

Submitted to
The Parliamentary Committee on Legal and Constitutional Affairs

Submitted on January 16, 2020

Honorable Chair and distinguished members of this Committee

We have honored your kind invitation to contribute to the review of these important Miscellaneous Amendments (as received) by submitting our written analysis on the proposed amendments.

The three laws covered in this note are:

- Tanganyika Law Society Act
- Local Government (District Authorities) Act
- Local Government (Urban Authorities) Act

We commend the intention to align and synergise different laws and to keep up with changing contexts.

In particular, we are supportive of the inclusion lens brought in through the amendments proposed to the Tanganyika Law Society Act. These amendments allow for more representative decision-making across geographic lines in particular and take note of the important role and historic exclusion of women and youth from decision-making positions in the Society. However, we continue to insist on the importance of the Tanganyika Law Society as an independent organisation with a special role in embedding rule of law in the country. For these reasons it is important that, to the maximum extent possible, the Society is left to self-regulate and govern according to rules and procedures set by members and the Council.

In addition the amendments to this Act are likely to have the unintended consequences of limiting decision-making to fewer members of the Society, diminishing democracy and making decisions easier to influence externally.

The changes to the Local Government Acts (district authorities, urban authorities), while needed, are mis-phrased such that they preclude the possibility of suing local authorities. This should be corrected.

In subsequent pages, we provide detailed analysis to support our general and specific comments.

We humbly submit,

Twaweza East Africa

The Written Laws Miscellaneous Amendments (No. 8) Act, 2019

Notes and recommendations – January 2020

Twaweza

1. Introduction

Amendments to fourteen different laws are proposed. Of these, brief checks confirm that eleven are not as such, directly relevant to Twaweza's work, and therefore are not included in the analysis in this note. The three laws covered in this note are:

- Tanganyika Law Society Act
- Local Government (District Authorities) Act
- Local Government (Urban Authorities) Act

The first one is analysed and presented separately. The other two are grouped together in one section as the amendments are similar across the two Acts. In each case, a brief analysis is followed by recommendations for how the proposed amendments could be improved.

2. Tanganyika Law Society Act

The Tanganyika Law Society is the Bar Association of mainland Tanzania. It was established by law in 1954, re-established under a new law (the TLS Act) in 2002, and essentially comprises all qualified lawyers in mainland Tanzania.

The majority of proposed amendments to the TLS Act concern the management of the society. This includes a number of changes that may appear minor, but which would impact on the ability of TLS and the society's leadership to operate independent of government. This includes:

Changes to the composition and terms of Council members

Article 52 amends section 15 of the Act, including two main changes. First, it introduces new restrictions on eligibility for membership of the TLS Council (the society's governing body). Specifically, in addition to the President, Vice-President and Honorary Treasurer (each elected by the society's members), the amendments require that the other eight members must comprise seven who, it appears, are to be elected by Zonal chapters and one representing young lawyers. Second, the amendments introduce term limits on Council members: two terms of one year each. In other words, the only council members elected by all members will be the three top leaders, and there will be very rapid turnover of the society's top leadership council members.

Some context is required here. First, the leadership of TLS – particularly the society's President – has become a contentious issue in recent years, with three consecutive Presidents elected against the wishes of government ministers.

Second, the government introduced amendments to the TLS Act in 2018¹. This most notably introduced new restrictions on who was allowed to become members of the TLS Council (its governing body): specifically, that no public servant or politician was allowed to do so. These were controversial and contested at the time but were passed at the time.

¹ See Part XIV of the Written Laws (Miscellaneous Amendments) (No.2) Act, 2018

The combined effect of the 2018 amendments and the latest proposed amendments is that i) the pool of potential leaders for TLS has been substantially reduced, and ii) that leadership will continue to change hands very frequently. The consequences will be to undermine the position of TLS President, and indeed of the society as a whole, making it harder for the society to operate independently.

Further, it is hard to understand the justification for introducing such restrictions on an independent society that is entirely capable of establishing its own procedures and policies. The independence of lawyers is an essential element of the rule of law and indeed of democracy, so any restrictions on the society's operations should be minimal and should have very clear justifications.

