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THE WRITTEN LAWS (MISCELLANEOUS AMENDMENTS)(NO.2) ACT, 2018

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NOTICE

This Bill to be submitted to the National Assembly is published for general information to the public together with a statement of its objects and reasons.

Dodoma
7 June, 2018

JOHN W.H.KIJAZI
Secretary to the Cabinet

A Bill
for

An Act to amend certain written laws.

ENACTED by Parliament of the United Republic of Tanzania.

PART I
PRELIMINARY PROVISIONS

Short title **1.** This Act may be cited as the Written Laws (Miscellaneous Amendments) (No.2) Act, 2018.

Amendments of certain written laws **2.** The written laws specified in various Parts of this Act are amended in the manner specified in their respective Parts.

PART II
AMENDMENT OF THE ADMINISTRATOR-GENERAL
(POWERS AND FUNCTIONS) ACT,
(CAP.27)

Construction Cap. 27 **3.** This Part shall be read as one with the Administrator-General (Powers and Functions) Act, hereinafter referred to as the “principal Act”.

Amendment of section 2 **4.** The principal Act is amended in section 2, by-
(a) deleting the definition of the term “Administrator-General” and substituting for it the following:

““Administrator-General” means a person appointed as such under section 4(1) and includes a Deputy Administrator-General;”

(b) adding in the appropriate alphabetical order the following new definitions:

Cap. 341 ““Advocates Committee” means the Advocates Committee established as such under section 4 of the Advocates Act;

“Assistant Administrator-General” means a person appointed as such under section 4(2); and

Cap.245 “Ministerial Advisory Board” means the Ministerial Advisory Board of the Registration, Insolvency and Trusteeship Agency established in terms of the Executive Agencies Act;”

Addition of section 3A

5. The principal Act is amended by adding immediately after section 3, the following new section:

“Functions of Ministerial Advisory Board
Cap. 245

3A.-(1) The Ministerial Advisory Board shall, in addition to the functions stipulated in terms of the Executive Agencies Act, advise the Minister on matters relating to conduct and performance of the Administrator-General in the discharge of functions under any other written laws.

(2) The Ministerial Advisory Board shall cause to be prepared bi-annual reports which shall be submitted to the Minister and a copy to the Attorney General for advice in relation to the functions performed by the Administrator-General as a corporation sole.”

Amendment of section 4

6. The principal Act is amended in section 4, by-

(a) deleting subsection (1) and substituting for it the following:

“(1) The President shall appoint an Administrator-General and a Deputy Administrator-General from amongst persons with qualifications to be appointed as Judge of the High Court of Tanzania.”

(b) adding immediately after subsection (1) the following:

“(2) The Minister shall appoint such number of Assistant Administrators-General from amongst law officers in the public service as may be required.”

(c) re-numbering subsections (2) and (3) as subsections (3) and (4) respectively;

(d) deleting the words “or an Assistant Administrator-General” appearing in subsection (4) as renumbered; and

(e) adding immediately after subsection (4) as renumbered the following new subsections:

“(5) Subject to the Executive Agencies Act, the Administrator-General shall be the Chief Executive Officer of the Registration, Insolvency and Trusteeship Agency and shall perform functions and exercise powers vested in him under the following laws-

Cap.25
Cap.108
Cap.212
Cap.13
Cap.29
Cap. 352
Cap.31
Cap.318

- (a) the Bankruptcy Act;
- (b) the Births and Deaths Registration Act;
- (c) the Companies Act;
- (d) the Law of the Child Act,;
- (e) the Law of Marriage Act,
- (f) the Probate and Administration of Estates Act;
- (g) the Public Trustee Act;
- (h) the Trustees’ Incorporation Act; and
- (i) any other law in force in the United Republic which may vest powers upon the Administrator- General.

(6) The Administrator-General may, for purposes of better management and organisation of the Registration, Insolvency and Trusteeship Agency, issue General or Standing Orders, Practice Notes and other instruments as he deems fit.

(7) A staff in the Registration, Insolvency and Trusteeship Agency who fails to comply with the orders, practice notes and other instruments issued under subsection (6) commits a misconduct and shall be dealt with by the Deputy Administrator-General.”

PART III
AMENDMENT OF THE CRIMINAL PROCEDURE ACT,
(CAP. 20)

Construction
Cap. 20

7. This Part shall be read as one with the Criminal Procedure Act, hereinafter referred to as the “principal Act”.

Amendment
of section 2

8. The principal Act is amended in section 2 by deleting the definition of the term “public prosecutor” and substituting for it the following-

Cap.430

““public prosecutor” means a Law Officer or a State Attorney appointed under section 5 of the National Prosecutions Service Act and includes the Director of Public Prosecutions, the Deputy Director of Public Prosecutions or any other person acting in criminal proceedings under the directions of the Director of Public Prosecutions;”

Amendment
of section 57

9. The principal Act is amended in section 57 by adding immediately after subsection (4) the following new subsections:

“(5) An interview of a person by a police officer under this section may, if available, be undertaken using an audio or video recording device and in such circumstances-

- (a) any machine which can make an audio or video recording may be used;
- (b) the person being interviewed shall be informed of the use of such recording device;
- (c) a copy of the recording shall be made available to the person or his legal representative immediately after that interview; and
- (d) a certificate of completion of the interview shall be filled in by the police officer in accordance with the requirements of subsection (3) and the person shall sign the certificate and be supplied with a copy of that certificate, save that, the requirement to read, initial each page of the record and sign the certificate at the end of the record shall not apply.

(6) The recording shall be used as evidence of the content and conduct of the interview without the requirement for a written record.

(7) The Chief Justice may make rules for carrying out the provisions of subsection (5).”

Amendment
of section 73

10. The principal Act is amended in section 73 by adding at the end of paragraph (e) the words “offences under the Drug Enforcement Control Act and offences under any other written law”.

Amendment
of section 169

11. The principal Act is amended in section 169-

(a) in subsection (2), by adding immediately after paragraph (c) the following new paragraph:

“(d) all the circumstances of the offence, including the circumstances in which the evidence was obtained.”

(b) by adding immediately after subsection (3) the following new subsections:

“(4) The court shall, prior to exclusion of any evidence in accordance with subsection (1), be satisfied that the failure or breach was significant and substantial and that its exclusion is necessary for the fairness of the proceedings.

(5) Where the court excludes evidence on the basis of this provision it shall explain the reasons for such decision.”; and

(c) by renumbering subsection (4) as subsection (6).

Repeal and
replacement of
section 188

12. The principal Act is amended by repealing section 188 and replacing it with the following:

“Court may
prohibit
publication
of names,
etc., of
parties or
witnesses
Cap.6

188.-(1) Notwithstanding any other written law, at any stage of the proceedings under this Act, the court may, upon an ex-parte application by the Director of Public Prosecutions, order-

(a) a witness testimony to be given through video conferencing in accordance with the provision of the Evidence Act;

(b) non-disclosure or limitation as to the identity and whereabouts of a witness, taking into account the security of a witness;

(c) non-disclosure of statements or documents likely to lead to the identification of a witness; or

(d) any other protection measure as the court may consider appropriate.

(2) Where the court orders for protection measures under paragraph (b) and (c) relevant witness statements or documents shall not be disclosed to the accused during committal or trial.

(3) The Chief Justice may make rules for better carrying out the provisions of this section.”

Addition of
section 205A

13. The principal Act is amended by adding immediately after section 205 the following new section.

“Matter or
thing duly
submitted for
examination
or analysis

205A.- (1) Any document purporting to be a report under the hand of a cyber-forensic expert, ballistic expert or any other expert over any matter or thing duly submitted to him for examination or analysis in the course of any proceedings under this Act may be used as evidence in any inquiry, trial or other proceedings under this Act.

(2) The court may presume that the signature to any such document is genuine and the person signing it held the

office or expertise which he professed to hold at the time of signing it.”.

**PART IV
AMENDMENT OF THE EXTRADITION ACT,
(CAP. 368)**

Construction
Cap.368

14. This Part shall be read as one with the Extradition Act, hereinafter referred to as the “principal Act”.

Repeal of
section 9

15. The principal Act is amended by repealing section 9.

Amendment of
section 10

16. The principal Act is amended in section 10 by deleting the words “or if directions in the nature of *habeas corpus* are issued, after the decision of the court upon the return to the directions,”.

Amendment of
section 16

17. The principal Act is amended in section 16 by deleting subsection (2) and substituting for it the following:

“(2) Subject to the provisions of section 28, a fugitive criminal shall not be surrendered under Part II of this Act unless provision is made by the law of the country to which he is to be surrendered, or by agreement, that the fugitive criminal shall not, unless he has been restored or had an opportunity of returning to Tanzania, be detained or tried in that country for any offence committed prior to his surrender other than an extradition crime proved by the facts on which the surrender is grounded.”

**PART V
AMENDMENT OF THE INTERPRETATION OF LAWS ACT,
(CAP. 1)**

Construction
Cap.1

18. This Part shall be read as one with the Interpretation of Laws Act, hereinafter referred to as the “principal Act”.

Amendment
of section 4

19. The principal Act is amended in section 4, by-

(a) deleting the definition of the term “Law Officer” and substituting for it the following:

““Law Officer” means the Attorney General, the Deputy Attorney General, the Director of Public Prosecutions, the Administrator-General, the Solicitor-General, the Deputy Director of Public Prosecutions, the Deputy Solicitor-General, the Chief Parliamentary Draftsman and every legally qualified State Attorney in the public service of the rank of or above Senior State Attorney or Senior Parliamentary Draftsman;”;

(b) deleting the words “and includes a Deputy Attorney-General” appearing in the definition of the words “Permanent Secretary”.

**PART VI
AMENDMENT OF THE LAW OF LIMITATION ACT,
CAP. 89**

Construction
Cap. 89 **20.** This Part shall be read as one with the Law of Limitation Act, hereinafter referred to as the “principal Act”.

Amendment
of section 44 **21.** The principal Act is amended in section 44 by adding immediately after subsection (4) the following new subsection-
 “(5) The Minister may make regulations for better carrying out of the provisions of this section.”.

**PART VII
AMENDMENT OF THE LAW REFORM COMMISSION OF TANZANIA ACT,
(CAP. 171)**

Construction
Cap.171 **22.** This Part shall be read as one with the Law Reform Commission of Tanzania Act, hereinafter referred to as the “principal Act”.

Amendment
of section 2 **23.** The principal Act is amended in section 2 by adding immediately after the words “by the” appearing in the definition of the term “reference” the words “Minister or the”.

Amendment
of section 4 **24.** The principal Act is amended in section 4(2), by –
(a) adding immediately after the words “submit to the” appearing in paragraph (c) the words “Minister and a copy to the”;
(b) adding immediately after the words “instance of the” appearing in paragraph (e) the words “Minister or the”;
(c) adding immediately after paragraph (e) the following new paragraphs:
 “(f) upon request, comment and give advice to the Inter-Ministerial Technical Committee on the proposal to enact a law with a view to ensuring systematic development of the law in the country;
 (g) assess the implementation of written laws.”.

Amendment
of section 5 **25.** The principal Act is amended in section 5 by deleting the words “not less than four and not more than nine other” appearing in subsection (1) and substituting for them the word “two part-time”.

