

GOVERNMENT NOTICE No. 670 Published On. 17/9/2021

**LAW REFORM COMMISSION OF TANZANIA ACT,
(CAP. 171)**

REGULATIONS

(Made under Section 25)

THE LAW REFORM (ASSESSMENT OF LAWS) REGULATIONS, 2021

**PART I
PRELIMINARY PROVISIONS**

Citation

1. These Regulations may be cited as the Law Reform (Assessment of Laws) Regulations, 2021.

Interpretation
Cap. 171

2. In these Regulations, unless the context otherwise requires-

“Act” means the Law Reform Commission of Tanzania Act;

“assessment of laws” means a process invoked by the Commission in examining the implementation of a law or a provision of law enacted by Parliament;

“Chairman” means the Chairman of the Commission appointed under section 5 of the Act;

“Commission” means the Law Reform Commission of Tanzania;

“Commission meeting” means the highest approving body of the Commission established under the Law Reform (Review of Laws) Regulations, 2020;

“Minister” means Minister responsible for legal affairs;

“professional meeting” means the technical meeting of the Commission established under the Law Reform (Review of Laws) Regulations, 2020;

“review” means any research or study undertaken by

the Commission on a law or branch of law with a view of reforming that law or branch of laws in accordance with the prevailing circumstances;

“Secretary” means the Executive Secretary to the Commission; and

“stakeholder” means-

(a) any person who has knowledge or concern, and is consulted by the Commission for an opinion on review of laws; or

(b) any person with knowledge or concern who consults the Commission on an opinion on the review of laws,

and includes the Minister, the Attorney-General, the Judiciary of Tanzania, Ministry, Department or Agency of the Government, international body, private body or a member of public.

PART II OBJECTIVES

Objectives

3. The objectives of these Regulations shall be to-

(a) provide a structured framework for assessment of laws;

(b) provide principles and procedures to be followed by the Commission in assessment of laws;

(c) ensure the effectiveness of the process of assessment of laws by the Commission;

(d) increase and intensify the outreach of the Commission to its stakeholders and the general public; and

PART III PROPOSAL FOR ASSESSMENT OF LAWS

Proposals for
assessment of
laws

4. A proposal for assessment of any law or a provision of law by the Commission may originate from-

(a) the Minister;

- (b) the Attorney-General;
- (c) the Judiciary of Tanzania;
- (d) Ministry, Department or Agency of the Government;
- (e) Commission's own initiation or motion;
- (f) an international body;
- (g) a private body; or
- (h) a member of the public.

Assessment of
laws programme

5.-(1) The Commission shall, three months before the end of every financial year, present before a stakeholders' consultative meeting an annual assessment of laws programme for validation.

(2) The Commission shall, at the end of every financial year, submit to the Minister and the Attorney General, an annual assessment of laws programme to be undertaken by the Commission in the following financial year.

(3) In considering matters to be included in the assessment of laws programme, the following shall be taken into account-

- (a) social, economic or political relevancy of the subject matter;
- (b) potential benefits that would flow from the assessment of laws;
- (c) Commission access to the relevant experience; and
- (d) public opinion on the subject matter.

PART IV BASIS FOR ASSESSMENT OF LAWS

Rationale for
assessment of
laws

6. For purposes of these Regulations, the rationale for assessment of laws shall be for-

- (a) analyzing the level of realisation of policy objectives and measuring the effectiveness of laws in relation to their policy;
- (b) identifying factors that can affect smooth implementation of laws which may include-
 - (i) changes in facts on the ground;

- (ii) resource constraints;
- (iii) deflection of goals;
- (iv) resistance from stakeholders;
- (v) changes of related policy or legal framework;
- (vi) any other external factor;
- (c) monitoring, reviewing and evaluating whether the laws have achieved policy objectives.

Objectives for
assessment of
laws

7. Objectives for assessment of laws shall be to-
- (a) ensure the need to implement legislation in accordance with principles of legality and legal certainty;
 - (b) identify adverse effects on new legislation and recommend for expeditious amendment;
 - (c) support a consolidated system of appraisal for assessing how effective a particular law is at regulating and responding to the purpose for which it was enacted;
 - (d) support improvements of quality of legislation in terms of relationship between objectives and outcomes; and
 - (e) enable policy and law makers to take immediate and appropriate remedial measures in addressing adverse effects, if any.

