

THE UNITED REPUBLIC OF TANZANIA



No. 16 OF 1984

I ASSENT,

Julius Nyerere President

14th January, 1985.

An Act to make provisions consequential upon the amendment of the Constitution of the United Republic of Tanzania, 1977, and for matters connected with the amendment of that Constitution

[.....]

ENACTED by the Parliament of the United Republic of Tanzania.

1. This Act may be cited as the Constitution (Consequential, Transitional and Temporary Provisions) Act, 1984, shall be read as one with the Fifth Constitutional Amendment Act, 1984 (entitled in Kiswahili "Sheria ya Maekebisho ya Tano Katika Katiba ya Nchi, ya Mwaka 1984") and shall come into operation on the date of commencement of that Act. Short title, construction and amendment

2. This Act shall apply throughout the United Republic. Application

3. In this Act, unless the context requires otherwise— Interpretation

"the Act" means the Fifth Constitutional Amendment Act, 1984 (entitled in Kiswahili "Sheria ya Marekebisho ya Tano Katika Katiba ya Nchi, ya Mwaka 1984");

"the amended Constitution" means the Constitution prior to its amendment by the Act:

"the Constitutions means the Constitution of the United of Tanzania, 1977, (entitled in Kiswahili "Katiba ya Jamhuri ya Muungano wa Tanzana, ya Mwaka 1977");

"existing law" means the written and unwritten law of Tanzania as it exists immediately before the commencement of the Act, and for the avoidance of doubt it is hereby declared that it includes any law enacted or made by any enactment or instrument passed or made before and coming into operation on or after, the commencement of the Act.

This Act,
Cap. 500,
Cap. 598
and C.A.
Act No. 2
of 1977 to
prevail
over the
Act

4. The provisions of this Act and such of the provisions of the Republic of Tanganyika (Consequential, Transitional and Temporary Provisions Act, 1962, the Interim Constitution (Consequential, Transitional and Temporary Provisions) Act, 1965, and of the Constitution (Consequential Transitional and Temporary Provisions) Act, 1977, as have not expired shall have effected notwithstanding anything contained in the Act.

Transitional Provisions

Existing
law

5.—(1) Without prejudice to the repeal, revocation or amendment of any existing law, with effect from the commencement of this Act, the existing law shall continue to be the law of Tanzania after the commencement of the Act except in so far as it is amended, modified repealed or revoked by competent authority or any provision of it expires after the commencement of the Act. However, the existing law shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with the provisions of the Act or as are provided in this Act: and for the avoidance of doubts it is hereby declared that, subject to the modifications, adaptations, qualifications and exceptions with which the existing law shall be construed and subject also to the other provisions of this Act, the operation of the existing law after the commencement of the Act shall not be affected by the amendment of the Constitution.

(2) Notwithstanding the amendment of the Constitution and, in particular, the justiciability of the provisions relating to basic rights, freedoms and duties, no existing law or any provision in any existing law may, until after three years from the date of the commencement of the Act, be construed by any court in the United Republic as being unconstitutional or otherwise inconsistent with any provision of the Constitution.

(3) The President may, at any time before the 30th of June, 1985, by order published in the *Gazette*, make such amendments to any existing law as may appear to him to be necessary or expedient for bringing that law into conformity with the provisions of the Act and the Constitution or for giving effect or enabling effect to be given to those provisions, and where the President makes an order under this section in relation to any law which is applicable to Zanzibar as well as to Mainland Tanzania, that order shall have effect so as to amend that law in relation to any person or matter connected with Zanzibar as well as with Mainland Tanzania in respect of any matter within the legislative competence of the Parliament of the United Republic, notwithstanding any provision to the contrary in the Interpretation of Laws and General Clauses Act, 1972.

Cap. 1

6. Where any matter that falls to be prescribed or provided for under the Act by Act of Parliament or by any other authority or person is prescribed or provided for by or under existing law (including any amendment made to that law under section 5 of this Act) or is prescribed or provided for immediately before the commencement of the Act by or under the Constitution or for the purposes of the Constitution, that prescription or provision shall, as from the commencement of the Act have effect as if it had been made under the Act by Act of Parliament or, as the case may be, by the other authority or person.