Amendment
of section 6 **26.** The principal Act is amended in section 6, by-
(a) deleting subsection (2) and substituting for it the following:
 “(2) A Commissioner shall be appointed as a part-time Commissioner and shall, unless he sooner resigns or ceases to be a Commissioner in any other way, hold office for a term of three years from the date of his appointment, and shall be eligible for re-appointment.”;
(b) deleting subsections (4) and (5) and substituting for them the following:

“(4) A holder of a high judicial office shall not be appointed as a Commissioner unless such person is appointed as a Chairman.

(5) The appointment of, or service by a person who holds a high judicial office as a Commissioner, shall not affect his tenure of that high judicial office or his rank, title, status, precedence, salary or allowance of any kind or other rights or privilege as the holder of that office.”;

(c) deleting subsection (6); and

(d) renumbering subsection (7) as subsection (6).

Amendment
of section 8

27. The principal Act is amended in section 8:

(a) by deleting the marginal note and substituting for it the following:

“Reference of matters to Commission”;

(b) in subsection (1), by deleting the words “Attorney General shall” and substituting for them the words “Minister may”;

(c) by deleting the word “The” appearing at the beginning of subsections (3) and (4) and substituting for it the words “The Minister or the” respectively.

Amendment
of section 9

28. The principal Act is amended in section 9 by deleting subsection (1) and substituting for it the following:

“(1) The Commission may, subject to informing the Minister and the Attorney General, in that behalf, undertake the examination of any matter without waiting for a reference on it by the Minister or Attorney General as the case may be.”

Amendment
of section 11

29. The principal Act is amended in section 11(1) by adding immediately after the words “Commission to the” appearing in the third line the words “Minister or the”.

Amendment
of section 14

30. The principal Act is amended in section 14 by deleting subsection (2) and substituting for it the following:

“(2) Where the Minister or the Attorney General has referred a matter to the Commission, the Commission may, at any time before making its report in pursuance of the reference, submit to the Minister or the Attorney General an interim report on its work under the reference.”

Amendment
of section 16

31. The principal Act is amended in section 16 by deleting the words “Attorney General” and substituting for them the words “Minister on the advice of the Attorney General”.

Amendment
of section 19

32. The principal Act is amended in section 19 by deleting the words “shall, on a recommendation by the Attorney-General” appearing in subsection (1) and substituting for them the word “may,”.

Amendment
of section 22

33. The principal Act is amended in section 22-

(a) in subsection (2), by deleting the word “three” and substituting for it the word “two”;

- (b) in subsection (3), by deleting the words “who is a full-time Commissioner to preside at that meeting, and if there is no full-time-Commissioner, any of the other Commissioners shall be elected”; and
- (c) by deleting subsection (4), and substituting for it the following-
 - “(4) All questions arising at a meeting of the Commission shall as much as possible, be decided by consensus of the members present at the meeting.”.

PART VIII
AMENDMENT OF THE MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT,
(CAP.254)

Construction
Cap. 254

34. This Part shall be read as one with the Mutual Assistance In Criminal Matters Act, hereinafter referred to as the “principal Act”.

General
amendment

35. The principal Act is amended generally by-

- (a) deleting the words “the Attorney General” wherever they appear in the Act and substituting for them the words “the Director of Public Prosecutions”;
- (b) deleting the word “interdict” wherever it appears in the Act and substituting for the words “restraining order”;
- (c) deleting the words “foreign interdict” wherever they appear in the Act and substituting for them the words “foreign restraining order”;
- (d) deleting the words “foreign specified offence” wherever they appear in the Act and substituting for them the words “foreign serious offence”.

Amendment
of section 2

36. The principal Act is amended in section 2, by –

- (a) deleting the definitions of the terms “foreign specified offence”; “interdict” and “specified offence”;
- (b) deleting the definition of the term “serious offence” and substituting for it the following:

Cap.256

““serious offence” has the meaning ascribed to it under the Proceeds of Crimes Act;

- (c) inserting in the appropriate alphabetical order the following new definitions:

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““foreign serious offence” means a serious offence against a law of a foreign country;

“restraining order” has a meaning ascribed to it in the Proceeds of Crimes Act; ”.

Amendment
of section 4

37. The principal Act is amended in section 4, by –

- (a) inserting immediately after paragraph (h) the following new paragraphs:

“(i) preserving and obtaining all forms of computer and telecommunication data;

(j) interception of postal items;

(k) interception of communications data;

- (l) covert electronic surveillance;
- (m) facilitating the taking of evidence by video conference.”;
- (b) renumbering paragraphs (i) and (j) as paragraphs (n) and (o) respectively.

Amendment
of section 5

38. The principal Act is amended in section 5 by inserting the phrase “under a separate agreement, arrangement or practice with another foreign state” between the words “matters” and “otherwise”

Addition of
section 8A

39. The principal Act is amended by adding immediately after section 8 the following new section:

“Functions of
Director of
Public
Prosecutions
Cap.368

8A. Subject to the provisions of the Extradition Act, in the performance of his functions under this Act the Director of Public Prosecutions shall-

- (a) transmit and receive requests for legal assistance and execute or arrange for the execution of such requests directly with foreign countries;
- (b) ensure that requests for legal assistance conform to the requirements of the laws of United Republic and her international obligations;
- (c) where necessary, certify or authenticate or arrange for the certification or authentication of any document or other material supplied in response to a request for legal assistance;
- (d) ask practical measures to facilitate the orderly and rapid disposition of requests for legal assistance;
- (e) negotiate and agree on conditions related to requests for legal assistance as well as ensuring compliance with those conditions;
- (f) make any arrangements deemed necessary in order to transmit the evidentiary material gathered in response to a request for legal assistance to a requesting state or to authorise any other authority to do so; and
- (g) carry out such other tasks as provided for by this Act or which may be necessary for effective execution of mutual legal assistance.”.

Amendment
of section 9

40. The principal Act is amended in section 9(2), by-

- (a) adding immediately after paragraph (g) the following new paragraphs:
 - “(h) the nature of the criminal matters and whether or not criminal proceedings have been instituted;
 - (i) where criminal proceedings have not been instituted, the offence which the foreign country believes has been, is being or will be committed, together with a summary of known facts;

- (j) where criminal proceedings have been instituted-
 - (i) the court exercising jurisdiction in the proceedings;
 - (ii) the identity of the accused person;
 - (iii) the offence of which the person stands accused, and a summary of the facts and the penalties which may be imposed;
 - (iv) the stage reached in the proceedings; and
 - (v) any date fixed for further stages in the proceedings.”;

(b) renaming paragraphs (h) and (i) as paragraphs (k) and (l) respectively;

Addition of sections 9A, 9B and 9C

41. The principal Act is amended by adding immediately after section 9 the following new sections:

“Confidentiality

9A. The confidentiality of a request and its contents and the information and materials supplied under this Act shall be maintained except for disclosure in the criminal matter specified in the request and where otherwise authorised by the requesting state.

Language

9B. All documents in support of a request for assistance under this Act shall be either in English or Kiswahili language.

Costs

9C. Ordinary costs for executing a request shall be borne by the United Republic, unless otherwise determined by United Republic and a requesting state.

(2) Where expenses of a substantial or extraordinary nature are or will be required to execute the request the requesting state shall consult in advance and the manner in which the costs shall be borne.

(3) For the purposes of subsection (2), substantial or extraordinary expenses may include but are not limited to-

- (a) fees and reasonable expenses of expert witnesses;
- (b) any travelling costs to enable a witness to travel to the requesting country to assist in a criminal investigation or criminal proceedings;
- (c) cost of establishing and operating live video links;
- (d) costs of temporarily transferring persons in custody subject to a request under this Act;
- (e) costs incurred for the interception of electronic communication; and
- (f) costs incurred for conducting surveillance.”

Amendment
of section 11

42. The principal Act is amended in section 11, by-

(a) deleting subsection (1) and substituting for it the following:

“(1) Where a request is made by the appropriate authority of foreign country for-

- (a) evidence to be taken or collected in Tanzania; or
- (b) documents or other articles in Tanzania to be produced for purposes of proceedings or investigation in relation to a criminal matter in a foreign country,

the Director of Public Prosecutions may, subject to such terms and conditions as he may determine, authorise the taking or collection of the evidence or production of the documents or other articles, and the transmission of the evidence, documents or other articles to the foreign country.”

(b) in subsection(2) by -

- (i) inserting the words “or collection” between the words “taking” and “of” appearing in the opening phrase;
- (ii) adding immediately after paragraph (b) the following new paragraph:

“(c) if the laws of a requesting country do not require evidence to be taken before a magistrate on oath instead of following the process in paragraph (a) an investigation officer may-

- (i) interview a person and record his statement;
- (ii) collect documents, articles or other materials; and
- (iii) certify that the statement was recorded or the article was collected by him.”.

Amendment
of section 25

43. The principal Act is amended in section 25(3)(a)(iii) by adding at the end of that paragraph the words “other than the proceedings to which the request relates”.

Addition of
section 25A

44. The principal Act is amended by adding immediately after section 25 the following new section:

“Evidence by
video
conferencing

25A.-(1) Any evidence, production or article of any form of mutual legal assistance under this Act may be provided by means of video conferencing technology.

(2) The evidence shall include the interviewing of witnesses for the purposes of investigation, identification of a person or thing or the provision of witness evidence during court proceedings including trial.

(3) The Minister may make rules for better carrying out of the provisions of this section.”.

Repeal and replacement of section 32

45. The principal Act is amended by repealing section 32 and replacing it with the following:

“Registration of orders

32.-(1) Where-

(a) an appropriate authority of a foreign country requests the Director of Public Prosecutions to make arrangements for the enforcement of-

(i) a foreign forfeiture order made in respect of a foreign serious offence against a property that is believed to be located in Tanzania; or

(ii) a foreign pecuniary penalty order made in respect of a foreign serious offence where some or all of the property available to satisfy the order is believed to be located in Tanzania Mainland; and

(b) the Director of Public Prosecutions is satisfied that-

(i) the forfeiture order or pecuniary penalty order was properly made against the person; and

(ii) forfeiture order or pecuniary penalty order is not subject to appeal in the foreign country,

the Director of Public Prosecutions may, upon application, obtain the registration of the order with the High Court.

(2) Where an appropriate authority of a foreign country requests the Director of Public Prosecutions to make arrangements for the enforcement of a restraining order issued in respect of a foreign serious offence against a property that is believed to be located in Tanzania, the Director of Public Prosecutions may, on application, obtain the registration of the order by the High Court.

(3) If, on application in terms of subsection (1) or (2), the High Court is satisfied from the documents filed on record, or from any other evidence, that the foreign forfeiture order, the foreign penalty order or the restraint order was properly made against the person concerned, the High Court may register the order.

(4) The High Court may regard any evidence adduced in a foreign court as conclusive of any matter or fact stated in the documents.

(5) Where the High Court refuses to register the order under subsection (3), the refusal order shall be appealable as if it were an order made under Proceeds of Crimes Act.

(6) A forfeiture order registered with the High

Cap.256

Cap.256 Court in terms of this section shall have effect and may be enforced, as if it were a forfeiture order made by a court under the Proceeds of Crime Act at the time of registration.

Cap.256 (7) A pecuniary penalty order registered with the High Court in terms of this section shall have effect, and may be enforced, as if it were a pecuniary penalty order made by a court under the Proceeds of Crime Act at the time of registration and requiring the payment to Tanzania of the amount payable under the order.

(8) A restraining order registered with the High Court in terms of this section shall have effect, and may be enforced, as if it were a restraining order made by a court under the Proceeds of Crime Act at the time of registration.

