



7 August 2020

**To: Minister for Justice
Hon. Dr. Mwigulu Lameck Nchemba (MP),
Minister for Constitutional and Legal Affairs,
P.o.Box 315,
Dodoma
Tanzania
email: katibumkuu@sheria.go.tz**

**Cc: Attorney General of the Republic of Tanzania
Dr. Adelardus Kilangi,
P.o.Box 630,
Dodoma,
Tanzania**

Per email: info@agctz.go.tz

RE: The Written Laws Miscellaneous Amendments Act no. 3 (2020)

1. The above subject matter refers.
2. The undersigned organisations are concerned about the recently enacted Written Laws Miscellaneous Amendments Act no. 3 (2020) (hereinafter referred to as the Act) which was published by the Government of Tanzania on 17 June 2020.
3. The passing of the Act has raised concerns among the international community at large including both local and regional civil society organisations, particularly with regards to the implications of the Act on the rule of law, equality and the principle of separation of powers in Tanzania. We would like to bring to your attention our concerns with the amendments made to the following pieces of legislation:

- 3.1 The Basic Rights and Duties Enforcement Act,
- 3.2 The National Assembly (Administration) Act.



4. Basic Rights and Duties Enforcement Act [Section 7 (b)(2) of the Act]

- 4.1 This amendment requires all applications made to the High Court challenging violations of the Bill of Rights as enshrined in the Constitution of the Republic of Tanzania (hereinafter referred to as the Constitution), to be accompanied by an affidavit made by a person who is personally affected by the alleged violation.
- 4.3 The matter which the Act seeks to achieve has already been decided in 2013, by the High Court in the case of *Legal and Human Rights Center v. Mizengo Peter Pinda and the Attorney General*; whereby the High Court stated that, Article 26(2) of the Constitution gives room for any person, including both persons directly affected and persons not directly affected by the alleged violation, to institute the proceedings before a court.
- 4.4 The requirement for a Constitutional petition to be accompanied by an affidavit of a person who is personally affected is contrary to the principles of a constitutional democracy seeking to protect and uphold fundamental human rights. It creates a barrier to access to justice especially for the most vulnerable who are unable to self-represent in contravention of Tanzania's international, regional and domestic human rights obligations.
- 4.5 The amendment is incompatible Article 30(1) of the Treaty establishing the East African Community, which entrench the right to every person to institute a case in the East African Court of Justice challenging any violation of the Treaty. No mandatory requirement that the person initiating such a case has to be personally affected and file an affidavit exists.

5. Basic Rights and Duties Enforcement Act (BRADEA) [Section 7(b)(4) of the Act]

- 5.1 The amendment provides that any suit against the President, Vice President, Prime Minister, Chief Justice and Speaker (hereinafter referred to as the President and others) under any application brought in Court under the BRADEA will be brought against the Attorney General.
- 5.2 The Act, in relieving the President and others, from any suit being brought against them, has brought consequential amendments to other laws which provide for similar effects on an overall lack of liability of the President and



others. These laws are the Presidential Affairs Act and the Law Reform (Fatal Accident and Miscellaneous Revision) Act.

5.1 This amendment relieves the President and others of their obligations under their oaths of office to uphold and defend the Constitution.

5.2 This amendment is in contravention of the principle of the rule of law and in particular Article 26(1) of the Constitution which provides that everyone has a duty to observe and abide by the provisions of the Constitution.

5.3 This amendment is in contravention of Article 13 of the Constitution which provides for equality before the law, emphasizing that all persons are equal before the law and no law shall be enacted that is discriminatory and that no person shall be discriminated against in the discharge of the functions or business of any state office.

5.4 This provision is in contravention of Article 3 of the African Charter on Human and Peoples' Rights which states:

1. *“Every individual shall be equal before the law.*
2. *Every individual shall be entitled to equal protection of the law.”*

5.5 In addition, this provision is in contravention of Article 10 of the African Charter on Democracy Elections and Governance which states:

“State parties shall entrench the principle of the supremacy of the constitution in the political organization of the State...State Parties shall protect the right to equality before the law and equal protection by the law as a fundamental precondition for a just and democratic society”

5.6 This provision is also in contravention with Article 14 of the International Convention on Civil and Political Rights, which states:

“All persons shall be equal before the courts and tribunals...”

6. The National Assembly (Administration) Act [Amending Section 5 and 7]

6.1 The Act amends Section 5 of the National Assembly Administration Act by adding the words ‘upon approval by the president’. Thus, a commission of the



- national assembly will not pass any activity prior to the approval of the president.
- 6.2 The Act is in direct contradiction with Article 62 of the Constitution, which states that: *'There shall be a Parliament of the United Republic which shall consist of two parts, that is to say, the President and the National Assembly.'*
- 6.3 The amendment is in contravention of the principle of separation of powers as enshrined in Article 4 of the Constitution as it purports to bestow upon the President the powers to interfere with and control the administration of the National Assembly.
- 6.4 The amendment further contradicts Article 63 of the Constitution which provides the following:
- "The second part of Parliament shall be the principal organ of the United Republic which shall have the authority on behalf of the people to oversee and advise the Government of the United Republic and all its organs in the discharge of their respective responsibilities in accordance with this Constitution".*
- 6.5 The amendment is in contravention of Article 3 of the African Charter on Democracy Elections and Governance which provides for the separation of powers.
7. Considering the aforementioned concerns, we make the following recommendations for your consideration we urge the Attorney General and Minister of Justice to:
- 7.1 Refrain from violating Article 26 of the Constitution by curtailing the initiation of litigation in the public interest and to not violate the provisions enshrined in Article 107 of the Constitution which effective access to justice.
- 7.2 Bring before Parliament amendments of sections of the Act which provide immunity for public officials, which is in contravention of the Constitution and international norms and standards.
- 7.3 Implore Parliament to exercise its powers as mandated by the Constitution, to amend the Act including all sections that violate the sanctity of the Constitution and international human rights law.



8. Moreover, we implore Parliament to:

- 8.1 Respect the principle of separation of powers in the execution of all of its duties including the enactment of legislation.
- 8.2 Repeal Section 7 (b)(2) of the of the Basic Rights and Duties Enforcement Act and bring the Act into line with the Constitution and international human rights law.
- 8.3 Repeal Section 5 and 7 the National Assembly (Administration) Act and bring the Act into line with the Constitution and international human rights law.

We thank you for your attention to these critical issues.

Signed by:

- 1. Kaajal Ramjathan-Keogh; Executive Director; Southern Africa Litigation Centre**
- 2. Stanley Nyamanhindi, CEO; SADC Lawyers Association**
- 3. Deus Valentine, CEO; Centre for Strategic Litigation**