

THE CONSTITUTIONAL REVIEW MODAL LAW, 2022.

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THE CONSTITUTIONAL REVIEW MODAL LAW, 2022.

An Act to provide for the establishment of the Committee of Experts for purposes of coordinating the preparation of the harmonized proposed Constitution; to provide for preparation and submission of the proposed harmonized constitution to the President; to provide any technical expertise on the proposed harmonized constitution as may be required and to provide for related matters.

PART I

PRELIMINARY PROVISIONS

- Short Title 1.-(1) This Act may be cited as the Constitutional Review Act, 2022.
- Application 2. This Act shall apply to Mainland Tanzania and Zanzibar.
This Act shall come into force on the date Published in the *Gazette*.
- Interpretation 3. In this Act, unless the context requires otherwise:
"constitutional review" means the process of undertaking the completion of the constitutional review process up to the promulgation of the new Constitution of the United Republic;
"Draft Constitution" means the draft constitution prepared by the Constitutional Review Commission;
"Harmonized proposed Constitution" means the harmonized draft constitution after harmonization of the draft constitution and the proposed constitution by the Committee;
"President" means the President of the United Republic of Tanzania;
"Proposed Constitution" means the proposed constitution prepared by the Constituent Assembly;
"public service" means an active member of the public or political service or a person who has served in that capacity in five years;

"referendum" means a public vote or poll cast in accordance with the provisions of this Act and the Referendum Act for purposes of validation of the harmonized proposed Constitution;

"Secretary" means the Secretary of the Committee;

"the Constitution" means the Constitution of the United Republic of Tanzania.

PART II

OBJECTIVES

Objectives

4. - The objectives of this Act shall be to:

- (a) provide for the establishment of the Committee for purposes of coordinating the preparation of the harmonized proposed Constitution;
- (b) make provision for terms of reference of the Committee;
- (c) provide for a mechanism by which the Committee shall prepare and submit the proposed harmonized constitution to the President and the report accompanied thereto;
- (d) provide for the functions and powers of the Committee;
- (e) provide for a mechanism for scrutiny of the Draft Constitution and the Proposed Constitution to produce the harmonized proposed Constitution;
- (f) provide for election of the Chairman and the Vice-Chairman of the Committee and appointment of the Secretary to the Committee and Staff; and
- (g) provide for the manner in which the new constitution shall be promulgated.

PART III

ESTABLISHMENT OF THE COMMITTEE OF EXPERTS

Establishment 5.- 1. The President shall, upon consultation and in
and agreement with the President of Zanzibar and after
Composition considering the qualifications and experience of the
of the appointees appoint 9 Members of the Committee by order
Committee of published in the *Gazette* in accordance with this procedure:
Experts

- (a) One former Chief Justice from any of the Commonwealth Countries who shall be its Chairman;
- (b) Two eminent scholars in constitutional law from Commonwealth Countries that have recently passed through the constitutional review process;
- (c) Six other members from the United Republic drawn from academia, civil society, religious institutions and representation from each side of the Union;
- (d) The Attorney Generals of the United Republic and Zanzibar, who shall be the *ex officio* to the Committee without the right to vote;
- (e) The Office of the Chief Parliamentary Draftsman of the United Republic, shall serve as the Secretariat to the Committee.

2. In exercising his power in subsection 1 above, the President shall consider gender and social inclusion.

3. In its first sitting, the Committee shall elect the Vice-Chairman.

Qualifications 6.- 1. In appointing members of the Committee in section 5(1)c above, the President shall have regard to:-

- (a) experience relevant to constitutional review or professional qualifications in constitutional matters, law, public administration, economics, finance and social science;
- (b) Union and the population diversity of the United Republic of Tanzania; and
- (c) age, gender and representation of various social groups.

(2) Without prejudice to subsection (1), a person shall not qualify for appointment as a member of the Commission

unless that person is of high integrity and impeccable behavior.

(3) Notwithstanding subsection (1), a person shall not qualify for appointment as a member of the Commission if that person is:

- (a) a member of security organs;
- (b) an active member of the public/political service or has been in that capacity in five years preceding the date of appointment;
- (c) a member/leader of the political party or has been a member of a person who has served in that capacity in ten years preceding the date of appointment;
- (d) is/has been a member of the Constitutional Review Commission, the Constituent Assembly, National Assembly or House of Representatives and any task force associated to constitutional reforms;
- (e) a person who has been convicted of, or is the subject of proceedings in the court of law for an offence involving dishonesty or moral turpitude; or
- (f) a non-citizen of Tanzania.

