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The 2000 General Elections in Tanzania: Legal and Institutional Frameworks

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Introduction

Tanzania held six parliamentary and presidential elections between 1962 and 1992 under the single party system. A National Electoral Commission (NEC) was created for that purpose to supervise these elections. The country's Interim Constitution of 1965, the United Republic of Tanzania Constitution of 1977 and subsequent amendments to it, the 1985 Elections Act, and the Local Government (Elections) Act, 1979 provided the legal framework for conducting elections. On 1 July 1992, the 8th amendment to the Constitution of the United Republic of Tanzania 1977 was enacted, paving the way for the country to revert to a multiparty political system. Thus the 1995 general elections were the second multiparty elections held in the country, and the 2000 general elections held on 29 October 2000 were the third.

The task of supervising the conduct of elections in Tanzania is vested into two commissions. The National Electoral Commission (NEC) established under Article 74(1) of the Constitution of the United Republic of Tanzania (the Union Constitution) and vested with that power under section 4(2) of the Elections Act, 1985—has the responsibility to supervise the conduct of Union elections in the United Republic. The Zanzibar Electoral Commission (ZEC) established under Article 118 of the Constitution of Zanzibar, 1984 is vested with powers to supervise the conduct of elections in Zanzibar. This paper will deal with the 2000 general elections in Tanzania Mainland and Union elections in Zanzibar, which were managed entirely by the NEC.

The paper examines the legal and political frameworks for the 2000 general elections. Specifically, the focus is on the constitution, elections laws and rules that governed the elections. The argument of the paper is that elections are important instruments for

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democratic governance. However, they can only promote a democratic society if they are well managed as well as free and fair. This means that the body responsible for the management of elections must not only be independent and competent.

A dissenting view on the relevance of elections has been offered by Aviakin who argues that elections are not the means through which basic decisions are made but serve the purpose of legitimising the system, policies of the ruling class, and giving them a mantle of popular mandate. He asks, "Why participate in an electoral exercise that confers constitutional legitimacy to a state that is likely to remain unrepresentative?"[1]

Despite Aviakin's dismal view, elections are important in building democratic societies. The 2000 elections in Tanzania were of historical significance for at least two reasons. First, the elections were the second multiparty elections since the introduction of a multiparty political system in 1992. The first multiparty elections of 1995 were won by the ruling party, Chama cha Mapinduzi (CCM). The opposition in Zanzibar—where the government and the Zanzibar Electoral Commission were accused of rigging the elections in favor of CCM—disputed them. Second, the elections were held in the aftermath of the death of the nation's founding leader, Julius Nyerere, who passed away on 14 October 1999. Consequently, there were some who were uncertain about the direction that the country would follow, and indeed whether the CCM would emerge victorious. For this reason, the 2000 elections attracted wider attention.

Theoretical and Conceptual Stances

In a major respect, elections in Tanzania go beyond the actual voting in of leaders who are subsequently given the mandate to govern on behalf of the electorate. Broadly, elections refer to the entire process which includes determination of electoral constituencies, registration of voters, nomination of candidates both by competing political parties and later by the National Electoral Commission, the organization of and campaigning by candidates, the establishment of polling stations, the logistics of the distribution of polling materials, the actual voting, counting of votes, declaration of results and, finally, election petitions.

This conceptual amplification would not be complete if we fail to underscore what a well-managed election should be. An election is well-managed if it is exemplified by the following: a peaceful enabling

pre-election environment; the existence of an independent and efficient electoral body to manage the election; the registration of voters that is done in a transparent manner giving all eligible voters adequate opportunity to register for elections; the treatment of candidates for electoral office equally during the entire process; giving citizens equal opportunity to apply their right to vote; treating candidates and political parties equally in their campaigns when "selling" their party programmes and policies; and that citizens are free to listen to them; and finally, all administrative arrangements including opening of polling stations, distribution of ballot papers, counting of votes, and announcement of results are carried out capably and honestly. All that is being suggested here is that a well-managed election should produce a free and fair election expressing the free will of the people.