Selection and
cluster of laws for
assessment

8.-(1) The Commission shall, in selecting and clustering laws for assessment, be guided by the following criteria:

- (a) whether a law or a provision of law has been brought into force;
- (b) whether five years have passed following the enactment of a law or a provision of law;
- (c) how courts have interpreted such law or a provision of law;
- (d) usage of such law or provision of law by legal practitioners and members of public;
- (e) whether the intended policy objectives of the

law have been achieved.

(2) The Commission shall, for the purpose of sub regulation (1), consider the following attributes-

- (a) the government revenue collection;
- (b) the socio-economic development;
- (c) the provision of social services;
- (d) the combating corruption and other economic crimes;
- (e) the poverty reduction;
- (f) the combating of gender based violence;
- (g) the direction of government development plans;
- (h) the public outcry;
- (i) the directives from the Minister responsible for legal affairs or Attorney-General; and
- (j) any other criterion, the Commission may consider necessary.

(3) The decision as to whether a law or a provision of law is suitable for assessment shall be on a case-by-case basis:

Provided that, the Commission shall not make assessment of unsuitable laws.

(4) For the purpose of sub-regulation (3), “unsuitable laws” includes-

- (a) appropriation laws;
- (b) a law or provision of law that makes minor technical changes; or
- (c) a law or provision of law whose scheme of enactment contains its own method of assessment.

(5) Notwithstanding sub regulation (4), a law or a provision of law enacted under a state of emergency and potentially affects or encroaches on civil liberties may be the subject for assessment of laws.

PART V METHODOLOGICAL STAGES FOR ASSESSMENT OF LAWS

Planning phase

9. The Commission shall, prior to assessment of laws, undertake the following:

- (a) evaluation of a law or provision of law;
- (b) defining objectives of the assessment;
- (c) identifying roles of implementing agencies and relevant stakeholders;
- (d) collection of necessary information; and
- (e) determination of time-frame and schedule for assessment of laws.

Scope
assessment
laws

for
of

10.-(1) The Commission shall, in defining the scope of assessment of laws, consider whether it is necessary to assess-

- (a) the entire law;
- (b) the provision of the law; or
- (c) the branch of laws.

(2) The Commission may, prior to deciding on the scope for assessment of laws, consider-

- (a) priorities and strategic objectives of the Government;
- (b) the nature and complexity of the law or a provision of law;
- (c) cost of examination;
- (d) legal, political, economic and social effects;
- (e) innovative nature of the law; and
- (f) emergence of new risks and threats as a result of assessment of laws.

Implementation
phase

11. During and after the assessment of laws, the Commission shall:

- (a) consult stakeholders;
- (b) review the efficacy of implementation of principal and subsidiary legislation; and
- (c) scrutinize findings and prepare a report.

Process
consulting
stakeholders

of

12.-(1) The Commission shall, during the process of consulting stakeholders, develop-

- (a) communication strategy for consultation; and
- (b) clear and concise consultation documents that include necessary information to

facilitate the assessment of laws.

(2) The Commission shall, in the assessment of laws, ensure that stakeholders are provided opportunity to express opinion.

(3) It shall be a duty of the Commission to acknowledge the written response of stakeholders and implementing agencies.

Issues to address
in assessment of
laws

13. In conducting assessment of laws, the Commission shall address the following issues:

- (a) achievement of the objectives of the law in terms of quality, quantity and time measured against the baselines of what would have happened without intervention of the law;
- (b) extent to which the law has achieved objectives or induced activity that would otherwise have occurred;
- (c) influence of external factors;
- (d) unexpected side effects;
- (e) inputs made by the Government and private sector;
- (f) effective utilization of the allocated resources;
- (g) legal and policy compliance;
- (h) expected improvements of the law upon implementation; and
- (i) the effect of court decisions on a particular law or a provision of law.

