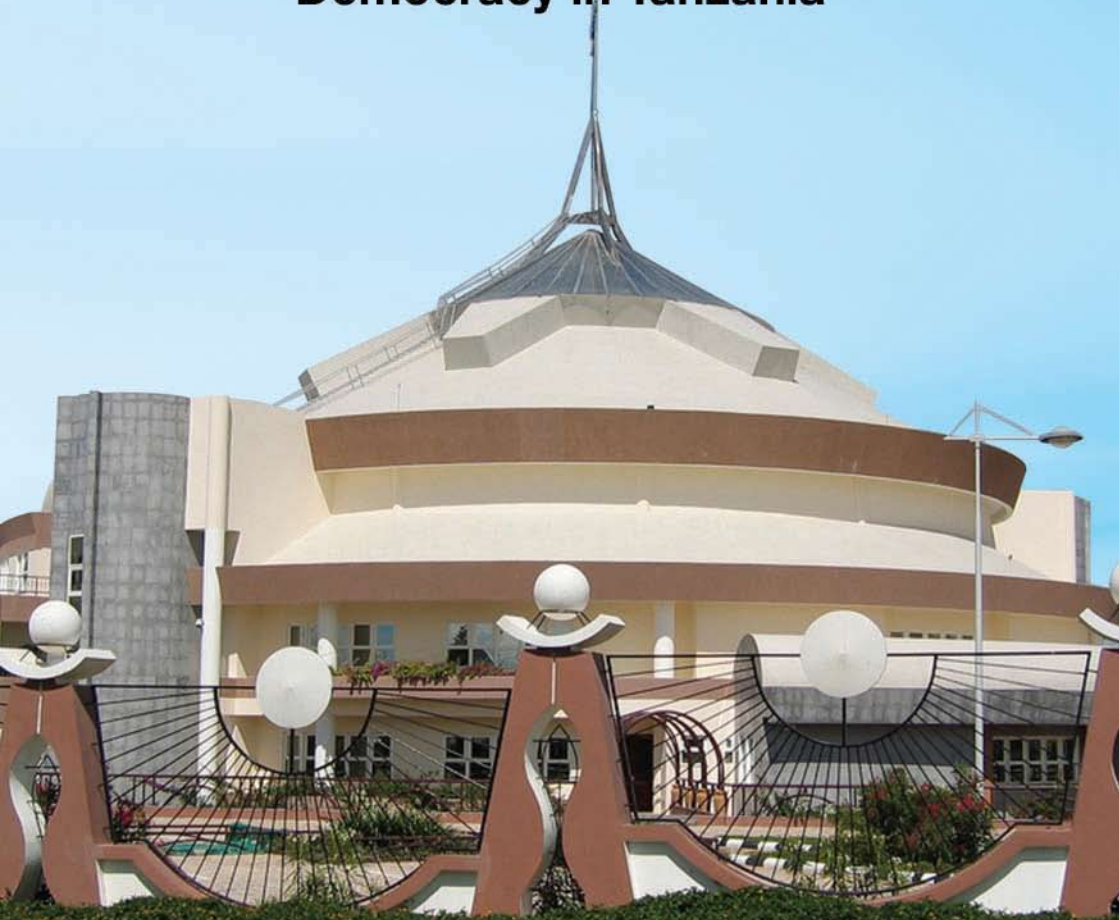


Issue VII - March 2010

MAENDELEO DIALOGUE

Democracy in Tanzania



**THE PROPOSED BILLS ON ELECTIONS;
ELECTORAL REFORM OR ASSAULT ON
GROWING DEMOCRACY?**

MAENDELEO DIALOGUE:

**THE PROPOSED BILLS ON
ELECTIONS;
ELECTORAL REFORM OR
ASSAULT ON GROWING
DEMOCRACY?**



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LIST OF ACRONYMS

ATF	Alliance for Tanzania Farmers
BAKWATA	Baraza Kuu la Waislamu Tanzania
CAG	Controller and Auditor General
CBOs	Community Based Organizations
CCT	Christian Council of Tanzania
CSOs	Civil Society Organizations
CCM	Chama Cha Mapinduzi (Ruling Party)
CHADEMA	Chama Cha Demokrasia na Maendeleo
CUF	Civic United Front
EMBs	Election Management Bodies
FBOs	Faith Based Organizations
KAS	Konrad Adenauer Stiftung
MP	Member of Parliament
NEC	National Electoral Commission
NGOs	Non Governmental Organization
NLD	National League for Democracy
ROP	Registrar of Political Parties
SAU	Sauti ya Umma Party
TADIP	Tanzania Development Initiative Programme
TADEA	Tanzania Democratic Alliance
TOR	Terms of Reference
TLS	Tanganyika Law Society
TAMWA	Tanzania Media Women Association
TAWLA	Tanzania Women Lawyers Association
TYV	Tanzania Youth Vision
UMD	Union for Multiparty Democracy
URT	United Republic of Tanzania
UDI	Ubungo Development Initiative
UFISADI	Political Corruption
ZEC	Zanzibar Electoral Commission

PREFACE

This publication highlights major issues raised during a one day dialogue organized jointly by KAS and TADIP in Dar es Salaam. The aim of the dialogue was to enable people from different walks of life to discuss and make recommendations on the two proposed Bills-Electoral Laws (Miscellaneous) Amendments Act, 2009 and the Election Expenses Act, 2009.

Given the wide attendance of participants and the fruitful deliberations that ensued, the publication has been produced with the aim of disseminating dialogue recommendations for wide public consumption.

Konrad Adenauer Stiftung (KAS) is a German political foundation. It operates in more than 120 countries worldwide. The Foundation's headquarters are situated in Sankt Augustin near Bonn and in Berlin. It started operations in Tanzania in 1964.

Tanzania Development Initiative (TADIP) is a non-partisan service organisation involved in training, capacity building, consultancy, lobbying, advocacy and research. These activities promote dialogue and allow TADIP to act as a policy and political 'think-tank' for organisations and institutions that believe in the centre right ideology and the philosophy of "peoples power"

To continue with the tradition of offering an interactive platform for politic-intellectual exchange, KAS and TADIP plan to host regular dialogues on pertinent issues having a direct bearing on the lives of the peoples of Tanzania.

ACKNOWLEDGEMENT

This publication is a product of collective efforts made by many people from political parties, academia, CSOs, CBOs, FBOs, NGOs, professional organizations and other social groupings and individuals who gathered at the Dar es Salaam Conference Center to deliberate on two gazetted bills-Election Laws (Miscellaneous Amendments)Act,2009 and the Election Expenses Act, 2009 .

We wish to acknowledge contributions made by all of them in the dialogue. We specifically wish to thank KAS Tanzania Country Office for material support that made the dialogue possible.

We wish to thank Professor Mwesiga Baregu for gracing the dialogue with some incisive and forward looking ideas, Tundu Lissu for his in-depth analysis of the two Bills, without forgetting the dialogue moderator Mr. Salum Zagar for his wise guidance of the dialogue proceeding to the very fruitful ending.

Finally we wish to thank all participants- academicians, politicians, political parties, CSOs, CBOs, FBOs, NGOs and the media. This mixture made the dialogue to come out with useful recommendations.

The editorial work of this publication was done jointly by Ludger Kasumuni and Lawrence Kilimwiko whom we wish to recognize their efforts and expertise.

Lastly we thank TADIP members and the Secretariat for the logistical support.

INTRODUCTION

On 11th December 2009 Tanzania announced through the Government Gazette two Bills on Election Expenses Act, 2009 and Electoral Laws Amendments Act, 2009 and invited public inputs on the Bills before being tabled in Parliamentary.

The proposed Election Expenses Act, 2009 sought among others to make provisions for the funding of nomination process, election campaigns and election with a view to control the use of funds and illegal practices in the nomination process, election campaigns and elections; to make provisions for allocation, management and accountability of funds and to provide for consequential and related matters.

The on the other proposed bill, Electoral Law (Miscellaneous Amendments) Act, 2009 sought to amend both the Elections Act and the Local Government Elections Act.

Considering the slow pace of democratic transition in the country and in view of the fact that even the very rules of political competition have not yet been fully agreed upon by the main political actors, Tanzania Development Initiative Programme (TADIP) and Konrad Adenauer Stiftung (KAS) took the initiative by convening a one day dialogue to gather opinions from key stakeholders through its Maendeleo Dialogue.

Several key stakeholders, including Political Parties, Non Governmental Organisations, Civil Society Organisations (CSOs), Faith Based Organisations (FBOs), Community Based Organisations (CBOs), Academia, the media and others who attended the dialogue held at the Dar es Salaam Conference Center.

The need for dialogue also arose from lopsided process of democratic reforms in the country, which is still maintaining vestiges of monolithic politics including an outdated Constitution and electoral laws, that are inimical not only to liberal democracy, but are also a drawback to flourish of multiparty democracy and good governance.

At the constitutional level, the struggles for a new constitution are still going on seventeen years after the introduction of multiparty democracy. Problematic areas include the fact that the distribution of power among the three institutions of governance in the name of Executive, Parliament and Judiciary is still inequitable.

Horizontally among the Executive, Parliament and Judiciary, the balance tilts heavily in favour of the executive; and this is despite the gains that the other branches have achieved since 1992. Vertically between the central and local government authorities, the balance tilts heavily in favour of the central government with the later having very limited powers in the areas of finance, decision making and personnel. In fact under the current arrangements, local authorities in Tanzania are more of agents of the central government than “government” in their own right.

Equally important, is the domineering role of the incumbent party over the weak and fragmented opposition political parties to the extent that the country is multiparty only by law, while in practice it is a one party state.

Because of this lopsided arrangement, the behavior of governance institutions leaves much to be desired. The state institutions of governance do not adhere to democratic norms and practices. For instance the government bureaucracy is still characterized by the following:

- ✓ Not accessible to citizens;
- ✓ Very casual in enforcing laws and order;
- ✓ Exceedingly corrupt (*ufisadi*);

- ✓ Permitting citizens limited and selective information;
- ✓ Showing no responsiveness to public demand and needs;
- ✓ Lack accountability to the public
- ✓ Holding limited consultation with the people when making decisions concerning them.

Other areas of disagreement include exclusion of independent candidates in the electoral laws and election of the Speaker of the Parliament, there are suggestions that he should be appointed outside political parties in order to be independent.

There is also no agreement on the political power structure in the country. Issues like: presidential system or parliamentary system, term limit for MPs and how to deal with unresponsive and unaccountable MPs and Councilors in the absence of recall powers by the electorate.

Since 1995 election stakeholders especially political parties have always expressed their dissatisfaction with elections results on the ground that the Election Management Bodies (EMBs) namely NEC and ZEC are not independent, impartial and incompetence.

Given that the ongoing political reforms are dictated by the ruling party without popular participation of citizens, the dialogue sought to expand the scope of debate to cover among others the country's political power structure, EMBs, electoral system and systems of governance.

While the major objective of the dialogue remained to collect opinions on whether the Bills constitute positive electoral reforms or assault on democracy, the specific objective was to raise other pertinent issues related to democratic transition in the country.

The fierce debates among numerous stakeholders under Maendeleo Dialogue to oppose the original Bills mentioned above have brought positive response from the government and ruling party.

The government's positive response to Maendeleo Dialogue is a step forward towards further democratic reforms in Tanzania for a number of reasons.

One, this is the first time a Parliamentary Bill has been overhauled 100 percent to accommodate inputs from members of general public.

Major issues fiercely debated included; failure of the proposed laws to curb dirty money and corruption in the electoral process, monopoly of political parties, especially the incumbent ruling party in determining election funding.

Two, the proposed Bills were seen as fetter to the growth and flourish of democracy in Tanzania. All these major issues were also strongly debated during the Parliamentary session.

Third, all crucial inputs put forward by Maendeleo Dialogue have been incorporated in the amended Bills which among others now include the provision that under the Election Expenses Act of 2010, stakeholders must be given opportunity to debate limits on election funding and control of election malpractices. Article 31(2) of the Act stipulates on inclusion of stakeholders, especially the opinions of political parties and general public before drafting regulations on election expenses.

Other inputs incorporated relate to provisions on prohibition of public officers from participating in election campaigns and using public funds and property to support a political party and/or its candidates and prohibiting foreign companies with economic interests from donating to political parties and candidates. Restriction of foreign funding has been clearly stated under Articles 12 (1 – 4), 13, 14 and 15 of the Act.

Other provisions incorporated in the Act include Article 28 (1 & 2) which mandates state media to give equal access to all political parties to present their programmes.

In line with a proposal put forward by the dialogue, Articles 8, 9, 10 (1 – 3) and 11 of the Act prescribe on the procedures for setting clear limits on election campaign expenses.

Already Tsh. 5 billions has been set as the limit for presidential election while Tsh. 50 millions is for parliamentary elections.

Following the incorporation of stake holders' inputs in the Act, the Registrar of Political Parties is now set to use such inputs framing guidelines and regulations to govern the forthcoming general elections.

The government has also responded positively to the recommendations by deleting all redundant provisions on Electoral Laws Amendment Bill, which were copied from the existing Electoral Laws like definition on campaign period, nomination of candidates, curbing bribes, Election Code of Conduct and Powers of the National Electoral Commission in election management.

It is also of interest to note that for the first time in the country's political history the Bill was assented by President Jakaya Kikwete in public and witnessed by key political stakeholders on March 17, 2010.

While in then original Bill powers of setting limits on election funding was arbitrarily left in the hands of the Registrar of Political Parties, in the assented Bill there is a provision for stakeholders' involvement in determining the limits and procedures on election expenses. This has been clearly stated in Article 31 (3) of the Act.

What has been agreed during recent stakeholders meeting is that the set limits are not rigid but the law provides flexibility in overspending provided that the parties fill in special forms on excess spending explaining the reasons and authenticity of funds source.

Likewise, while the original Bill had given monopoly to political parties to determine election funding, the amended Bill has diluted such monopoly. Contrary to the original Bill which gave arbitrary powers to Secretary Generals of political powers to control the process of nomination of candidates, the amended Bill has dispersed that power and authority and it is the Court of Law which is final in determining the right candidates in case court resolution is called for.

Article 24 (1 – 8) prescribes on the procedures for nomination of candidates and responsibilities of various actors.

It is important also to note that the participation of a Member of Parliament (Chadema), Halima Mdee in the Maendeleo Dialogue and subsequently during the Parliamentary Committee on Legal and Constitutional Affairs greatly influenced the outlook of MPs when debating the Bills.

Equally important is the inputs through a critical and legal analysis prepared by Chadema lawyer, Tundu Lissu and distributed to members of the Parliamentary Committee. The document had great impact in directing the trend of the debate in parliamentary.

There is no doubt Maendeleo Dialogue has proved a vital tool in the ongoing political reforms and that exclusion resulting from hangovers of monolithic politics under the single party rule can be replaced by inclusive politics, after all democracy is a culture of dialogue.

In this context Maendeleo Dialogue has and continues to champion a culture of political dialogue, which is a fundamental pillar of democracy, good governance and sustainable development. There is every reason to continue supporting this vital tool by both internal and external stakeholders of democracy.

CHAPTER 1

OFFICIAL OPENING

The Dialogue was officially graced by Prof. Mwesiga Baregu, who was the guest of honor.

Professor Baregu urged dialogue participants to focus their attention on two issues, first, the context of the two Bills, and secondly, the timing and objectives of the two Bills.

He said the Bills had been drafted within the context of lack of democracy in Tanzania because Tanzania was yet to put in place a new constitution guaranteeing effective conduct of multiparty politics, saying he shared with the proposals of Nyalali's Commission in formulating new constitution which would spearhead democratic reforms under multiparty rule.



Prof. Mwesiga Baregu

According to him, without formulating a new constitution in the country, Tanzania will never improve democracy. A new social contract between the ruled and the rulers was called for, explaining that the country should not continue to put patches in the old constitution for that will never bring meaningful democratic reforms.

The political scientist noted that the current constitution still maintains many vestiges of colonial rule as expressed in making Regional and District Commissioners to play double roles and existence of centralized structure of Local Governments. With enactment of a new constitution Tanzania would be very far in terms of political and socio-economic development.

In his second argument, Prof. Baregu asked why the two Bills were drafted at that particular time. He said it was drafted under the political environment clouded by political corruption (*ufisadi*) in reference to the money stolen from Bank of Tanzania within the External Payment Account (EPA) Scheme to finance elections.

According to the Professor, the two Bills were not geared to for provide a level playing field in politics because the Office of the Registrar of Political Parties had been assigned other roles of tightly controlling political parties rather than nurturing their flourish to promote democracy. He underscored the need for high level of transparency and fairness in funding political parties.

The country should not always think that representative democracy through elections is the only cure for problems of achieving democracy; he said adding that the Bills ought to dwell on the long term life of political parties under multiparty rule.

According to him the Bills were supposed to talk on the best ways of funding political parties and political activities.

Prof. Baregu took time to review an analytical paper on the two Bills presented by a lawyer with the opposition party, CHADEMA, saying it has revealed several shortcomings in the proposals. In the first place, the Bills did not aim to prevent dirty money during elections. There was no single clause in the Bill on Election Expenses, Act stipulating on the meaning of dirty money and election fraud.

Similarly, there was no clause prohibiting influx of foreign money for sponsoring political activities during elections. He said the Bills intended to prevent the opposition parties, NGOs, CSOs, CBOs, FBOs and other stakeholders to acquire money or spend their own funds to finance political activities and civic education programmes.

He cited clause 19(1) of the Bill on Election Expenses Act, 2009 which wants the NGOs, CBOs and FBOs to be answerable to the Registrar of Political Parties, which is against the national constitution. That implied that religious affairs had been included in the government affairs. He also talked on the need for independent candidates in all elections saying it was not fair that entry into political leadership should be pegged in political parties alone.

Earlier in his welcome remarks, TADIP Programme Manager, Mr. Steven Mmbogo said since its establishment in 2006 TADIP in collaboration with KAS had been conducting dialogues under its Maendeleo Dialogue Programme.

According to him, Maendeleo Dialogue Programmes are intended to raise public awareness on a number of public interest issues by availing members of the public forums to air opinions on how to improve various aspects of development, including democratic reforms and improvement of governance.

He said under the dialogues TADIP had been implementing a vision aimed to ensure that the society was well informed on the development processes, free to participate in the development affairs with high degree of democracy.

He said the mission of TADIP was to steer public debates through sensitization dialogues and building citizen's capacity to participate in the dialogues.

Mmbogo said the topic of that day was on the proposed electoral laws published in the Government Gazette of 11th December 2009. The published Bills comprise the Election Expenses Act, 2009 and Electoral Laws Amendments Act, 2009.