(4) For the purposes of subsection 3(b) the term “public service” does not include employees of the higher learning institutions;

(5) For the purposes of subsections (1) the President shall, within sixty days after the enactment of this Act, invite the general public to submit to the President a list of names of qualified persons for appointment as members of the Committee:

Provided that the lists shall, for every name proposed, indicate the age, gender, experience, qualifications and nationality of such person.

6. Within twenty-one days from the deadline of receiving names, the President shall appoint Committee.

Removal from office 7. The President may remove a member of the Committee from office if:

- (a) is convicted of corruption charges or any other related offences including gender-based violence;
- (b) unsound mind;
- (c) gross misconduct;
- (d) has been declared bankrupt;
- (e) death.

Filling of Vacancy 8. The President shall appoint another candidate from the list submitted to the President under Section 6(5) in the event of:

- (a) death;
- (b) resignation;
- (c) serious illness.

Functions and Powers of the Committee 9.- 1. The Committee shall have the following functions:

- (a) to review:
 - i. the Constitution of the United Republic of Tanzania of 1977;
 - ii. the Draft Constitution; and
 - iii. the Proposed Constitution;
- (b) to prepare the harmonized proposed Constitution;
- (c) to prepare the report detailing reasons for each of the proposed provisions in the harmonized proposed Constitution; and
- (d) to present the harmonized proposed Constitution and the report to the President;

2. The President shall, within 14 days of the receipt of the harmonized proposed constitution cause the harmonized proposed constitution and the report to be published in the *Gazette*.

3. In exercising its mandate, the Committee shall not be restricted from using other documents, emanating from other jurisdictions as best practices on constitutional review.

4. The Committee shall complete the performance of its functions within ninety days of the date of appointment:

Provided that, where there are genuine reasons that the Committee is unable to complete the performance of its functions within the prescribed time in subsection (4), the President may, upon receipt of a specific request from the Committee and in consultation with the President of Zanzibar, extend for not more than thirty days during a period which the Committee shall complete and submit harmonized proposed constitution and the report.

5. The President upon receiving the harmonized draft constitution and having published it, shall cause it to be submitted within sixty days to the National Constitutional Conference for validation and adoption.

Dissolution of the Committee 10.-1. Upon submission of the harmonized proposed Constitution and the report to the President, the Committee shall be resolved.

(2) Notwithstanding the dissolution of the Committee under sub-section (1) the President may cause to be invited a member, Chair, Vice-Chair for the purposes of clarifying a matter of controversy to the general public regarding the harmonized proposed Constitution.

PART IV

FINANCIAL PROVISION

Financial provisions 11.-1. Members of the Committee shall receive emoluments from the Consolidated Fund of the United Republic as the President may determine.

(2) The budget for the operations of the Committee shall be appropriated through the Office of the Attorney General of the United Republic.

(3) The accounts relating to the operations of the Committee on the last day of the financial year shall be submitted by the Office of the Attorney General of the United Republic for audit by the Controller and Auditor General in accordance with the Public Audit Act, the Public Procurement Act and the Public Finance Act.

PART V

GENERAL PROVISIONS

- Oath and affirmation by members 12. Members of the Committee shall take Oath before the President as prescribed in the First Schedule to this Act.
- Immunity of the Committee 13. The Committee shall not be liable individually or collectively for an act or omission either civil or criminal done in *bonafide* in the course of exercising its functions.
- Rules and Procedures of the Committee 14. On the first sitting of the Committee, the Committee shall make rules and procedures for conducting its business.
- Submission of the Harmonized Draft Constitution and the Report 15. The Committee shall, after the completion of making a harmonized proposed Constitution and the report, submit it to the President of the United Republic of Tanzania and the President of Zanzibar.
- Validation of The harmonized proposed Constitution 16. The referendum Act shall apply in respect of validation of the provisions of the harmonized proposed Constitution.
- Promulgation of the Constitution 17.- 1. The provisions of the New Constitution shall come into force on the date provided for in the New constitution.
(2) The President shall, within ninety days after the outcome of the referendum, promulgate in such a manner and style as the President may determine the operationalization of the New Constitution.
(3) Upon promulgation of the New Constitution, this Act shall be spent and shall have no legal effect.
(4) In the application of this Act, both the English and Swahili versions shall be authentic.

Transition
Period

18. There shall be a transition period following the promulgation in accordance with the provision of the New Constitution.

FIRST SCHEDULE

PART I

OATH OF AFFIRMATION OF A MEMBER OF THE COMMITTEE.

I having been appointed by the President as on the day of20 to perform the functions of the Committee. do hereby swear/affirm I will be faithful and impartial to the United Republic of Tanzania, and to the best of my knowledge and ability discharge the duties and perform the function devolving upon me by virtue of being a member of the Committee.

So help me God

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Member of the Committee.