Assessment of
subsidiary
legislation

14. The Commission shall assess a subsidiary legislation to determine whether the subsidiary legislation-

- (a) is not authorized by the terms of the enabling law or has not complied with any condition set forth in the enabling law;
- (b) purports to have retroactive or retrospective effect without express authority provided in the enabling law;
- (c) imposes fine, imprisonment or other penalty without express authority provided in the

- enabling law;
- (d) appears for any reason to infringe the Constitution or rule of law;
- (e) makes rights and liberties of person unduly dependent on administrative discretion or is inconsistent with rules of natural justice;
- (f) makes unusual or unexpected use of powers conferred by the enabling law;
- (g) amounts to exercise of substantive legislative power which is the subject of direct parliamentary enactment; or
- (h) tends directly or indirectly to oust jurisdiction of court without express authority in the enabling law.

Analysis of findings in the assessment of laws

15.-(1) The Commission shall, prior to arriving at a conclusion of its assessment, analyze the information shared.

(2) The Commission shall use gathered information and findings to arrive at a conclusion and recommendations on the assessment.

Report on assessment of laws

16.-(1) The Secretary shall, upon arriving at a conclusion and making recommendations, prepare a report which shall provide an accurate summary of the findings and recommendations on the assessment of laws.

(2) The Secretary may, where he deems fit, consider documents to be annexed to the report, and the documents shall form part of the report.

(3) The report on assessment of laws shall, unless the context of the report or prevailing circumstances demand, contain such information and be in such format as prescribed in the Schedule to these Regulations.

Deliberation and approval of report

17.-(1) A report on assessment of laws shall be presented before a professional meeting of the Commission which shall deliberate on:

- (a) the draft report on assessment of laws;

- (b) any other documents or matters which relate to the subject matter of the assessment of laws; and
 - (c) authorization of submission of the report and any other documents or matters to the Commission meeting.
- (2) The Commission meeting shall deliberate and approve-
- (a) the draft report on assessment of laws;
 - (b) the final report on assessment of laws;
 - (c) any other documents or matters which relate to the subject matter of the assessment of laws; and
 - (d) authorize submission of the final report and any other documents or matters to the Minister.

Resourceful
purposes of report

18. An approved report on assessment of laws shall, among other things, be resourceful for the provision of information to policy and law makers on the usefulness of a law or provision of the law.

SCHEDULE

(Made under regulation 16(3))

REPORT FORMAT AND WRITING STYLE

1. Report Format

(a) Title Page

The title page shall bear the following features:

- (i) the name of the Commission;
- (ii) the national emblem;
- (iii) the title of the project; and
- (iv) date of submission.

(b) Transmittal Letter

The Report shall include a submission letter addressed to the Minister responsible for legal affairs.

The letter shall include:

- (i) name and address of the Minister;
- (ii) date of submission;
- (iii) brief background to the research or review;
- (iv) statement of submission; and
- (v) signature of the Chairman or Executive Secretary.

(c) Staff of the Commission

This part shall provide for:

- (i) name and photographs of Commissioners;
- (ii) names and titles of the Executive Secretary, Deputy Secretaries and State Attorneys; and
- (iii) names and titles of persons co-opted from outside the Commission.

(d) Acknowledgements

The Report shall acknowledge facilitations, help or assistance from various stakeholders such as government institutions, non-government organizations and experts.

(e) Executive Summary or Abstract

The Report shall provide in brief, the most important points of the Report. These shall include:

- (i) objectives or reasons for the assessment of laws;
- (ii) statement of the problem;
- (iii) summary of the main findings;
- (iv) conclusions; and
- (v) recommendations.

(f) Table of Contents

The Report shall have a table of contents which shall include:

- (i) All the sections and sub-sections of the Report with page references;
- (ii) List of tables, diagrams or illustrations and appendices; and
- (iii) List of legislation and policies.

(g) Chapter One - Introduction

This Chapter shall contain the following features:

- (i) an Introduction to the Commission and its mandate;
- (ii) background to the research or review;
- (iii) terms of reference;
- (iv) background to the assessment of laws;
- (v) objectives or rationale of the assessment of laws;
- (vi) scope and limitations; and
- (vii) methodology.

(h) Chapter Two - Analysis of Policy and Legal Framework

This Chapter shall provide the following:

- (i) analysis of the policy and legal framework governing the research on assessment of laws;
- (ii) strengths and gaps in the governing policy and legal framework;
- (iii) proposal for measures to address the established gaps as hypothesis in the course of assessment of laws; and
- (iv) conclusion on the general observation on the analysis of policy and legal framework.

