

Mandate of the Special Rapporteur on the rights to freedom of peaceful assembly and of association

REFERENCE:
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24 June 2020

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the rights to freedom of peaceful assembly and of association, pursuant to Human Rights Council resolution 41/12.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning amendments to the Basic Rights and Duties Enforcement Act (1994), that, while adopted by the Parliament of Tanzania on 10 June 2020 through the Written Laws (Miscellaneous Amendments) (No.3) Act 2020, await Presidential promulgation. The amendments provide that "An application submitted under the Act, shall not be admitted by the High Court unless it is accompanied by an affidavit stating the extent to which the contravention of the provisions of Articles 12 to 29 of the Constitution, on fundamental rights, has affected such person personally".

The amendments brought to this act are worrisome as they bar bona fide individuals, civil society organizations and lawyers, who are not necessarily affected directly by a particular violation of a fundamental constitutional right from bringing public interest cases seeking a group remedy, legal, social or systemic change through courts of laws. The amendments require these organizations and individuals to demonstrate how they have personally been affected by the matter being brought to the court, the absence of which leads to inadmissibility of the case.

I fear that these amendments gravely limit the ability of civil society and individuals to defend the rights of vulnerable individuals, groups and communities and are in violation of Article 22 of the International Covenant on Civil and Political Rights (ICCPR). This Article guarantees the right to freedom of association and sets clear criteria for any restriction imposed by the State as to being prescribed by law, being necessary, and aiming to proportionately protect a fundamental aspect of the life of individuals, such as their health and morals. Furthermore, the Article defines a negative obligation for the State, which is to refrain from interfering with organisations' purposes, and activities they set for themselves. In addition, the requirement of "personal harm" is not necessary for a democratic society, as most primary victims of unconstitutional and illegal acts of the organs and officials of the State, do not have the necessary knowledge, capacity or wherewithal to litigate and vindicate their rights and freedoms in courts, hence the significant importance of public interest litigation in the advancement of rights in a democratic society.

I believe that public interest litigation forms part of freedom of association, particularly for those civil society organisations working to protect and promote human rights. Freedom of association is also an enabling right: denying civil society

organisations the possibility of bringing cases to courts, where they have not been personally harmed, means obstructing rather than enabling the possibility of such organisations to uphold individuals' right of access to effective remedy where their human rights have been violated. Civil society plays an important role in any democratic society by ensuring that the voice of the voiceless is heard and their concerns brought to the attention of authorities.

The adoption of these amendments also contradicts the national jurisprudence on this matter. The Constitution of the Republic provides for elements of access to justice under Article 13(6), and in Articles 26(2) and 30(3), which give individuals the right to take legal action to ensure the Constitution order is protected and in case any of the rights provided in the Constitution are violated. In 1994, the High Court of Tanzania in the case of *Rev. Christopher Mtikila v. Attorney General*, interpreted the provisions of Articles 30(3) and 26(2) of the Constitution, and held that there was no requirement of an ingredient of personal interest in matters of interest to the public. In reaching such a decision, the Court considered some important social circumstances facing Tanzanian society, such as legal literacy and limited resources to handle litigations, which are still valid to date and therefore make the action by the Parliament unfathomable.

I am also very concerned by the hasty approach taken and the lack of consultation by the Parliament to adopt these amendments. The Parliament considered these amendments through an expedited procedure under certificate of urgency leaving merely 48 hours for civil society and the public to make submissions, although the amendments bring fundamental change to the society and how the judicial system in general will function in the future. This certificate of urgency has also been used on other occasions, where important issues concerning civic space was at stake.

I would like to remind you once again that the State must ensure that the laws in Tanzania are in accordance with its obligations under international law regarding the right to freedom of association and other provisions of the ICCPR. To ensure this, I urge the President not to promulgate the law, and guarantee that any proposed legislation is protective of human rights and promotes an enabling environment for civil society actors.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide any additional comment(s) you may have on the above-mentioned information.
2. Please provide information regarding the steps planned by your Excellency's Government to ensure that the enforcement of the amendments mentioned in this letter does not violate international standards, especially Article 22 of the International Covenant on Civil and Political Rights.

3. Please indicate the reasons why the Parliament used certificate of urgency to adopt the aforementioned amendments to the law and explain if sufficient consultations took place with civil society organizations and how their comments and recommendations were integrated into the amendments.
4. Please indicate why such amendments are necessary in a democratic society and how the government intends to ensure access to justice to vulnerable and marginalised communities in the country

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

I finally urge your Excellency's Government to continue its cooperation with the mandates of the Special Procedures of the Human Rights Council, to take into account the concerns raised, and to avail of any technical assistance that Special Procedures may be able to provide in order to ensure the full promotion and protection of human rights in Tanzania.

Please accept, Excellency, the assurances of my highest consideration

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association