TADIP Programme Manager, Mr. Steven Mmbogo

TADIP expected that the dialogue will come up with crucial recommendations to be submitted to the Parliamentary Committee on Constitutional, Justice and Administrative Affairs which was scheduled to sit between January 18 and 20th 2010.

He reminded them that much as elections were very important in promotion of democracy, not all elections being held in the country were democratic. In order elections to be democratic, free and fair, there was a need to put in place a level playing field.

The process of building democracy in the country must correspond with the process of building a level playing field in the political arena under multiparty rule, according to him.

He said not all processes of electoral law reforms were democratic, adding that with intention or unintentionally the efforts for electoral laws reforms could either improve or kill democracy.

Mmbogo said the central focus of the dialogue was to dwell on the need to ensure that the forthcoming general elections are conducted in a democratic manner, but that aspect rested on the commitment of government leaders to protect public interest and not protecting individual and single party interests.

It is important to note that the recommendations given by the dialogue would be useful not only to the ruling party, but the opposition and other stakeholders of democracy. The recommendations would be the outcome of all stakeholders, implying that it was the standpoint of all Tanzanians. He ended his welcome remarks by calling upon participants to participate actively in the dialogue saying their recommendations should not be ignored by the Parliament.

KAS Country Team Leader, Richard Shaba, thanked all participants for their positive response to a crucial dialogue saying by sponsoring such a dialogue, KAS was expanding the forums to improve democracy and good governance in Tanzania. Through the dialogue stakeholders were given another opportunity to discuss their own political affairs for their own interests.

He said multiparty democracy through elections was not always the answer in improving democracy. KAS and other stakeholders believed that such kind of democracy was not sustainable because elected leaders were close to people only during elections, but after elections elected leaders distanced themselves from the interest of electorates.

Given that elected leaders usually are not accountable to the citizens during post election periods, the best thing was to ensure that democratic accountability prevails even after elections.

There is a need therefore to take a broad focus of democracy rather than taking a narrow focus because the elected leaders who aspire to be re-elected must tell the electorate what achievements they have brought while in power.

Shaba suggested some useful guidelines on the dialogue as follows:

- What kind of political power structure should the country adopt- parliamentary or presidential system or both. The pros and cons of all systems must be properly analyzed. There is a need to put in place systems of checks and balances like in USA where Ministers are appointed outside the Parliament. When an MP is appointed a Regional Commissioner would he get opportunity to represent his constituency? When an MP is appointed a Minister how does the system of checks and balances and separation of powers operate?
- Election Management Bodies - there are complaints that EMBs are weak, impartial and incompetent to conduct ensure free and fair elections.



Richard Shaba, KAS Country Team Leader

- The citizens ought to be empowered through civic education so as to participate actively in the electoral processes. The political parties must also get prepared for election to ensure confidence and political stability after elections. The problem of voter fatigue expressed in the form of political apathy must also be tackled.

Shaba ended his remarks by calling for active participation in the dialogue.

CHAPTER 2

MAIN ISSUES RAISED

After the official opening, participants were invited to debate on the proposed Bills. The following are views from key stakeholders:

(a) Political Parties

1. **Emanuel Makaidi**, NLD Chairman:
The proposed Bills are undemocratic and are inclined to silence critical members of parliament who are critical against political graft (*ufisadi*).



The Bills were equally geared to weaken the opposition and continue with an unlevelled political playing field. The Bills increases the levels of controls of political parties by the Registrar of Political Parties.

The powers of the Controller and Auditor General (CAG) have been usurped by the registrar of political parties. The Bills were a non starter and should be opposed by all stakeholders of democracy through mass demonstrations.

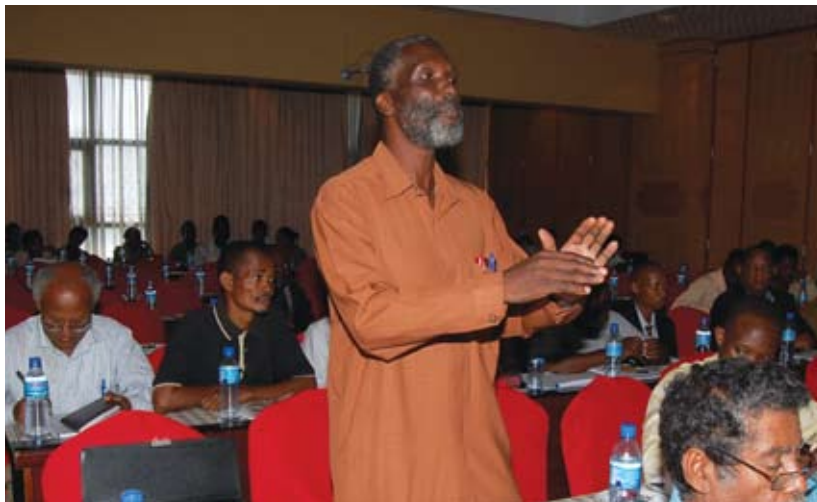
2. **Juma Khatib**, Representative of TADEA:
The Bills were meant to weaken opposition parties and silence outspoken CCM members who are critical of grand corruption.



The government was trying to collect opinions by deception while the real motive or intention was to kill democracy. All Tanzanians need a common stand and unity in opposing these Bills.

Without a new constitution Tanzania will never attain democracy.

3. **Joram Bashange** - CUF Deputy Secretary General:
All stakeholders ought to unite to oppose such Bills outright. The Bills were against the constitution.



The Bill on Election Expenses, Act had on one side closed expenses through one door and but opened another door for graft on another side.

Under the proposed law; CHADEMA would fail to hire a helicopter for effective election campaigns.

After CCM had bought enough election vehicles, the new Bills were mooted deliberately in order to weaken the opposition in terms of electing funding.

The proposed Election Expenses Act gives enormous powers to Secretary Generals of political parties to dictate the candidature of party members. This is

not only undemocratic but may also fuel corruption, favoritism, discrimination and above political intrigues.

The Bills should be opposed because they have one intention- to kill the opposition. The Bills were drafted in a hurry with a single motive, which is weakening the opposition during the forthcoming elections.

4. **Victor Kimesera**, Member of Executive Committee of CHADEMA:

Experience had shown that there was a need for all stakeholders to protect democracy and freedom, otherwise the hard won freedom and democracy will be monopolized by the few. The Bills were a response to public criticism against political corruption.

All Tanzanians regardless of their political affiliations should stand up to oppose the two Bills.



The Bills were undemocratic since they bear clauses that give secretary generals of political party's unchecked powers to remove candidates during elections. As such the Bills were meant to prevent party members from holding their leaders accountable for their actions or decisions.

Similarly, the Bills were yet to improve EMBs for effective supervision of elections like say the Malawi Electoral Commission.

5. **Haji Mussa**, Representative of Jahazi Asilia:

The government had only one aim in proposing such undemocratic bills, which is to kill democracy. There is an urgent need to level the political playing field and ensure every playing side play according to the rules of the political game. All political parties should be given opportunities and a good foundation for running political affairs effectively.



The proposed laws should be opposed. Strangely enough, the two Bills had excluded Zanzibar which is part of the Union as political parties and elections are union matters.

Zanzibar will be badly affected by the proposed laws given the fact coercive forces in the name of police and army are normally used during general elections. During the 2005 elections, 32,000 members of militia were transported to the Islands from Tanzania Mainland.

6. **Masudi Saidi Masudi**, Representative of Alliance for Tanzania Farmers (ATF):
The incumbent party, CCM is the brain behind the two Bills created in order to kill opposition political parties in the country. When independent candidates



are allowed, the proposed laws will never work. With the enactment of the two Bills many CCM candidates would sail unopposed because of political manipulation and bribery through secretary generals of the opposition political parties. This is a well calculated plan by the ruling party and its government so as to weaken the opposition during the forthcoming general elections. CCM should be bold enough to play fair and not be scared of competitive politics.

7. **Tony Kamuhanda**, Representative of Sauti ya Umma Party (SAU):

The proposed laws are very bad and should be hated like leprosy. The source of the two Bills is the existence of bad constitution in the country. All stakeholders must unite to oppose them. There was also a need to frame new constitution.



8. **Mshangama**, from Union for Multiparty Democracy (UMD):

The destiny of the country under these Bills is being decided by only one actor, CCM. Such approach was wrong. When the two Bills sail through all MPs whose political survival depends on graft will be re-elected through political corruption and dirty money. The time for people to go to the bush is now, the use of forceful means was necessary because the two bills were very dangerous to democracy.



9. **Mrs. Leticia Nyerere**, Member of CHADEMA:

The two Bills are undemocratic hence not useful. All stakeholders must oppose them through mass demonstration during the next Parliamentary Session in Dodoma.

There were no fundamental changes which were brought by the clique of the ruling party.

10. **Freeman Mbowe**, Chairperson of CHADEMA:
If democracy stakeholders keep silent on the matter, bad leaders will be elected during forthcoming elections.



CHADEMA had critically analysed the two Bills and had come to a conclusion that they are not for public interest. More specifically, the Bills were not for the interest of opposition parties, NGOs, CBOs, CSOs and FBOs.

It was a well calculated strategy of hold the nation through dirty politics. The Bills have robbed Civil Society Organisations, including FBOs and NGOs the right to participate in political affairs freely. The Bills were exclusively applicable on Tanzania Mainland only. Furthermore, the powers of CAG have been taken away by the Registrar of Political Parties who does not possess financial auditing expertise. Equally important, the office of the registrar of political parties

is too small to perform such a huge task. All political stakeholders must stand up to oppose them. The issue at hand was not for political parties alone, but all stakeholders of democracy.

The two Bills were targeting to bar opposition parties from participating effectively in the forthcoming general elections. The ruling party would be financed through dubious means such as KAGODA, the public pension funds and financial institutions. The Bills were not the outcome of thorough research and participation of citizens. The ruling party wants to continue to have excessive monopoly in managing elections. There is a need to form a common front to reject the two Bills. All stakeholders must form a united front to oppose the Bills.

(b) Civil Society Organizations

1. Representative of Tanzania Youth Vision (TYV):
Many poor people who live on less than one dollar a day did not know bad issues embodied in the two Bills. The Bills were an outcome of *Ufisadi* and undemocratic tendencies in the country. They are completely against democracy. The government was supposed to educate the citizens before drafting such undemocratic Bills. A new constitution is called for given the widening gap between the haves and the have-nots in the country.
2. Representative of Tanganyika Law Society (TLS):
It would appear that the two Bills were not known to many citizens. Many people have not read these Bills, something which should be noted at this dialogue. He

was the only person who opposed the common stand of refusing these Bills.



3. Veteran Journalist, **Salim Saidi Salim:**
The two Bills would not be practically implemented in Zanzibar as they were exclusive for Tanzania Mainland



even though politics is a Union matter. The proposed laws are not useful as they are modeled on the former autocratic political systems of Eastern Europe. They should be opposed in totality.

4. Representative of students of University of Dar es Salaam:

The Bills were undemocratic as they have taken away the powers of the general public and put them in the hands of few people. There is a need to issue a strong declaration of opposing the two Bills. FBOs and CSOs should convene a meeting to map up a common agenda against the two Bills.

5. Representative of Ubungo Development Initiative (UDI):

A national task force should be formed immediately to spearhead the opposition against the two Bills.



CHAPTER 3

DIALOGUE RESOLUTIONS

1. The dialogue has resolved to form a 10 Members Task Force to draft and submit recommendations of stakeholders to the Parliamentary Committee on Constitutional, Justice and Administrative Affairs to oppose the two Bills.
2. The two Bills should not be enacted as they are drawback to democratic reforms in the country.
3. The two Bills were intended to kill democracy in the country.
4. The Bills, especially the Bill on Election Expenses Act was against the Constitution.



5. The two Bills have excluded Zanzibar as long as there is no any statement on the role of Zanzibar Electoral Commission (ZEC).
6. It was also resolved that stakeholders of democracy should issue a joint statement of not participating in the forthcoming general elections in case the two Bills are passed by the Parliament and assented by the President.
7. Stakeholders observed that the Bills have taken away the freedom and rights of NGOs, FBOs, CBOs and other CSOs to participate in social and political affairs.
8. The two Bills were intended to silence political actors and other stakeholders who are critical against political corruption (*Ufisiadi*).
9. Stakeholders observed that there was no sufficient preparation and research when the Bills were drafted, since stakeholders were not effectively involved.
10. It was observed that the Bills were drafted in a hurry in order to protect the interests of a few at the expense of public interests.
11. Stakeholders called for mass demonstration countrywide to oppose the two Bills.
12. Observed that the Union Constitution needed effective democratic reforms.
13. Stakeholders observed that the Bill on Election Expense Act has usurped the powers of Controller and Auditor General (CAG) and put them in the hands of Registrar of Political Parties who does not possess financial auditing expertise.

14. Stakeholders observed that by giving the secretary generals of political parties the powers to delete unilaterally candidates during elections, the Bill on Electoral Law Amendments Act has provided a loophole for political corruption and intrigues during elections.
15. Stakeholders have also noted the citizens' demand for independent candidates in all political elections at all levels.
16. Stakeholders observed that the Bill on Elections Expenses Act was meaningless because it does not provide for the ceiling election expenses; instead it provides only powers to the responsible Minister to set the limits as he so wished.
17. The Bill on Election Expenses Act was very defective and will never attain the goals of tightly controlling election fraud and dirty money or money laundering during elections.



CHAPTER 4

RECOMMENDATIONS SUBMITTED TO THE PARLIAMENTARY COMMITTEE ON CONSTITUTION, JUSTICE AND ADMINISTRATIVE AFFAIRS

INTRODUCTION

We participants gathered from various Civil Society Organisations, political parties, faith based organisations, religious institutions, higher learning institutions, individuals and other democracy stakeholders whereby we resolved to submit our proposal for opposing the Bills to be deliberated by the Constitution, Justice and Administrative Parliamentary Committee on Monday 18th to 20th January 2010.

After a long discussion and debate, the participants decided to form a National Task Force of ten members to oversee the stakeholders' recommendations.

This document comprises two parts, the first one is the Bill on Election Expenses Act, 2009 and the second one is the Bill on Electoral Laws (Miscellaneous Amendments) Act 2009.

It should be remembered that on 11th December 2009 the Prime Minister's Office of the Government of the United Republic of Tanzania published a Bill Supplement to the Gazette of the United Republic of Tanzania. The Bill Supplement introduces Government proposals to amend certain electoral laws, as well as to enact a completely new law to regulate election financing in Tanzania.

The electoral laws sought to be amended by the proposed *Electoral Laws (Miscellaneous Amendments) Act, 2009* (hereafter ‘the Amendment Bill’) are the *Elections Act, 1985 Chapter 343 of the Revised Edition of the Laws of Tanzania*, and the *Local Government (Elections) Act, 1979 Chapter 292 of the Revised Edition of the Laws of Tanzania*. While the former relates to parliamentary and presidential elections, the latter regulates gubernatorial elections to both district and urban authorities. Locality elections at village, vitongoji and mitaa levels are conducted under separate legislation and are not the subject of this paper. On the other hand, the proposed *Election Expenses Act, 2009* (hereafter ‘the Election Expenses Bill’) seeks to regulate all aspects of election financing of general elections in Tanzania.

The latter Bill makes wide-ranging proposals that, if enacted into law, will have far reaching and serious implications on the right to participate in electoral processes of not only the opposition political parties but also of all sections of the organized civil society. The same, however, cannot be said of the former Bill. Because the amendments it proposes are a mere shuffling of provisions of the current electoral laws and/or a nibbling at the edges of existing law. The Bills are analysed in the current and immediate past historical context in order to understand their importance or true meanings. This historical context is framed by the opposition parties’ perennial demands for electoral reform to create an independent electoral machinery.

Part one:

THE ELECTION EXPENSES ACT, 2009

According to its statement of objects and reasons, the thrust of the Election Expenses Bill is, *inter alia*, “to control the use of funds and illegal practices in the nomination process...” Other objects are “restricting foreigners, be it a government, an international organization, or institution to provide funds for election expenses”; and checking illegal practices in the election process. These objects are to be attained through pre-and post-election disclosure and reporting mechanisms. The starting point of our analysis must necessarily be the answer to the question, what are ‘election expenses’? The answer is to be found in clause 7 of the Election Expenses Bill which defines the term ‘election expenses’ as “all funds expended or expenses incurred in respect of the conduct and management of nomination process, election campaign and election by a political party, candidate or Government....”. We will return to this definition shortly.

As we mentioned in this paper, these may not be the real objectives and reasons for this Bill. That the real objectives may be much more sinister than the pious declarations of the statement of objects and reasons. However and regardless of the motives, should it be enacted into law, the Election Expenses Bill may sound the death knell of multiparty electoral politics in Tanzania. It may also be the premature end of the participation – albeit limited – of civil society organizations and religious groups in electoral politics of the country. We dare declare.

RESTRICTION ON CANDIDATES' SPENDING

The Election Expenses Bill is founded upon two key pillars around which it is built. The first key pillar is that, with the exception of the Government, all election expenses shall be borne solely by political parties. Thus, according to clause 8(1), “it shall be the obligation of each political party to conduct and fund its election campaign by utilizing its own funds from the sources stipulated under the Political Parties Act.” Under section 13(1) of the latter Act, ‘fully registered’ political parties derive their funds and other resources from membership fees, voluntary contributions, proceeds of any investment, project or undertaking in which the party has an interest, subvention from the Government and donations, bequests and grants from any other source. To obtain these funds, a political party may, according to clause 11(1) appeal for and receive voluntary donations from any individual or organization in the United Republic of Tanzania for the purposes of financing election activities.

That political parties are the sole source of election expenses could not be made clearer by clause 11(4): “... no candidate shall receive or accept donation for election expenses from any person, organization or institution other than through his political party.” This covers expenses incurred in nomination processes within the political parties. (Cl. 14(1) In other words, not even a constituent can directly donate funds for the election of a member of parliament of his or her choice except through the candidate’s political party. Tough luck if s/he likes the candidate but disagrees with the party’s policies or electoral platform or vice versa! A candidate is also prohibited from using his or her own funds for financing election expenses. According to clause 8(2), “a candidate may use his own funds during election campaigns to cater (sic!) for personal costs or other costs as may be necessary or required for the purpose of

election campaigns.” The phrase ‘personal or other costs’ is not defined in the Election Expenses Bill.

Consequently, and given the definition of ‘election expenses’ in the Bill, it can be safely assumed that these are costs of a personal nature such as expenditures on clothing, toiletries and the like!