Changes to the TLS Secretariat

Previously, the TLS Act largely allowed the society and its Council to determine how it will be managed on a day-to-day basis. A Secretary and other officers were to be appointed as required, but no restrictions were put on who should take these roles. Amendment 56 would change this, replacing section 19 with a new section that, among other things, specifies that an Executive Director must be recruited from among the society's members, that he/she must be an advocate of the High Court of Tanzania with at least ten years' experience of legal practice, and that they should be appointed for a five year term (renewable once).

The likely consequence of these changes, particularly when combined with changes to the Council as outlined above, is to shift the main power base of the society away from the (elected) President, who will serve for a maximum of two years, and towards the Executive Director, who can serve for up to ten.

As before, there is no clear justification for these restrictions on the operations of a society whose independence should be strongly protected, and which is entirely capable of running itself.

Changes to Annual General Meetings and other General Meetings

Amendment 57 introduces extensive rules governing the functioning of TLS Annual General Meetings (AGMs). Specifically, AGMs will no longer comprise all members of the society, but on a representative basis. Those attending will be limited to Council members, members of standing committees, members of the committees of chapters representing each Zone, women, young lawyers, senior lawyers, etc., and between two and four members chosen by each chapter to represent them. Oddly, the amendments would require that AGMs must be held in the second week of April. And finally, Amendment 58 replaces a rule under which any fifteen society members could demand a General Meeting with a new rule requiring "at least one third of members of good standing consisting equal percentage representation from each chapter" to make such a demand.

Given that the AGM is where Council members (including the President) are elected, restricting attendance at the AGM in this way is a serious constraint on the society. It is certainly disempowering for each society member who is not chosen to attend, since they will have no say in choosing the society's leaders or setting its policies. Further, given that the procedures by which those attending the AGM are to be chosen are so complicated, it seems likely that decisions made at AGMs will be open to legal challenge. This could mean, for example, that future Presidents of TLS will find their two-year term entirely taken up with legal struggles to confirm their legitimacy in that role. Finally, the rules for member-demanded meetings are so specific that it seems almost impossible for such a meeting to ever meet the requirements.

As before, the independence of the national Bar Association is an important component of respect for the rule of law. Impinging on that independence by introducing restrictions should only be done when truly necessary. That is not the case with these changes.

Audits, Accounts and Reports

Amendments 59-61 introduce new accounting and reporting requirements on the TLS, including specific requirements that audited accounts, annual reports and minutes of all General Meetings must be delivered to the Minister responsible for Legal Affairs.

It is both good practice for a society such as TLS to be fully transparent in its operations and reasonable to expect the society to keep proper accounts and to have these audited. However, the requirement that this should all be delivered to the Minister is unnecessary and carries a strong sense that the society would be “under” the Minister. This is not the case and should not be allowed to become so.

Recommendations

Overleaf, we propose a series of changes to the amendments that would ensure protection for the independence of TLS.

However, as outlined above, the proposed amendments to the TLS Act introduce extensive restrictions on how the society must be governed and how it must operate. Given that respect for the rule of law demands protection of the independence of lawyers in general and the Bar Association in particular, such restrictions should only be introduced when they are clearly justified, and they should be minimal. These restrictions are not justified and not minimal.

As such, the main recommendation is as follows:

Replace Amendments 52-61 with a single amendment specifying that “the governance and operations of the society are matters for the society itself, and not subject to control or interference by any branch of government.”