Cap.256 (9) Where any order is registered with the High Court in terms of this section, any amendments made to the order, whether before or after registration, may be registered in the same way as the order and amendments shall not, for the purposes of this Act and the Proceeds of Crime Act have effect until they are registered.

(10) A copy of the appropriate order or amendment sealed or authenticated by the court or other authority making that order or amendment or a copy of that order or amendment duly authenticated in accordance with subsection (2) of section 38, shall be filed with the High Court on registration of the order or amendment.

(11) A sealed or authenticated copy of an order or amendment shall be regarded for the purposes of this Act as the same as the sealed or authenticated original copy but registration effected by means of a copy shall cease to have effect at the end of twenty-one days unless the sealed or authenticated original copy has been subsequently registered or time has been extended by the court.

(12) The Director of Public Prosecutions may apply to the High Court for the amendment of the application or the cancellation of any registration made in terms of this section.

(13) Without prejudice to the generality of subsection (11), the Director of Public Prosecutions may apply for a cancellation in terms of that subsection if he is satisfied that—

- (a) the order has ceased to have effect in the foreign country in which it was made; or
- (b) the cancellation of the order is appropriate having regard to the arrangements entered into between the United Republic and the foreign country in relation to enforcement of orders of the kind.

(14) Where an application is made to the High Court for cancellation of a registration in terms of subsection (12), the High Court shall cancel the registration accordingly.”.

Repeal and replacement of section 35

46. The principal Act is amended by repealing section 35 and replacing it with the following:

“Request for information gathering orders

35.Where-

- (a) criminal proceedings or criminal investigations have commenced in a foreign country in respect of a foreign serious offence; and
- (b) the appropriate authority of a foreign country request the United Republic to obtain information about the property or any other information which is reasonably believed to be relevant to proceedings or investigation,

the Director of Public Prosecutions may, in writing, authorise the head of an investigating agency to obtain information requested in accordance with the provisions of the Proceeds of Crimes Act or any other written laws.”.

Cap.256

Amendment of section 38

47. The principal Act is amended in section 38(2) by deleting the word “and” appearing at the end of paragraph (a) and substituting for it the word “or”.

Addition of sections 38A, 38B and 38C

48. The principal Act is amended by adding immediately after section 38 the following new sections:

“Authentication of witness statement, deposition or an affidavit

38A.-(1) A witness statement, deposition or an affidavit obtained pursuant to a request made under this Act shall, if it satisfies the conditions set out in this section, be admissible in evidence.

(2) A witness statement shall be admissible in evidence if it is-

- (a) signed, certified and contains a declaration by the person making it that it is true; and
- (b) certified by a magistrate, Judge or an officer in or of the Government of a foreign country.

(3) A deposition shall be admissible in evidence if it is-

- (a) a sworn deposition; and
- (b) certified or verified by a magistrate, Commissioner or Judge in a foreign Country.

(4) An affidavit shall be admissible in evidence if it is-

- (a) signed, verified and sworn by a person who made and
- (b) signed by a Judge, magistrate, Commissioner for oath or an officer in the Government of a foreign country.

Electronic record
or data

38B.-(1) Electronic record or data message obtained pursuant to a request made under this Act shall be admissible in evidence if-

(a) the maker or a person who collected the record or data certifies-

(i) the reliability of the manner in which the record or data was generated, stored or communicated; and

(ii) the reliability of the manner in which the integrity of the record or data was maintained; and

(b) the authority in a foreign country or an officer in the foreign country authenticates receipt of that electronic record or data from the maker or a person who collected it.

Other forms of
evidence

38C. Nothing shall be construed as preventing production of any evidence, article, any other form of mutual legal assistance under this Act, orally, by means of video conferencing or any other technology.”.

PART IX

AMENDMENT OF THE NATIONAL PROSECUTIONS SERVICE ACT, (CAP. 430)

Construction
Cap.430

49. This Part shall be read as one with the National Prosecutions Service Act, hereinafter referred to as the “principal Act”.

General
amendment

50. The principal Act is amended generally by-

(a) deleting the words “the Deputy Attorney General” and “legal officer” wherever they appear in the Act;

(b) deleting the word “Director” wherever it appears in the Act save for sections 19(1) and (2) and 27 and substituting for it the words “Director of Public Prosecutions”.

Amendment
of section 3

51. The principal Act is amended in section 3, by-

(a) deleting the definition of the term “Director”;

(b) deleting the definition of the terms “Law Officer” and “State Attorney” and substituting for them the following:

Cap.1

“Law Officer” has the meaning ascribed to it under the Interpretation of Laws Act;

“State Attorney” means a person appointed under section 5 or designated as such to perform functions under this Act;”

(c) inserting in their appropriate alphabetical order the following new definitions:

““Deputy Director of Public Prosecutions” means the Deputy Director of Public Prosecutions appointed pursuant to the

provisions of this Act;

“District Prosecution Officer” means the Law Officer appointed to be in-charge of prosecution matters in a District;

“Regional Prosecutions Officer” means the Law Officer Appointed to be in-charge of prosecution matters in a Region;”;

(d) deleting the words “Attorney General” in the definition of “public prosecutor.”.

Repeal and replacement of sections 4,5,6 and 7

52. The principal Act is amended by repealing sections 4, 5, 6 and 7 and replacing them with the following:

“National Prosecutions Service

4.-(1) There shall continue to be established an independent and autonomous Service to be known as the National Prosecutions Service.

(2) The Service shall be headed by the Director of Public Prosecutions appointed by the President in accordance with Article 59B of the Constitution.

(3) There shall be the Deputy Director of Public Prosecutions who shall be appointed by the President from amongst persons with qualifications to be appointed as Judge of the High Court of Tanzania

(4) The Deputy Director of Public Prosecutions shall be the accounting officer of the Service and shall be the immediate assistant to the Director of Public Prosecutions.

(5) Functions and powers of the Director of Public Prosecutions may be performed or exercised by the Deputy Director of Public Prosecutions, Regional Prosecution Officers, District Prosecution Officers, Law Officer, State Attorney or such other public officer designated as such by the Director of Public Prosecutions.

(6) For the purposes of subsection (5), the Director of Public Prosecutions may by instrument appoint or designate any Law Officer, State Attorney or any other public officer to perform the functions or exercise powers of the Director of Public Prosecutions.

(7) Without prejudice to subsection (6), any person who was a Law Officer, State Attorney or a Legal Officer appointed or designated to perform the functions or exercise powers of the Director of Public Prosecutions shall be deemed to have been appointed or designated as such.

(8) The Director of Public Prosecutions, the Deputy Director of Public Prosecutions and any officer appointed to exercise the functions of the Service under this Act or any other written law shall have a *locus standi* in courts of law for and on behalf of the Director of Public Prosecutions.

Appointment
of staff

5.-(1) The Director of Public Prosecutions shall appoint or employ in the National Prosecutions Service and at every Regional and District offices of the Service such number of Law Officers, State Attorneys and other public officers as may be necessary for proper and effective performance of the functions and exercise of powers of the Director of Public Prosecutions.

(2) The Deputy Director of Public Prosecutions shall be responsible for managing day to day affairs and be a disciplinary authority of employees in the National Prosecutions Service.

(3) The Director of Public Prosecutions shall appoint for each Region and District a Law Officer to be in-charge of prosecution matters in the Region or District as the case may be and the person so appointed shall bear the title of Regional Prosecution Officer and District Prosecution Officer respectively.”

Power to issue
orders,
practices notes,
others
instruments

6.-(1) The Director of Public Prosecutions may, for purposes of better management and organisation of the Service, issue General or Standing Orders, Practice Notes and other instruments as he may deem fit.

(2) A staff in the Service who fails to comply with the Standing Orders, Practices Notes and other instruments issued under subsection (1), commits a misconduct to be dealt with by the Deputy Director of Public Prosecutions.

Power to
promulgate
Code of
Professional
Conduct and
Etiquettes

7.-(1) The Director of Public Prosecutions shall prescribe the Code of Professional Conduct and Etiquettes for Public Prosecutors.

(2) Any public prosecutor who breaches the Code of Professional Conduct and Etiquettes for Public Prosecutors commits a professional misconduct and shall be liable to disciplinary actions through the Deputy Director of Public Prosecutions in accordance with the Public Service Regulations or through the Advocates Committee.”

Amendment
of section 9

53. The principal Act is amended in section 9, by-

(a) deleting the marginal note and substituting for it the following:
“Powers and functions of National Prosecutions Service”;

(b) deleting subsection (1) and substituting for it the following:

“(1) Notwithstanding the provisions of any other written law, the powers and functions of the National Prosecutions Service shall be to -

(a) decide to prosecute or not to prosecute in relation to any offence;

- (b) take and conduct criminal cases on behalf of the sovereign of the United Republic, the Central Government, independent departments, executive agencies and the local government;
- (c) coordinate and supervise criminal investigation and conduct of criminal prosecution in courts of law other than court martial;
- (d) intervene and take over at any stage of criminal proceedings, appeal, execution or any incidental proceedings before any court of law to which the Central Government, independent department, agency or a local government has interest;
- (e) discontinue at any stage before judgement is delivered any criminal proceeding brought to the court by another person or authority;
- (f) issue directives to any public officer performing functions relating to conduct of criminal prosecution in courts of law;
- (g) direct the police and other investigative organs to investigate any information of a criminal nature and to report expeditiously;
- (h) appoint or employ and discipline Law Officers, State Attorneys and other staff of the National Prosecutions Service;
- (i) carry out the general supervision of Law Officers, State Attorneys and other officers or staff appointed or employed in the National Prosecutions Service;
- (j) administer legal functions performed by Law Officers, State Attorneys and other officer or staff of the National Prosecutions Service; and
- (k) summon any public officer to give explanation, or information regarding any matter which is or likely to be the subject of criminal prosecution.”

Amendment
of section 19

54. The principal Act is amended in section 19, by-

- (a) deleting paragraph (b) of subsection (3) and substituting for it the following:
 - “(b) a conduct inconsistent with the Code of Professional Conduct and Etiquettes for Public Prosecutors.”;
- (b) deleting the words “acting on the advice of the Attorney General” appearing in subsection (4); and
- (c) deleting the words “on the advice of the Attorney General” appearing in subsection (5).

Repeal and
replacement of
section 25

55. The principal Act is amended by repealing section 25 and replacing it with the following:

“Sources of
funds

25. The funds of the Service shall consist of-

- (a) any sums that may be appropriated by the Parliament;
- (b) any moneys by way of donations or grants made within and outside the United Republic; and
- (c) such sums of money or assets which may vest in or accrue to the Service from other sources by way of fees, grants or in any other way under this Act or any other written law.”.

Addition of sections 25A, 25B and 25C

56. The principal Act is amended by adding immediately after section 25 the following:

“Annual estimates

25A.-(1) The Service shall, before the commencement of the financial year, cause to be prepared, estimates of the revenue and expenditure for the year.

(2) The annual estimates shall be submitted to the Minister who shall cause the same to be laid before the National Assembly within three months from the date of their submission to him.

Annual performance report

25B.-(1) The Service shall submit bi-annual performance reports in respect of the financial year to the Minister and a copy to the Attorney General.

(2) The performance of the Service shall be audited by the Controller and Auditor General.

Books of accounts

25C.-(1) The Service shall keep proper books of accounts.