In the real world of Tanzanian politics and society, this proposal may have deadly consequences for opposition parties and/or candidates. Given the propensity of functionaries of the ruling party to intimidate and/or punish donors of the opposition parties with harassment from government institutions such as the tax authorities, very few individuals or organizations are likely to give donations for election expenses to the opposition parties. And with the opposition parties’ share of government subvention being less than ten percent of the total, the ability of opposition parties to fund election campaigns from this source is minimal indeed.

To make matters worse, individual candidates of these parties may not – even if they are able and willing to - use their own funds or other resources for election expenses. The likely effect – whether intended or not – of these provisions is to financially cripple the opposition parties and their candidates during general elections. The ruling party, with its vast property holdings it expropriated for itself when the multiparty system was introduced in the early 1990s, and with its uncanny ability to extort funds from the business community or to benefit from the plunder of the public treasury as alleged in BOT’s EPA account scandal, will have the financial resources to prevail over the opposition parties, thus hamstrung.

It is also clear that the underlying assumption for these proposals may be that candidates are prone to receiving dirty money as campaign contributions other than their political parties. Or perhaps the latter are easier to control than their candidates.

RESTRICTION OF FOREIGN FUNDING

The second pillar of the Election Expenses Bill is the alleged restriction of foreign funding of electoral expenses. Under clause 12(1) of the Bill, “no political party, Non-Governmental Organization, Community Based Organization, other body or institution or any member of such political party, Non-Governmental Organization, Community Based Organization, body or institution and no other person shall receive, bring or cause to be brought into the United Republic, any funds or anything which can be cashed or converted into funds which, on the ground of a donation or on other grounds, is intended to be used or, in the discretion of such political party, Non-Governmental Organization, Community Based Organization, body, institution, member or other person, may be used to further the interest of any political party, own candidature or any other person who has been nominated or may be nominated as a candidate for any contested election.”

This is perhaps the most sweeping and draconian legislative proposal ever drafted to control election financing in Tanzania. While the stated object for the Bill is ostensibly to restrict foreigners from providing funds for election expenses, this provision goes far beyond this goal. Indeed, a strict construction of the provision may show that rather than restricting foreigners, it in fact prohibits Tanzanian citizens – whether living abroad or inside the country - from bringing or receiving funds or anything that can be converted into funds from outside the country. This is so because the definition of the term ‘funds’ is so wide that it covers literally everything that can conceivably be used for election purposes. Under clause 12(2), the term ‘funds’ is defined to include “money, motor vehicles, aircraft, flags, printing, publication or distribution of leaflets, brochures or any other publication, broadcast by radio or television, provision of food or drinks to voters and any other thing intended to be used for furtherance of election campaigns.”

The prohibition of ‘foreign’ funding for election expenses does not cover donations only. Importation of ‘funds’ “on other grounds” is similarly prohibited. Though not defined, ‘other grounds’ may include voluntary contributions, requests or grants from Tanzanian citizens living abroad; funds held by Tanzanian citizens in foreign bank accounts, or from investment, projects or undertakings in foreign countries in which Tanzanian citizens have interest; procurement abroad of ‘funds’ by political parties, their members and/or any other person living in Tanzania; and procurement abroad by candidates to further their own candidature. Furthermore, the prohibition does not cover political parties, their members or candidates only. Included in this sweeping dragnet are NGOs, CBOs and bodies or institutions such as churches and church organizations, commercial enterprises, sports groups and corporate or unincorporated bodies. And it does not matter whether these bodies are foreign- or locally-owned by Tanzanian citizens.

It is clear, from the foregoing, that this proposal is not only intended for the opposition political parties which would seem to be the most obvious target. It is also intended for the organized civil society, both secular and religious, which has rediscovered its independent voice in the past few years. Using restriction of foreign funding as a political cover, the proposed prohibition constitutes the most direct and serious attack on multiparty democracy in Tanzania. If enacted into law, the Election Expenses Bill will not only financially cripple the opposition parties and/or their candidates during the forth-coming general elections. It will also silence civil society organizations and religious institutions such as churches and church groups that have become increasingly and publicly strident in their criticism of government policies and practices.

The Election Expenses Bill will also not control the influx of dirty money that has so characterized the elections over the past decade or so. Firstly, it does not prohibit the use of proceeds of organized

crime such as the looting of public coffers or tax evasion from being used for funding election expenses. Indeed it is remarkable that this Bill has nothing to say regarding ‘voluntary’ contributions, donations, bequests or grants from local business elites or locally-based subsidiaries of foreign multinational corporations that currently dominate our economic landscape. Though registered as local companies for purposes of the companies’ law, the latter are for all intents and purposes foreign companies.

Secondly and crucially, what is prohibited is not importation of foreign funds *per se*. Indeed, there is not a single provision that declares illegal the receipt or bringing of funds from foreign governments, international organizations, foreign companies or foreign citizens which is the stated objective of the Election Expenses Bill. On the contrary, what is prohibited is the timing of the importation of these funds. Thus, under clause 12(4), the restriction on foreign funding “*shall not apply to any funds received within, brought or caused to be brought into the United Republic during any period ... of ... ninety days before the [general] Election Day; and [in the case of] a by-election, thirty days before the Election Day*”!

As the national media has reported in recent weeks, the CCM state party has already imported more than 200 motor vehicles in preparation for the forthcoming general elections. It would appear, in the light of this analysis, that the vehicle imports - and perhaps much more - are geared towards meeting the requirements of the Election Expenses Bill as and/or when it is finally enacted into law. With their limited opportunities for raising finances locally, opposition parties and organized civil societies may not be so lucky.

So while it proclaims noble intent, the Election Expenses Bill is actually intended to deceive the people by creating the illusion of

progressive reforms to control foreign influence and the influence of dirty money in Tanzanian electoral politics. The real intent is to consolidate and/or shore up *status quo* by depriving opposition political parties of electoral funds and muzzling organized civil society.

LIMITING ELECTION EXPENSES

The third pillar anchoring the Election Expenses Bill is the limitation of election expenses. For this purpose, clause 10(1) empowers the Minister responsible for political parties to prescribe, by an order published in the Gazette, the maximum amount of election expenses. The only criteria that will guide the Minister in exercise of this power is the difference in the size of electoral constituencies and the categories. (Cl. 10(1) (a) The power to set the maximum amount is also the power to vary the amount (Cl. 10(1)(b) A political party or a candidate may, ‘in exceptional circumstances’, expend more than the prescribed amount. When that happens, the political party or the candidate must give reasons for the use of excess funds to the Registrar of Political Parties. (Cl. 10(2) The use of excess funds is, otherwise, a criminal offence punishable by a fine ranging from three to five million shillings for candidates and political parties respectively. (Cls. 10(3) & 25(a) and (b)

There also are limits to the use of funds for election purposes by non-governmental organizations, faith-based organizations and community based organizations.

Firstly, they are obligated not to use funds in excess of the limit prescribed by the Minister. (Cl. 13(2) Secondly, these organizations can only use their funds for purposes of advocacy and public awareness only. (Cl. 13(3) Freedom of expression – in the form of support for particular candidates or political party platforms

- guaranteed by the Constitution may not, according to this rule, extend to the organized civil society. Non-compliance with these restrictions is, presumably an offence punishable by a fine not exceeding ten million shillings. (Cl. 25(c))

YET MORE SHUFFLING!

Perhaps the most evident sign of the maintenance of *status quo* is the retention in the Election Expenses Bill of almost the entire provisions of the offences part of the Elections Act. Thus Part V of the Bill that provides for ‘prohibited practices’ is an almost verbatim reproduction of sections 97(1) and 98(1) of the Elections Act. For example, clause 21(1) which prohibits ‘unfair conducts’ is a verbatim reproduction section 97(1) of the current Act that prohibits ‘bribery.’ Similarly, the offence of ‘unconscionable funding’ in clause 22 is the age old offence of ‘treating’ under section 98(1) of the Act. The only new offence that does not form part of the current law is the proposed offence of ‘conveyance of voters’ to or from polling stations under clause 23 of the Bill.

Even defences against these offences under the current law have been retained in the Bill. Thus the section 97(3) defence of want of the candidate’s knowledge, consent or approval where bribery has been established has been transferred to clause 21(2) of the Bill.

Likewise, mindful that wealthy candidates often gain considerable advantage through seemingly legitimate contributions and donations to self-help or community welfare projects, the Bill seeks to retain that advantage. According to clause 21(3), “... an act or transaction shall not be deemed to constitute prohibited practice if it is proved to have been designed to advance the interests of community fund raising, self-help, self-reliance or social welfare projects within the constituency and to have been done before the nomination process

or election campaign....” This is a verbatim reproduction of section 97(4) of the Elections Act. The only defence that has not been retained in the Bill is the infamous *Takrima*, i.e. the exemption to the definition of the offence of treating of “... anything done in good faith as an act of normal or traditional hospitality.” (Section 98(2))

There are other provisions that are welcome but are a retention of the current law. For example, the Bill proposes a right of presidential candidates to utilize the government broadcasting service and television during election campaigns in accordance with the provisions of the Elections Act. (Cl. 27(1)) The government media is also obligated to publish information related to the electoral process without bias or discrimination against any candidate. There is nothing new to these provisions for they have been part of the country’s electoral law since the 1995 amendments to the Elections Act. (See section 53) What is more, these provisions have been widely and consistently ignored by the state-owned media which continues to be largely a mouth-piece of the ruling party. The retention of these provisions in the Election Expenses Bill is not likely to change this bias.

OFFENCES AND PENALTIES

Although the retention of the corrupt practices and the introduction of the new offence of conveyance of voters in the Election Expenses Bill are to be welcomed, there are serious misgivings about proposed penalty for non-compliance with these prohibitions. Under clause 24(1) of the Bill, “any candidate, his agent or by his political party who does an act which amounts to prohibited practice as stipulated in this Part, shall render himself liable for disqualification to participate in the nomination process or election.” Under sub-clause (2) the Registrar is obligated to file an objection with the Director of Elections and the Secretary General of the party

sponsoring the candidate if he is satisfied that a candidate is liable for disqualification in the nomination process or election. And once that objection is filed, the Secretary General of the sponsoring party is obligated, *suo moto* or upon direction by the Commission, to nominate a qualified person to stand as a candidate in lieu of the disqualified candidate! (Cl. 24(3) Failure by the political party to nominate an alternative candidate renders itself disqualified from participating in the nomination process or election in respect of which the candidate was disqualified. (Cl. 24(4)

These proposals are remarkable for several reasons. Firstly, they give the Registrar of Political Parties an unreasonable monopoly of power to police the observance of the prohibited practices. Under the current law, an objection against the nomination of a candidate may be made by another candidate, the Director of Elections or the Returning Officer *suo moto*. (See sections 40(3) and 44(3) of the Elections Act and the Local Government Elections Act respectively) Secondly, they give power to the parties' Secretaries General to disqualify candidates who are seeking nomination or who may already have been nominated to contest election.

The power to disqualify candidates has, historically, been vested with the returning officers or the Electoral Commission (See section 40(4A), (5) and (6) of the Elections Act)

Crucially, whereas there are significant safeguards and due process rights for candidates under the current law, there are none under the Election Expenses Bill. Thus the Secretary General need not notify the candidate whose nomination has been objected to before he nominates another candidate in lieu thereof. Similarly, the candidate who has been objected has no right to be heard and no right of appeal against the decision to disqualify him. These proposals will give the parties' Secretaries General dictatorial powers to oust candidates of their dislike from contesting elections

on a mere allegation by the Registrar that they have committed prohibited practices. In our opinion the most likely targets of this proposal includes rebel members of parliament who are critical against grafts.

Political parties may also be disqualified from participating in elections for failure to comply with wide ranging and mandatory provisions regarding the disclosure reporting of election expenses both before and after elections. (See clauses 9, 13(4), 17(3), 18(2) and 18(4) Thus a political party that fails to file a financial and audit report as required by the Election Expenses Bill shall, “in addition to payment of default fine of shillings three million, be disqualified to contest in any election including the next General Elections, unless that political party files such financial and audit reports to the satisfaction of the Registrar before the nomination day.” (Cl. 18(4). See also clause 20(1) Here too the Registrar is obligated to file an objection with the Director of Elections who shall then proceed to issue an order of disqualification against the political party concerned and all the candidates it has sponsored in that election! (Cl. 20(2) and (3). There is similarly, no right of hearing or appeal regarding the Registrar’s objection or the Director’s order of disqualification.

There is little relief for candidates even where no objection has been filed by the Registrar against their nomination. Those who fall through the Registrar’s dragnet will be caught by the hook of election petition. Under clause 24(5), where a candidate, his agent or political party commits a prohibited practice for which no objection has been filed, another candidate, agent or voter may allege in an election petition, inter alia, that the candidate, his agent or his political party committed a prohibited practice during nomination process, election campaigns or election. That allegation will be dealt with under the procedure for avoidance of elections in Parts VII and VIII of the Elections Act.

The Election Expenses Bill proposes other wide ranging offences and penalties for non-compliance with the provisions of the Bill. For example, given that the Registrar is empowered under clause 4(2)(c) of the Bill to conduct investigations and examinations of the financial affairs and records of political parties, it is an offence to obstruct the Registrar or his representative from carrying out the investigations and examinations aforesaid. (Cl. 26(a) Similarly, given the Registrar's power to enter and inspect books, papers and documents (cl. 5); and to demand information relating to the election expenses of a political party, candidate or polling agent (cl. 6(1), it is an offence to refuse to produce the books, papers or documents as requested (Cl. 26(b), or to produce false books, documents or false information. (Cl. 26(c) Furthermore, since political parties are obligated to file returns and financial reports of election expenses to the Registrar (Cl. 18(1) & (2), it is an offence to make false statement in any returns or financial report. (Cl. 26(d) And in view of the obligation to keep records – ‘for the purposes of financial accountability’ – imposed on candidates, political parties, NGOs, CBOs and FBOs by clause 19(1), it is an offence to destroy books, papers, documents or anything relating to the subject matter of Registrar's investigation, examination or inspection. (CL. 26(e)

While these provisions are welcome in order to maintain the financial accountability during elections, the proposed penalty upon conviction – a fine not exceeding shillings ten million – remarkably minimal. Indeed, one may question the rationale or justice of disqualifying a political party and/or candidate who fails to disclose funds for election expenses but imposing a relatively small fine for one who refuses to produce records, or produces false records and/or statements or destroys records. The latter offences are equally, if not more, serious for they suggest wrongdoing on the part of the guilty party.

CONCLUSIONS AND RECOMMENDATIONS

Given the foregoing examination of the Election Expenses Bill, there can be no doubt that the proposals made are of fundamental importance to political parties. If enacted into law and rigorously enforced, these proposals will radically affect the rights of political parties and the organized civil society to participate in electoral politics and processes. The proposals will deny rights of citizens to contribute financially to the election of candidates of their choice. They will deny candidates the right to raise and use their own funds for legitimate election expenses even where their political parties are unable to do so. They will prohibit or restrict the right of weaker political parties and/or candidates to raise funds for election expenses throughout the election cycle while favouring and protecting the ruling party. They will not check the influx of dirty money and/or proceeds of crime from being laundered in electoral processes. They will not prevent the influence of foreign interests in our electoral politics. They are also eminently anti-democratic in granting unchecked and/or arbitrary powers to party leaders to remove candidates on mere suspicion and without due process of the law.

Given the above, the Election Expenses Bill should be opposed and its enactment into law resisted by all those concerned about the health of our electoral politics and our fundamental rights to participate in the election of our government. The following provisions need to be especially resisted and/or deleted from the Bill, namely:

- (1) The provisions of clauses 8(1) and 14(1) giving a monopoly on political parties to fund election expenses;
- (2) The provisions of clause 8(2) preventing candidates from using their own funds during election campaigns;

- (3) The provisions of clause 11(2) giving a monopoly on political parties to receive voluntary donations for election expenses;
- (4) The provisions of clause 11(4) prohibiting candidates from receiving or accepting voluntary expenses from persons other than their political parties;
- (5) The provisions of clause 12 that prohibit funding of election expenses from legitimate sources by political parties, NGOs, CBOs, FBOs and other bodies and institutions and by individual citizens throughout the election cycle;
- (6) The provisions of clause 13(3) that restrict the right of organized civil society to support candidates and/or political parties of their own choice consistent with their legitimate interests;
- (7) The provisions of clause 15(2) that makes it an illegal practise for a political party to fail to disclose any gift, loan, advance, deposit or donation received for its election expenses;
- (8) The provisions of clauses 18(4), 20(1) and 24(1) relating to disqualification of candidates and/or political parties from participating in election processes;
- (9) The provisions of clause 24(3) that empower the Secretary General of a political party to remove without due process a candidate against whom an objection has been filed by the Registrar;

On the other hand, we recommend the incorporation of the following provisions into the Bill, namely:

- (a) Provisions expressly prohibiting public officers from participating in election campaigns, or utilizing public funds and/or property, to support candidates and/or political parties;
- (b) Provisions expressly prohibiting foreign companies with economic and/or commercial interests in Tanzania from contributing or donating funds for election expenses to candidates and political parties;
- (c) Provisions expressly mandating government media to give equal access to all political parties to present their programs;
- (d) Provisions expressly mandating government media to give the same amount of air time and space in government media to all candidates to present their programs.
- (e) In order to be meaningful the provisions expressly prohibiting excess expenses by candidates, political parties, Non Governmental Organisations, Faith Based Organisations and other civic organisations should clearly prescribe a limit on election expenses without leaving that power to responsible Minister.

