the representation of such person or provide legal assistance or advice.

(2) In case such person is in jail, the application shall be submitted through the Superintendent Jail.

(3) Where the person in need of free legal assistance, is under the age of eighteen years, insane or is otherwise unable to make an application, any other person interested in the welfare of such person may submit the application on behalf of such person.

(4) The application under sub-section (1) shall be accompanied by an affidavit to the effect that such person is an indigent person. No further enquiry shall be made regarding the determination of indigency.

(5) The provision of sub-section (4) shall not apply to a person who is in jail or in police custody.

(6) Notwithstanding the provisions of this section, the Government may direct the Chief Public Defender or Additional Chief Public Defender, or a District Public Defender or a Public Defender at Tehsil to provide free legal assistance or advice to an indigent person.

(7) Notwithstanding, the above provisions any court may direct the Chief Public Defender, or Additional Chief Public Defender, or District Public Defender or Public Defender at Tehsil to represent any indigent person or any other person in the court at any stage of case or proceedings starting from the stage of remand of an accused when he is in police custody till final decision of a criminal case and at any stage of any other case.

CHAPTER—VI

MISCELLANEOUS

15. Staff.—(1) The Government may create posts in the office consisting of various categories of employees.

(2) The Chief Public Defender shall, with the approval of the Government, appoint the subordinate staff of the office.

(3) The Chief Public Defender shall, with the approval of the Government, determine the terms and conditions of service of the subordinate staff.

16. **Public Servant.**—The Chief Public Defender, the Additional Chief Public Defenders, the District Public Defenders, the Public Defenders and the subordinate staff of the Service shall be deemed to be public servants within the meanings of section 21 of the Pakistan Panel Code, 1860 (XLV of 1860).

17. **Submission of Report.** — (1) The Chief Public Defender shall, within the period of three months of closing of the financial year, submit annual audit and performance report to the Government.

(2) The Government shall, within two months of receipt of the report submit the same before the National Assembly of Pakistan.

18. **Ordinance not to override other laws.**— The provisions of this Ordinance shall be in addition to and not in derogation of any other law for the time being in force.

19. **Rules.**— The Government may, by notification, make rules to carry out the purposes of this Ordinance.

20. **Regulations.**— Subject to the provisions of this Ordinance and the rules, the Chief Public Defender may make regulations to give effect to the provisions of this Ordinance.

STATEMENT OF OBJECTS AND REASONS

It is necessary to establish and maintain a public defender and legal aid office to promote justice throughout Pakistan by providing quality and compassionate legal services, protecting individual rights, and advocating as a justice partner for effective defender services and a fair and rational justice system and to ensure equal protection of law to such persons through free legal assistance, advice and representation in the Courts or outside.

2. Ordinance seeks to achieve the above cited objects.

MINISTER-IN-CHARGE