(2) Within three months from the end of each financial year, the Service shall submit to the Controller and Auditor General accounts of the Service together with-

- (a) a statement of financial activities and income and expenditure during that financial year; and
- (b) a statement of assets and liabilities of the Service existing at the end of such financial year.

(3) The accounts of the Service shall be audited by the Controller and Auditor General.”

Amendment of section 27

57. The principal Act is amended in section 27, by:

(a) deleting subsections (1) and (2) and substituting for them the following:

“(1) There is established a National Criminal Justice Forum whose role shall be to-

- (a) undertake strategic analysis relevant in the criminal justice system; and
- (b) address challenges and complaints facing the criminal

justice system.

(2) The Forum shall consist of the following members-

- (a) the Director of Public Prosecutions who shall be the Chairman;
- (b) the Inspector General of Police;
- (c) the Chief Registrar of the Judiciary of Tanzania;
- (d) the Director General of Tanzania Intelligence and Security Service;
- (e) the Director General of the Prevention and Combating of Corruption Bureau;
- (f) the Commissioner General of Immigration;
- (g) the Commissioner General of Prisons;
- (h) the Commissioner General of the Drug Control and Enforcement Authority;
- (i) the Commissioner of Social Welfare;
- (j) the Chief Government Chemist;
- (k) the Chairman of the National Parole Board;
- (l) the Director of Community Service;
- (m) the Director responsible for legal services in the Ministry responsible for local governments;
- (n) the Director responsible for justice monitoring in the Ministry responsible for legal affairs; and
- (o) the Director of Criminal Investigation who shall be the Secretary.”;

(b) deleting subsection (7) and substituting for it the following:

“(7) The Forum shall prepare and submit a report of its deliberations to the Permanent Secretary of the Ministry responsible for legal affairs who shall advise the Minister and cause the same to be submitted to the National Criminal Justice Ministerial Committee.”.

(c) adding immediately after subsection (7) the following:

“(8) The National Criminal Justice Forum may-

- (a) share experience with the criminal justice system in Tanzania Zanzibar and elsewhere and adopt best practices for implementation as it deems fit;
- (b) issue guidelines or memorandum of understanding for use by the criminal justice actors in their operations; and
- (c) regulate its own proceedings.”.

Addition of sections 27A and 27B

58. The principal Act is amended by adding immediately after section 27 the following new sections-

“National Criminal Justice Ministerial Committee

27A.-(1) For purposes of section 27, there shall be the National Criminal Justice Ministerial Committee.

(2) The Committee shall consist of the following members-

- (a) the Minister who shall be the Chairman of the Committee;
- (b) the Minister responsible for home affairs;
- (c) the Minister responsible for good governance;

- (d) the Minister responsible for local governments;
- (e) the Minister responsible for social welfare;
- (f) the Minister responsible for finance;
- (g) the Minister responsible for drug control and enforcement; and
- (h) the Attorney General.

(3) The National Criminal Justice Ministerial Committee shall consider and deliberate on policy issues relating to administration of criminal justice as recommended to it by the National Criminal Justice Forum and may advise on how any of such issues shall be dealt with at sectoral or national level.

(4) The Permanent Secretary of the Ministry responsible for legal affairs shall be Secretary to the Committee.

(5) The Committee, in the discharge of its duties, may co-opt any person as it may deem fit.

(6) The Committee may regulate its own proceedings.

Regional
Criminal
Justice Forum

27B.-(1) There is established in every region a Regional Criminal Justice Forum whose role shall be to create an opportunity for actors of criminal justice in the respective region to meet and discuss strategic issues involved in the administration of criminal justice.

(2) The Forum shall consist of the following members:

- (a) the Regional Prosecutions Officer who shall be the Chairman;
- (b) the Deputy Registrar of the respective High Court zone;
- (c) the Regional Security Officer;
- (d) the Regional Chief of the Prevention and Combating of Corruption Bureau;
- (e) the Regional Prisons Officer;
- (f) the Regional Coordinator of Community Service;
- (g) the Chairman of the Regional Parole Board;
- (h) the Regional Social Welfare Officer;
- (i) the Law Officer in the Regional Administrative Secretary's Office;
- (j) the officer in-charge in the Chief Government Chemist office of the respective region; and
- (k) the Regional Crimes Officer who shall be the Secretary.

(3) The Forum may co-opt any person as it deems fit.

(4) The Forum shall meet at least twice annually.

(5) The Regional Forum shall prepare a report and

submit it to the Chairman of the National Criminal Justice Forum who shall forward the recommendations for deliberations by the National Criminal Justice meetings.

(6) The Forum shall work closely with the Case-flow Management Committees established for each Region or District in relation to matters of criminal nature.”

PART X

AMENDMENT OF THE OFFICE OF THE ATTORNEY GENERAL (DISCHARGE OF DUTIES) ACT, (CAP. 268)

Construction
Cap.268

59. This Part shall be read as one with the Office of the Attorney General (Discharge of Duties) Act, hereinafter referred to as the “principal Act”.

Amendment
of section 3

60. The principal Act is amended in section 3, by-

- (a) deleting the definitions of the terms “Administrator-General”, “investigative organs” and “legal officer”;
- (b) deleting the definitions of the terms “Code of Ethics” and “State Attorney” and substituting for them the following:

““Code of Ethics” means the Code of Ethics referred to under section 27; and

“State Attorney” means a person appointed as such under section 24 and includes a Parliamentary Draftsman and a Local Government Solicitor;”.

Addition of
section 3A

61. The principal Act is amended by adding immediately after section 3 a new section 3A as follows:

“Objectives of
Act

3A. The objectives of this Act shall be to enhance and strengthen the capacity -

- (a) to deliver advice on matters of law to the Ministries, independent departments, agencies and the local government;
- (b) for efficiency in drafting of legislative instruments and draft resolutions for debate by the National Assembly;
- (c) to deliver advice to Ministries, independent departments, Agencies and the local government on legislative process;
- (d) of the Government in dealing with matters instituted or filed in courts of law or arbitral tribunals; and
- (e) of the Government in the negotiation of agreements of commercial or political nature both local or international in which the Government is a party or has interest.”.

Amendment
of section 4
G. N. No.48
of 2018

62. The principal Act is amended in section 4 by inserting immediately after the word “by” appearing in the last line, the words “the Constitution, the Office of the Attorney General (Re-structure) Order, 2018 and”.

Amendment
of section 5

63. The principal Act is amended in section 5 by deleting subsections (2) and (3) and substituting for them the following:

“(2) The Attorney General shall, by virtue of his office, be the head of the bar and shall, through the Solicitor General, take precedence over all civil matters whenever he appears in court.

(3) Subsection (2) shall apply in relation to the Deputy Solicitor General, Law Officers and State Attorneys appearing in court in the name of the Attorney General.”.

Amendment
of section 6

64. The principal Act is amended in section 6, by-

- (a) deleting paragraphs (a), (b) and (d);
- (b) renaming paragraphs (c) and (e) as paragraphs (a) and (b) respectively; and
- (c) adding at the end of paragraph (b) as renamed, the words “other than those working in the National Prosecutions Service or the Office of the Solicitor-General.”

Amendment
of section 7

65. The principal Act is amended in section 7(1), by-

- (a) deleting paragraph (b);
- (b) renaming paragraphs (c), (d), (e) and (f) as paragraphs (b), (c), (d) and (e) respectively; and
- (c) inserting immediately after the word “Attorneys” appearing in the renamed paragraph (c) the words “in the Ministries, Government departments, agencies and local government”.

Repeal and
replacement of
section 8

66. The principal Act is amended by repealing section 8 and replacing it with the following:

“Functions of
Office of
Attorney
General
Cap. 2
G. N. No.
48 of 2018

8. Without prejudice to the generality of Articles 59 and 59A of the Constitution and the Office of the Attorney General (Re-structure) Order, 2018 the functions of the Office of the Attorney General shall be to:

- (a) advise ministries, independent departments, agencies and other government institutions and organisations on the legislative process and legal opinion on general issues;
- (b) draft legislative proposals into Bills for enactment into law;
- (c) draft all legislative instruments and resolutions for ratification by the National Assembly;
- (d) advise on proper and purposeful meaning of enactment of Parliament, subsidiary legislation and other legal instruments;
- (e) carry out the general supervision of Law Officers and State Attorneys appointed or

employed in the Office of the Attorney General, ministries, local government authorities, independent departments, executive agencies and government institutions other than those under the National Prosecutions Service and the Office of the Solicitor-General;

- (f) carry out the general supervision of staff employed in the office of the Attorney General;
- (g) administer legal functions performed by Law Officers and State Attorneys in the Office of the Attorney General;
- (h) summon any public officer to give explanation, or information regarding any matter which is the subject of advice;
- (i) prepare and submit bi-annual report to the Minister;
- (j) appoint or employ and discipline Law Officers, State Attorneys and other staff of the Office of the Attorney General; and
- (k) perform any function as may be necessary for effective discharge of the duties and the exercise of the powers of the Attorney General.”.

Amendment of section 9

67. The principal Act is amended in section 9 by deleting the words “such officers” and substituting for them the words “Law Officers and State Attorneys”.

Amendment of Part III

68. The principal Act is amended in Part III by deleting *subheading (a)* and substituting for it the following:

“(a) *Special Provisions in Relation to the National Prosecutions Service, the Office of the Solicitor-General and the Administrator-General*”.

Repeal and replacement of section 10

69. The principal Act is amended by repealing section 10 and replacing it with the following:

“Relationship of Office of Attorney General and other offices

10.-(1) Without prejudice to the generality of Article 59B of the Constitution, the Office of the Attorney General shall advise and maintain a link with the National Prosecutions Service, the Office of the Solicitor-General and the Administrator-General for better carrying out of their respective duties.

(2) For the purposes of subsection (1), the Office of the Attorney General shall -

- (a) receive copies of bi-annual performance reports from the National Prosecutions Service, Office of Solicitor General and the

- Administrator General;
- (b) follow-up on the implementation of the decisions reached by the Government Legal Team; and
 - (c) advise the Government, the National Assembly and the Judiciary accordingly.
- (3) The Minister may make rules for better carrying out the provisions of this section.”.

Repeal of sections 11, 13 and 14

70. The principal Act is amended by repealing sections 11, 13 and 14.

Amendment of PART IV

71. The principal Act is amended in Part IV by deleting the heading and substituting for it the following:
“THE ATTORNEY GENERAL, LAW OFFICERS AND STATE ATTORNEYS IN THE PUBLIC SERVICE”

Repeal and replacement of section 15

72. The principal Act is amended by repealing section 15 and replacing it with the following:

“Law Officers and State Attorneys

15.-(1) There shall continue in existence in Ministries, local government authorities, independent departments, government institutions, agencies and organisations, Law Officers and State Attorneys who by virtue of their qualifications, job description and duties, perform legal functions.

(2) The Attorney General may issue directions either general or specific to any Law Officer or State Attorney in public service other than those under the National Prosecutions Service or the Office of the Solicitor-General with regard to the manner of performing the legal functions within their respective offices.

(3) The Solicitor-General may issue each Law Officer and State Attorney in ministries, local government authorities, independent departments and other government institutions, agencies and organisations with Practice Instrument that will entitle the bearer to appear in court in cases where the Attorney General is a party.”.