As far as the electoral system is concerned, Tanzania has the winner-takes all system, which simply requires a candidate with most of the votes in an electoral constituency to be the winner irrespective of whether or not the candidate received the majority of votes cast. This system is applicable to presidential, parliamentary, and local government elections. Additionally, in parliament and local councils there are "special seats" for women allocated to political parties in proportion to the number of seats won.

The National Electoral Commission

The National Electoral Commission is the election authority as provided in Article 74(1) of the Constitution of the United Republic of Tanzania, and it is vested with power under Section 4(2) of the Elections Act, 1985, to administer all levels of elections and to ensure that the elections are free and fair. It is also the function of NEC to demarcate election constituencies as shall be authorized by the President. Additionally, under Section 3, 124 and 126 of the Elections Act, the NEC is vested with powers to issue regulations, directives, and notices which have the force of law. The Commission is not obliged to follow orders or directives of any person or from any government department, and the views of any political party (Article 75). This is important in order to enable the NEC undertake its constitutional duties independently and impartially.

Despite the provision for the independence of the NEC, doubts continue to be raised about its autonomy. The immediate concern is undoubtedly the fact that all the seven members of the commission are appointed by the President who is the chairman of a political party contesting in the elections whose conduct the NEC is supposed

to manage during the elections period. A related doubt is that members of the commission may feel indebted to the president for appointing them. This leads to a view that their management may not lead to a free and fair election. Furthermore, Article 74(5) of the Constitution provides for the dismissal of members of the Commission and thus lack of guaranteed security of tenure. In short, the president—a politician in a political contest—has immense powers at his disposal over the Commission.

The composition of the NEC (Article 74(1)) is that the Chairman must be either a judge of the High Court or the Court of Appeal. The Vice-Chairman must be a judge of the High Court or the Court of Appeal, or a person who has been a judge or has the qualifications to be appointed a judge. Furthermore, the Vice Chairman is appointed on the basis of the principle that where the Chairman hails from one part of the Union, he/she must be a person who hails from the other part of the Union. It must be admitted that there is an institutional conflict of interest in as much as both the chairman and vice-chairman are sitting judges of the High Court or Court of Appeal, and these institutions are in the course of election petitions called to decide on matters taken by the NEC during the administration of elections. Clearly, their role is problematic as far as the doctrine of separation of powers is concerned.

As far as demarcation of constituencies is concerned, a view has been raised that the process lacks clear guidelines, raising the suggestion that some constituencies are created to suit some incumbent political figures. While in the 2000 elections there was only the case of dissolving Mitema constituency and transferring some areas of it to Newala and Tandahimba constituencies, there is still a valid reason to have a broader consensus on constituency demarcation to accommodate all political views. Given the importance of this function, it is submitted that the President's approval should be dispensed with to avoid partisan considerations.

Constitutional and Legal Framework Governing Elections in Tanzania

Elections in Tanzania are governed by the Constitution of the United Republic of Tanzania 1977 and subsequent amendments, the Elections Act, 1985 (Act No. 1 of 1985), and the Local Government (Elections) Act, 1979 both amended up to August 2000, and the Political Parties Act, 1992 (Act No. 5 of 1992). In the administration of elections as provided in the Election Act, 1985, NEC is vested with powers under Sections 3, 124, and 126 to issue regulations,

directives, which, in their totality, constitute subsidiary electoral laws in the administration of elections. During the 2000 general elections NEC issued directives on guidelines for registration assistants, returning officers, voters, political parties and contesting candidates, and local and international observers and monitors.[2]

Towards the end of December 1999 the government proposed a series of amendments to the Constitution of the United Republic of Tanzania, and to the electoral laws. The overall thrust was an attempt to contribute to improving the quality of the electoral system and promoting the possibility for having free and fair elections in October 2000. These amendments were a result of NEC's suggestions in its report to the President on the conduct of 1995 elections; recommendations of Justice Kisanga's report on Government's White Paper No 1 of 1998; and the government's selective responses to these reports.[3]

