



## **Analysis of the Written Laws (Miscellaneous Amendments) Act. No.2 of 2021**

Tangible initiatives for Local Development Tanzania (TIFLD) in collaboration with Eleven (11) other organizations namely; TWaweza, Law Age, Business and Human Right, Tanzania Network of Legal Aid Providers (TANLAP), WILDAF, Coalition for Women Human Rights Defenders, SEKA and ASSOCIATE, WATED, Tanzania Human Rights Defenders and Legal and Human rights Centre, analyzed amendments to the Miscellaneous Amendment Act (No 2) of 2021. The recommendations are jointly submitted and presented before the Parliamentary Standing Committee on Constitutional and Legal affairs. We thank the Parliamentary Committee for the invitation to recommend this bill.

### **GENERAL OVERVIEW/RECOMMENDATIONS**

1. The Proposed bill is going to improve the efficiency and efficacy of government agencies and the way they function. The bill is proposing shifting the way government agencies do things from analogy way to using digital technology. This will remove beaocracy and corruption. Examples are Birth and Death Registration, Business name registration and the Companies Act.
2. The law has made some amendments to promote adherence to constitutional provisions and to avoid nullification of the provision to contradictions with the Constitution. An example is the National Assembly Administration Act.
3. Land Dispute Courts Act will bring confusion on jurisdiction matters between Ward Tribunals and the District Land and Housing Tribunals; therefore, it will need education and awareness to the community to understand the demarcation between the two institutions. It will need an amendment of the Ward Tribunal Act, but one of the important questions to ask ourselves is does it mean that the Ward Tribunal now is been abolished if that is the case under which law. The second

question is if the limitation of 30 days of the case lapse makes the District and Land Tribunal the first court of instance and is that the intention of this law?

4. The number of members forms some of the committees is not balanced. There are more members from the government side and a few from other stakeholders which makes the decision more government-centred.
5. The proposed amendments are silent on gender issues and other marginalized groups.

**a. Specific recommendations**

1. <b>AMENDMENTS OF THE ADVOCATES ACT (CAP 341)</b>				
<b>PROVISION OF THE BILL</b>	<b>S. OF ACT</b>	<b>PROPOSED AMENDMENT</b>	<b>CSO's PROPOSAL</b>	<b>RATIONALE</b>
S. 7	S. 4A and B	Establishment of Regional Advocates Ethics Committee	1.Powers of Committee should have the status of recommendation only. They should be the same as the district and regional Magistrate Committee under the Judiciary Administrative Act.	The composition of the Regional Advocate Committee is the same up to National Level. It can Jeopardize the Justice of Advocates the same as in the Judicial system.

S.4A (2)		Appointment of Public Officer to be a secretary of the committee	2. Secretary of the Committee should be a lawyer with qualifications from Law School of Tanzania or Holder of the Bachelor of Laws degree.	To make sure the committee work effectively and record be efficient.
S.4A (3)		The quorum issue should be changed	3. We recommend quorum should contain 3 people. We proposed an additional member of the committee who shall be a layperson from the community to represent the interests of Consumers of the legal services. It is further proposed that the appointment of this person shall be done by the judge in charge and shall take consideration of balancing the gender and minority composition in the committee. The layperson should be a person of command respect from a particular region. The quorum should be composed of three people.	To make sure the committee work effectively and record be efficient.

4A (5)			4. The section should be removed	The Judge in charge is not part of the Committee. The role of a judge in charge is not clear in the committee.
S.4B		Powers of Regional Advocate committee to hear and determine	5. Final Decision should be on the National Committee instead of being the appeal board. Therefore, Section 4B (1) (b) should be deleted  6. National Committee should have the power to revise or confirm recommendations from the regional committee.	To make sure the Doctrine of a fair trial should be retained  To make sure justice is done instead of jeopardized justice.
S.8	S.13	Appeals		

			<p>7. Appeal should be as it is in the current Advocate Act. S.24 of the Advocate Act.</p> <p>OR</p> <p>There must be amendment S.13 of the Advocates Act.</p>	<p>To make sure justice is done instead of jeopardized justice.</p>
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**AMENDMENT OF THE BIRTH AND DEATH REGISTRATION ACT, (CAP 108)**

<b>PROVISION OF THE BILL</b>	<b>S. OF ACT</b>	<b>PROPOSED AMENDMENT</b>	<b>CSO's PROPOSAL</b>	<b>RATIONALE</b>
S.10	S.17	Collection of Death Certificate Should be done by Spouse or Children/ Next of kin. Reduction of Forgery.	We agree with the section. There must be specific and articulated regulations in a situation where available spouses and children are incapable to collect the certificate, so we proposed the Minister provide regulations and prescribed form and identification of any legal representative to collect the certificate.	To protect a surviving spouse, dependent or beneficiary interests.
S.19A (2)	S. 19	Introduction of online Registration and Electronic Register	We agree with it. We recommend the law should add the word institutions mandated by Law.	It helps people to access information and reduce crimes within the community. Crimes such as forgery and misuse of information