TANGANYIKA LAW SOCIETY ACT

<i>No.</i>	<i>Original</i>	<i>Details and Concerns</i>	<i>Recommendations</i>
52(a)	<p>The principle Act is amended in Section 15, by - deleting subsection (1) and replacing it with the following:</p> <p>(1) For the proper governance of the affairs of the Society, there shall be a Council consisting of a President, Vice President, Honourary Treasurer and eight other members, all of whom shall be members of the Society, duly elected during the Society's General Election.</p> <p>(2) The eight members of the Council referred to in subsection (1) shall comprise of seven zonal leaders and one member representing an association of young lawyers.</p>	<p>Election of the majority of Council members is in the hands of Zonal chapters rather than all members. This is an unnecessary interference with the society's governance and would have the impact of limiting the pool of who exactly is given the chance to choose these leaders.</p>	<p>In 52(a), change the text of 15(2) so that it reads as follows: "The eleven members of the Council referred to in subsection (1) shall elected by a simple majority of the society's membership with due regard to geographical, gender and youth representation."</p>
52(c)	<p>(5) The President, Vice President, Honourary Treasurer and the eight other members shall be elected for a term of one year and shall be eligible for re-election for one further term.</p>	<p>Council members, including the President, Vice-President and Treasurer, are subject to an entirely unnecessary and restrictive two-year term limit.</p>	<p>In 52(c), change the text of 15(5) so that it reads as follows: "The President, Vice-President, Honorary Treasurer and other Council members shall be elected for a term of two years and shall be eligible for re-election for three further terms."</p>

TANGANYIKA LAW SOCIETY ACT

No.	Original	Details and Concerns	Recommendations
56	<p>(3) The Council shall employ from amongst members or officers of the Society to be Executive Director of the Secretariat.</p> <p>(6) A person shall not be eligible to be employed as Executive Director of the Society unless that person-</p> <p>(a) is an advocate of the High Court of Tanzania and the courts subordinate thereto, with at least ten years of practice;</p> <p>(b) is of good moral standing in the society; and</p> <p>(c) has demonstrated experience in management of the same position or its equivalent.</p> <p>(7) A person employed as Executive Director shall hold office for a term of five years and may be eligible to serve for one further term subject to good standing performance.</p> <p>(8) The Executive Director may be removed from office by the Council by votes of at least two thirds of the members on any of the following grounds:</p> <p>(a) inability to perform functions of the office due to mental or physical infirmity;</p> <p>(b) gross misconduct;</p> <p>(c) incompetence;</p> <p>(d) has been adjudged bankrupt;</p> <p>(e) deserion of office or duty; or</p> <p>(f) has been convicted of a criminal offence punishable by imprisonment of a period of not less than two years.</p> <p>(9) The Council shall, before removing the Executive Director-</p> <p>(a) notify the Executive Director, in writing, of the resons for the intended removal; and</p> <p>(b) afford the Executive Director the opportunity to be heard in defence of allegations against him.</p>	<p>Intrusive restrictions on how the society appoints its management are introduced, which represent unnecessary infringements on the society's independence. It is important to note that this is a statutory body that is independent of government. As such best practice dictates that the skills and functions of an Executive Director change depending on organisational growth and direction. So this level of prescription on the qualities required in the Executive Director is detrimental to TLS's functioning. Similarly, reasons for removal and the process to do so should be dtermined by TLS itself.</p>	<p>In 56, remove the proposed subsections 19(6), 19(7), 19(8) and 19(9).</p>