Constitutional requirements fulfilled by existing law

7. Where any matter or thing has been commenced, or any step has been taken, before the commencement of this Act, by any person or authority having power for that purpose under existing law, the matter or thing may be carried on and completed and further steps may be taken by the person or authority having power for that purpose on or after the commencement of this Act, and it shall not be necessary for the later person or authority to reconsider the matter or thing or take the step afresh.

Pending matters

8.—(1) Subject to the provisions of subsections (2) and (3) of this section, every person who, immediately before the commencement of the Act, hold or is acting in any office established by or under any of the provisions of the amended Constitution amended by the Act or any former constitution shall, so far as is consistent with the provisions of the Act and of the Constitution be deemed as from the commencement of the Act, to have been elected or appointed to the like office or to act in the like office established by or under the Act or shall be deemed to be in the service of the United Republic and to have complied with any requirement of the Constitution, or of other written law to take and subscribe any oath on election or appointment to office.

Officers

(2) Any person who, under the amended Constitution or any former constitution or existing law, would be required to vacate his office at the expiration of any period or on the attainment of any age shall vacate his office at the expiration of that period or upon the attainment of that age.

(3) The provisions of this section shall apply without prejudice to the powers conferred by or under any law upon any person or authority to make provisions for the abolition of offices or to remove persons acting or acting in offices, or to require persons to retire from office.

9.—(1) Subject to the provisions of subsection (2) of this section, but notwithstanding the enactment of the Act and the provisions of that Act relating to the composition of the National Assembly, the Speaker and the persons who, immediately before the commencement of the Act are members of the National Assembly established under the amended Constitution shall continue to be the Speaker and members respectively of, and to constitute, the National Assembly, under the Act and the Constitution until the next dissolution of Parliament made after the commencement of the Act and in accordance with the provisions of the Act as incorporated into the Constitution.

Continuation of the National Assembly established under the amended Constitution

(2) The provisions of subsection (1) of this section shall apply without prejudice to the operation of the provisions of the Constitution relating to the vacation of the office of Speaker or seat of a member of the National Assembly in the circumstances prescribed by the Constitution.

Dissolution of
Parliament
under the
amended
Constitution

10.—(1) Where, in accordance with the Act or any other law in force after the commencement of the Act any matter or thing is to be, or may be done on or on account of a dissolution of Parliament, the matter or thing shall be done or, as the case may be, may be done on or on account of the dissolution of the Parliament established under the amended Constitution.

(2) If any occasion arises before the declaration of the majority of the results in the general election to be held on the dissolution of the Parliament established under the amended Constitution—

(a) for the summoning of Parliament under the powers contained in subsection (4) of section 87 of the Constitution, as amended by the Act, the Speaker and the persons who, immediately before the dissolution, were members of the National Assembly established under the amended Constitution may be summoned to that Parliament and, until midnight on the day on which the majority of the results are declared those persons shall be deemed to be the Speaker and the members respectively of, and to constitute, the National Assembly;

(b) for the appointment of any person to any office appointment to which, at a time when Parliament is dissolved, is restricted to persons who were members of the National Assembly immediately before dissolution, any appointment may be made to that office from among the persons who were members of the National Assembly immediately before the dissolution of the Parliament established by the amended Constitution.

Legal
proceedings

11.—(1) Any proceeding pending immediately before the commencement of this Constitution before the Court of Appeal of the United Republic established by the amended Constitution may be continued and concluded, and decrees, judgements and orders in that proceeding may be given and perfected after the commencement of the Act before and by the Court of Appeal as re-established by the Act.

(2) Every decree, judgement or order given or perfected by the Court of Appeal of the United Republic established by the amended Constitution or by the Court of Appeal for East Africa which shall not have been fully executed and enforced before the commencement of the Act may be executed and enforced after the commencement of the Act by the Court of Appeal as re-established.

