

11 February 2021



Swahili proposed as Language of Tanzanian Law and Courts

- All laws to be drafted in Swahili
- New Bill proposes laws in English to be translated to Swahili
- Language of the Court to be Swahili
- In limited circumstances Minister can sanction other languages

Introduction

On 5 February 2021, the Secretary to the Cabinet, Mr. John W.H. Kijazi published a notice that informs the general public about the Written Laws (Miscellaneous Amendments) Bill of 2021 (the Bill), which is to be debated in the National Assembly. The Bill proposes to amend and add provisions on several written laws including the Interpretation of Laws Act (Chapter 1), which is the subject matter of this legal update. In a nutshell, the proposed amendments substitute English with Swahili language as the language of the law, Court and records in the administration of justice in Tanzania.

Background

Regarding the dispensation of justice, the law (and practice) permits all Courts/Tribunals in Tanzania to use Swahili and English language since 1985. Primary Courts and Ward Tribunals are required to use Swahili language in oral and written proceedings. Depending on the presiding personnel, District Courts, Resident Magistrates' Court, High Court, Court of Appeal and Administrative Tribunals use both Swahili and English languages in oral proceedings. Nonetheless, records and decisions of these Courts/Tribunals must be written in English.

Concerning the law-making process, since 1965 Swahili language has been used in debates and the proceedings of the National Assembly. Except for the Constitution of the United Republic of Tanzania of 1977, Bills and Acts of the Parliament, including this Bill, have been drafted and published in English since the British Colonial Rule to date. The law subsidiary legislation is drafted in either Swahili or English language or both.

Prelude to the Bill

Since 2008, the Law Reform Commission of Tanzania (LRCT) has added 'simplification and translation of laws' as one of its core functions. LRCT has been able to translate about 15 out of 2500+ possible laws. Yet, the Chief Parliamentary Draftsman has never approved such translated pieces of legislation for official use. Moreover, despite Section 84(1) of Chapter 1 recognising both English and Kiswahili as the language of the law, Subsection 3 of Section 84 prioritises the English version in case of a conflict or doubt about some terms or passage in a law.

On the other hand, Section 33 of the Written Laws (Miscellaneous Amendments) (No. 3) Act, 2020 adds subsection 2 immediately after subsection 1 of section 84 of Chapter 1, which allows the Attorney General to 'translate any written law from one language of enactment into another' and publish the translated version in the Government Gazette.

For further information on legal updates please contact:

E: info@fbattorneys.co.tz

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FB Attorneys

8th Floor, Amani Place, Ohio Street
P. O. Box 19813
Dar es Salaam, Tanzania
T: +255 22 2135994/5
E: info@fbattorneys.co.tz
W: www.fbattorneys.co.tz

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Proposed change

The Bill proposes to amend the Interpretation of Laws Act as follows:

- Proposed Section 84(1) declares Swahili as the language of the laws of the country
- The Bill adds Section 84(6) that empowers the Minister responsible for legal affairs to make regulations prescribing circumstances and conditions where a law may be in a language other than Swahili language, allowing some flexibility
- The Bill adds Section 84A that declares Swahili as the language to be used in the administration and dispensation of justice (by Courts, tribunals and other adjudicative bodies)
- English may be used in the adjudication process at the discretion of the presiding officer, but the resulting records or documents must be translated and authenticated in Swahili language unlike English presently
- The proposed Section 84A allows the Minister responsible for legal affairs in consultation with the Chief Justice to determine circumstances and conditions, where the dispensation of justice may be made in a language other than Swahili

Conclusion

The implication of these proposed changes on the administration of justice in Tanzania is manifold. Once this change becomes effective, Swahili will become predominantly a language of the law, Courts, Court records, and Courtroom communications. Given the fact that Swahili language is vastly used in day-to-day activities of the Government and the people, its use in the legal sector will undoubtedly facilitate the realisation of access to justice by all.

However, for technical and sensitive laws that govern tax and investment matters, amongst others, the Portfolio Minister could still exploit the avenue provided by the proposed Section 84(6) to retain the English version of the relevant laws. It should be borne in mind that the Bill neither proposes for the drafting of investment-related agreements in Swahili nor translating the same into Swahili language. Besides, English remains the language of legal education.

To read a copy of the Written Laws (Miscellaneous Amendments) Bill of 2021, [click here](#).

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