TANGANYIKA LAW SOCIETY ACT

No.	Original	Details and Concerns	Recommendations
57	<p>21(1) The Council shall, in at least the second week of April of each calendar year, convene an Annual General Meeting.</p> <p>(3) The Annual General Meeting shall be convened by way of representation.</p> <p>(4) The Annual General Meeting shall be duly constituted where it is composed of:</p> <p>(a) members of the Council;</p> <p>(b) members of all Standing Committee</p> <p>(c) all Chapter leaders including members of their Standing Committees;</p> <p>(d) four members from each Chapter comprising of representatives of young lawyers, female lawyers, senior lawyers and people with disability, all elected annually by Chapter members in the Chapter general meetings;</p> <p>(e) members of the Zonal Executive Committees;</p> <p>(f) two members from the Chapter zones elected from the zone members during zonal annual general meeting; and</p> <p>(g) any other person as the Council may consider necessary to invite.</p>	<p>Unnecessary restrictions on the conduct of AGMs and other General Meetings are introduced that interfere with the society's operations and disempower individual members of the society.</p> <p>Scope should be left for the full membership of TLS to attend their own annual meeting.</p>	<p>21(1) The Council shall, in each calendar year, convene an Annual General Meeting.</p> <p>(3) The Annual General Meeting shall be convened by way of representation or attendance of all members.</p> <p>(4) The Annual General Meeting shall be duly constituted where it is, at minimum, composed of:</p> <p>(a) members of the Council;</p> <p>(b) members of all Standing Committee</p> <p>(c) all Chapter leaders including members of their Standing Committees;</p> <p>(d) four members from each Chapter comprising of representatives of young lawyers, female lawyers, senior lawyers and people with disability, all elected annually by Chapter members in the Chapter general meetings;</p> <p>(e) members of the Zonal Executive Committees;</p> <p>(f) two members from the Chapter zones elected from the zone members during zonal annual general meeting; and</p> <p>(g) any other person as the Council may consider</p>
58	<p>(1) Notwithstanding section 21, the Council may convene a general meeting of the Society where at least one third of members of good standing consisting of equal percentage representation from each Chapter, at any time requisition a general meeting by written notice in that behalf signed by them, specifying the object of the proposed meeting and deposit with the Executive Director.</p>	<p>An overly high bar is set for members to call General Meetings, which is practically impossible to meet.</p>	<p>(1) Notwithstanding section 21, the Council may convene a general meeting of the Society where at least one per cent (1%) of members at any time requisition a general meeting by written notice in that behalf signed by them, specifying the object of the proposed meeting and deposit with the Executive Director.</p>
59	<p>(2) The Council shall submit to the Minister minutes of the Annual General Meeting or general meeting as the case may be within two months after the minutes have been confirmed by the Annual General Meeting or general meeting respectively.</p>	<p>An unnecessary requirement for the minutes of General Meetings to be provided to the Minister is introduced.</p>	<p>(2) The Council may share with the Minister minutes of the Annual General Meeting or general meeting as the case may be within two months after the minutes have been confirmed by the subsequent Annual General Meeting or general meeting respectively.</p>

TANGANYIKA LAW SOCIETY ACT

<i>No.</i>	<i>Original</i>	<i>Details and Concerns</i>	<i>Recommendations</i>
60	(3) The Council shall serve a copy of the audited accounts together with the auditor's report to the Minister and the Minister responsible for the finance within six weeks after the report is presented at the Annual General Meetings.	An unnecessary requirement for audited accounts and the auditors report to be provided to the Ministers of Finance and Legal Affairs is introduced. Making the information public is sufficient.	(3) The Council shall make public on its website, and through social and traditional media, a copy of the audited accounts together with the auditor's report.
61	(2) The Council shall deliver a copy of the annual report to the Minister within six weeks after the Annual General Meeting.	An unnecessary requirement for the annual report to be provided to the Minister is introduced. Making the information public is sufficient.	(2) The Council shall shall its annual report make public on its website, and through social and traditional media.

3. Local Government Acts (urban authorities), (district authorities)

The main effect of the amendments here is a new requirement that any lawsuit against a government body must be joined by the Attorney General. This is not problematic.

But there is a confusingly worded clause in amendments 31 and 33 (to the Local Government Acts) that would first require 90 days notification of intention to sue an LGA, and then prohibit suits from being commenced after the 90-day period. It looks like this effectively prohibits lawsuits against LGAs, but this was likely not the intention.

Recommendations

Overleaf we present the recommendations.

LOCAL AUTHORITIES ACTS

<i>Amendment</i>	<i>Details and Concerns</i>	<i>Recommendations</i>
31 and 33 (1) No suit shall be commenced against a local government authority- (a) unless a ninety days' notice of intention to sue has been served upon the local government authority and a copy thereof to the Attorney General and the Solicitor General; and (2) upon the lapse of the ninety days period for which the notice of intention to sue relates.	The precise wording of these amendments look likely to prohibit lawsuits against LGAs, which was probably not the intention. A careful reading shows that someone seeking to sue needs to provide ninety days notice but then cannot sue beyond ninety days.	31 and 33 (2) until the lapse of the ninety days period for which the notice of intention to sue relates.