Repeals and Amendments

Repeals and
amendment
of provisions
of the
Constitution

12.—(1) Subject to the provisions of subsection (2) of this section the Preamble to the Constitution, Chapter I, Chapter II, Chapter III, Chapter IX and the Schedule to the Constitution are hereby repealed.

(2) Subject to the preceding provisions of this Act, the provisions of sections 13, 14 and 15 of Interpretation of Laws and General Clauses Act,

No. 16 Constitution (Consequential, Trans. and Temp. Provisions) 1984

5

1972, (which relate respectively to repeal and substitution, effect of repeal of an Act or part of an Act on subsidiary legislation), shall have effect in relation to the repeal of the said parts and other provisions of the Constitution as if the Constitution were an Act of Parliament the parts and other provisions of which are repealed, and replaced by the Act.

(3) Subject to subsection (4) of this section, Chapter IV, Chapter V, Chapter VI, Chapter VII and Chapter VIII of the Constitution are hereby amended.

(4) Subject to the preceding provisions of this Act, the provisions of sections 17, 18 and 19 of the Interpretation of Laws and General Clauses Act, 1972, (which relate respectively to construction of amending Act with amended Act, reprint of amended Act and reference to amended written law), shall have effect in relation to the amendment of the said parts and other provisions of the Constitution as if the Constitution were an Act of Parliament the parts and other provisions of which are deleted, and replaced by the Act.

13. The Appellate Jurisdiction Act, 1979, is hereby amended—

Amendment
of Act No.
15 of 1979

(a) by adding immediately after section 1 the following new section:—

“Application 2. This Act shall apply throughout the United Republic.”;

(b) by renumbering section 2 as subsection (1) of section 3, and—

(i) inserting the following definition immediately before the definition “Court of Appeal”.

““the Constitution” means the Constitution of the United Republic of Tanzania, 1977 or the Constitution of Zanzibar, 1978, as the case may be;

(ii) deleting the definition “High Court” and substituting for it the following:

“High Court” means the High Court of the United Republic of Tanzania or the High Court of Zanzibar, as the case may be;”;

(iii) by adding immediately after subsection (1) the following subsections—

“(2) For the purposes of this Act, reference to any provision of any procedural or substantive enactment applicable to Mainland Tanzania shall be construed to include reference to a like or similar provision of a corresponding procedural or substantive enactment by the House of Representatives applicable to Zanzibar in relation to the matters to which the former enactment relates.

(3) For the purposes of this Act, reference to a court subordinate to the High Court shall be

6. No. 16 Constitution (Consequential, Trans. and Temp. Provisions) 1984

construed to include a court subordinate to the High Court of Zanzibar corresponding to the court referred to in this Act.

(4) For the purposes of this Act, reference to the Director of Public Prosecutions, or to any other public officer on whom any power or function is conferred or imposed under this Act in relation to Mainland Tanzania shall, subject to subsection (5), be construed as including reference to a public officer holding office under the Revolutionary Government of Zanzibar and exercising or discharging power or functions in relation to Zanzibar corresponding to those exercisable or discharged by the Director of Public Prosecutions or other public officer referred to in this Act.

(5) The provisions of subsection (4) shall not apply to the interpretation of the designation "Chief Justice".

(c) by renumbering sections 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 as sections 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 respectively.

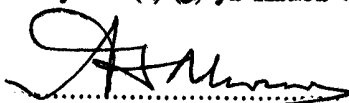
(d) by deleting section 12 as renumbered and substituting for it the following—

"12. The Chief Justice may, either on his own motion or upon the advice of, and after consultation with, the Chief Justice of Zanzibar, make rules of court regulating appeals to the Court of Appeal and other matters incidental to the making, hearing or determination of those appeals."

Passed in the National Assembly on the Thirty-first day of October, 1984.


Clerk of the National Assembly

"Nathibitisha kwamba Muswada kwa ajili ya Sheria hii umepitishwa na Bunge kwa mujibu wa Masharti ya Ibara ya 52 (1) (b) ya Katiba".


Spika