Amendment of section 16

73. The principal Act is amended in section 16, by-

(a) deleting the marginal note and substituting for it the following:

“Functions to be performed by Law Officers and State Attorneys”

(b) deleting subsections (1) and (2) and substituting for them the following:

“(1) The functions which are, by the Constitution, this Act or by any other written law, required to be performed by or on behalf of the Attorney General, may be performed by a Law Officer or a State Attorney authorised by the Attorney General pursuant to the provisions of this Act.

(2) A person shall not become a Law Officer or State Attorney only for the reason that his job description includes performing legal functions.”.

(c) deleting subsection (3); and

(d) renumbering subsection (4) as subsection (3).

Addition of sections 16A and 16B

74. The principal Act is amended by adding immediately after section 16 the following sections-

“Professional Association of lawyers in public service

16A.-(1) The Attorney General may establish a professional association of lawyers in the public service.

(2) The association shall be a professional forum of lawyers in the public service to meet once a year and deliberate on various legal issues including professional development and other matters of concern.

(3) The report of the meeting shall be submitted to the Minister.

(4) The Minister may make regulations for the proper management, leadership, organisation and conduct of the business of the association.

(5) Without prejudice to the foregoing provisions, the Minister may, from time to time, call meetings of lawyers in the public service in order to inform them of policy development issues with regard to the legal sector and the public service in general.

Roll of State Attorneys

16B.-(1) The Attorney General shall establish and keep a Roll of all State Attorneys.

(2) The Attorney General shall enter in the Roll the name of every State Attorney and the order of entry of such names shall be according to precedence of such State Attorneys as between themselves.

(3) Nothing in this section shall prejudice or affect the qualification or status of any person who before the establishment of the Roll of State Attorneys was a State Attorney.”.

Amendment of section 17

75. The principal Act is amended in section 17, by-

(a) inserting immediately after the word “shall” appearing in the second line of subsection (1), the words “through the Solicitor-General”;

(b) deleting the words “Attorney General” appearing in the second line of subsection (2) and substituting for them the words “Solicitor-General”;

(c) deleting subsection (3) and substituting for it the following:

“(3) Where a suit, inquiry or any other proceeding is pending before the court, tribunal or any other administrative body to which the Solicitor-General does not have a right of audience, it shall be sufficient for the Solicitor-General to file a certificate of the intention of the Attorney General to be joined and the court, tribunal or any such administrative body shall immediately forward

the record of the proceedings to the nearest court, tribunal or administrative body for purposes of enabling the Solicitor-General to appear.”.

Amendment
of section 18

76. The principal Act is amended in section 18, by-

- (a) deleting the words “offices of all solicitors of” appearing in subsection (1) and substituting for them the words “State Attorneys in”;
- (b) deleting subsection (2) and substituting for it the following:

“(2) Where there is a need for appointing a Law Officer to head or to perform the functions referred to in subsection (1), the Permanent Secretary of the Ministry responsible for local government authorities may, after consultation with the Attorney General and Solicitor-General, appoint the Law Officer from the Ministry responsible for local government authorities, Office of the Attorney General or Office of the Solicitor-General.”;

- (c) deleting subsection (3);
- (d) inserting immediately after the words “Attorney General” appearing in subsection (5) the words “Director of Public Prosecutions and the Solicitor-General”;
- (e) deleting subsection (6) and substituting for it the following:

“(6) The Law Officer appointed in accordance with this section or any other Law Officer or State Attorney in the service of the local government authority shall, under the auspices of the Solicitor-General, have the right of audience in any matter before the court in which a local government authority or the Attorney-General is a party.”;

- (f) re-numbering subsections (4), (5) and (6) as subsections (3), (4) and (5) respectively.

Amendment
of section 19

77. The principal Act is amended in section 19 by deleting the words “or legal officer”.

Amendment
of section 20

78. The principal Act is amended in section 20 by deleting the words “or any legal officer”.

Amendment
of section 21

79. The principal Act is amended in section 21 by deleting subsection (3) and substituting for it the following:

“(3) Notwithstanding the provisions of this section, all matters regarding administration or discipline in respect of Law Officers and State Attorneys in the public service shall be under the supervision and control of their respective employers.”.

Amendment
of section 22

80. The principal Act is amended in section 22, by-

- (a) deleting the words “Minister, Permanent Secretary, head of Department or Agency” appearing in subsection (1) and substituting for them the words “ministry, local government authority, independent department, government institution, agency or organisation”;
- (b) deleting subsection (2) and substituting for it the following:

“(2) Where the opinion of the Attorney General is requested in relation to any matter reserved to the Attorney General, the ministry, local government authority, independent department, government institution, agency or organisation shall state clearly the matter and issues involved together with any opinion that may have been given from within such ministry, local government authority, independent department, government institution, agency or organisation.”

Amendment of section 23

81. The principal Act is amended in section 23 by adding immediately after the words “a court of competent jurisdiction” the words “, the Cabinet.”

Amendment of Part VII

82. The principal Act is amended in Part VII by deleting the heading and substituting for it the following:

“ATTORNEY GENERAL, LAW OFFICERS AND OTHER STATE ATTORNEYS IN PUBLIC SERVICE”

Amendment of section 24

83. The principal Act is amended in section 24 by deleting the words “Deputy Attorney General” appearing in subsection (1) and substituting for them the words “ministry, local government authority, independent department, government institution, agency or organisation”.

Repeal and replacement of section 25

84. The principal Act is amended by repealing section 25 and replacing it with the following:

“Government Legal Team

25.-(1) There is established a Team to be known as the Government Legal Team which shall undertake strategic legal analysis and forecast with regard to legal services rendered as well as prosecutorial and adjudicatory services provided.

(2) The Team shall consist of-

(a) the Attorney-General who shall be the Chairman;

(b) the Director of Public Prosecutions;

(c) the Solicitor-General;

(d) the Administrator-General;

(e) the Executive Secretary of the Law Reform Commission of Tanzania;

(f) the Chief Parliamentary Draftsman;

(g) the Director of Legal Services in the Ministry responsible for legal affairs; and

(h) the Director of Legal Services in the Ministry responsible for local governments.

(3) The Attorney General shall appoint a Law Officer from the Office of the Attorney General to be a Secretary to the Team.

(4) The Team may co-opt any person as it deems necessary.

(5) The Team shall meet at least twice a year but may meet at any time if there is any issue to be discussed for

the purpose of improving the legal services.

(6) The quorum at any meeting of the Team shall be half of the members.

(7) The Team may regulate its own proceedings.

(8) The Team shall prepare a report of its deliberations and submit the same to the Minister.”.

Amendment
of section 26

85. The principal Act is amended in section 26 by deleting the words “and other legal officers” appearing in that section.

Repeal and
replacement of
sections 27
and 28

86. The principal Act is amended by repealing sections 27 and 28 and replacing them with the following-

“Code of
Ethics

27.-(1) There shall be a Code of Ethics for Law Officers and State Attorneys in the public service to be prescribed by the Minister.

(2) All matters regarding administration or enforcement of the Code of Ethics for Law Officers and State Attorneys in the public service shall be under the supervision and control of their respective employers.

G.N No.
168 of 2003

(3) Notwithstanding the Public Service Regulations, the Attorney General may refer allegations of professional misconduct against a Law Officer or a State Attorney to the Advocates Committee.

(4) Each Permanent Secretary and every head of the independent department, government institution, agency or organisation shall liaise with the Ministry in the administration of the Code of Ethics in respect of Law Officers and State Attorneys employed in their respective offices.

(5) The Chief Justice may, in consultation with the Minister, make rules for better carrying out referrals to the Advocates Committee by the Attorney General under subsection (3) of this section.

Orders, etc
and sanctions
for breach of
Code of
Ethics
G.N. No.
168 of 2003

28.-(1) The Attorney General may issue General or Standing Orders, Practice Notes and other instruments as he may deem fit for purposes of better management and organisation of the Office of the Attorney General.

(2) Any Law Officer or State Attorney who breaches the Code of Ethics commits a professional misconduct and shall be liable to disciplinary actions through the employer in accordance to the Public Service Regulations or through the Advocates Committee.”

Repeal of the
Schedule

87. The Schedule to the Office of the Attorney General (Discharge of Duties) Act is hereby repealed.

PART XI
AMENDMENT OF THE PREVENTION AND COMBATING OF CORRUPTION ACT,
(CAP. 329)

Construction
Cap. 329 **88.** This Part shall be read as one with the Prevention and Combating of Corruption Act, hereinafter referred to as the “principal Act”.

Amendment
of section 34 **89.** The principal Act is amended in section 34 by deleting the words “Attorney General” appearing in subsections (2), (3) and (6) and substituting for them the words “Director of Public Prosecutions”.

PART XII
AMENDMENT OF THE PREVENTION OF TERRORISM ACT,
(CAP.19)

Construction
Cap.19 **90.** This Part shall be read as one with the Prevention of Terrorism Act, hereinafter referred to as the “principal Act”.

Amendment
of section 34 **91.** The principal Act is amended in section 34 by deleting subsection (3) and substituting for it the following:

Cap.20 “(3) A Court may, on an ex-parte application by the Director of Public Prosecutions, order that the case proceeds in a manner stated in section 188 of the Criminal Procedure Act.”.

PART XIII
AMENDMENT OF THE PROCEEDS OF CRIME ACT,
(CAP. 256)

Construction
Cap. 256 **92.** This Part shall be read as one with the Proceed of Crime Act, hereinafter referred to as the “principal Act”.

General
amendment **93.** The principal Act is amended generally by-

- (a) deleting the words “the Attorney General” wherever they appear in the Act and substituting for them the words “the Director of Public Prosecutions.”
- (b) deleting the word “defendant” wherever it appears in the Act and substituting for it the word “respondent”;
- (c) deleting the words “foreign specified offence” wherever they appear in the Act and substituting for them the words “foreign serious offence”;
- (d) deleting the words “specified offence” wherever they appear in the Act and substituting for them the words “serious offence”; and
- (e) deleting the words “Treasury Registrar” wherever they appear in the Act and substituting for them the words “Permanent Secretary in the Ministry responsible for Treasury.”.

Amendment
of section 3 **94.** The principal Act is amended in section (3),by –
(a) deleting the definitions of the terms “serious offence” and “specified offence” and substituting for them the following:

“serious offence” means an offence against provisions of any law in Tanzania of which the maximum penalty is death or imprisonment for a period of not less than twelve months and includes any offence in which property has been used or proceeds have been generated or benefits have been derived;

“specified offence” means an offence against the provisions of any law in a foreign state for conduct which, had it occurred in Tanzania would constitute a serious offence under the laws of Tanzania;

(b) deleting the word “High” appearing in the definition of the term “Trustee”;

(c) inserting in the appropriate alphabetical order the following new definition:

Cap. 6

““document has the meaning ascribed to it under the Evidence Act;”.

Repeal and replacement of section 31A

95. The principal Act is amended by repealing section 31A and replacing it with the following:

“Freezing of bank account

31A.-(1) Where the Inspector General of Police or the Director of Criminal Investigation suspects on reasonable grounds that any person has been involved in the commission of a serious offence, he may authorise and direct a police officer of the rank of Assistant Superintendent of Police or above to freeze a bank account and seize any document from that bank or financial institution for fourteen days during which leave of the court for continued seizure and freezing shall be obtained.

(2) Upon application, the court may order extension of a period of seizure or freezing an account where there are reasonable grounds to suspect that the money held in the account is related to the commission of a serious offence.