Part two:

THE ELECTORAL LAWS (MISCELLANEOUS AMENDMENTS) ACT, 2009

As stated in the Introduction above, the Amendment Bill seeks to amend both the Elections Act and the Local Government Elections Act. As far as the former is concerned, the most significant proposal relates to the procedure for the nomination and election of women special seats members of parliament. Clause 13 seeks to amend Chapter V of the Elections Act by introducing a new Part III on ‘Nomination of Women for Special Seats.’ There is nothing new in this proposal. For what it does is to transfer the provisions of Article 78 of the *Constitution of the United Republic of Tanzania, 1977 Chapter 2 of the Revised Edition of the Laws of Tanzania* into the Elections Act. The same ‘cut and paste’ exercise has been performed in relation to the Local Government Elections Act whereby a new Part XIA is proposed to be inserted into that Act to provide for ‘Nomination of Councillors for Women Special Seats.’ (See cl. 31)

There are numerous other, equally inconsequential proposals. Thus, for example, clause 14 seeks to repeal sections 87, 97 and 98 of the Elections Act that define the terms ‘campaign period’, ‘bribery’ and ‘treating’ respectively. These will now be moved onto the definition section and Part V of the Election Expenses Bill respectively. The latter Part relates to ‘Prohibited Practices.’ In other words what are the offenses of bribery and treating under the current law will remain the same offenses under the latter Bill. Similarly, clause 15 proposes to repeal section 100 of the Elections Act which deals with the offenses of ‘bribery, treating and undue influence in relation to members and officers of the [National Electoral] Commission.’ The section will now be replaced by a new section 100 relating to the offenses of ‘bribery, corruption and undue influence in relation to

members and officers of the Commission’! Here the only change is the substitution of the term ‘corruption’ for the term ‘treating’! Similar shuffling is to be found in clause 10 of the Amendment Bill which proposes to codify in the Elections Act the provisions of Article 76(3) of the Constitution which bars by-elections within a period of twelve months preceding the date of dissolution of Parliament. Furthermore, clause 18 divides section 113 of the Elections Act into two subsections but otherwise leaves the provision intact. Perhaps the only meaningful proposal as regards the subject of electoral corruption is the proposed repeal of section 109 of the Elections Act which exempted certain corrupt or illegal practices if done inadvertently or by ‘accidental miscalculation.’ There will now be no excuse for any corrupt or illegal practices. However, this cannot be described as earth-shaking reform of the corruption provisions given the obvious difficulty of disproving good faith in the commission of the corrupt or illegal practices.

The more compelling evidence of unwillingness to reform the electoral system is, however, to be found in the proposals dealing with the institutional machinery for conducting the elections.

Whereas both the Constitution and the Elections Act have theoretically vested powers to the National Electoral Commission to supervise the general conduct of presidential and parliamentary elections, the reality of the matter is that the Commission is a mere smokescreen. For it is the local government machinery which, in law and in fact, manages all aspects of all elections in Tanzania. That local government machinery is an extension of the central government bureaucracy in regional, district and local levels and is directly accountable to the central government in the form of the Ministry responsible Regional Administration and Local Government (TAMISEMI). This machinery only becomes the electoral machinery by operation of the law for, under section 7(1)

of the Elections Act, every City, Municipal, Town and District Executive Director and their subordinate staff automatically become returning officers, assistant returning officers and polling assistants during general elections. They are also registration officers for the purposes of registration of voters by virtue of section 7A(1) of the Elections Act. The Commission has no say whatsoever in the appointment of these officers. Moreover, it cannot appoint any other officer – whether by office or name - beyond the narrow circle of local government ‘public officers.’ (See sections 7(3), 7A(3) and 8(1))

Although section 6(2) of the Elections Act obligates these bureaucrats to ‘carry out fully’ all directions and instructions issued by the Commission, the reality and the practice has, almost without exceptions, been different. For during every election cycle this local government bureaucracy completely identifies with and works for the ruling party and/or its candidates and against the opposition parties and their candidates. Its standard practice has been to frustrate opposition candidates in all stages of the election process from voter registration through the nomination process to voting, counting and declaration of election results.

No wonder the removal of local government officials in all aspects of the electoral process has been the most consistent demand of the democracy stakeholders. Such has been the unanimous demand of the opposition that in February, 2009 the leaders of all political parties signed a memorandum of understanding with the Registrar of Political Parties that Ward and Village Executive Officers would not be allowed to manage the locality elections of October 2009. However, when regulations for those elections were promulgated in August 2009 the so-called Morogoro Agreement was ignored and the local government functionaries were retained as returning officers.

Given this reality, the issue is how the Amendment Bill proposes to deal with this local government bureaucracy that in practice serves the interests of the ruling party. The answer to this question is an unqualified negative. Clause 4 of the Amendment Bill, for instance, proposes to amend section 7(2) of the Elections Act in order to empower the Commission to “appoint by office or name, from amongst public officers, such number of Returning Officers or Assistant Returning Officers for the purposes of conducting an election in a constituency.” Section 7(2) that is sought to be repealed provides that the Commission “shall appoint by office such number of Returning Officers or Assistant Returning Officers as it may deem fit.” The only change being proposed is, therefore, that election officers may now be appointed by name instead of by office only. The crucial fact that they must all be ‘public officers’ – and therefore ultimately accountable to the ruling party – has been left intact. A similar change is proposed with regard to section 7A(2) of the Elections Act which provides for the appointment of Assistant Registration Officers. (Cl. 5)

There are more examples of the illusory reforms. Clause 7 of the Amendment Bill creates a whole new section 15A relating to the right of political parties to be represented by registration agents during the registration of voters and the procedure thereof. Clause 16 proposes similar provisions for voter registration under the Local Government Elections Act. As far as we know, this has been the uncontested practice since the Elections Act was amended in 2004 to introduce the Permanent Voters Register! There are other fortuitous proposals. For instance, the Amendment Bill proposes to reduce the period for nomination of new presidential or vice presidential candidates upon death of a previously nominated candidate from more than twenty one days under the current law to less than fourteen days proposed by the Bill. (Cl. 9) Similarly, the Amendment Bill proposes to limit the hearing and determination

of petitions at both trial and appellate stages to two years instead of the current maximum of two and half years for trials and no limit for appeals. (Cl. 20) On the other hand, the Amendment Bill proposes to increase the period of limitation for challenging parliamentary election results from the current fourteen days to the proposed thirty days. (Cl. 20) Though welcome, these proposals will not significantly affect the overall framework for the conduct of elections which is heavily weighted against opposition parties.

There is also a proposal for the Commission to make and publish an Electoral Code of Conduct for the laudable purpose of ‘promoting fair, free and orderly elections.’ (Cl. 21) The proposed Electoral Code of Conduct will prescribe the ethical conduct of political parties, the Government and the Commission during election campaigns and the mechanism for its enforcement. It will be subscribed to by, *inter alia*, political parties and the candidates before they submit their nomination forms. Contravention of the provisions of the Electoral Code of Conduct is punishable by a penalty to be prescribed in the same Electoral Code of Conduct.

Given the multifarious rules and regulations that govern the conduct of political parties and/or candidates under the *Political Parties Act, Chapter 292 of the Revised Edition of the Laws of Tanzania* (hereafter ‘the Political Parties Act’) and the electoral laws, it is doubtful whether the addition of yet another set of rules or regulations in the form of the Electoral Code of Conduct will do anything to improve the conduct of elections in Tanzania. What is certain, however, is that the promulgation of the Electoral Code of Conduct will add yet another administrative burden to the already overstretched resources of the opposition parties and their candidates.

The statement of objects and reasons accompanying the Amendment Bill gives its object as being “to improve the efficiency and

performance of the Commission in discharging its mandate in conducting elections.” The reason for the Amendment Bill is given as “the experience and short-comings or deficiencies that were noted in the last election.” The shortcomings or deficiencies the Bill identifies are lack of mandate to appoint regional election coordinators, lack of clarity regarding the updating of the voters register and lack of access to election centres by officers of the Commission.

These cannot be the real reasons for the Amendment Bill. To start with, the Commission has had power, under section 8(1) of the Elections Act, to appoint Regional Election Coordinators since the Act was amended by Act No. 8 of 1995. Secondly, the Commission has had wide discretionary power, under section 15(1) of the Elections Act, to set the time for registration of voters or for updating the voters register. The same applies with regard to access to election centres as sections 63(2) and 72(1) of the Elections Act allow a wide variety of officers of the Commission to enter into polling and counting centres respectively. Fourthly, what is the rationale for the shuffling of the provisions relating to election of special seats members of parliament or local authorities; corrupt or illegal practices; election petitions; nomination of candidates; and registration of voters.

All these are part of the current electoral laws and have not in any case been identified in the statement of objects and reasons as being problematic. They have also never been the subject of any serious demand for change by opposition parties or the organized civil society.

The foregoing analysis of the Amendment Bill makes clear that it is not intended to create the legal framework for freer and fairer elections. As we have already shown, the proposed amendments

to the electoral laws are largely cosmetic as they do not alter the basic, or even formal, structure of the current electoral system. The proposed amendments also do not create any significant new rights or obligations. There is, in other words, nothing reformist in these proposals. All this begs the question: What are the real reasons for the Amendment Bill? The answer, we submit, is fairly obvious. The Amendment Bill is intended to deceive the people and perhaps the donors by creating the illusions of electoral reform while leaving intact the pillars of the current electoral system. Its proposals are intended to consolidate and buttress *status quo* while giving the fig leaf of reform. The real intent is to divert attention away from calls for real reforms that have been at the centre of demands by opposition parties and the organized civil society. No wonder then that such crucial questions as the demand for an independent Electoral Commission and concomitant institutional machinery; independent candidates; and the streamlining of electoral procedures to expand rather than constrict electoral rights and freedoms have been swept under the legislative carpet.

In view of the foregoing, we recommend that the Amendment Bill be significantly revamped by deleting all proposals that are already part of the existing electoral laws and/or do not add any value to the current electoral system, namely:

- (1) Clauses 13 and 31 relating to the nomination and/or election of special seats members of parliament and local authorities respectively;
- (2) Clauses 14 and 15 relating to the offenses of bribery, treating and the definition of the term ‘campaign period’;
- (3) Clauses 10 and 18 relating to restrictions for holding by-elections and the certification as to validity of elections respectively;

- (4) Clauses 4 and 5 relating to the power of the Commission to appoint certain election officers;
- (5) Clauses 7 and 16 relating to the right of political parties to appoint registration agents;
- (6) Clause 21 relating to the promulgation of the Electoral Code of Conduct;

On the other hand, we recommend the incorporation of the following proposals to form part of the Amendment Bill, namely:

- (a) The repeal of sections 7, 7A and 8 of the Elections Act and their replacement by provisions empowering the Commission to appoint its own officers and staff. The example of the Ghanaian Constitution of 1992, whose Articles 52 and 53 empower the Electoral Commission of that country to appoint its own officers and employees and which mandate the Commission to have a representative in every region and district may be worth studying and emulating;
- (b) The repeal of Article 67(1)(b) of the Constitution and section 39(2)(f) of the Local Government Elections Act that prohibit independent candidates from being nominated and contesting elections;
- (c) The repeal of section 38(4) of the Elections Act that voids the nomination papers of a candidate who is not in compliance with the requirements of section 38(3) regarding statutory declarations, photographs and the biographical information of the candidates. As the Supreme Court of India stated in a famous case, the wages of procedural sins should not be the death of substantive rights;

- (d) Provisions that expressly prohibit Regional and District Commissioners, state security officers and/or personnel and all other public officers from playing any role whatever in the electoral process except as voters;
- (e) The repeal and replacement of section 111(2) of the Elections Act that bars hearing of a petition unless a petitioner has paid into the court, as security for costs, an amount not exceeding five million shillings in respect of each respondent;
- (f) The repeal and replacement of section 111(3) and (5) of the Elections Act requiring petitioners to make formal applications for determination of the amount payable as security for costs, or to be exempted from payment of any form of security for cost.
- (g) Provision that includes the right of Tanzanians who are living outside the country to be given opportunity to vote in all elections.
- (h) Provision that allows independent candidates in all elections, which is a citizens' constitutional right.

APPENDICES

Appendix 1: Position Paper Prepared in Response to the Publication of the Bills for the Electoral Laws (Miscellaneous Amendments) Act, 2009 and the Election Expenses Act, 2009

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January 2010

ELECTORAL REFORM OR ASSAULT ON DEMOCRACY: THE PROPOSED BILLS FOR THE ELECTORAL LAWS (MISCELLANEOUS AMENDMENTS) ACT, 2009, AND THE ELECTION EXPENSES ACT, 2009

INTRODUCTION:

On 11th December 2009 the Prime Minister's Office of the Government of the United Republic of Tanzania published a Bill Supplement to the Gazette of the United Republic of Tanzania. The Bill Supplement introduces Government proposals to amend certain electoral laws as well as to enact a completely new law to regulate election financing in Tanzania. The electoral laws sought to be amended by the proposed *Electoral Laws (Miscellaneous Amendments) Act, 2009* (hereafter 'the Amendment Bill') are the *Elections Act, 1985 Chapter 343 of the Revised Edition of the Laws of Tanzania*, and the *Local Government (Elections) Act, 1979 Chapter 292 of the Revised Edition of the Laws of Tanzania*. While the former relates to parliamentary and presidential elections, the latter regulates gubernatorial elections to both district and urban authorities. Locality elections at village, vitongoji and mitaa levels

are conducted under separate legislation and are not the subject of this paper. On the other hand, the proposed *Election Expenses Act, 2009* (hereafter ‘the Election Expenses Bill’) seeks to regulate all aspects of election financing of general elections in Tanzania.

The latter Bill makes wide-ranging proposals which, if enacted into law, will have far reaching and serious implications on the right to participate in electoral processes of not only the opposition political parties but also of all sections of the organized civil society. The same, however, cannot be said of the former Bill. For the amendments it proposes are a mere shuffling of provisions of the current electoral laws and/or a nibbling at the edges of existing law. The Bills are analysed in the current and immediate past historical context in order to understand their import or true meanings. This historical context is framed by the opposition parties’ perennial demands for electoral reform to create an independent electoral machinery; the debate on grand corruption that was brought about by the publication of CHADEMA’s *Orodha ya Mafisadi* (‘the List of Shame’) in September of 2007 and its nation-wide chopper-hopping *Operation Sangara* that followed soon after; the fall from power of former Prime Minister Edward Lowassa and several senior cabinet ministers and high officials under the weight of allegations of high-level corruption and monstrous abuse of office; CHADEMA’s electoral successes in parliamentary by-elections in Kiteto, Tarime, Busanda and Biharamulo West constituencies in 2008 and 2009; increasing political assertiveness and independence of organized civil society and religious institutions in relation to the CCM state-party; and the deepening fissures within the CCM state-party as evidenced by the open rebellion of some of its members of parliament.

It is also important to bear in mind the influx of dirty money – whether looted from the public treasury as in the case of the Bank of Tanzania’s EPA account or from tax-dodging businessmen - and

the consequent capture of the CCM state party by a business cabal with dubious connections to high state officials. These events have not only eroded the popular support of the CCM state-party thereby deepening the crisis facing it, they have also increased the visibility and legitimacy of the opposition parties, especially CHADEMA. We start with the examination of the first Bill.

THE ELECTORAL LAWS (MISCELLANEOUS AMENDMENTS) ACT, 2009

As stated in the Introduction above, the Amendment Bill seeks to amend both the Elections Act and the Local Government Elections Act. As far as the former is concerned, the most significant proposal relates to the procedure for the nomination and election of women special seats members of parliament. Clause 13 seeks to amend Chapter V of the Elections Act by introducing a new Part III on ‘Nomination of Women for Special Seats.’ There is nothing new in this proposal. For what it does is to transfer the provisions of Article 78 of the *Constitution of the United Republic of Tanzania, 1977 Chapter 2 of the Revised Edition of the Laws of Tanzania* into the Elections Act. The same ‘cut and paste’ exercise has been performed in relation to the Local Government Elections Act whereby a new Part XIA is proposed to be inserted into that Act to provide for ‘Nomination of Councillors for Women Special Seats.’ (See cl. 31)

There are numerous other, equally inconsequential, proposals. Thus, for example, clause 14 seeks to repeal sections 87, 97 and 98 of the Elections Act that define the terms ‘campaign period’, ‘bribery’ and ‘treating’ respectively. These will now be moved onto the definition section and Part V of the Election Expenses Bill respectively. The latter Part relates to ‘Prohibited Practices.’ In other words what are the offenses of bribery and treating under the current law will

remain the same offenses under the latter Bill. Similarly, clause 15 proposes to repeal section 100 of the Elections Act which deals with the offenses of ‘bribery, treating and undue influence in relation to members and officers of the [National Electoral] Commission.’ The section will now be replaced by a new section 100 relating to the offenses of ‘bribery, corruption and undue influence in relation to members and officers of the Commission’! Here the only change is the substitution of the term ‘corruption’ for the term ‘treating’!

Similar shuffling is to be found in clause 10 of the Amendment Bill which proposes to codify in the Elections Act the provisions of Article 76(3) of the Constitution which bars by-elections within a period of twelve months preceding the date of dissolution of Parliament. Furthermore, clause 18 divides section 113 of the Elections Act into two subsections but otherwise leaves the provision intact. Perhaps the only meaningful proposal as regards the subject of electoral corruption is the proposed repeal of section 109 of the Elections Act which exempted certain corrupt or illegal practices if done inadvertently or by ‘accidental miscalculation.’ There will now be no excuse for any corrupt or illegal practices. However, this cannot be described as earth-shaking reform of the corruption provisions given the obvious difficulty of disproving good faith in the commission of the corrupt or illegal practices.

The more compelling evidence of unwillingness to reform the electoral system is, however, to be found in the proposals dealing with the institutional machinery for conducting the elections. Whereas both the Constitution and the Elections Act have theoretically vested powers to the National Electoral Commission to supervise the general conduct of presidential and parliamentary elections, the reality of the matter is that the Commission is a mere smokescreen. For it is the local government machinery which, in law and in fact, manages all aspects of all elections in Tanzania. That local government machinery is an extension of the central

government bureaucracy in regional, district and local levels and is directly accountable to the central government in the form of the ministry responsible regional administration and local government (TAMISEMI). This machinery only becomes the electoral machinery by operation of the law for, under section 7(1) of the Elections Act, every City, Municipal, Town and District Executive Director and their subordinate staff automatically become returning officers, assistant returning officers and polling assistants during general elections. They are also registration officers for the purposes of registration of voters by virtue of section 7A(1) of the Elections Act. The Commission has no say whatsoever in the appointment of these officers. Moreover, it cannot appoint any other officer – whether by office or name - beyond the narrow circle of local government ‘public officers.’ (See sections 7(3), 7A(3) and 8(1))

Although section 6(2) of the Elections Act obligates these bureaucrats to ‘carry out fully’ all directions and instructions issued by the Commission, the reality and the practice has, almost without exceptions, been different. For during every election cycle this local government bureaucracy completely identifies with and works for the CCM state party and/or its candidates and against the opposition parties and their candidates. Its standard practice has been to frustrate opposition candidates in all stages of the election process from voter registration through the nomination process to voting, counting and declaration of election results. No wonder the removal of local government officials in all aspects of the electoral process has been the most consistent demand of the opposition parties. Such has been the unanimous demand of the opposition that on 20th March 2009 the leaders of all political parties signed a memorandum of understanding with the Registrar of Political Parties that Ward and Village Executive Officers would not be allowed to manage the locality elections of October 2009. However, when regulations for those elections were promulgated in August 2008, the so-called Morogoro Agreement was ignored and the

local government functionaries retained as returning officers. As a result, during the October 2009 locality elections all opposition parties without exception paid a very high price for their naivete in believing that the CCM state party would relinquish its trump card in the electoral politics of the country.

