



## THE CLEAR AND PRESENT DANGER TO OUR UNITED REPUBLIC

### Statement on the Proposed Miscellaneous Amendments No. 3 (2020) Bill

On Thursday 4 June, the government published the Miscellaneous Amendments No. 3 (2020) Bill proposing amendments to 13 laws. On Friday 5 June the proposed amendments were read for the first time in Parliament. Public views were invited over the weekend and the Bill is due to be passed on Tuesday 9 June, due to its introduction under a Certificate of Urgency.

Contained within these amendments are proposals that fundamentally alter the fabric of our society, in particular with regards to the rule of law.

**We, as independent civil society organisations who cherish and uphold basic values of freedom and democracy, are sounding the alarm about the clear and present danger to our Republic that the Miscellaneous Amendments No. 3 (2020) Bill represents.**

Many of the amendments proposed brazenly violate the spirit and the letter of our Constitution. They threaten such fundamental, constitutionally enshrined principles as equality before the law (Article 13), the supremacy of the Constitution (Article 26), and the separation of powers (Article 4).

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#### *Article 13 – Equality before the law is in danger!*

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The Constitution of the United Republic of Tanzania states as follows:

*'13(1) All persons are equal before the law and are entitled, without any discrimination, to protection and equality before the law.'*

Amendments proposed to the **JUDICIARY ADMINISTRATION ACT, (CAP. 237)** grant immunity from prosecution to all judicial employees for acts done 'in good faith' during their employment.

Proposed amendments to the **LAW REFORM (FATAL ACCIDENTS AND MISCELLANEOUS PROVISIONS) ACT, (CAP. 310)** and to the **BASIC RIGHTS AND DUTIES ENFORCEMENT ACT, (CAP. 3)** similarly state that

all suits against the President, Vice-President, Prime Minister, Speaker, Deputy Speaker or Chief Justice cannot be brought against them directly but instead must be brought against the Attorney General.

By preventing individuals who hold these offices from being held directly accountable in a court of law, the amendments serve to erode accountability in the country. Experience from around the world shows that individual direct accountability is critical in ensuring performance and reducing wrong-doing. The principle of equality before the law enshrined in the Constitution requires that every citizen, regardless of position or rank, be held equally accountable for breaking the law. These amendments reduce the possibility for holding specific groups directly responsible for their actions while in office. In addition, there are already adequate protections for the President and Judicial Officers in the Constitution and the Judiciary Administration Act itself.

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### *Article 26 – The supremacy of the Constitution is under attack!*

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The Constitution of the United Republic of Tanzania states as follows:

*‘26(2) Every person has the right, in accordance with the procedure provided by law, to take legal action to ensure the protection of this Constitution and the laws of the land.’*

Amendments proposed to the **BASIC RIGHTS AND DUTIES ENFORCEMENT ACT, (CAP. 3)** provide that only affected or directly aggrieved parties can file constitutional cases and that Article 30(3) of the Constitution is to be applied in the reading of Article 26(2).

Proposed amendments to the **LAW REFORM (FATAL ACCIDENTS AND MISCELLANEOUS PROVISIONS) ACT, (CAP. 310)** and the **BASIC RIGHTS AND DUTIES ENFORCEMENT ACT, (CAP. 3)** grant specific individuals immunity from prosecution for violating the Constitution, in specific circumstances.

Article 26 of the Constitution empowers and enjoins every Tanzanian citizen to protect and promote the Constitution, including through the courts. Removing the right for individuals or entities to sue for their rights unless they are directly affected, effectively outlaws public interest litigation and alienates the disenfranchised from legal redress. Furthermore, granting individuals immunity from prosecution for constitutional violations denies citizens the right and opportunity to protect the Constitution. More importantly, these proposed changes alter the hierarchy of laws and law-making by allowing procedural legislation to dictate a hierarchy between articles of the Constitution.

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### *Article 4 – The Separation of Powers is threatened!*

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The Constitution of the United Republic of Tanzania states as follows:

*‘4(1) All state authority in the United Republic shall be exercised and controlled by two organs vested with executive powers, two organs vested with judicial powers and two organs vested with legislative and supervisory powers over the conduct of public affairs.’*

The proposed amendments to the **LAW REFORM (FATAL ACCIDENTS AND MISCELLANEOUS PROVISIONS) ACT, (CAP. 310)** and to the **BASIC RIGHTS AND DUTIES ENFORCEMENT ACT, (CAP. 3)** similarly state that all suits against the President, Vice-President, Prime Minister, Speaker, Deputy Speaker or Chief Justice cannot be brought against them directly but instead must be brought against the Attorney General.

Amendments proposed to the **NATIONAL ASSEMBLY (ADMINISTRATION) ACT, (CAP. 115)** give the President significant mandate over parliamentary business – specifically the power to approve the establishment of departments, units and sections by the Parliamentary Service Commission.

The principle of separation of powers is one of the cornerstones of our Republic and our young democracy. The three branches of government are the Executive, the Legislature and the Judiciary. Each branch is independent and has a role in holding the others accountable in the public interest. The Judiciary in particular is tasked with ensuring that all of us comply with the law. These amendments make the Attorney General, a member of the Executive branch, answerable for crimes committed by the most senior leaders from all three branches of government. This blurs the lines of accountability between these three organs.

Also, by giving the President a mandate over internal parliamentary business, they unconstitutionally remove the power of Parliament to hold the Executive accountable. The amendments to Parliament's autonomy also contravene Articles 62 and 63 of the Constitution which detail the President's role in the National Assembly and the supremacy of Parliament.

**These amendments pose a very clear and present danger to our United Republic. We call on law-makers, the media, civil society and all citizens to unite in challenging them and in so doing, to defend our Constitution and our United Republic of Tanzania.**

**Sign the petition:** <http://chng.it/9QmKVXJRQ5>

**Learn more:** <https://twaweza.or.tz/go/miscellaneous-amendments-analysis-2020->

**Follow the debate:** #KatibaYetu, #UhuruWetu, #DemokrasiaYetu #Muswada2020

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