The most important amendments effected were the introduction of a permanent register of voters (Article 5(3)(a)); qualifications for election as president and a member of National Assembly to include no liabilities of taxes (Article 39 and 67 respectively); and the election of president by simple majority instead of absolute majority (Article 41). In addition, the President is given powers to appoint up to ten members of the National Assembly (Article 66). The number of special seats for women in the National Assembly increased from 15 percent to between 20 percent and 30 percent (Article 66(a), (b), and (d)), and the list of names of women candidates submitted by the parties for the purpose of filling the Special Seats for Women to be used throughout the life of the new National Assembly (Article 78). There is also an added qualification for the Deputy Chairman of the National Electoral Commission to be a judge of the High Court or the Court of Appeal (Article 74); no by-elections twelve months before a general election (Article 76). Another important amendment was the removal of the numbering of ballot papers to provide secrecy of the voter (Article 59(c)).

It is evident from the foregoing that Tanzania was preparing for free and fair general elections in 2000. The central question here is whether these amendments contributed to the desired goal. First, the idea of introducing a permanent register of voters was not put in place before the 2000 general elections. While introducing a permanent register of voters would certainly add transparency to the elections, the absence of the register defeated the purpose of the amendment in the 2000 elections.

Secondly, the idea of doing away with absolute majority in the election of the president raises pertinent questions. One is that there is a possibility of electing a president voted by a minority. But also importantly is the fact that simple majority puts the legitimacy of the President into question because of winning. Similarly, with regard to the amendment in institution of the presidency, the President is given powers to appoint up to ten Members of the National Assembly. The fact of the matter is that this does not in any way contribute to more free and fair elections as it profoundly undermines the principles of equal representation and accountability. If free and fair elections are to be the basis for a democratic government, that is, "a government for the people, of the people and by the people", then it is very fair that representatives be elected and not appointed. This amendment is a negation of the popular will that legislators who are representatives of the people should be elected. Moreover, by the mere fact that the President appoints members of the National Assembly, he is in fact destroying the distribution of powers between the executive and the legislative.[4]

Another issue that deserves attention is whether the increase of the number of special seats for women in the National Assembly (Article 66) contributed to free and fair elections. According to the government, the purpose of the amendment was to give certain advantages to groups that may have been under-represented, and whose interests may have not be articulated in the political arena. But the trouble with this thinking is that since voters cannot hold these women representatives accountable on voting day, the freedom of elections is weakened. The central question, therefore, is how these representatives are chosen, and then held accountable for their actions. Furthermore, it is questionable whether the composition of the lists of women candidates is democratic and thus representative of women in political parties. Be it as it may, women should vie for elective office in the normal way or risk being viewed as second-rate members of the National Assembly, thus weakening their position in arguing for their political agenda in the political system.

Another amendment that might look minor but which deserve some attention is the amendment provided in Section 7(1) of the Elections Act 1985, which provides for District Executive Directors, Municipal Directors, Town Directors and City Directors to be Returning Officers. Additionally, this amendment provides that any election official whose misconduct leads to the nullification of election results is liable upon conviction to a fine of not less than Tsh 100,000/=

and not exceeding Tsh 300,000/= or to imprisonment for a term of five years or both. To be sure, the intention and spirit of this provision is quite noble in as much as it is geared to foster accountability. However, it is problematic because of its preoccupation with nullification of results and since the likelihood of election results, being nullified by petition is slim, the abuse of elections process would not be prevented particularly at the early stages.

Nomination of Candidates

There is a remarkable consensus that nomination of candidates is an important process in elections, and provides a barometer of free and fairness in democratic practice. Undoubtedly, Tanzania has elaborate legal and constitutional instruments governing elections. However, some of these laws are rendered ineffective by other laws of the land. The 8th amendment to the Constitution, which did away with the one-party monopoly, did in fact create a multiparty monopoly. More specifically, the constitution closed the door for independent candidates in elections. In other words, if one wants to run for an office, one is compelled to join and be nominated by a political party. The denial of the right to stand for election for public office limits the freedom of elections. While it is true that all citizens may not take an active and equal part in politics, it must be legally possible for them to do so.