Given this reality, the issue is how does the Amendment Bill propose to deal with this local government bureaucracy that in practice serves the interests of the CCM state party. The answer to this question is an unqualified negative. Clause 4 of the Amendment Bill, for instance, proposes to amend section 7(2) of the Elections Act in order to empower the Commission to “appoint by office or name, from amongst public officers, such number of Returning Officers or Assistant Returning Officers for the purposes of conducting an election in a constituency.” Section 7(2) that is sought to be repealed provides that the Commission “shall appoint by office such number of Returning Officers or Assistant Returning Officers as it may deem fit.” The only change being proposed is, therefore, that election officers may now be appointed by name instead of by office only. The crucial fact that they must all be ‘public officers’ – and therefore ultimately accountable to the CCM state party – has been left intact. A similar change is proposed with regard to section 7A(2) of the Elections Act which provides for the appointment of Assistant Registration Officers. (Cl. 5)

There are more examples of the illusory reforms. Clause 7 of the Amendment Bill creates a whole new section 15A relating to the right of political parties to be represented by registration agents during the registration of voters and the procedure thereof. Clause 16 proposes similar provisions for voter registration under the Local Government Elections Act. As far as we know, this has been the uncontested practice since the Elections Act was amended in 2004 to introduce the Permanent Voters Register! There are other fortuitous proposals. For instance, the Amendment Bill proposes

to reduce the period for nomination of new presidential or vice presidential candidates upon death of a previously nominated candidate from more than twenty one days under the current law to less than fourteen days proposed by the Bill. (Cl. 9) Similarly, the Amendment Bill proposes to limit the hearing and determination of petitions at both trial and appellate stages to two years instead of the current maximum of two and half years for trials and no limit for appeals. (Cl. 20) On the other hand, the Amendment Bill proposes to increase the period of limitation for challenging parliamentary election results from the current fourteen days to the proposed thirty days. (Cl. 20) Though welcome, these proposals will not significantly affect the overall framework for the conduct of elections which is heavily weighted against opposition parties.

There is also a proposal for the Commission to make and publish an Electoral Code of Conduct for the laudable purpose of ‘promoting fair, free and orderly elections.’ (Cl. 21) The proposed Electoral Code of Conduct will prescribe the ethical conduct of political parties, the Government and the Commission during election campaigns and the mechanism for its enforcement. It will be subscribed to by, *inter alia*, political parties and the candidates before they submit their nomination forms. Contravention of the provisions of the Electoral Code of Conduct is punishable by a penalty to be prescribed in the same Electoral Code of Conduct. Given the multifarious rules and regulations that govern the conduct of political parties and/or candidates under the *Political Parties Act, Chapter 292 of the Revised Edition of the Laws of Tanzania* (hereafter ‘the Political Parties Act’) and the electoral laws it is doubtful whether the addition of yet another set of rules or regulations in the form of the Electoral Code of Conduct will do anything to improve the conduct of elections in Tanzania. What is certain, however, is that the promulgation of the Electoral Code of Conduct will add yet another administrative burden to the already overstretched resources of the opposition parties and their candidates.

CONCLUSION AND RECOMMENDATIONS

The statement of objects and reasons accompanying the Amendment Bill gives its object as being “to improve the efficiency and performance of the Commission in discharging its mandate in conducting elections.” The reason for the Amendment Bill is given as “the experience and short-comings or deficiencies that were noted in the last election.” The shortcomings or deficiencies the Bill identifies are lack of mandate to appoint regional election coordinators, lack of clarity regarding the updating of the voters register and lack of access to election centres by officers of the Commission.

These cannot be the real reasons for the Amendment Bill. To start with, the Commission has had power, under section 8(1) of the Elections Act, to appoint Regional Election Coordinators since the Act was amended by Act No. 8 of 1995. Secondly, the Commission has had wide discretionary power, under section 15(1) of the Elections Act, to set the time for registration of voters or for updating the voters register. The same applies with regard to access to election centres as sections 63(2) and 72(1) of the Elections Act allow a wide variety of officers of the Commission to enter into polling and counting centres respectively. Fourthly, what is the rationale for the shuffling of the provisions relating to election of special seats members of parliament or local authorities; corrupt or illegal practices; election petitions; nomination of candidates; and registration of voters. All these are part of the current electoral laws and have not in any case been identified in the statement of objects and reasons as being problematic. They have also never been the subject of any serious demand for change by opposition parties or the organized civil society.

The foregoing analysis of the Amendment Bill makes clear that it is not intended to create the legal framework for freer and fairer

elections. As we have already shown, the proposed amendments to the electoral laws are largely cosmetic as they do not alter the basic, or even formal, structure of the current electoral system. The proposed amendments also do not create any significant new rights or obligations. There is, in other words, nothing reformist in these proposals. All this begs the question: what are the real reasons for the Amendment Bill? The answer, we submit, is fairly obvious. The Amendment Bill is intended to deceive the people and perhaps the donors by creating the illusions of electoral reform while leaving intact the pillars of the current electoral system. Its proposals are intended to consolidate and buttress *status quo* while giving the fig leaf of reform. The real intent is to divert attention away from calls for real reforms that have been at the centre of demands by opposition parties and the organized civil society. No wonder then that such crucial questions as the demand for an independent electoral commission and concomitant institutional machinery; independent candidates; and the streamlining of electoral procedures to expand rather than constrict electoral rights and freedoms have been swept under the legislative carpet.

In view of the foregoing, we recommend that the Amendment Bill be significantly revamped by deleting all proposals that are already part of the existing electoral laws and/or do not add any value to the current electoral system, namely:

- (1) Clauses 13 and 31 relating to the nomination and/or election of special seats members of parliament and local authorities respectively;
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- (6) Clause 21 relating to the promulgation of the Electoral Code of Conduct;

On the other hand, we recommend the incorporation of the following proposals to form part of the Amendment Bill, namely:

- (a) The repeal of sections 7, 7A and 8 of the Elections Act and their replacement by provisions empowering the Commission to appoint its own officers and staff. The example of the Ghanaian Constitution of 1992, whose Articles 52 and 53 empower the Electoral Commission of that country to appoint its own officers and employees and which mandate the Commission to have a representative in every region and district may be worth studying and emulating;
- (b) The repeal of Article 67(1)(b) of the Constitution and section 39(2)(f) of the Local Government Elections Act that prohibit independent candidates from being nominated and contesting elections;
- (c) The repeal of section 38(4) of the Elections Act that voids the nomination papers of a candidate who is not in compliance with the requirements of section 38(3) regarding statutory declarations, photographs and the biographical information of the candidates. As the Supreme Court of India stated in a famous case, the

wages of procedural sins should not be the death of substantive rights;

- (d) Provisions that expressly prohibit Regional and District Commissioners, state security officers and/or personnel and all other public officers from playing any role whatever in the electoral process except as voters;
- (e) The repeal and replacement of section 111(2) of the Elections Act that bars hearing of a petition unless a petitioner has paid into the court, as security for costs, an amount not exceeding five million shillings in respect of each respondent;
- (f) The repeal and replacement of section 111(3) and (5) of the Elections Act requiring petitioners to make formal applications for determination of the amount payable as security for costs, or to be exempted from payment of any form of security for costs;

THE ELECTION EXPENSES ACT, 2009

According to its statement of objects and reasons, the thrust of the Election Expenses Bill is, *inter alia*, “to control the use of funds and illegal practices in the nomination process....” Other objects are “restricting foreigners, be it a government, an international organization, or institution to provide funds for election expenses”; and checking illegal practices in the election process. These objects are to be attained through pre-and post-election disclosure and reporting mechanisms. The starting point of our analysis must necessarily be the answer to the question what are ‘election expenses’? The answer is to be found in clause 7 of the Election

Expenses Bill which defines the term ‘election expenses’ as “all funds expended or expenses incurred in respect of the conduct and management of nomination process, election campaign and election by a political party, candidate or Government....” We will return to this definition shortly.

As we show in this paper, these may not be the real objects and reasons for this Bill. That the real objectives may be much more sinister than the pious declarations of the statement of objects and reasons. However and regardless of the motives, should it be enacted into law, the Election Expenses Bill may sound the death knell of multiparty electoral politics in Tanzania. It may also be the premature end of the participation – albeit limited – of civil society organizations and religious groups in electoral politics of the country. We dare explain.

RESTRICTION ON CANDIDATES’ SPENDING

The Election Expenses Bill is founded upon two key pillars around which it is built. The first key pillar is that, with the exception of the Government, all election expenses shall be borne solely by political parties. Thus, according to clause 8(1), “it shall be the obligation of each political party to conduct and fund its election campaign by utilizing its own funds from the sources stipulated under the Political Parties Act.” Under section 13(1) of the latter Act, ‘fully registered’ political parties derive their funds and other resources from membership fees, voluntary contributions, proceeds of any investment, project or undertaking in which the party has an interest, subvention from the Government and donations, bequests and grants from any other source. To obtain these funds, a political party may, according to clause 11(1) appeal for and receive voluntary donations from any individual or organization in the United Republic for the purposes of financing election expenses.

That political parties are the sole source of election expenses could not be made clearer by clause 11(4): "... no candidate shall receive or accept donation for election expenses from any person, organization or institution other than through his political party." This covers expenses incurred in nomination processes within the political parties. (Cl. 14(1) In other words, not even a constituent can directly donate funds for the election of a member of parliament of his or her choice except through the candidate's political party. Tough luck if s/he likes the candidate but disagrees with the party's policies or electoral platform or vice versa! A candidate is also prohibited from using his or her own funds for financing election expenses. According to clause 8(2), "a candidate may use his own funds during election campaigns to carter (sic!) for personal costs or other costs as may be necessary or required for the purpose of election campaigns." The phrase 'personal or other costs' is not defined in the Election Expenses Bill. Consequently, and given the definition of 'election expenses' in the Bill, it can be safely assumed that these are costs of a personal nature such as expenditures on clothing, toiletries and the like!

In the real world of Tanzanian politics and society, this proposal may have deadly consequences for opposition parties and/or candidates. Given the propensity of functionaries of the CCM state party to intimidate and/or punish donors of the opposition parties with harassment from government institutions such as the tax authorities, very few individuals or organizations are likely to give donations for election expenses to the opposition parties. And with the opposition parties' share of government subvention being less than ten percent of the total, the ability of opposition parties to fund election campaigns from this source is minimal indeed.

To make matters worse, individual candidates of these parties may not – even if they are able and willing to - use their own funds or other resources for election expenses. The likely effect – whether

intended or not – of these provisions is to financially cripple the opposition parties and their candidates during general elections. The CCM state party, with its vast property holdings it expropriated for itself when the multiparty system was introduced in the early 1990s, and with its uncanny ability to extort funds from the business community or to benefit from the plunder of the public treasury as in BoT’s EPA account scandal, will have the financial resources to prevail over the opposition parties thus hamstrung.

It is also clear that the underlying assumption for these proposals may be that candidates are prone to receiving dirty money as campaign contributions than their political parties. Or perhaps the latter are easier to control than their candidates. Whichever way the case may be, the looting of the central bank’s EPA funds to finance CCM election campaigns in the 2005 general elections should serve as an antidote for the belief that political parties are harder to corrupt than individual candidates are.

RESTRICTION OF FOREIGN FUNDING

The second pillar of the Election Expenses Bill is the alleged restriction of foreign funding of electoral expenses. Under clause 12(1) of the Bill, “no political party, Non-Governmental Organization, Community Based Organization, other body or institution or any member of such political party, Non-Governmental Organization, Community Based Organization, body or institution and no other person shall receive, bring or cause to be brought into the United Republic, any funds or anything which can be cashed or converted into funds which, on the ground of a donation or on other grounds, is intended to be used or, in the discretion of such political party, Non-Governmental Organization, Community Based Organization, body, institution, member or other person, may be used to further the interest of any political party, own candidature

or any other person who has been nominated or may be nominated as a candidate for any contested election.”

This is perhaps the most sweeping and draconian legislative proposal ever drafted to control election financing in Tanzania. While the stated object for the Bill is ostensibly to restrict foreigners from providing funds for election expenses, this provision goes far beyond this goal. Indeed, a strict construction of the provision may show that rather than restricting foreigners, it in fact prohibits Tanzanian citizens – whether living abroad or inside the country - from bringing or receiving funds or anything that can be converted into funds from outside the country. This is so because the definition of the term ‘funds’ is so wide that it covers literally everything that can conceivably be used for election purposes. Under clause 12(2), the term ‘funds’ is defined to include “money, motor vehicles, aircraft, flags, printing, publication or distribution of leaflets, brochures or any other publication, broadcast by radio or television, provision of food or drinks to voters and any other thing intended to be used for furtherance of election campaigns.”

The prohibition of ‘foreign’ funding for election expenses does not cover donations only. Importation of ‘funds’ “on other grounds” is similarly prohibited. Though not defined, ‘other grounds’ may include voluntary contributions, bequests or grants from Tanzanian citizens living abroad; funds held by Tanzanian citizens in foreign bank accounts, or from investment, projects or undertakings in foreign countries in which Tanzanian citizens have interest; procurement abroad of ‘funds’ by political parties, their members and/or any other person living in Tanzania; and procurement abroad by candidates to further their own candidature. Furthermore, the prohibition does not cover political parties, their members or candidates only. Included in this sweeping dragnet are NGOs, CBOs and bodies or institutions such as churches and church organizations, commercial enterprises, sports groups and corporate

or unincorporated bodies. And it does not matter whether these bodies are foreign- or locally-owned by Tanzanian citizens.

It is clear, from the foregoing, that this proposal is not only intended for the opposition political parties which would seem to be the most obvious target. It is also intended for the organized civil society, both secular and religious, which has rediscovered its independent voice in the past few years. Using restriction of foreign funding as a political cover, the proposed prohibition constitutes the most direct and serious attack on multiparty democracy in Tanzania. If enacted into law, the Election Expenses Bill will not only financially cripple the opposition parties and/or their candidates during the forth-coming general elections. It will also silence civil society organizations and religious institutions such as churches and church groups that have become increasingly and publicly strident in their criticism of government policies and practices.

The Election Expenses Bill will also not control the influx of dirty money that has so characterized the CCM state-party electoral politics over the past decade or so. Firstly, it does not prohibit the use of proceeds of organized crime such as the looting of public coffers or tax evasion from being used for funding election expenses. It is, in this sense, inconceivable that the billions of shillings looted from the central bank and other public institutions in the past few years will not be used to entrench the CCM state party in power. Indeed it is remarkable that this Bill has nothing to say regarding ‘voluntary’ contributions, donations, bequests or grants from local business elites or locally-based subsidiaries of foreign multinational corporations that currently dominate our economic landscape. Though registered as local companies for purposes of the companies law, the latter are for all intents and purposes foreign companies.

Secondly and crucially, what is prohibited is not importation of foreign funds *per se*. Indeed, there is not a single provision that declares illegal the receipt or bringing of funds from foreign governments, international organizations, foreign companies or foreign citizens which is the stated objective of the Election Expenses Bill. On the contrary, what is prohibited is the timing of the importation of these funds. Thus, under clause 12(4), the restriction on foreign funding “*shall not apply to any funds received within, brought or caused to be brought into the United Republic during any period ... of ... ninety days before the [general] election day; and [in the case of] a by-election, thirty days before the election day*”!

As the national media has reported in recent weeks, the CCM state party has already imported more than 200 motor vehicles in preparation for the forthcoming general elections. It would appear, in the light of this analysis, that the vehicle imports - and perhaps much more - are geared towards meeting the requirements of the Election Expenses Bill as and/or when it is finally enacted into law. With their limited opportunities for raising finances locally, opposition parties and organized civil society may not be so lucky. So while it proclaims noble intent, the Election Expenses Bill is actually intended to deceive the people by creating the illusion of progressive reforms to control foreign influence and the influence of dirty money in Tanzanian electoral politics. The real intent is to consolidate and/or shore up *status quo* by depriving opposition political parties of electoral funds and muzzling organized civil society.

LIMITING ELECTION EXPENSES

The third pillar anchoring the Election Expenses Bill is the limitation of election expenses. For this purpose, clause 10(1) empowers the Minister responsible for political parties to prescribe, by an order published in the Gazette, the maximum amount of election expenses. The only criteria that will guide the Minister in exercise of this power the difference in the size of electoral constituencies and the categories. (Cl. 10(1)(a) The power to set the maximum amount is also the power to vary the amount (Cl. 10(1)(b) A political party or a candidate may, ‘in exceptional circumstances’, expend more than the prescribed amount. When that happens, the political party or the candidate must give reasons for the use of excess funds to the Registrar of Political Parties. (Cl. 10(2) The use of excess funds is, otherwise, a criminal offence punishable by a fine ranging from three to five million shillings for candidates and political parties respectively. (Cls. 10(3) & 25(a) and (b)

There also are limits to the use of funds for election purposes by non-governmental organizations, faith-based organizations and community based organizations. Firstly, they are obligated not to use funds in excess of the limit prescribed by the Minister. (Cl. 13(2) Secondly, these organizations can only use their funds for purposes of advocacy and public awareness only. (Cl. 13(3) Freedom of expression – in the form of support for particular candidates or political party platforms - guaranteed by the Constitution may not, according to this rule, extend to the organized civil society. Non-compliance with these restrictions is, presumably an offence punishable by a fine not exceeding ten million shillings. (Cl. 25(c)

YET MORE SHUFFLING!

Perhaps the most evident sign of the maintenance of *status quo* is the retention in the Election Expenses Bill of almost the entire provisions of the offences part of the Elections Act. Thus Part V of the Bill that provides for ‘prohibited practices’ is an almost verbatim reproduction of sections 97(1) and 98(1) of the Elections Act. For example, clause 21(1) that prohibits ‘unfair conducts’ is a verbatim reproduction section 97(1) of the current Act that prohibits ‘bribery.’ Similarly, the offence of ‘unconscionable funding’ in clause 22 is the age old offence of ‘treating’ under section 98(1) of the Act. The only new offence that does not form part of the current law is the proposed offence of ‘conveyance of voters’ to or from polling stations under clause 23 of the Bill.