(3) Where the court orders an extension of period of seizure or freezing of an account under sub section (2), it may, at any later time vary or set aside that order where the continued seizure or freezing is no longer required or upon production of additional evidence, and where the court is satisfied that money held into the account is not related to the commission of a serious crime.”

Addition of sections 31B and 31C

96. The principal Act is amended by adding immediately after section 31A the following new sections:

“Collecting information or document relating to property

31B.-(1) For the purpose of collecting information about the property under this Act or any other law, an investigation officer may summon, interrogate and record a statement from any person who has information or document relating to the property.

(2) Any person who fails without reasonable cause

to appear before the investigation officer for interrogation or to produce a document or any other thing relevant to investigation of the property under subsection (1) or being a witness at such investigation refuses to answer any question put to him or to produce any document or any other thing relevant to investigation commits an offence and upon conviction shall be liable to a fine of not less than one million shillings or to imprisonment for a term of not less than three years or to both.

Disclosure of investigation information

31C.-(1) Any person who discloses to a suspect or unauthorised third party the information relating to an ongoing or impending investigation under this Act or any other law with the intent to interfere or otherwise frustrate the investigation commits an offence and upon conviction shall be liable to a fine of not less than ten million shillings or to imprisonment for a term of not less than five years or to both.

(2) Where a person who contravenes the provisions of subsection (1) is a body corporate, such person shall be liable to a fine of not less than five hundred million shillings or three times the value of the property under investigation, whichever is greater.”.

Amendment of section 38

97. The principal Act is amended in section 38, by-

- (a) deleting the word “apply” appearing in the third line of subsection (1) and substituting for it the words “make an *ex parte* application”;
- (b) adding immediately after paragraph (b) of subsection (2) the following new paragraph:

“(c) order the Administrator-General or any other public trustee to take care and control of property under restraint.”

- (c) adding immediately after subsection (5) the following new subsections:

“(6) In addition to the order granted under subsection (2), the court may order-

- (a) disposal of any property under restraint which is subject to natural decay, wear and tear, depreciation or whose maintenance may cause substantial expenses;
- (b) proceeds of sale of the property disposed to be kept in a special interim management account until forfeiture application in respect of that property is concluded or the court orders otherwise.

(7) A property to which a restraining application has been made shall not be disposed until the application or an appeal as the case may be has been determined.”.

Repealing of sections 40 and 41

98. The principal Act is amended by repealing sections 40 and 41.

Amendment
of section 42

99. The principal Act is amended in section 42, by adding immediately after subsection (2) the following new subsection:

“(3) Any person affected by the restraining order may, within fourteen days after being served with notice of the restraining order, apply to court for variation or rescission of the restraining order or any other order which the court may issue under section 43.”.

Amendment
of section 43

100. The principal Act is amended in section 43, by deleting subsection (3) and substituting for it the following-

“(3) The court may, upon application by a person affected by the restraining order, vary or rescind a restraining order where it is satisfied that-

- (a) the property involved is not tainted; or
- (b) the interest in the property was acquired for sufficient value, without knowledge, and in circumstances such as not to arouse suspicion that the property was tainted.”.

Amendment
of section 50

101. The principal Act is amended in section 50(2), by inserting the words “qualifications, supervision, between the article “the” and the word “remuneration”.

Amendment
of section 54

102. The principal Act is amended in section 54, by deleting the words “interdicts or”

Addition of
section 62A

103. The principal Act is amended by adding immediately after section 62 the following new section:

“Disclosure
of
information
about
property

62A.-(1) An investigation officer may, by notice in writing, require any person under investigation or suspected to have committed a serious offence to furnish, within such time and in such manner as may be specified in the notice, a full and true account of all or any property which he -

- (a) possesses, controls, directs or is entitled to the benefit from; or
- (b) had in his possession, control, direction or was entitled to the benefit from.

(2) A person who is required to furnish information pursuant to the provisions of subsection (1) may, in addition to the requested information, provide details of the basis upon which he asserts that the property is not the benefit of criminal activity.

(3) A person responding to a request under subsection (1) shall provide the information requested to the investigation officer within thirty days from the date of request unless he satisfies the investigation officer that more time is required to comply with the request.

(4) In any application for a confiscation order under this Act a response to a request under subsection (1) may be admitted in evidence to the confiscation proceedings.

(5) A person who in compliance with a request under subsection (1) gives false information commits an offence and upon conviction shall be dealt with in accordance to the provisions of section 122 of the Penal Code.”

Cap. 16

Repeal and replacement of section 76

104. The principal Act is amended by repealing section 76 and replacing it with the following:

“Appeals

76.-(1) Any person aggrieved by the order of the Court made under this Act may appeal against that order.

(2) Where an appeal is preferred under subsection (1), the execution of the order shall be stayed until the appeal is determined.

(3) The appeals under this Act shall be governed by the provisions of the Criminal Procedure Act.”

Cap.20

PART XIV
AMENDMENT OF THE TANGANYIKA LAW SOCIETY ACT,
(CAP. 307)

Construction
Cap. 307

105. This Part shall be read as one with the Tanganyika Law Society Act, hereinafter referred to as the “principal Act”.

Amendment of
section 15

106. The principal Act is amended by-

- (a) designating the contents of section 15 as subsection (1);
- (b) adding immediately after subsection (1) as designated the following new subsections:

“(2) Without prejudice to any other written law, a person shall not be elected to be a member of the Council unless such person-

- (a) is a citizen of the United Republic;
- (b) has not been formally certified to be of unsound mind;
- (c) has not been declared bankrupt; and
- (d) has appeared before the nomination committee and been certified to be of good professional standing to contest for membership to the Council.

(3) A person shall not be elected to be a member of the Council if such person is-

- (a) a public servant;
- (b) a Ward Counsellor;
- (c) a Member of Parliament; or
- (d) a leader of a political party.”

Addition of
section 15A

107. The principal Act is amended by adding immediately after section 15, a new section 15A as follows:

“Prohibition
of political
activities

15A.-(1) A member of the Council shall observe political neutrality and shall not engage in political activities while serving as a member of the Council.

(2) For the avoidance of doubt, political activities in relation to a member of the Council include the following:

Cap.258

- (a) contesting for a political post within a political party as defined by the Political Parties Act or in any other partisan elections;
- (b) campaigning for or against a candidate in partisan elections;
- (c) making campaign speeches;
- (d) collecting contributions or raising funds for any political party;
- (e) organising or managing political rallies or meetings; or
- (f) holding office in political parties.

(3) A member of the Council who contravenes the provisions of subsection (2) commits a gross misconduct and the Attorney General may petition to the Advocates Committee for the removal of such member from the Roll of Advocates.”.

Repeal and replacement of section 31

108. The principal Act is amended by repealing section 31 and replacing it with the following-

“Regulations

31.-(1) The Council may, in consultation with the Attorney General, make regulations for the better carrying out of the objectives of the Act.

(2) The Regulations made under subsection (1) shall be published in the *Gazette*.”.

OBJECTS AND REASONS

This Bill proposes to amend thirteen laws namely the Administrator General (Powers and Functions) Act, Cap. 27; the Criminal Procedure Act, Cap 20; the Extradition Act, Cap. 368; the Interpretation of Laws, Cap. 1; the Law of Limitation Act, Cap.89; Law Reform Commission of Tanzania Act, Cap.171; the Mutual Assistance in Criminal Matters Act, Cap. 254; the National Prosecutions Service Act, Cap 430; the Office of the Attorney General (Discharge of Duties) Act, Cap. 268; the Prevention and Combating of Corruption Act, Cap.329; the Prevention of Terrorism Act, 2002; the Proceeds of Crime Act, Cap 256; and the Tanganyika Law Society Act, Cap 307.

Generally, the proposed amendments intend to carry out consequential amendments as a results of development in the legal regime brought about by the Executive Agencies Act in relation to the Administrator General as well as changes introduced by Government Notices No. 48, 49 and 50 in relation to the Office of the Attorney General, the Office of the National Prosecution Services and the Office of the Solicitor General and otherwise do away with challenges in the implementation of certain provisions of the said laws and other related laws.

The Bill is divided into Thirteen Parts, whereby Part I deals with Preliminary Provisions which include the title of the Bill and the manner with which the laws proposed to be amended are amended in their respective Parts.

Part II of the Bill proposes to amend section 2 of the Administrator General (Powers and Functions) Act, Cap. 27 with a view to aligning the Act with subsequent changes that took place vide the Executive Agencies Act and the need to establish a new post of the Deputy Administrator General who shall be the accounting officer of the RITA and include it in the definition of the Administrator General. Further, the Bill proposes to amend section 4 of the Act so that the Administrator General is appointed by the President instead of the Minister. These proposed amendments include also the appointment of the proposed Deputy Administrator General. The proposals are in consideration of the scope of functions and powers of the Administrator General, status of his office and his precedence in court as per section 4(3) of the Act. Furthermore, the Bill proposes qualifications of the persons who are eligible to hold posts of the Administrator General and the Deputy Administrator General.

Part III of the Bill proposes to amend the Criminal Procedure Act, Cap.20 to include technological advancements for purposes of providing extensive protection to witnesses during the trial. The amendment also intends to improve the judicial test in the exclusion of evidence collected in violation of legal procedures. Further, the proposed amendment in section 57 intends to add provisions that would allow investigation officers to record interviews by using audio or digital devices. Section 73 is proposed to be amended to include drugs offences in the list of the offence which the court can order binding of the accused. Section 169 on the other hand is proposed to be amended in order to strengthen tests that a court should apply before exclusion of evidence that has been collected in violation of legal procedures. Proposed amendments in Section 188 are intended to provide extensive protection of witnesses who may need special protection in the trial. The protection that is currently available is with regard to the publication of names in the new papers. In section

205 it is proposed to add a new section to provide for admission in evidence of reports prepared by cyber forensic expert, ballistic expert and other experts.

Part IV of the Bill proposes to repeal section 9 and amend section 16(2) of the Extradition Act, Chapter 368. These amendments intend to do away with unnecessary bureaucracy in dealing with extradition applications of fugitive criminal from foreign countries. It is proposed that the Minister be at liberty to surrender the fugitive criminal to the requesting country within fifteen days after the said offender has been committed to prison by the court.

Part V of the Bill aims at proposing amendments of the Interpretation of Laws Act, Cap. 1 by re-defining “Law Officers” so as to be in line with the restructuring of the Office of the Attorney General. The Amendments proposes to include the Director of Public Prosecutions, the Administrator General, Solicitor General and State Attorney of or above the rank of Senior State Attorneys in the Public Service to be Law Officers. Further, the Act is amended with a view to remove the Deputy Attorney General in the definition of the Permanent Secretary. The reason behind this amendment is to be in line with the current structure of the Ministry. Currently, the Deputy Attorney General is the assistant to the Attorney General and his role is to advise the Permanent Secretaries when they convene to discuss different issues at the level of the IMTC, on behalf of the Attorney General.

Part VI of the Bill proposes to amend the Law of Limitation Act to give the minister responsible for legal affairs to make regulations for better carrying out of the mandate to extend the period of limitation as far as section 44 of the Act.

Part VII of the Bill proposes to amend the Law Reform Commission Act, in Sections 2, 4, 5, 6, 7, 8, 14, 19 and 22. These amendments intend to strengthen the performance of the Commission in responding to various changes that occur in the society. In addition, these amendments aim at placing policy matters under the Minister responsible for legal affairs instead of being performed by institutions under the Ministry.