It is tempting to say that the issue of candidate nomination is still problematic.[5] Basically there are two types of candidate nomination. First, political parties have their own regulations or methods for nominating candidates, ranging from handpicking by party leaders to competitive preferential voting. Secondly, the NEC presides over an officially regulated procedure of candidate nomination. During the 2000 elections, the nomination period was one day. This means that the potential candidate had only a day to deal with formalities, and with any objections that might have been raised. And if a candidate is aggrieved by the decision of the Returning Officer (RO), s/he may, within forty-eight hours, appeal to the NEC. Thereafter, the decision of NEC is final and cannot be challenged in any court except by way of election petition after the elections (Section 40 (5)). Since this touches on fairness, there is need for a longer period of nomination to provide for resolving nomination objections that might be raised.

Among the lessons to be drawn from the 2000 elections is that the ability of political parties to field candidates was greatly constrained by the government's withdrawal of subsidies in 1996. This led to a

general tendency of favouring candidates who are rich and powerful, and in certain cases the nomination process encouraged corruption and cronyism. Even in the case of CCM, which has a clear and transparent nomination procedure, incidences of malpractices were witnessed. The lesson is obvious: the nomination process within parties was generally not free and fair since a crucial determining factor was wealth, and not necessarily procedures.

Another important issue in the elections was the campaign period that began a day after the nomination up to the day immediately preceding the elections day. For the 2000 elections, this period began on 19 August 2000, and ended on 28 October 2000. There are several factors here that need our attention. First, as provided in Section 53 of the Elections Act, 1985, the NEC issues directives that have the force of law for the purpose of guiding government owned news media to accord equal opportunities to candidates or political parties participating in the election. However, as reported by TEMCO II, unfairness prevailed as far as access to state owned media was concerned, and as such this did not contribute to a more level playing field.[6] Secondly, the commencement of campaign should coincide with the registration period as a strategy to increase political parties and candidates to participate in the registration exercise. For example, while the registration period began on 8 August 2000, campaign activities did not begin until 19 August 2000.

The discussion on electoral laws in Tanzania would be incomplete if the issue of election petitions is not addressed in light of the amendment in Section 115 of the Elections Act, 1985. Initially, the Constitution provided for any dissatisfied voter with election results to contest in a court of law at fee of Tsh 4000. For example, in 1995 there were 134 petitions filed in the High Court out of 232 electoral constituencies.

During a workshop in 1997, Justice Brigadier General Augustine Ramadhani, Vice-Chairman of the NEC was of the view that "petitions are a greater bother and a waste of time and resources of this nation."[7] He, therefore, suggested that fees for petitioning applicable in Ireland which stood at the equivalent T.sh 5,000,000/= be adopted in Tanzania. Eventually this idea was put into effect vide amendment in Section 115 of the Elections Act, 1985, without regard to the economic disparity between the two countries!

While one can argue that the number of cases brought before courts do not prove flawed elections, they provide a democratic safety valve for those who, for some reasons, are not satisfied with the results

to be free to petition. However, with the amendment in Section 115, any petitioner had to deposit with the Registrar of the High Court Tsh 5,000,000 as security for costs, otherwise no date of hearing will be fixed. This requirement is not applicable where the Attorney General is the petitioner. If the idea is to discourage petty petitions, the sum that was introduced was almost prohibitive, and did not contribute to making the elections in 2000 fairer.[8] It may, similarly, be said that the amount of Tsh 500,000/= deposited as security in case of petitioning council election as provided in the Local Authorities (Elections) Act, 1979 (Section 100) is also prohibitive, and does not contribute to making elections fair even when there could be strong grounds for petitioning.

With regards to the election of a presidential candidate as provided in Article 41(7) of the Constitution of the United Republic of Tanzania, 1977, no court is allowed to inquire into the election of a candidate who has been declared by the National Electoral Commission to have been duly elected. Perhaps the major consideration here is the costs of a possible second presidential election, and political uncertainty. But the real issue is whether this provision is important from a democratic point of view.

As far as the Local Authorities (Elections) Act, 1979 was concerned, the amendments undertaken were basically to synchronize these elections with the Elections Act, 1985 for presidential and parliamentary elections. For example, in Section 70A, votes for local authority elections are to be counted at the polling stations, thereby contributing to transparency in the election exercise.

Management of Elections: How Effective?