Even defences against these offences under the current law have been retained in the Bill. Thus the section 97(3) defence of want of the candidate’s knowledge, consent or approval where bribery has been established has been transferred to clause 21(2) of the Bill. Likewise, mindful that wealthy candidates often gain considerable advantage through seemingly legitimate contributions and donations to self-help or community welfare projects, the Bill seeks to retain that advantage. According to clause 21(3), “... an act or transaction shall not be deemed to constitute prohibited practice if it is proved to have been designed to advance the interests of community fund raising, self-help, self-reliance or social welfare projects within the constituency and to have been done before the nomination process or election campaign...” This is a verbatim reproduction of section 97(4) of the Elections Act. The only defence that has not been retained in the Bill is the infamous *Takrima*, i.e. the exemption to the definition of the offence of treating of “... anything done in good faith as an act of normal or traditional hospitality.” (Section 98(2))

There are other provisions which are welcome but which are a retention of the current law. For example, the Bill proposes a right of presidential candidates to utilize the government broadcasting service and television during election campaigns in accordance with the provisions of the Elections Act. (Cl. 27(1) The government media is also obligated to publish information related to the electoral process without bias or discrimination against any candidate. There is nothing new to these provisions for they have been part of the country's electoral law since the 1995 amendments to the Elections Act. (See section 53) What is more, these provisions have been widely and consistently ignored by the state-owned media which continues to be largely a mouth-piece of the CCM state party. The retention of these provisions in the Election Expenses Bill is not likely to change this bias.

OFFENCES AND PENALTIES

Although the retention of the corrupt practices and the introduction of the new offence of conveyance of voters in the Election Expenses Bill are to be welcomed, there are serious misgivings about proposed penalty for non-compliance with these prohibitions. Under clause 24(1) of the Bill, “any candidate, his agent or by his political party who does an act which amounts to prohibited practice as stipulated in this Part shall render himself liable for disqualification to participate in the nomination process or election.” Under sub-clause (2) the Registrar is obligated to file an objection with the Director of Elections and the Secretary General of the party sponsoring the candidate if he is satisfied that a candidate is liable for disqualification in the nomination process or election. And once that objection is filed, the Secretary General of the sponsoring party is obligated, *suo moto* or upon direction by the Commission, to nominate a qualified person to stand as a candidate in lieu of the

disqualified candidate! (Cl. 24(3) Failure by the political party to nominate an alternative candidate renders itself disqualified from participating in the nomination process or election in respect of which the candidate was disqualified. (Cl. 24(4)

These proposals are remarkable for several reasons. Firstly, they give the Registrar of Political Parties an unreasonable monopoly of power to police the observance of the prohibited practices. Under the current law, an objection against the nomination of a candidate may be made by another candidate, the Director of Elections or the Returning Officer *suo moto*. (See sections 40(3) and 44(3) of the Elections Act and the Local Government Elections Act respectively) Secondly, they give power to the parties' Secretaries General to disqualify candidates who are seeking nomination or who may already have been nominated to contest election. The power to disqualify candidates has, historically, vested with the returning officers or the Electoral Commission (See section 40(4A), (5) and (6) of the Elections Act)

Crucially, whereas there are significant safeguards and due process rights for candidates under the current law, there are none under the Election Expenses Bill. Thus the Secretary General need not notify the candidate whose nomination has been objected to before he nominates another candidate in lieu thereof. Similarly, the candidate who has been objected has no right to be heard and no right of appeal against the decision to disqualify him. These proposals will give the parties' Secretaries General dictatorial powers to oust unwanted candidates from contesting elections on a mere allegation by the Registrar that they have committed prohibited practices. The most likely targets of this proposal are rebel members of parliament within the CCM state party who have openly broken ranks with their party's hierarchy on such crucial questions as institutionalized corruption and rampant abuse of office by high state officials.

Political parties may also be disqualified from participating in elections for failure to comply with wide ranging and mandatory provisions regarding the disclosure reporting of election expenses both before and after elections. (See clauses 9, 13(4), 17(3), 18(2) and 18(4) Thus a political party that fails to file a financial and audit report as required by the Election Expenses Bill shall, “in addition to payment of default fine of shillings three million, be disqualified to contest in any election including the next General Elections unless that political party files such financial and audit reports to the satisfaction of the Registrar before the nomination day.” (Cl. 18(4). See also clause 20(1) Here too the Registrar is obligated to file an objection with the Director of Elections who shall then proceed to issue an order of disqualification against the political party concerned and all the candidates it has sponsored in that election! (Cl. 20(2) and (3). There is similarly, no right of hearing or appeal regarding the Registrar’s objection or the Director’s order of disqualification.

There is little relief for candidates even where no objection has been filed by the Registrar against their nomination. Those who fall through the Registrar’s dragnet will be caught by the hook of election petition. Under clause 24(5), where a candidate, his agent or political party commits a prohibited practice for which no objection has been filed, another candidate, agent or voter may allege in an election petition, inter alia, that the candidate, his agent or his political party committed a prohibited practice during nomination process, election campaigns or election. That allegation will be dealt with under the procedure for avoidance of elections in Parts VII and VIII of the Elections Act.

The Election Expenses Bill proposes other wide ranging offences and penalties for non-compliance with the provisions of the Bill. For example, given that the Registrar is empowered under clause 4(2)(c) of the Bill to conduct investigations and examinations of

the financial affairs and records of political parties, it is an offence to obstruct the Registrar or his representative from carrying out the investigations and examinations aforesaid. (Cl. 26(a) Similarly, given the Registrar's power to enter and inspect books, papers and documents (cl. 5); and to demand information relating to the election expenses of a political party, candidate or polling agent (cl. 6(1), it is an offence to refuse to produce the books, papers or documents as requested (Cl. 26(b), or to produce false books, documents or false information. (Cl. 26(c) Furthermore, since political parties are obligated to file returns and financial reports of election expenses to the Registrar (Cl. 18(1) & (2), it is an offence to make false statement in any returns or financial report. (Cl. 26(d) And in view of the obligation to keep records – 'for the purposes of financial accountability' – imposed on candidates, political parties, NGOs, CBOs and FBOs by clause 19(1), it is an offence to destroy books, papers, documents or anything relating to the subject matter of Registrar's investigation, examination or inspection. (CL. 26(e)

While these provisions are welcome in order to maintain the financial accountability during elections, the proposed penalty upon conviction – a fine not exceeding shillings ten million – remarkably minimal. Indeed, one may question the rationale or justice of disqualifying a political party and/or candidate who fails to disclose funds for election expenses but imposing a relatively small fine for one who refuses to produce records, or produces false records and/or statements or destroys records. The latter offences are equally, if not more, serious for they suggest wrongdoing on the part of the guilty party.

CONCLUSIONS AND RECOMMENDATIONS

Given the foregoing examination of the Election Expenses Bill, there can be no doubt that the proposals made are of fundamental importance to political parties. If enacted into law and rigorously enforced, these proposals will radically affect the rights of political parties and the organized civil society to participate in electoral politics and processes. The proposals will deny rights of citizens to contribute financially to the election of candidates of their choice. They will deny candidates the right to raise and use their own funds for legitimate election expenses even where their political parties are unable to do so. They will prohibit or restrict the right of weaker political parties and/or candidates to raise funds for election expenses throughout the election cycle while favouring and protecting the wealthy CCM state party. They will not check the influx of dirty money and/or proceeds of crime from being laundered in electoral processes. They will not prevent the influence of foreign interests in our electoral politics. They are also eminently anti-democratic in granting unchecked and/or arbitrary powers to party leaders to remove candidates on mere suspicion and without due process of the law.

Given the above, the Election Expenses Bill should be opposed and its enactment into law resisted by all those concerned about the health of our electoral politics and our fundamental rights to participate in the election of our government. The following provisions need to be especially resisted and/or deleted from the Bill, namely:

- (1) The provisions of clauses 8(1) and 14(1) giving a monopoly on political parties to fund election expenses;
- (2) The provisions of clause 8(2) preventing candidates from using their own funds during election campaigns;

- (3) The provisions of clause 11(2) giving a monopoly on political parties to receive voluntary donations for election expenses;
- (4) The provisions of clause 11(4) prohibiting candidates from receiving or accepting voluntary expenses from persons other than their political parties;
- (5) The provisions of clause 12 that prohibit funding of election expenses from legitimate sources by political parties, NGOs, CBOs, FBOs and other bodies and institutions and by individual citizens throughout the election cycle;
- (6) The provisions of clause 13(3) that restrict the right of organized civil society to support candidates and/or political parties of their own choice consistent with their legitimate interests;
- (7) The provisions of clause 15(2) that makes it an illegal practise for a political party to fail to disclose any gift, loan, advance, deposit or donation received for its election expenses;
- (8) The provisions of clauses 18(4), 20(1) and 24(1) relating to disqualification of candidates and/or political parties from participating in election processes;
- (9) The provisions of clause 24(3) that empower the Secretary General of a political party to remove without due process a candidate against whom an objection has been filed by the Registrar;

On the other hand, we recommend the incorporation of the following provisions into the Bill, namely:

- (a) Provisions expressly prohibiting public officers from participating in election campaigns, or utilizing public funds and/or property, to support candidates and/or political parties;
- (b) Provisions expressly prohibiting foreign companies with economic and/or commercial interests in Tanzania from contributing or donating funds for election expenses to candidates and political parties;
- (c) Provisions expressly mandating government media to give equal access to all political parties to present their programs;
- (d) Provisions expressly mandating government media to give the same amount of air time and space in government media to all presidential candidates to present their programs;

* LLB (Hons.) Dar; LLM (Dist.) Warwick; Advocate, High Court of Tanzania; head, Directorate of Legal and Constitutional Affairs and Human Rights, CHADEMA Headquarters, Dar es Salaam, Tanzania

Appendix 2: List of names of the Task Force

1. Tundu Lissu, CHADEMA
2. Halima Mdee (MP) -CHADEMA
3. Joram Bashanga, CUF
4. Haji Mussa Kitole, Jahazi Asilia
5. Representative from Christian Council of Tanzania (CCT).
6. Representative from Tanzania Muslims Council (BAKWATA).
7. Representative from Tanzania Media Women Association (TAMWA).
8. Representative from Tanzania Women Lawyers Association (TAWLA).
9. Joseph Mboja, Tanzania Youth Vision (TYV).
10. Representative from Higher Learning Institutions.

Appendix 3: Bill Supplement

BILL SUPPLEMET

No. 17

*to the Gazzete of the United Republic of Tanzania No. 50
Vol. 90 dated 11th December, 2009.*

*Printed by the Government Printer, Dar es Salaam by
Order of Government*

THE UNITED REPUBLIC OF TANZANIA



PRIME MINISTERS OFFICE
BILL SUPPLEMENT

No. 17

11th December, 2009

*to the Gazette of the United Republic of Tanzania No. 50 Vol 90 dated 11th December, 2009
Printed by the Government Printer, Dar es Salaam by Order of Government*

THE ELECTION EXPENSES ACT, 2009

ARRANGEMENT OF SECTIONS

Section Title

PART I
PRELIMINARY PROVISIONS

1. Short title and commencement.
2. Application.
3. Interpretation.

PART II
ADMINISTRATION OF ELECTION EXPENSES

4. Functions of the Registrar.
5. Powers of inspection.
6. Power to demand information.

PART III
ELECTION EXPENSES

7. Meaning of election expenses.
8. Election expenses to be incurred by political parties.
9. Disclosures of funds before election campaigns.
10. Limit of election expenses.
11. Voluntary donations.

Councillor:

"nomination process" means the process by whatever procedure whereby a political party invites persons who are eligible to be candidates in elections;

"political party" means an organized group of persons formed for the purpose of forming a government or a local government authority within the United Republic through elections or for putting up or supporting candidates to such elections;

Caps. 292 and 343

"polling district" means a ward declared as such under the Local Authority (Elections) Act or an area or division of a constituency made pursuant to the provisions of section 5 of the National Elections Act;

"presidential candidate" means a person nominated to contest an election to the Office of the President of the United Republic and includes the vice-presidential candidate;

"prohibited practices" means any offence mentioned in and punishable under the provisions of Part V;

Cap. 258

"Registrar" means the Registrar of Political Parties appointed under the Political Parties Act;

Dar es Salaam,
11th December, 2009

PHILEMON L. LULIANO,
Secretary to the Cabinet

A BILL
for

An Act to make provisions for the funding of nomination process, election campaigns and election with a view to control the use of funds and illegal practices in the nomination process, election campaigns and elections; to make provisions for allocation, management and accountability of funds and to provide for consequential and related matters.

ENACTED by Parliament of the United Republic of Tanzania.

PART I
PRELIMINARY PROVISIONS

Short title and commencement

1-(1) This Act may be cited as the Election Expenses Act, 2009.

(2) This Act shall come into operation on such date as the Minister may, by notice in the Gazette, appoint.

Application

2. This Act shall apply-

<p>12. Restriction of foreign funding to election expenses. 13. Organizations to disclose funds. 14. Nomination of candidates.</p>	<p>(a) in the case of Mainland Tanzania, in respect of election expenses for a candidate for the office of the President of the United Republic; a Member of Parliament and a Councillor; and, in the case of Tanzania Zanzibar, in respect of a candidate for an office of the President of the United Republic and for an office of a Member of Parliament.</p>	<p>Cap. 343 and 292 "voter" means a person or delegate who is for the time being qualified to vote during the nomination process and election in accordance with the provisions of the National Elections Act or the Local Authority Elections Act.</p>
<p>PART IV ACCOUNT ABILITY</p> <p>15. Disclosure of funds for election campaigns. 16. Receipt of election expenses. 17. Apportionment of election expenses incurred by a political party. 18. Returns as to election expenses. 19. Obligation to keep records. 20. Failure to disclose funds.</p>	<p>Interpretation</p> <p>3. In this Act, unless the context requires otherwise: "by-election" means an election other than the general election; "campaign period" means the period commencing immediately after the nomination day up to the day immediately preceding election day; "candidate" means a person who submits himself for election in the Office of the President, a Member of Parliament or a Councillor; "contested election" means an election in a ward or a constituency where there are more candidates than vacancies;</p>	<p>PART II ADMINISTRATION OF ELECTION EXPENSES</p> <p>Functions of the Registrar</p> <p>4.(1) The Registrar of Political Party shall be responsible for supervision and administration of election expenses under this Act. (2) The Registrar shall, in addition to other functions stipulated under the Political Parties Act - (a) assist political parties and facilitate the Returning Officers to perform their functions as required under this Act; (b) examine all financial returns filed with the Registrar; (c) conduct such investigations and examinations of the financial affairs and records of political parties, Returning Officers and candidates as he considers necessary, in relation to election campaigns; (d) take relevant measures for any apparent contravention of this Act; (e) prescribe forms and the contents thereof for use under this Act; and (f) provide such guideline for the proper administration of this Act as he considers necessary for the guidance of polling agents, political parties, candidates, Returning Officers and any other public officer performing any functions under this Act.</p>
<p>PART V PROHIBITED PRACTICES</p> <p>21. Unfair conducts. 22. Unconscionable funding. 23. Conveyance of voters. 24. Disqualification of candidates.</p>	<p>Cap. 2</p> <p>"Constitution" means the Constitution of the United Republic of Tanzania, 1977; "Councillor" means a person who is elected in the office of - (a) in relation to a district, a District Council; (b) in relation to a municipality, a Municipal Council; (c) in relation to a city, a City Council; and (d) in relation to a town, a Town Council;</p>	<p>Powers of inspection</p> <p>5. For the purposes of an investigation or examination under this Act, the Registrar or his representative authorized in writing may, at any reasonable time enter any premises in which the books, papers and documents of a political party or candidate relevant to the subject matter of the investigation or examination are kept.</p>
<p>PART VI OFFENCES AND PENALTY</p> <p>25. General offences and penalties. 26. Offences relating to powers of the Registrar.</p>	<p>Cap. 343 and 292</p> <p>"election" means the act of selecting by vote a person from among a number of candidates to fill a vacancy in the Office of the President, a Member of Parliament conducted under the National Elections Act or a Councillor conducted under the Local Authority Elections Act and includes the nomination process; "election expenses" has the meaning ascribed to it under section 7; "Minister" means the Minister responsible for political parties; "monitoring" means information gathering, and examination and evaluation of the electoral process; "nomination day" means a day appointed for the nomination of candidates in a contested election for the Office of the President, the Vice-President, a Member of Parliament or a</p>	<p>Power to demand information</p> <p>6. - (1) The Registrar may request for any information relating</p>
<p>PART VII GENERAL PROVISIONS</p> <p>27. Duties of Government media. 28. Peace and security. 29. Protection from liability. 30. Regulations.</p>	<p>Cap. 343 and 292</p> <p>"election expenses" has the meaning ascribed to it under section 7; "Minister" means the Minister responsible for political parties; "monitoring" means information gathering, and examination and evaluation of the electoral process; "nomination day" means a day appointed for the nomination of candidates in a contested election for the Office of the President, the Vice-President, a Member of Parliament or a</p>	<p>Power to demand information</p> <p>6. - (1) The Registrar may request for any information relating</p>
<p>PART VIII CONSEQUENTIAL AMENDMENTS</p> <p>31. Constitution. 32. Miscellaneous amendments.</p>	<p>Cap. 343 and 292</p> <p>"election expenses" has the meaning ascribed to it under section 7; "Minister" means the Minister responsible for political parties; "monitoring" means information gathering, and examination and evaluation of the electoral process; "nomination day" means a day appointed for the nomination of candidates in a contested election for the Office of the President, the Vice-President, a Member of Parliament or a</p>	<p>Power to demand information</p> <p>6. - (1) The Registrar may request for any information relating</p>
<p>NOTICE</p> <p>This Bill to be submitted to the National Assembly is published for general information to the general public together with a statement of its objects and reasons.</p>	<p>Cap. 343 and 292</p> <p>"election expenses" has the meaning ascribed to it under section 7; "Minister" means the Minister responsible for political parties; "monitoring" means information gathering, and examination and evaluation of the electoral process; "nomination day" means a day appointed for the nomination of candidates in a contested election for the Office of the President, the Vice-President, a Member of Parliament or a</p>	<p>Power to demand information</p> <p>6. - (1) The Registrar may request for any information relating</p>