Part VIII of the Bill intends to improve the legal framework on mutual legal assistance; designate the Director of Public Prosecutions as a central authority in mutual legal assistance and clarify his functions. The amendments also intends make provisions for use of electronic records and data message obtained under mutual legal assistance arrangement and allow the use of video conferencing technology in cases where there are witnesses in different countries. Proposed amendments further 4 intend to widen types of assistances that may be required to build complex international criminal cases such as the interception of communication data, preservation of telecommunication and computer data. Section 11 is proposed to be amended to include an alternative process to take statement on oath in the circumstance where it is not necessary to take the statements before the Magistrate. Currently, the provisions of section 11(2) requires that all statements taken by authorities in Tanzania need to be taken before a magistrate and certified on oath.

Further, proposed amendment in section 32 will facilitate the enforcement of foreign forfeiture orders without undue delay. Moreover, it is also proposed to add new sections 38A, 38B and 38C to provide for authentication options for a statement, affidavit and deposition. Currently, the Act is silent on the admission and authentication of evidence other than the documents. Witness statement, affidavit and deposition in a trial may be used as

evidence in the circumstances where a witness in a foreign country is not ready to travel to Tanzania to testify in a trial.

Part IX proposes to consequentially amend the National Prosecutions Service Act, Chapter 430 by removing aspects that empowers the Office of the Attorney General to deal with prosecutorial functions and supervisory of administrative issues relating to the National Prosecutions Service. This augurs well with the spirit of restructuring the office of the Attorney General and establishing an independent and autonomous National Prosecutions Service. Apart from that, the Bill proposes to amend the Act in section 27 by restructuring the composition of the National Criminal Justice Forum. Further, the Act is proposed to be amended by introducing new sections 27A and 27B that establish the National Criminal Justice Ministerial Committee and the Regional Criminal Justice Forum, respectively. The National Criminal Justice Ministerial Committee shall be vested with provision of guidance on policy issues relating to the administration of criminal justice, while the role of the Regional Criminal Justice Forum shall be to create an opportunity for actors of criminal justice in the respective region to meet and discuss strategic issues involved in the administration of criminal justice and recommend policy or other strategic interventions that may be required for the system to perform well. The proposed amendments in its entirety aim at bringing efficiency in the administration of justice in Mainland Tanzania.

Part X proposes to consequentially amend the Office of the Attorney General (Discharge of Duties) Act, 2005. Generally, the proposed amendments intend to take on board the new structure of the Office of the Attorney General as restructured by the Office of the Attorney General (Re-structure) Order, 2018. G.N.No.48 of 2018. Particularly, the proposed amendments intend to relieve the Office of the Attorney General from discharging duties relating to public prosecutions and instead those duties to be discharged by the National Prosecution Service. Furthermore, under the proposed amendments, the functions of dealing with civil litigation and arbitration are also relieved from the Office of the Attorney General and placed under the Office of the Solicitor General. Principally, the amendments aims at enabling the Office of the Attorney General to concentrate in its constitutional duty of advising the Government; legislative drafting; and coordinating and regulating State Attorneys in the Public Service, other than those placed under the National Prosecution Service and the Office of the Solicitor General. It is also intended to enhance principles of shared responsibilities but distinguished accountability for efficacy and efficiency in the interest of national development.

Part XI the proposed amendment in Section 34 of the Prevention and Combating of Corruption Act intends to replace the Attorney General with the Director of Public Prosecutions. This is so because of the changes in discharge of the functions of the two offices introduced by government notices No. 48,49 and 50.

Part XII the Bill proposes to amend section 34 of the Prevention of Terrorism Act for purposes of protecting witnesses and the use of technology in the trial of Terrorism offences.

Part XIII proposes to amend the Proceeds of Crime Act. The proposed amendments intend to strengthen legal measures that will ensure criminals are deprived proceeds of crimes and thereby discourage them from committing property driven crimes. The amendments also intend to improve the management and disposal of restrained and confiscated assets.

Section 3 is proposed to be amended to widen the definition of a serious offence in order to apply the Proceeds of Crimes Act to all potential offences which generate proceeds. The current definition is narrow; it does not include all potential criminal offences which could result in criminal profit such as wildlife and tax crimes. It is also proposed to amend the definition of the term 'account' in order to broaden the definition to cover different forms of account. It is also proposed to add a new section 31B to give investigators more powers to obtain information during investigation of criminal assets; and add a new section 31C to prohibit disclosure of information that would prejudice investigation of criminal assets. Section 38 is proposed to be amended in subsection (1) to give the Director of Public Prosecutions the option to make an ex-parte application to secure the assets liable to forfeiture when there is a threat for dissipation of the asset. It is also proposed to amend the same section by adding subsection (6) to give the court discretion to order pre-confiscation disposal of properties which are subject to speed decay or properties whose management would cause substantial expenses.

Part XIV of the Bill proposes to amend the Tanganyika Laws Society Act, Cap. 307 by introducing common standards that will apply to members of the Council and procedures for making Regulations governing the Society. In general, the Bill proposes that the Regulations made by the Council of the Society should be made in consultation with the Attorney General and be published in the Gazette.

MADHUMUNI NA SABABU

Muswada huu unapendekeza marekebisho katika Sheria kumi na tatu (13) zifuatazo; Sheria ya Kabidhi Wasii Mkuu, Sura ya 27, Sheria ya Mwenendo wa Makosa ya Jinai, Sura ya 20, Sheria ya Kubadilishana Wafungwa, Sura ya 368, Sheria ya Tafsiri ya Sheria, Sura ya 1, Sheria ya Ukomo, Sura ya 89, Sheria ya Tume ya Kurekebisha Sheria, Sura ya 171, Sheria ya Mashirikiano Katika Masuala ya Jinai, Sura ya 254, Sheria ya Ofisi ya Taifa ya Mashtaka, Sura ya 430, Sheria ya Ofisi ya Mwanasheria Mkuu wa Serikali (Utekelezaji wa Majukumu yake), Sura ya 268, Sheria ya Kuzuia na Kupambana na Rushwa, Sura ya 329, Sheria ya Kuzuia Ugaidi, Sura ya 19, Sheria ya Mapato ya Uhalifu, Sura ya 256 na Sheria ya Chama cha Mawakili Tanganyika, Sura ya 307.

Kimsingi marekebisho yanayopendekezwa yanalenga kuwezesha utekelezaji wa mabadiliko ya mfumo wa kisheria (legal regime) yaliyotokana na Sheria ya Wakala wa Serikali na Matangazo ya Serikali Na. 48, 49 na 50 kuhusu Ofisi ya Kabidhi Wasii Mkuu, Ofisi ya Mwanasheria Mkuu wa Serikali, Ofisi ya Taifa ya Mashtaka na Ofisi ya Wakili Mkuu. Aidha, marekebisho yanakusudia kuondoa changamoto za kiutendaji katika vifungu mbalimbali vya Sheria tajwa na sheria nyinginezo.

Muswada huu umegawanyika katika Sehemu Kumi na nNne. Sehemu ya Kwanza inahusu masharti ya utangulizi ambayo yanajumuisha jina la Muswada na namna ambavyo masharti mbalimbali ya sheria yanavyopendekezwa kurekebishwa.

Sehemu ya Pili inapendekeza kurekebisha kifungu cha 2 cha Sheria ya Mamlaka na Utekelezaji wa Majukumu ya Kabidhi Wasii Mkuu, Sura ya 27 kwa lengo la kuwianisha sheria na mabadiliko yaliyotokea katika Sheria ya Wakala za Serikali na haja ya kuanzisha nafasi mpya ya Naibu Kabidhi Wasii Mkuu ambaye atakuwa afisa masuuli wa Wakala wa RITA na kumjumuisha katika tafsiri ya Kabidhi Wasii Mkuu. Aidha, Sehemu hii ya Muswada inapendekeza kukifanyia marekebisho kifungu cha 4 cha Sheria ili uteuzi wa Kabidhi Wasii Mkuu ufanywe na Rais badala ya Waziri. Sababu za mapendekezo hayo ni kwa kuzingatia uzito wa majukumu na mamlaka ya Kabidhi Wasii Mkuu, hadhi ya ofisi yake na nafasi yake Mahakamani kwa mujibu wa kifungu cha 4 (3) cha Sheria hiyo. Marekebisho haya pia yanaweka masharti na sifa za watu wanaostahiki kushikilia nafasi za Kabidhi na Naibu Kabidhi Wasii Mkuu.

Sehemu ya Tatu ya Muswada inapendekeza kurekebisha Sheria ya Mwenendo wa Makosa ya Jinai, Sura ya 20 kwa kujumuisha maendeleo ya kiteknolojia kwa lengo la kutoa ulinzi mkubwa kwa mashahidi wakati wa usikilizwaji wa kesi za jinai. Aidha, marekebisho haya yanalenga kuboresha vigezo vitakavyopelekea kuuengua ushahidi unaopatikana kwa ukiukaji wa taratibu za kisheria. Vile vile, marekebisho yanayopendekezwa katika kifungu cha 57 yanalenga kuongeza vifungu vinavyoweza kuruhusu maafisa wa uchunguzi kurekodi mahojiano kwa kutumia vifaa vya sauti au kidigitali. Kifungu cha 73 kinapendekezwa kurekebishwa kwa kujumuisha makosa ya dawa za kulevya katika orodha ya makosa ambayo mahakama inaweza kuamuru mtuhumiwa aendeleo kushikiliwa. Marekebisho haya yana lengo la kuviwezesha vyombo vya uchunguzi kutekeleza majukumu yao kwa ufanisi. Sehemu ya 169 kwa upande mwingine inapendekezwa kurekebishwa ili kuimarisha vigezo ambavyo mahakama inapaswa kuvitumia kabla ya kutolewa kwa ushahidi ambao umekusanywa kwa ukiukaji wa taratibu za kisheria. Pamoja na hayo, marekebisho yanayopendekezwa katika kifungu cha 188 yanalenga kutoa ulinzi kwa mashahidi wanaoitwa kutoa ushahidi wao mahakamani pale ambapo Mkurugenzi wa Mashitaka anaomba hivyo Mahakamani. Ulinzi iliopo sasa ni ule unaozua kuchapishwa majina yao kwenye magazeti. Aidha, katika sheria hii, Muswada unapendekeza kuongeza kifungu kipya cha 205A kinachoongeza masharti ya Mahakama kuukubali ushahidi wa mtaalam wa silaha na wataalam wengine.

Sehemu ya Nne ya Muswada inapendekeza kufuta kifungu cha 9 na kurekebisha kifungu cha 16(2) cha Sheria ya Urejeshwaji wa Wahalifu, Sura ya 368. Marekebisho haya yana nia ya kuondoa urasimu usiohitajika katika kushughulika na maombi ya kuwarejesha wahalifu kwenye nchi walikotendea makosa kwa lengo la kuimariha mahusiano ya kimatafa na kidiplomasia katika masuala ya jinai. Mapendekezo haya yana nia ya kumpa fursa Waziri mwenye dhamana kushughulikia maombi ya namna hii bila kufungwa na masharti ya siku 15 yaliyopo kwenye sheria baada ya mahakama kuamuru mtuhumiwa huyo kuwekwa kizuizini kusubiria amri ya Waziri ya kumrejeshwa.