Much has been written about the causes and consequences of elections for democracy. But a vital variable for explaining the success or failure of democratic transition is the administration of elections. In the case of Tanzania, an important factor undermining efficient administration of elections is the institutional incapacity of the NEC. First, it lacks its own finance, and is thus entirely dependent on government and donor funding. As it is, neither the Constitution nor the Elections Act provide funding sources for NEC in the discharge of its functions. As a matter of fact, in terms of financing NEC operates more or less as a department in the Prime Minister's Office. The lack of financial independence places NEC in the hands of the ruling party's government, raising suspicions of partiality. What the Vice Chairman of NEC admitted in April 1994 was still relevant in October 2000: "Admittedly our independence is detracted by such things as the fact that we cannot freely employ

our own staff and we have no independent finance."[9] An obvious problem with this state of affairs is that NEC may not get sufficient funds from the government at the needed time to fund its activities, and this can only result in the ineffectiveness of the NEC.

The other problem relating to capacity for managing elections—and indeed for ensuring free and fair elections—is NEC's lack of permanent staff. Before the 2000 general elections, elections posts were advertised, and thereafter successful applicants were appointed to various positions for the election period. However, in early 2000, an amendment was provided in Section 7(1) of the Elections Act 1985 to provide for District Executive Directors, Municipal Directors, Town Directors and City Directors to be appointed as ROs. This creates a potential problem of divided loyalty because these officers are not really independent of the government of the day that is still their employer. Put differently, such personnel may not give full loyalty to the NEC as they consider themselves permanent employees of the government. Additionally, NEC from different sources recruited a substantial number of staff.

In retrospect, the amendment made to the Election Act 1985 (Schedule to Act No. 10 of 2000) which allowed candidates, their agents and political parties to undertake door-to-door canvassing, and permitting candidates to offer traditional hospitality (*takrima*) to voters raised issues that have relevance for free and fair elections. The Electoral Laws (Miscellaneous Amendments), which was assented by the President on April 2000, did in fact legalize corruption. Section 98(2) and (3) which amended the provision in the parent law of Elections Act, 1985 provides that anything done in good faith as an act of normal or traditional hospitality shall not be deemed to be bribery. The outcome of this change is the growing role of money in elections, and a trend suggesting "... that wealth will soon be the only qualification for election to positions of power."[10]

This factor of resources and wealth is in a wider context related to the use of public resources for electoral purpose. For many years after independence, the ruling party (CCM) accumulated resources, and despite the process of de-linking the ruling party from state machinery in 1992 when the multiparty system came into being, CCM candidates continued to use state resources to the disadvantage of the opposition parties. These resources included use of government vehicles (often with plate numbers changed to civilian ones), use of state offices as CCM offices, and more coverage in state informational media such as the *Daily News*, the National Television (TVT) and Radio Tanzania (RTD). The failure to

distinguish between party and state resources originates from the one-party rule era that has continued in more or less similar status with the ruling party CCM continuing to enjoy a privileged position in the political system. .

As a way of expanding democratic participation, there is need to pay attention to the extent to which the electorate is informed of their basic rights, and their awareness of the electoral laws. In a major respect this point addresses the issue of civic education in the democratic process. What is interesting is that the Elections Act does not require NEC to run voter education programmes. Thus in the 2000 general elections, NEC's participation was in the form of dissemination of pamphlets, posters, and messages given through the media and seminars. As a result, citizens who are the most distinctive element in democracies are not well-informed of their rights. For this reason, it is necessary that civic education be upgraded to a permanent feature in the political process of Tanzania.[11]

Conclusion

This paper set out to discuss the legal and institutional framework that governed the 2000 general elections in Tanzania Mainland. More specifically, the focus was on the extent to which the legal framework facilitated the management of the elections to ensure a free and fair exercise. Although a series of constitutional amendments and changes in the electoral laws undertaken before October 2000 did in a way provide a political environment that enabled some form of political competition by political parties, it has also emerged that a number of bad statutes were left in the books thus limiting democratic participation. A second conclusion is that multi-partism does not equal democracy, and indeed the mere participation of 13 political parties in the election did not make the election necessarily free and fair. The evidence from the 2000 elections is that the new emerging political parties have a number of limitations (including lack of intra-party democratic practice), and thus there is a need to think beyond political parties. Finally, there is need to strengthen the electoral commission to make it more independent.