<p>(2) Where a request for information is made pursuant to subsection (1), such information shall be furnished to the Registrar by the political party, candidate or polling agent, as the case may be, within such time as the Registrar may determine.</p>	<p>and all election expenses shall be paid from that account.</p> <p>Cap-258 (3) Every political party shall disclose to the Registrar information relating to donations received pursuant to subsection (1) in a like manner as is required under the Political Parties Act.</p> <p>(4) For the purposes of this section, no candidate shall receive or accept donation for election expenses from any person, organization or institution other than through his political party.</p>	<p>or by any person for the nomination process or election expenses of a political party, whether as a gift, loan, advance, deposit or donation, shall be paid or promised to the political party concerned and not otherwise and the political party shall disclose the received funds in the returns respecting election expenses.</p> <p>(2) A political party which fails to disclose any gift, loan, advance, deposit or donation received as required under subsection (1) commits an act of illegal practices.</p>
<p>PART III ELECTION EXPENSES</p> <p>Meaning of election expenses 7. The term "election expenses" means all funds expended or expenses incurred in respect of the conduct and management of nomination process, election campaign and election by a political party, candidate or Government and include-</p>	<p>Restriction of foreign funding to election expenses 12-(1) No political party, Non-Governmental Organisation, Community Based Organisation, other body or institution or any member of such political party, Non-Governmental Organisation, Community Based Organisation, body or institution and no other person shall receive, bring or cause to be brought into the United Republic, any funds or anything which can be cashed or converted into funds which, on the ground of a donation or on other ground, is intended to be used or, in the discretion of such political party, Non-Governmental Organisation, Community Based Organisation, body, institution, member or other person, may be used to further the interest of any political party, own candidature or any other person who has been nominated or may be nominated as a candidate for any contested election.</p>	<p>Receipt of election expenses 16. Any person who effects payments in respect of any election expenses shall ensure that the payment made is vouched for by a bill stating the particulars and by a receipt or some other evidence of payment.</p>
<p>Cap-343 (b) in relation to nomination process, all expenses incurred by a political party during the nomination process;</p> <p>(c) in relation to nomination of a candidate under the National Elections Act, all expenses or expenditure incurred by a political party for facilitating its candidate for nomination;</p> <p>(d) in relation to election campaigns, all expenses or expenditure incurred by political parties or candidates for the purpose of election campaigns; and</p> <p>(e) in relation to an election, all expenses incurred by the Government, political parties and candidates.</p>	<p>(2) The term "funds" as used in subsection (1) shall be construed to include:</p> <p>(a) money;</p> <p>(b) a motor vehicle;</p> <p>(c) an aircraft;</p> <p>(d) a flag;</p> <p>(e) printing, publication or distribution of leaflets, brochures or any other publications;</p> <p>(f) broadcast by radio or television;</p> <p>(g) provision of food or drinks to voters; and</p> <p>(h) any other thing intended to be used for furtherance of election campaigns.</p>	<p>Appointment of election expenses incurred by a political party 17-(1) With the consent of the candidates concerned, a political party may expend on the advertisement of candidates sponsored by such political party and their meetings and in that event shall-</p> <p>(a) apportion the expenditure between such candidates as may be appropriate, and</p> <p>(b) within thirty days after the polling day, inform each candidate of the amount so apportioned to him, and the amount so apportioned shall form part of the candidate's election expenses.</p>
<p>Election expenses to be incurred by political parties. Cap-258 8-(1) It shall be the obligation of each political party to conduct and fund its election campaign by utilizing its own funds from the sources stipulated under the Political Parties Act.</p>	<p>Cap-258 (3) Except as provided for under the Political Parties Act, the restriction imposed by subsection (1) shall not apply to any funds received within, brought or caused to be brought into the United Republic during any period, in the case of-</p> <p>(a) the General Elections, ninety days before the election day; and</p>	<p>(2) Any advertisement referred to in section (1) shall include the name of the Board of trustee of the political party in the question and a statement that it is published under the authority of that political party.</p>
<p>(2) Subject to the limitations provided for under this Act, a candidate may use his own funds during election campaigns to cater for personal costs or other costs, as may be necessary or required for the purpose of election campaigns.</p>	<p>Cap-258 (3) Every candidate shall within seven days after the nomination day disclose to the Secretary-General of a political party which sponsored that candidate any amount of funds which the candidate-</p> <p>(a) has in possession; and</p> <p>(b) expects to receive, and intended that such funds be used as election expenses.</p>	<p>(3) The Board of Trustees of a political party shall, within ninety days after the polling day, render, in respect of every candidate sponsored by such party, to the Registrar, in returns showing expenditure incurred in terms of subsection (1) and the amount apportioned to each candidate.</p>
<p>Disclosure of funds before election campaigns 9-(1) Every candidate shall within seven days after the nomination day disclose to the Secretary-General of a political party which sponsored that candidate any amount of funds which the candidate-</p> <p>(a) has in possession; and</p> <p>(b) expects to receive, and intended that such funds be used as election expenses.</p>	<p>Returns as to election expenses 18-(1) Any candidate who receives funds as election expenses shall, within thirty days from the polling day, prepare a report to that effect and submit such a report to the political party which sponsored that candidate in the election.</p> <p>(2) Every political party which sponsored a candidate shall within ninety days after the publication of the results of the General Elections, transmit to the Registrar the report</p>	<p>Returns as to election expenses 18-(1) Any candidate who receives funds as election expenses shall, within thirty days from the polling day, prepare a report to that effect and submit such a report to the political party which sponsored that candidate in the election.</p> <p>(2) Every political party which sponsored a candidate shall within ninety days after the publication of the results of the General Elections, transmit to the Registrar the report</p>

<p>(2) Every political party which participates in the election shall, within thirty days after the nomination day, disclose to the Registrar all funds which it intends to -</p> <p>(a) use as election expenses; and</p> <p>(b) use for candidates sponsored by such political party as election expenses.</p> <p>(3) Where in exceptional circumstances, a candidate or a political party expends funds in excess of the amount of funds disclosed pursuant to the provisions of subsection (1) or (2), as the case may be, that candidate or political party shall be required to make a report to the Registrar containing reasons for the use of excess funds.</p>	<p>(b) a by-election, thirty days before the election day.</p> <p>(4) Any political party, body, institution, member or other person who uses any fund referred to in subsection (1) contrary to the provisions of that subsection or fails to comply with any requirements or conditions stipulated in terms of that subsection (1), commits an offence.</p> <p>Organisations to disclose funds</p> <p>13-(1) Any Non-Governmental Organisations, Faith Based Organisations or Community Based Organisations which, for the purpose of election, wishes to participate in any activity referred to in subsection (3) shall be required to disclose sources and the amount of funds that shall be used for that activity.</p> <p>(2) Subject to subsection (1) Non-Governmental Organisations, Faith Based Organisations or Community Based Organisations shall not use more than the amount prescribed by the Minister in the regulations.</p> <p>(3) Without prejudice to subsection (1), all money of Non-Governmental Organisations, Faith Based Organisations or Community Based Organisations shall be used for purposes of -</p> <p>(a) advocacy; and</p> <p>(b) public awareness.</p> <p>(4) Within ninety days after the election, Non-Governmental Organisations, Faith Based Organisations or Community Based Organisations referred to in subsection (1), shall furnish to the Registrar information in relation to expenses incurred for the election.</p>	<p>containing true returns in the prescribed form in relation to the candidate, a financial statement of all expenses incurred together with all bills and receipts.</p> <p>The report shall contain -</p> <p>(a) a financial report of election expenses;</p> <p>(b) an account of personal expenses paid by the candidate;</p> <p>(c) an account of all funds received by a candidate or any other person on his behalf for the purpose of election expenses incurred, with a statement of every payment and sources of those funds;</p> <p>(d) a statement by the candidate verifying the report and stating that no payment not permitted by the Act was made with his knowledge and consent and to his knowledge and belief every expense incurred is entered in the report of the political party; and</p> <p>(e) the audit report thereon as required under this Act.</p> <p>(4) Where the political party fails to file the financial report and the audit report as required by this Act, that political party shall, in addition to payment of default fine of shillings three million, be disqualified to contest in any election including the next General Elections unless that political party files such financial report and audit report to the satisfaction of the Registrar before the nomination day.</p>
<p>Limit of election expenses</p> <p>10-(1) For the purpose of implementation of section 9 and this section, the Minister shall, by an order in the Gazette, prescribe -</p> <p>(a) the maximum amount of election expenses depending on -</p> <p>(i) the difference in the size of electoral constituency;</p> <p>(ii) categories of candidates;</p> <p>(b) vary the amount of election expenses to be used by political parties during election campaigns.</p> <p>(2) Where in exceptional circumstances, a political party or a candidate expends funds in excess of the amount prescribed under sub-section (1) that political party or, as the case may be, shall be required to make a report to the Registrar containing reasons for the use of excess funds.</p> <p>(3) A political party which or a candidate who uses funds in excess of the amount prescribed pursuant to sub-section (1) commits an offence.</p>	<p>Nomination of candidates</p> <p>14-(1) All expenses to be incurred during the nomination process within the political parties shall be borne out by a political party concerned.</p> <p>(2) For the purpose of this section, the Minister shall, in consultation with Registrar and political parties with full registration, make uniform regulations which shall be observed during the nomination process by all political parties.</p>	<p>(3) funds anticipated to be received and their sources;</p> <p>(c) funds expended for nomination, election campaigns and election; and</p> <p>(e) funds expended by candidates as nomination and election expenses.</p> <p>(2) The political party shall ensure that -</p> <p>(a) donations, consisting of goods or services are valued and recorded in accordance with this Act; and</p> <p>(b) financial statement as required under this Act together with</p>
<p>Voluntary donations</p> <p>11-(1) A political party may, for the purposes of financing election expenses, appeal for and receive voluntary donations from any individual or organization in the United Republic and the source of every donation exceeding shillings five hundred thousand for an individual donor and shillings one million for an organisation or institution shall, within thirty days of its receipt, be disclosed to the Registrar by the Board of Trustees of a political party concerned.</p> <p>(2) Each political party shall ensure that all donations received by the party in the form of money are deposited in the special account opened by the party for election expenses.</p>	<p>Part IV</p> <p>ACCOUNTABILITY</p> <p>Disclosure of fund for election campaigns</p> <p>15-(1) All funds provided by an association or group of persons</p>	<p>Obligation to keep records</p> <p>19-(1) For the purposes of financial accountability under this Act, it shall be the duty of every candidate, and each political party, Non-Governmental Organization, Faith Based Organization and Community Based Organization which participated in activities referred to in subsection (3) of section 13 of this Act to keep records of -</p> <p>(a) funds received for election expenses indicating the amount and the nature of funds received;</p> <p>(b) names and postal, physical and electronic addresses of donors;</p> <p>(c) funds anticipated to be received and their sources;</p> <p>(d) funds expended for nomination, election campaigns and election; and</p> <p>(e) funds expended by candidates as nomination and election expenses.</p>

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auditors report are filed with the Registrar.

- (3) The Registrar shall, for the purposes of record keeping under this section, make guidelines prescribing the manner in which records shall be prepared and maintained.

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- (4) All records relating to funds used as election expenses shall be audited by the Controller and Auditor-General in accordance with the provisions of the Political Parties Act.

Failure to disclose funds

- 20.-(1) A political party which and every candidate who is required under the provisions of this Act to disclose the amount and sources of funds intended to be used as election expenses and fails to disclose such funds, shall, in the absence of any reasonable explanation, render itself or himself liable for disqualification to participate in the election.

- (2) Where the Registrar is satisfied that a political party is liable for disqualification to participate in the election the Registrar shall file an objection with the Director of Elections.

- (3) Upon receipt of an objection filed by the Registrar, the Director of Elections shall issue an order disqualifying that political party and all candidates it has sponsored from participating in that election.

PART V

PROHIBITED PRACTICES

Unfair conducts

- 21.- (1) During the nomination process, election campaign or election, an act of prohibited practice shall be committed by-

- (a) every person who, before or during the campaign period, directly or indirectly, by any other person on his behalf, gives, lends or agrees to give or to lend, or offers, promises, or promises to procure or to endeavor to procure, any money or valuable consideration to or for any voter or to or for any person on behalf of any voter or to or for any other person, in order to induce any voter to vote or to refrain from voting, or corruptly does any such act, on account of such voter having voted or refrained from voting at any nomination process or election.

- (a) every person who after any nomination or election, directly or indirectly, by himself or by any other person on his behalf, receives any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or refrain from voting at any nomination process or election.

- (2) Where it is alleged that the act constituting prohibited practice was committed by an agent or any other person on behalf of the candidate, it shall be a defence for the candidate if he proves that it was committed without his knowledge, consent or approval or that of his agent.

- (3) For the purposes of this section an act or transaction shall not be deemed to constitute prohibited practice if it is proved to have been designed to advance the interests of community fund raising, self-help, self-reliance or social welfare projects within the constituency and to have been done before the nomination process or election campaign, as the case may be.

Unconscionable funding

22. The following persons shall be deemed to commit unconscionable funding within the meaning of this Act:

- (a) every person who, by himself or by any other person, on his behalf, either before, during or after the nomination process or election directly or indirectly gives, or provides, or pays, wholly or in part, the expense of giving or providing food, drink, entertainment or provisions to or for any person, for the purpose of influencing that person, or any other person, to vote or to refrain from voting at such nomination process or election; and

- (b) every person who accepts or takes any such food, drink, entertainment or provision.

Conveyance of voters

- 23.- (1) No payment or contract for payment shall, for the purpose of promoting or procuring the nomination or election of a candidate at any nomination process or election, be made on account of the conveyance of voters to or from the poll station, whether for the hiring of vehicle, vessels or animal or transport of any kind whatsoever, or for railways fares, or otherwise, or

- (7) For the purpose of paragraph (b) of subsection (6), it shall be the responsibility of the Government to ensure the means of conveyance is always made available equally to all such voters who wish to avail themselves to their polling station.

Disqualification of candidates

- 24.- (1) Any candidate, his agent or by his political party who does an act which amounts to prohibited practice as stipulated in this Part shall render himself liable for disqualification to participate in the nomination process or election.

- (2) Where the Registrar is satisfied that a candidate is liable for disqualification to participate in the nomination process or election, the Registrar shall file an objection with the Director of Electoral Commission as well as with the Secretary General of a political party which sponsors that candidate.

- (3) Where an objection has been filed by the Registrar, the Secretary General shall, on his own motion or upon direction by the Electoral Commission nominate a qualified person to stand as candidate in lieu of the candidate against whom an objection is filed by the Registrar.

- (4) A political party which shall fail to nominate another candidate in lieu of the candidate in respect of whom an objection has been filed by the Registrar shall be disqualified from participating in the nomination process or election in a ward, division or constituency where he stands as a candidate.

- (5) Where a candidate, his agent or his political party commits an act which amounts to prohibited practice as stipulated in this Part and for which no objection was filed in accordance with subsection (2), a person who was a candidate, agent or voter may allege in an election petition that the candidate, his agent or his political party had, during the nomination process, election campaigns or election, committed a prohibited practice.

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- (6) A person who commits a prohibited practice referred to in subsection (5), shall be deemed to have acted in accordance with the provisions of Chapters VII and VIII of the National Elections Act shall apply.

PART VI OFFENCES AND PENALTIES	
<p>(b) every person who directly or indirectly, by himself, his agent or by his political party on his behalf, gives or procures, or agrees to give or procure, or to endeavor to procure, any office, place or employment, to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce such voter to vote or to refrain from voting, or corruptly does any such act, on account of such voter having voted or refrained from voting at any election;</p> <p>(c) every person who, before or during the election campaigns period directly or indirectly, by himself, his agent or by his political party on his behalf, makes any gift, loan, offer, promise, procurement, or agreement to or for any person in order to induce such person to procure or to endeavor to procure, the nomination of a person as a Councillor, a candidate by a political party, the election of any person as a Member of Parliament or the President or the vote of any voter at any nomination process or election;</p> <p>(d) every person who, upon or in consequence of any such gift, loan, offer, promise, procurement or agreement, procures or engages, promises or endeavors to procure the nomination of a person as a candidate by a political party, the return of any person as a Councillor, a Member of Parliament, the President or the vote of any voter at nomination process or an election;</p> <p>(e) every person who, for purposes of promoting or furthering a nomination process or an election campaign, or during the nomination or campaign, or during the nomination or campaign period, advances or pays, or causes to be paid, any money to or for the use of any other person, with the intent that such money, or any part of that money, shall be expended in bribery at any nomination process or election or who knowingly pays, or causes to be paid, any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any nomination process or election;</p> <p>(f) every voter who, before or during the nomination process or election campaign period directly or indirectly, by himself or by any other person on his behalf, receives, agrees to receive or contracts for any money, gift, loan or valuable consideration, office place or employment for himself or for any other person, for voting or agreeing to vote or for refraining from or agreeing to refrain from voting at any nomination process or election; and</p>	<p>to or with a voter on account for the use of any house, land, building, or premises for the exhibition of any address, bill, account of the exhibition of any address, bill or notice;</p> <p>(2) Subject to such exception as may be allowed in pursuance of this Act, if any payment is made in contravention of this section either before, during, or after an election, the person making such payment or contract shall commit an offence if he is a party to any such contract, knowing it to be in contravention of this section commits an act of prohibited practice.</p> <p>(3) A person commits an act of prohibited practice who let, lend or employ for the purpose of conveyance of voters to and from the polling station any vehicle, vessel or animal of transport of any kind which he keeps or uses for the purpose of letting out for hire, and if he lets, lends or employs such vehicle, vessel or animal of transport knowing that it is intended to be used for the conveyance of voters to and from the polling station.</p> <p>(4) A person who hires, borrows, or uses for the purpose of conveyance of voters to and from the polling station any vehicle, vessel or animal transport of any kind which knowingly that the owner thereof is prohibited by subsection (3) to let, lend, or employ for that purpose commits an act of prohibited practice.</p> <p>(5) Nothing in subsection (3) or (4) shall prevent a vehicle, vessel or animal of transport of any kind being let to, or hired, employed, or used by a voter or several voters at their joint cost for the purpose of being conveyed to or from the polling station.</p> <p>(6) Notwithstanding anything in the preceding provisions of this section-</p> <p>(a) where it is the ordinary business of a voter as an advertising agent to exhibit for payment bills and advertisement, a payment to or contract with such voter, if made in the ordinary course of business, shall not be deemed to be a prohibited practice within the meaning of this section; and</p> <p>(b) where voters are unable at an election to reach their polling station from their place of residence without crossing the sea, a branch of its arm or river, means may be provided for conveying such voters equally to their polling station or to enable them to cross in order to reach their polling station.</p>
PART VII GENERAL PROVISIONS	
Duties of Government media	
Cap.343	
27.-(1) The candidate for the Office of the President in an election shall have the right to utilize the Government broadcasting service and television during the election campaign, in accordance with the provisions of the National Elections Act.	
(2) The Government media shall include in their publications and information related to the electoral process without bias and	
<p>25. Any person who commits an offence under this Act to which no specific penalty is prescribed shall on conviction be liable to -</p> <p>(a) in the case of a political party, to a fine of not exceeding shillings five million;</p> <p>(b) in the case of a candidate, to a fine of not exceeding shillings three million;</p> <p>(c) in the case of an organization, corporation or institution, to a fine of not exceeding shillings ten million.</p>	<p>26. Any person who-</p> <p>(a) obstructs the Registrar or his representative from exercising powers of the Registrar under this Act;</p> <p>(b) refuses to produce books, papers and documents as requested by the Registrar;</p> <p>(c) produces false books, documents or false information to the Registrar;</p> <p>(d) makes false statement in any returns or financial report; or</p> <p>(e) destroys any books, papers, documents or thing relating to the subject matters of investigation, examination or inspection, commits an offence and shall be liable on conviction to a fine not exceeding shillings ten million.</p>