Sehemu ya Tano inahusu mapendekezo ya marekebisho ya Sheria ya Tafsiri ya Sheria, Sura 1 kwa kutoa tafsiri mpya ya neno "Maafisa wa Sheria" ili kuendana na marekebisho ya muundo wa Ofisi ya Mwanasheria Mkuu kwa mujibu wa Hati Idhini iliyochapishwa katika Tangazo la Serikali Na.48 la mwaka 2018. Vile vile, marekebisho haya yanapendekeza kuwajumuisha Mkurugenzi wa Mashtaka, Kabidhi Wasii Mkuu, na Wakili Mkuu wa Serikali au waendesha mashtaka wenye cheo kuanzia wakili wa serikali Mkuu kuwa Maafisa Sheria (Law Officers). Aidha, mapendekezo ya marekebisho haya yanalenga kumwondoa Naibu Mwanasheria Mkuu kwenye tafsiri ya Katibu Mkuu kwa kuzingatia kuwa katika muundo wa Wizara hapo awali, Naibu Mwanasheria Mkuu pia alikuwa Katibu Mkuu

wa Wizara. Hivi sasa, Naibu Mwanasheria Mkuu ni msaidizi wa Mwanasheria Mkuu wa Serikali na jukumu lake ni kuwashauri Makatibu Wakuu wanapokutana kujadili masuala mbalimbali katika vikao vya Kamati za Makatibu Wakuu kwa niaba ya Mwanasheria Mkuu wa Serikali.

Sehemu ya Sita ya Muswada inapendekeza kurekebisha Sheria ya Ukomo, Sura ya 89 ili kumpa Waziri mwenye dhamana na masuala ya Sheria mamlaka ya kutunga Kanuni za kutekeleza vizuri mamlaka ya kuongeza muda wa kufungua mashauri ya madai nje ya muda kwa mujibu wa kifungu cha 44 cha Sheria.

Sehemu ya Saba ya Muswada inapendekeza kufanya marekebisho kwenye Sheria ya Tume ya Kurekebisha Sheria katika vifungu vya 2, 4, 5, 6, 7, 8, 14, 19 na 22. Marekebisho haya yanalenga kuongeza tija na kuimarisha utendaji wa Tume na kuendana na mabadiliko mbalimbali ambayo hutokea katika jamii. Aidha, marekebisho haya yana lengo la kuweka masuala ya kisera chini ya Waziri mwenye dhamana na mambo ya sheria badala ya kufanywa na taasisi zilizo chini ya Wizara.

Sehemu ya Nane inakusudia kufanya marekebisho kwenye Sheria ya Mashirikiano katika Masuala ya Jinai, Sura ya 256 kwa kuboresha mfumo wa kisheria kuhusu ushirikiano katika masuala ya jinai na nchi nyingine; kumpa Mkurugenzi wa Mashtaka mamlaka ya kushughulikia maombi ya nyaraka za upelelezi za ndani na nje ya nchi na kumpatia majukumu ya masuala anayotakiwa kufanya kwa mujibu wa sheria. Aidha, marekebisho haya yanalenga kuweka masharti ya matumizi ya teknolojia katika masuala ya mashirikiano katika kesi za jinai pale inapotokea shahidi yuko nje ya nchi.

Vile vile, marekebisho yaliyopendekezwa katika sehemu hii yana nia ya kupanua wigo na aina za usaidizi ambao utahitajika kuendesha kesi ngumu za kimataifa kwa kutumia mifumo ya mawasiliano na kompyuta inapobidi. Katika kifungu cha 11 inapendekezwa kufanya marekebisho ya kisheria ikiwa ni pamoja na kuweka utaratibu mbadala wa kuchukua maelezo ya shahidi kwa njia ya kiapo ambapo si lazima kuchukua maelezo hayo mbele ya Mahakimu. Masharti ya kifungu cha 11 (2) cha sasa yanataka maelezo na taarifa ya ushahidi vichukuliwe mbele ya hakimumu na kuthibithishwa kwa kiapo. Zaidi ya hayo, Muswada unapendekeza kufanya marekebisho katika kifungu cha 32 ili kuzirejesha mali zilizopatikana isivyo halali kurejeshwa bila kucheleweshwa. Aidha, sehemu hii inapendekeza kuongeza vifungu kifungu kipya cha 38A, 38B na 38C ili kutoa uhuru wa uthibitisho wa nyaraka na viapo. Hivi sasa, Sheria iko kimya kuhusu namna ya kupokea maelezo na uthibitisho wa ushahidi zaidi ya nyaraka. Maelezo ya mashahidi na viapo ni miongoni mwa masuala yanayoweza kutumika kama ushahidi katika mazingira ambayo shahidi aliye ughaibuni hana nia ya kuja Tanzania kwa lengo la kutoa ushahidi.

Sehemu ya Tisa ya Muswada inapendekeza kufanya marekebisho kwenye Sheria ya Taifa ya Mashtaka kwa kuondoa vipengele vinaivyowezesha Ofisi ya Mwanasheria Mkuu wa Serikali kushughulikia masuala ya uendeshaji wa mashtaka na kuisimamia Ofisi ya Taifa ya Mashtaka kiutawala. Mapendekezo haya ni matokeo ya kubadili muundo wa Ofisi ya Mwanasheria Mkuu wa Serikali na kuanzisha Ofisi huru ya Taifa ya Mashtaka ya Jinai inayojitegemea. Mbali na hayo, Muswada unapendekeza kurekebisha kifungu cha 27 na kurekebisha muundo wa Jukwaa la Taifa la Haki Jinai. Aidha, inapendekezwa katika Sehemu hii kuongeza vifungu viwili vipya vya 27A na 27B ambavyo vinaanzisha Kamati ya Mawaziri ya Haki Jinai na Jukwaa la Haki Jinai la Mkoa. Kamati ya Haki Jinai ya Mawaziri

itakuwa na jukumu la kutoa miongozo ya kisera na maelekezo ya mwenendo wa haki jinai, wakati lile la mkoa litatoa fursa ya kukutana na kujadili masuala ya kimkakati ya haki jinai katika mkoa husika. Marekebisho yanayopendekezwa kwa ujumla yanalenga kuleta ufanisi katika mfumo wa haki jinai nchini.

Sehemu ya Kumi ya Muswada inapendekeza marekebisho kwenye Sheria ya Ofisi ya Mwanasheria Mkuu wa Serikali. Kwa ujumla, marekebisho haya yanaendana na muundo mpya wa Ofisi ya Mwanasheria Mkuu wa Serikali kwa mujibu wa Hati Idhini iliyotolewa na Rais wa Jamhuri ya Muungano wa Tanzania. Marekebisho haya yanalenga kuondoa majukumu ya uendesaji wa mashtaka ya jinai na usimamizi wa masuala ya ufilisi chini ya Ofisi ya Mwanasheria Mkuu wa Serikali na badala yake majukumu hayo kutekelezwa na taasisi husika zilizoanzishwa kwa mujibu wa sheria. Aidha, katika marekebisho haya, masuala ya kuendesha na kusimamia mashauri ya madai yameondolewa chini ya Mwanasheria Mkuu wa Serikali na kuwekwa chini ya Wakili Mkuu wa Serikali. Kimsingi, marekebisho yanalenga kuiwezesha Ofisi ya Mwanasheria Mkuu wa Serikali kujikita katika shughuli zake za msingi zilizobainishwa chini ya Ibara ya 59 za ushauri; pia kuandika miswada ya sheria na kuwaratibu wanasheria wote walio katika utumishi wa umma nje ya wale walio katika Ofisi ya Taifa ya Mashtaka na Ofisi ya Wakili Mkuu wa Serikali. Mabadiliko haya ni muhimu kwa kuwa yanalenga kuimarisha utendaji na mahusiano baina ya taasisi za serikali kwa lengo la uwajibikaji na kuongeza ufanisi wa utendaji kwa maslahi ya maendeleo ya taifa.

Sehemu ya Kumi na Moja inapendekeza kufanya marekebisho kwenye Sheria ya Kuzuia na Kupambana na Rushwa kwa kuondoa maneno Mwanasheria Mkuu wa Serikali katika kifungu cha 34 na badala yake kumuweka Mkurugenzi wa Mashtaka. Marekebisho haya yanatokana na mabadiliko ya muundo wa Ofisi ya Mwanasheria Mkuu wa Serikali.

Sehemu ya Kumi na Mbili inapendekeza kurekebisha kifungu ch 34 cha Sheria ya Ugaidi kwa kumlinda shahidi na kuweka masharti ya matumizi ya teknolojia katika uendesaji wa kesi za ugaidi.

Sehemu ya Kumi na Tatu inapendekeza marekebisho ya Sheria ya Urejeshwaji wa Mali Zitokanazo na Uhalifu. Marekebisho yanayopendekezwa yanalenga kuimarisha mfumo wa kisheria kwa kuhakikisha kuwa wahalifu wananyang'anywa mali zilizopatikana kwa njia za uhalifu, hawanufaiki nazo, na hivyo kuwazuia kuendelea kutenda makosa kwa kutumia mali hizo pamoja na makosa mengine yanayoendana ikiwemo makosa ya dawa za kulevya, usafirishaji haramu wa binadamu, rushwa na utakatishaji fedha.

Katika Sehemu hii, kifungu cha 3 kinapendekezwa kurekebisha ili kupanua maana ya neno "serious offence" kutumika katika sheria hii na ili kutumika katika makosa mengine yote makubwa yanayozalisha kipato. Tafsiri ya sasa haijumuishi makosa yote ya jinai ambayo yanaweza kusababisha faida kama vile makosa yahasuyo wanyamapori na makosa ya kodi. Aidha, Sehemu hii inapendekeza kuongeza vifungu vipya vya 31B na 31C kwa lengo la kuviwezesha vyombo vya uchunguzi kupata taarifa inayoweza kusaidia uchunguzi. Marekebisho haya yanalenga kuzuia utoaji wa taarifa ambazo zinaweza kuathiri uchunguzi wa mali itokanayo na uhalifu. Marekebisho ya kifungu cha 38 kifungu kidogo cha (1) yanalenga kumpa mamlaka Mkurugenzi wa Mashtaka kuwasilisha Mahakamani maombi ya upande mmoja (*ex-parte application*) kwa lengo la kukamata mali iliyopatikana kwa njia za uhalifu na ambayo iko hatarini kupotea au kuharibiwa. Sehemu hii pia inapendekeza

kurekebisha kifungu cha 38 kwa kuongeza kifungu kidogo cha (6) ili kuiwezesha Mahakama kutoa amri ya kutaifishwa au kauzwa kwa awali mali iliyokamatwa na ambayo inaharibika mapema au ile ambayo utunzaji wake ni wa gharama.

Sehemu ya Kumi na Nne ya Muswada inapendekeza kurekebisha Sheria ya Chama cha Mawakili Tanganyika, Sura ya 307 kwa kuweka vigezo ambavyo vitatumika kwa wajumbe wa Baraza na taratibu za kuzifuata wakati wa utungaji wa Kanuni zinazosimamia Chama hicho. Kwa ufupi, mapendekezo ya marekebisho ya sheria hii yana lengo la kuweka masharti ya kumtaka Mwanasheria Mkuu Mkuu wa Serikali kuzipitisha Kanuni zinazotungwa na Baraza la Chama kabla ya kuchapishwa. Aidha, Kanuni hizo zitachapishwa kwenye Gazeti la Serikali.

Dodoma,
22 Mei, 2018

PALAMAGAMBA J.A.M. KABUDI
Waziri wa Katiba na Sheria