				Restrict misuse of personal information by other authorities unless ordered by the court.
3. <b>AMENDMENT OF THE BUSINESS NAMES (REGISTRATION) ACT (CAP 213).</b>				
S.13	S.6	Additional Documents to register Business Names. Improve Personal details of attachment during registration of Business names	We agree	It is aligned with digital technology
4. <b>AMENDMENT OF THE CIVIL AVIATION ACT, (CAP. 80)</b>				
<b>PROVISION OF THE BILL</b>	<b>S. OF ACT</b>	<b>PROPOSED AMENDMENT</b>	<b>CSO's PROPOSAL</b>	<b>RATIONALE</b>
PART 2 S.3A	PART 2	Establishment Civil Aviation Committee.	The composition of the committee should be expressly mentioned composition and gender consideration.	The composition should be expressly mentioned. it's



		National Civil Aviation Security Committee		important to include gender consideration. Examples of best practices are related to land tribunal, the National Assembly Act, Mining policy etc.
5. <b>AMENDMENT OF THE COMPANIES ACT, (CAP. 212).</b>				
<b>PROVISION OF THE BILL</b>	<b>S. OF ACT</b>	<b>PROPOSED AMENDMENT</b>	<b>CSO's PROPOSAL</b>	<b>RATIONALE</b>
S.30(5)	S.3	A person shall not be eligible to incorporate a company if such person is reported by competent authorities to be associated with instances of offences	<p>1.The word associate with instances should be removed.</p> <p>2. The restriction is vague it does not mention a specific person. Therefore, we recommend the restriction intended should explain if the person includes Directors or Promoters or shareholders.</p>	The section is vague and contravenes the doctrine of presumption of innocence until proved guilty.

			3. We recommend removing the phrase “any other related offences prescribed by the Minister”	The Law should not be ambiguous. It should be specific.  3. To avoid misuse of the minister’s authority. As well as to remove judicial powers and vested the powers to the Ministers.
6. <b>AMENDMENT OF THE LAND DISPUTES COURTS ACT, (CAP. 216)</b>				
<b>PROVISION OF THE BILL</b>	<b>S. OF ACT</b>	<b>PROPOSED AMENDMENT</b>	<b>CSO’s PROPOSAL</b>	<b>RATIONALE</b>
S.47(4) and (5)  S.28A	S.13	Requirement of Certificate from Ward Tribunal to institute a land case in District Court and Housing Tribunal. If the matter has been resolved amicably.	We agree with the proposed bill.	Ward Tribunal will focus on reconciliation instead of adjudication.

S.28B			<p>The name of the law is wrong- Spelling check</p>	<p>The law should be written clear</p>
28B(2)(e)			<p>We propose the composition of the members of the f committee to include-          A senior judicial officer recommended by Judge Kiongozi, a senior law officer should be a person recommended by Attorney General,          - A representative from the Commission Human RightGoodd good Governance and          - Representative from TLS,          -Ministry of Home Affairs and          Ministry of Land and Settlement should remain n.           President office should be removed from the composition of the committee.</p>	<p>It is better to protect the integrity of Judge Kiongozi and the Attorney General.           The President Office has never been involved in issues of rights and discipline.</p>

			The proposed Composition should reflect the composition of The Court Brokers and Process Servers (Appointment, remuneration and Disciplinary) rules 2017	
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**7. AMENDMENTS OF THE NATIONAL ASSEMBLY (ADMINISTRATION) ACT, (CAP 115.)**

<b>PROVISION OF THE BILL</b>	<b>SECTION OF ACT</b>	<b>PROPOSED AMENDMENT</b>	<b>CSO's PROPOSAL</b>	<b>RATIONALE</b>
S.59	S.16	After Parliament dissolution, all the powers of Commission will be shifted to Speaker of the Parliament	Since the proposed provision is in line with the constitution. I should be retained However er, this is a constitutional discussion.	What are the chances of misuse of public office if not regulated.?

**8. AMENDMENT OF THE MAGISTRATES' COURTS ACT(CAP.11)**

<b>PROVISION OF THE BILL</b>	<b>SECTION OF ACT</b>	<b>PROPOSED AMENDMENT</b>	<b>CSOs PROPOSAL</b>	<b>RATIONALE</b>
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S.55	S.13	Spelling	We propose spelling to be corrected.	Clarity of the law
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