(i) Chapter Three - Stakeholders Views and Analysis

This Chapter shall contain analysis and interpretation of findings obtained during the field research. These findings shall be divided into headings and sub-headings based on the subject matter of the research. Each issue shall be divided into:

- (i) stakeholders' views on each issues raised or considered during the assessment of laws;
- (ii) stakeholders' recommendations on each of the issues considered;
- (iii) commission observation on stakeholders views and recommendations on each of the issues; and
- (iv) commission recommendation(s) on each of the issues and recommendations.

(j) Chapter Four - Conclusion and Recommendations

This chapter shall contain the following features:

- (i) restatement of the main problem that was the subject of the assessment of laws;
- (ii) a summary the main issues related to the problem and findings or conclusion of the assessment of laws; and
- (iii) recommendations which shall be provided on each and every issue raised and considered during the assessment of laws. These recommendations may be divided into the following categories:
 - (a) legal recommendations, and
 - (b) non-legal recommendations.

(k) Appendices

The Report shall include appendices containing extra information which is too long to be included in the main text of the Report. These may be tables, figures and questionnaires.

(l) References in the Main Text

Footnotes shall be preferred in the main text.

(m) Bibliography

The Report shall include bibliography containing books, articles and journals, which were read or used during the assessment of laws.

(n) Glossary

The Report includes a glossary containing technical or jargon words which readers might not easily understand.

(o) Referencing

(a) Journal article in Print

Adam, P. & Doris, P., "The Influence of Planning on Performance in Task-Based Learning," *Studies in Second Language Acquisition*, Vol. 3, No. 18, 2016, pp. 299-324.

Gardiner, L., "Comparative Law Reform," *American Bar Association Journal*, Vol. 52, No. 11, 1966, pp. 1021-1025.

(b) Article from e-Journal:

Foster, P. & Skehan, P., "The influence of planning on performance in task-based learning" *Studies in Second Language Acquisition*, Vol. 3, No. 18, 1996, pp. 299-324. Retrieved from www.lrct.go.tz on 25th June, 2019.

Gower, L. C. B., "Reflections on Law Reform," *The University of Toronto Law Journal*, Vol. 23, No. 3, 1973, pp. 257-269. Retrieved from <https://www.jstor.org/stable/825060>, on 3rd April 2020.

(c) Book with Author:

Mambi, A.J., (2014), *ICT Law Book: A Sourcebook for Information & Communication Technology and Cyber Law*, 2nd edn, Mkuki na Nyota, Dar es Salaam.

Mkapa, B.W. (2019), *My Life, My Purpose: A Tanzanian President Remembers*, Mkuki na Nyota, Dar es Salaam.

(d) Electronic Book (e-Book)

Nyerere, J.K., (1968), *Ujamaa: Essays on Socialism*, Oxford University Press, Dar es Salaam. Retrieved from <https://b-ok.cc/book/1221258/594f0c> on 4th April 2020.

Ellis, R., (2003), *Task-based Language Learning and Teaching*, 4th edn, Oxford University Press, Oxford. Retrieved from www.lrct.go.tz on 25th June, 2019.

(e) Book with a Corporate Author:

Law Reform Commission, (2019), *Law and Justice*, Dodoma Publishing House, Dodoma.

Afro-Shirazi Party, (1973), *Afro-Shirazi Party: A Liberation Movement*, Vol.2, Printing Press Corporation, Zanzibar.

(f) A Book with Editions

Wheare, K.C., (1966), *Modern Constitutions*, 2nd edn, Oxford University Press, Oxford.
Shillington, K., (1995), *History of Africa*, Rev. edn, St. Martin's Press, New York.

(g) Book with Multiple Volumes

Oppenheim, L., (1905), *International Law: A Treatise*, Vol.1, Longmans, Green & Co., London.

Ackermann, M.E., et al., (2008), *Encyclopedia of World History: The First Global Age*, Vol. III, Facts on File, Inc., New York.

(h) Book with Multiple Volumes and Editions

Darity, W. A. Jr (ed.), (2008), *International Encyclopedia of the Social Sciences: Cohabitation–Ethics in Experimentation*, Vol.2, 2nd edn, Macmillan, Detroit.