Notes

1. Bob Aviakian, 1986, *Democracy: Can't We do Better Than That?* Chicago: Banner Press,
2. National Electoral Commission, 2000, *A Handbook of Tanzanian Electoral Laws and Regulations, 2000*, Dar es Salaam: National Electoral Commission.

3. National Electoral Commission, 1997, *The Report of the National Electoral Commission on the 1995 Presidential and Parliamentary Elections*, Dar es Salaam.

4. To date President Mkapa has appointed eight CCM members to the National Assembly.

5. This number includes two opposition leaders who defected to CCM. Additionally, three of these have been appointed to the cabinet: Hassan Ngwilizi (President's Office), Omari Mapuri (Prime Minister's Office),) and Abdulkadir Shareef (Deputy Minister, Foreign Affairs and International Cooperation).

6. C.S.L. Chachage and K. Tambila, 2000, "*Nomination of Candidates in the 2000 Elections*", Tanzania Election Monitoring Committee II, Dar es Salaam, November.

7. Mohabe Nyirabu, 2000, "*The 2000 General Elections: Morogoro Region Report*", Tanzania Election Monitoring Committee II, Dar es Salaam, December.

8. Augustine S.L. Ramadhani, 1997, "Election Petitions, Multipartism and Democracy in Tanzania," in *Multipartism and the Parliament in Tanzania*, Workshop Proceedings of Bunge, June, Dar es Salaam.

9. On 14 February 2002, The Court of Appeal of Tanzania declared the requirement to deposit Tsh 5 million as security for the costs before an election petition is heard as provided under Section 111 (2), (3) and (4) of the Elections Act, 1985 unconstitutional for being violative of Article 13 (1), (2) and (6) (a) of the Constitution of the United Republic, 1977. The Court observed that many voters in Tanzania could not possibly raise even one-tenth of the required Tsh 5 million as a security for costs and thus the acceptance of this provision limits fundamental right of access to justice. See *The Guardian*, Dar es Salaam, 15 February 2002.

10. *Daily News*, (Dar es Salaam) 10 April 1994.

11. Samuel S. Mushi, 2000, "*The 2000 General Elections in Tanzania: How Free and How Fair?*" Tanzania Election Monitoring Committee II, Dar es Salaam, November.

12. In their report on The 2000 Presidential, Parliamentary and Councillors' Elections, the National Electoral Commission requests that it should be given the role of conducting Voter Education and be provided with the facilities for the same. See *The Report of The National Electoral Commission on The 2000 Elections*, Dar es Salaam, 2001.

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The National Electoral Commission (NEC) and the 1995 and 2000 General Elections in Tanzania: A Comparative Analysis

Cosmas Mogella*

Introduction

Tanzania reintroduced multiparty politics in 1992. Since then two general elections have been held: in 1995 and 2000. According to the Constitution and the elections laws of the country, the National Electoral Commission (NEC) is the sole organ vested with powers to supervise and administer general elections at all levels, and ensure the conduct of free and fair elections.

This paper examines the performance of the NEC in the conduct of the 1995 and 2000 general elections, so as to determine which of the two was more free and fair. In any political setting, the conduct of free and fair elections depends, to a large extent, on impartiality and neutrality of the organ responsible for their administration. Three conditions are necessary for this commission to be impartial and neutral: its functional autonomy and independence; unreserved trust of the public and all major stakeholders, and its effectiveness and efficiency in the administration of the elections. The paper attempts to answer one pertinent question on elections: To what extent were the necessary conditions for a free and fair elections present in both the 1995 and 2000 general elections?

Independence of the Commission

By independence here we mean freedom from influence or interference of any sort by any political party, the state and its organs. It also means full control over the resources necessary for the administration of election process. In this section we shall examine this conditionality.

As stated earlier, the Commission has been constitutionally established. Its composition, qualities and the duration of its members, are all enshrined in the 1977 Constitution (Article 74(1), as well as in section 4 of the Elections Act of 1985. The Constitution

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