Goodin, R.E. *et al.*, (2007), *A Companion to Contemporary Political Philosophy*, Vol.1, 2nd edn, Blackwell Publishing, Oxford.

(i) A Chapter in an Edited Volume:

Long, M., "Focus on form: A Design Feature in Language Teaching Methodology," in de Bot, *et al.* (eds.), (1991), *Foreign Language Research in Cross-Cultural Perspective*, John Benjamins, Amsterdam, pp. 39-52.

Dourado, W., "The Consolidation of the Union: A Basic Re-Appraisal," in Peter, C.M., and Othman, H. (eds.), (2006), *Zanzibar and the Union Question*, Zanzibar Legal Services Centre, Zanzibar, pp. 73-108.

(j) Conference Proceedings Publications

Cates, K., "Teaching for a Better World: Global Issues and Language Education," in Katchen, J. & Liung, Y. (eds.), (1998), *The Proceedings of the Seventh International Symposium on English Teaching*, Crane, Taiwan, pp. 35-46.

(k) Conference Proceedings- Unpublished:

Hussein, F., *Review of Legal System in Tanzania*, Paper presented to the Stakeholders Validation Workshop, at Dodoma Hotel in Dodoma, 20th June, 2019.

Dourado, W., "A Well-Trained Lawyer Can Operate under any Legal System," A Paper Presented at the University College, Dar es Salaam, 11th October 1977.

(l) Multiple Authors or Editors (more than two)

Allen, P. *et al.*, "Aspects of classroom treatment: Toward a More Comprehensive View of Second Language Education," in Harley, B. *et al.* (eds.), (1990), *The Development of Second Language Proficiency*, Cambridge University Press, Cambridge, pp. 57-81.

Shivji, I. G., *et al.*, (2004), *Constitutional and Legal System of Tanzania: A Civics Book*, Mkuki na Nyota Publishers, Dar es Salaam.

(m) Forthcoming Publications

Ellis, R., *Controversies in Grammar Teaching*, TESOL Quarterly [Forthcoming].

(n) Dissertations and Theses

Mohamed, J., (2019), *Legal Practice in Tanzania*, A Dissertation Submitted to the University of Dar es Salaam, for a degree of Master of Laws (LL.M.).

Abdulkadir, A.H., (2010), *Reforming and Retreating: British Policies on Transforming the Administration of Islamic Law and its Institutions in the Busa'idi Sultanate 1890-1963*, A Thesis Submitted to the University of Western Cape for the degree of Doctor of Laws (LL.D.).

(o) Reports

Colonial Office, (1960), *Tanganyika: Report of the Year 1959*, Her Majesty's Stationery Office, London.

The Report of the Constitutional Commissioner, Zanzibar, 1960 (Government Printer, Zanzibar).

The Report of the Presidential Commission on One Party or Multi-Party System, 1992.

The Report of the Tanganyika Constitutional Conference, 1961.

(p) Newspaper Article in Print:

Committee of Experts, "Progress on the Constitution Review Process at October 2009," in the *Daily Nation*, Monday, 26 October 2009, pp.2-6.

Marwa, M., "Justice in Courts," Daily News, Tuesday, 20th March, 2019, p. 24.

(q) Newspaper Article Without Author Name

Special Reporter, "Zanzibar Talks," in *Reporter: East Africa's Newsmagazine*, 28 April 1962.

Justice in Courts, 20th June, 2019, Nipashe, p. 13

(r) Newspaper, Article available online

Mwita Marwa, "Justice in Courts," Daily News, 20th March, 2019, p. 24. Retrieved from www.dailynews.or.tz on 2nd July, 2019.

(s) Citation if you have Read about a Source in Another one

Zahbi (as cited in Ghaznavi, 2003, p. 5)

(t) Personal Communications

S. Richard (interview, February 20, 2013)

2. Typing

The Report shall be typed in the following format

- (i) Century Gothic Font
- (ii) 12 Font size
- (iii) Double spaced
- (iv) margins of at least one inch on the left - 25mm - and no less than ¾ inch - 20mm elsewhere.

Dodoma,
2nd September, 2021

PALAMAGAMBA J.A.M. KABUDI
*Minister for Constitutional and
Legal Affairs*