<p>such publication shall not tamper with information or discriminate against any candidate.</p> <p>Peace and security</p> <p>28.(1) The Government shall, for the purpose of maintaining peace and security during nomination process, election campaign and election, deploy the defence and security personnel to provide such security.</p>	<p>(4) Any informer who shall suffer reprisal or retaliation or victimization or injury or any harm from a person accused of corruption, perpetrators of offences of corruption and their accessories shall be afforded reasonable protection, compensation and assistance by the Government upon ascertainment by the Registrar that the magnitude of victimization, injury or harm.</p> <p>OBJECTS AND REASONS</p> <p>This Bill makes legislative proposals for enactment of the law which puts in place provisions for funding of the nomination process and election campaigns. The thrust of this law is to control the use of funds and illegal practices in the nomination process whereby political parties invite qualified persons to be sponsored by such political parties and their formal nomination to be candidate in the general election or makes provisions to control the use of funds during election campaigns by requiring each candidate who and every political party which participates in the election to disclose the amount and sources of funds intended to be used as election expenses. The disclosure will be made in two phases: first, by the candidate being seven days after the nomination day and by the political party being thirty days after the nomination day, and, second, by the candidates and their political party which sponsored each of such candidate. The second phase of disclosure shall be made to the Registrar of Political Parties by way of returns.</p> <p>The Bill further proposes provision restricting foreigners, be it a government, an international organization, or institution to provide funds for election expenses. Provisions intended to check illegal practices in the election process and the penalty thereof are provided for.</p> <p>The Bill is divided into VIII Parts.</p> <p>Part I contains provisions on the short title and the date of commencement, application and constructions of words and terms which will be used in the proposed laws.</p> <p>Part II contains provisions on the administration of election expenses, supervisory powers of the Registrar of Political Parties to oversee and examine the use of election expenses by candidates and political parties.</p> <p>Part III contains provisions for funds for election expenses, the meaning of the term election expenses, primary</p>
<p>(a) in any place where nomination process or election campaign is conducted by a political party;</p> <p>(b) in respect of Presidential candidates; and</p> <p>(c) to such other place, area or to persons as it may determine.</p> <p>(2) The expenses for deploying the defence and security personnel for the purpose of this section shall be borne out by the Government.</p> <p>(3) No political party or a candidate shall engage a private security for the provision of security during the nomination process, election campaign or election for its candidate.</p> <p>Protection from liability</p> <p>29. No matter or thing done by any officer of the Government, officer or employee of the Office of the Registrar shall, if the matter or thing was done in good faith for the purposes of performance of any functions or exercise of any powers provided for under the provisions of this Act, shall make such officer or employee personally liable for the matter or thing done.</p> <p>Regulations</p> <p>30.(1) The Minister may, on the recommendation of the Registrar make regulations for or with respect to any matter which by this Act is required or permitted to be prescribed or which is necessary for giving effect to this Act.</p> <p>(2) Before making recommendation to the Minister about any regulations which are to be made, the Registrar shall submit the draft regulations to every fully registered political party for purposes of inviting opinions from the general public and in particular, political parties, in such manner as may be appropriate, at least thirty days before the draft regulations are submitted to the Minister.</p>	<p>MADHUMUNI NA SABABU</p> <p>Miswada huu wa Sheria, inapendekeza kutengesa kwa Sheria ya Gharama za Uchaguzi, Madhumuni ya Sheria hii ni kuweka utaratibu wa kisheria wa kusimamia na kurahibu mapato na matumizi ya gharama za kampeni kwa vyama vya siasa na Wagonjwa, kuweka utaratibu unaochezesha Serikali kuchangia gharama za kampeni na uchaguzi wa vyama vya siasa na vile vile kuweka utaratibu wa kisheria na kurahibu zawadi, misaadid na michango inayotolewa na wagonjwa wakati wa kampeni za uchaguzi. Aidha, Sheria inapendekeza inalinga katika kuweka utaratibu wa kudhibiti matumizi ya fedha wakati wa kampeni za uchaguzi na kuweka mifumo wa kisheria wa uwajibikaji katika matumizi ya fedha za umma na vile vile kuainisha adhabu kwa watakuuika masharti yaliyomo katika sheria inayopendekeza.</p> <p>Madhumuni ya kuweka utaratibu wa Sheria wa kusimamia matumizi ya fedha katika kampeni na uchaguzi ni kuweka mazingira yanakayowezesha kuwepo kwa uwazi zaidi katika matumizi ya fedha zikiakozotengwa kwa ajili ya kampeni za uchaguzi. Aidha, Sheria itasaidia kudhibiti matumizi mabaya ya fedha na vitendo vya rushwa kwenye kampeni za uchaguzi kwa kuwepo kwa utaribu wa fedha zikiakozumika katika kampeni na uchaguzi ndani ya vyama vya siasa na katika uteuzi wa wagonjwa.</p> <p>Miswada huu unegawanyika katika Sehemu Nane. Sehemu ya Kwanza inaweka masharti kuhusu mambo ya utunguzi ambayo ni jina, urehe ya kuanza kutumika, kuamika kwa sheria hii katika Tanzania Bare na Zanzibar na tafiri ya maeneo na misimami itakayotumika.</p> <p>Sehemu ya Pili inaorodhesha kazi za Msajili wa Vyama vya Siasa kitiwemo mamuka ya kusimamia na kukagua gharama za uchaguzi kwa vyama vya siasa na mwendendo wa wasimamizi wa uchaguzi.</p> <p>Sehemu ya Tatu inapendekeza masharti kuhusu fedha zikiakozumika kwa ajili ya uchaguzi, maana ya gharama za uchaguzi, uchaguzi ndani ya vyama vya siasa, gharama za uchaguzi, utaratibu wa siasa vinavyo kutimuni wakati wa uchaguzi wa masharti kwa vyama vya siasa inayotumika kama taarifa kuhusu sheria inayopendekeza utaratibu wa uchaguzi. Aidha, sheria inapendekeza utaratibu wa fedha zikiakozumika kama gharama za uchaguzi. Sheri lakusizi itaairifa kuhusu michango au misaadid inayotolewa na</p>

PART VIII CONSEQUENTIAL AMENDMENTS	
<p>Construction Cap. 258</p>	<p>31. The provisions of this Part shall be read as one with the Political Parties Act.</p>
<p>Miscellaneous amendments Cap. 258</p>	<p>32. The Political Parties Act is amended—</p> <p>(a) in section 13 by inserting the phrase "Subject to the provisions of Part III of the Election Expenses Act, 2009" just before the words "Every party", which appears in subsection (2); and</p> <p>(b) by inserting after section 13 the following provisions:—</p> <p>"Protection of informer and witness 13 A. - (1) Every person who is or becomes aware of the commission or the intention to commit by another person, whether that person is a voter, a candidate, a leader of a political party or not, to commit an offence of illegal practice shall be required to give information to the Registrar.</p> <p>(2) No information relating to commission of an offence under this Act shall be admitted in evidence in any civil or criminal proceedings and no witness in any civil or criminal proceedings shall be obliged to -</p> <p>(a) disclose the name or address of any informer who has given information to the Registrar with respect to an offence under this Act or the name or address of any person who has assisted the Bureau in any way in relation to such an offence; or</p> <p>(b) answer any question if the answer to such question would lead, or would tend to lead, to discovery of the name or address of such informer or person.</p> <p>(3) Where any book, document or paper which is the subject of evidence or liable for inspection in any civil or criminal proceedings need not be produced or disclosed, or which that disclosure of that information or person by the public, the court shall cause all such passages to be concealed from view by the public, or to be obliterated so far as may be necessary to protect the informer or such other person from discovery by the public.</p>
<p>nomination of candidates by political parties, election expenses to be incurred by political parties, disclosure of political parties. It also contains provisions on the limitation of election expenses, voluntary donations to be received by a political party, restriction of foreign funding to election expenses, the use of Government media, provision of police and security guards for Presidential Candidate and Running mates, submission of names of polling agent as well as the disbursement of funds by the Registrar to the polling agents.</p>	<p>kupokelewa na vyama vya siasa, kuziua fedha kutoka nje ya nchi kwa ajili ya kampeni za uchaguzi, na matumizi ya gharama kwa vyama na Taasisi zisizo za kisierikali wakati wa kutoa elimu ya kampeni na chaguzi za kisiasa.</p>
<p>Part IV contains provisions on the accountability of political parties to disclose funds for election campaigns, to issue receipts of election expenses, appointment of election expenses incurred by political parties, returns of election expenses, accounting for disbursed funds as well as obligations to keep records. It also contains provisions on the effect of failure to disclose funds. It is proposed that such failure may render the candidate or a political party concerned to be disqualified from participating in a given election.</p>	<p>Schemu ya Tano inapendeleza masharti yanayokazata baadhi ya matumizi ya fedha kama gharama za kampeni na uchaguzi. Matumizi hayo ni yale yanayohusu gharama kwa vitendo vinavyoziua au kuwa haramu wakati wa kampeni na uchaguzi.</p>
<p>Part V contains provisions which seek to categorize certain expenditure to be prohibited practices. These include unfair conducts, in connection finding and conveyance of voters. Furthermore it contains provisions for disqualification of candidates who commits prohibited practices.</p>	<p>Schemu ya Sita inapendeleza makesa ya ujumla pamoja na adhabu zinazoweza kutolewa kwa kukitika masharti ya Sheria hi.</p>
<p>Part VI contains general offences and penalties and the need to procure consent of the Director of Public Prosecutions for prosecution of offences under the proposed law.</p>	<p>Schemu ya Saba maweka masharti kuhusu haki ya Wagombea wa Ofisi ya Rais au Ofisi ya Makamu wa Rais kutumia vyombo vya habari na wajibu wa Serikali na vyombo vya habari kumuwezesha kutumia haki hiyo. Aidha, Schemu hii pia inapita Serikali wajibu wa kutumia vyombo vya ulimi na usalama ili kuhakikisha kwamba vyama vya siasa, wagombea wao na wapiga kampeni wanawafika wapiga kura bila ya ubuguzi wala kupewa vitisho.</p>
<p>Part VII contains general provisions which stipulates the right of the Presidential and the Vice Presidential candidates to use Government media and duty of Government media to that effect. It also contains provision for the Government duty to use its machinery and resources to facilitate political parties, candidates and campaigners to meet with voters and make political propaganda without fear of intimidation or threat.</p>	<p>Schemu ya Nane inapendeleza kufanya marekebisho katika Sheria ya Vyama vya Siasa ili koonishisha masharti ya Sheria hayo. Marekebisho ya msingi ni kuongeza kifungu cha 13A katika Sheria ya Vyama vya Siasa kwa lengo la kuweka unarubibu unakuwezesha Msajidi wa Vyama vya Siasa kupata hariri juu ya Mgombea au Chama cha Siasa kuingijishushu na vitendo vya utidaji wa usalama ya Sheria wakati wa kampeni ya uchaguzi. Aidha, kifungu hiki maweka unarubibu unakuwezesha kuhifadhi itambuliwa wa watua hariri.</p>
<p>Part VIII contains provisions on the consequential amendments to the Political Parties Act in order to harmonize the provisions of that law and the proposed law. The substantive part of the amendment is the insertion of Section 13A. The thrust of that provision is to shield whistle blowers through non-disclosure of their identity.</p>	<p>Schemu ya Nane inapendeleza kufanya marekebisho katika Sheria ya Vyama vya Siasa ili koonishisha masharti ya Sheria hayo. Marekebisho ya msingi ni kuongeza kifungu cha 13A katika Sheria ya Vyama vya Siasa kwa lengo la kuweka unarubibu unakuwezesha Msajidi wa Vyama vya Siasa kupata hariri juu ya Mgombea au Chama cha Siasa kuingijishushu na vitendo vya utidaji wa usalama ya Sheria wakati wa kampeni ya uchaguzi. Aidha, kifungu hiki maweka unarubibu unakuwezesha kuhifadhi itambuliwa wa watua hariri.</p>
	<p>Dear es Salama, MIZENGO P. FINIDA, Waziri Mkuu, 26-Novemba, 2009</p>

Appendix 4: The Election Expenses Act 2010

No. 6

Election Expenses

2010

THE ELECTION EXPENSES ACT, 2010

ARRANGEMENT OF SECTIONS

Section Title

PART I

PRELIMINARY PROVISIONS

1. Short title and commencement.
2. Application.
3. Interpretation.

PART II

ADMINISTRATION OF ELECTION EXPENSES

4. Functions of the Registrar.
5. Powers of inspection.
6. Power to demand information.

PART III

ELECTION EXPENSES

7. Meaning of election expenses.
8. Election expenses to be incurred by political parties.
9. Disclosures of funds before election campaigns.
10. Limit of election expenses.
11. Voluntary donations.
12. Restriction of foreign funding to election expenses.
13. Organizations to disclose sources of funds.
14. Expenses for nomination process.

PART IV

ACCOUNTABILITY

15. Disclosure of funds for election campaigns.
16. Receipt of election expenses.
17. Apportionment of election expenses incurred by a political party.

18. Returns as to election expenses.
19. Obligation to keep records.
20. Failure to disclose funds.

**PART V
PROHIBITED PRACTICES**

21. Unfair conducts.
22. Unconscionable funding.
23. Conveyance of voters.
24. Disqualification of candidates.
25. Prohibition of prohibited practices prior to nomination process.

**PART VI
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THE UNITED REPUBLIC OF TANZANIA



NO. 6 OF 2010

I ASSENT,

Mwajuma Mwakima

President

17th March, 2010

An Act to make provisions for the funding of nomination process, election campaigns and elections with a view to controlling the use of funds and prohibited practices in the nomination process, election campaigns and elections; to make provisions for allocation, management and accountability of funds and to provide for consequential and related matters.

ENACTED by Parliament of the United Republic of Tanzania.

PART I
PRELIMINARY PROVISIONS

Short title and
commencement

1.-(1) This Act may be cited as the Election Expenses Act, 2010.

(2) This Act shall come into operation on such date as the Minister may, by notice in the *Gazette*, appoint.

Application

2. This Act shall apply-

- (a) in the case of Mainland Tanzania, in respect of election expenses for a candidate for the office of the President of the United Republic, a Member of Parliament and a Councillor; and
- (b) in the case of Tanzania Zanzibar, in respect of a candidate for an office of the President of the United Republic and for an office of a Member of Parliament.

Interpretation

3. In this Act, unless the context requires otherwise-

“campaign period” means the period commencing immediately after the nomination day up to the day immediately preceding election day;

“candidate” means a person who submits himself for election in the Office of the President, a Member of Parliament or a Councillor;

“contested election” means an election in a ward, constituency or Presidential election in which there are more candidates than are vacancies;

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“Constitution” means the Constitution of the United Republic of Tanzania, 1977;

“Councillor” means a person who is elected in the office of -

- (a) in relation to a district, a District Council;
- (b) in relation to a municipality, a Municipal Council;
- (c) in relation to a city, a City Council; and
- (d) in relation to a town, a Town Council;

“election” means the act of selecting by vote a person from among a number of candidates to fill a vacancy in the Office of the President, a Member of Parliament conducted under the National Elections Act or a

Caps. 343 and
292

Councillor conducted under the Local Authority (Elections) Act and includes the nomination process;

“election expenses” has the meaning ascribed to it under section 7;

“Minister” means the Minister responsible for political parties;

“monitoring” means information gathering, examination and evaluation of the electoral process;

“nomination day” means a day appointed for the nomination of candidates in a contested election for the Office of the President, the Vice-President, a Member of Parliament or a Councillor;

“nomination process” means the process by whatever procedure whereby a political party invites persons who wish to be sponsored by any of such political parties to stand as candidate in the elections;

“political party” means any organized group of persons formed for the purpose of forming a government or a local government authority within the United Republic through elections or for putting up or supporting candidates to such elections;

Caps. 292
and 343

“polling district” means a ward declared as such under the Local Authority (Elections) Act or an area or division of a constituency made pursuant to the provisions of section 5 of the National Elections Act;

“Presidential election” means the election of the President of the United Republic;

“presidential candidate” means a person nominated to contest an election to the Office of the President of the United Republic and includes the vice-presidential candidate;

“prohibited practices” means any offence mentioned in and punishable under the provisions of Part V;

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“Registrar” means the Registrar of Political Parties appointed under the Political Parties Act;

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“voter” means a person or delegate who is for the time being qualified to vote during the nomination process and election in accordance with the provisions of the National Elections Act or the Local Authority (Elections) Act.

PART II

ADMINISTRATION OF ELECTION EXPENSES

Functions of
the Registrar

4. The Registrar of Political Parties shall be responsible for supervision and administration of election expenses under this Act.

Powers of
inspection

5.-(1) For the purposes of an investigation or examination under this Act, the Registrar or his representative authorized in writing may, at any reasonable time enter into any premises in which books, papers and documents of a political party or candidate relevant to the subject matter of the investigation or examination are kept.

(2) For the purpose of subsection (1), the Registrar shall serve notice of not less than five days to a political party or a candidate concerned.

Power to
demand
information

6.-(1) The Registrar may request for any information relating to election expenses of a political party or a candidate that is reasonably required in respect of their duties under this Act.

(2) Where a request for information is made pursuant to subsection (1), such information shall be furnished to the Registrar by a political party or a candidate within such reasonable time as the Registrar may determine.

PART III

ELECTION EXPENSES

Meaning of
election
expenses

7.-(1) The term "election expenses" means all funds expended or expenses incurred in respect of the conduct and management of nomination process, election campaign and election by a political party, candidate or Government and include-

- (a) in relation to nomination process, all expenses incurred by a political party during the nomination process;

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- (b) in relation to nomination of a candidate under the National Elections Act or all expenses or expenditure incurred by a political party for facilitating its candidate for nomination;
- (c) in relation to election campaigns, all expenses or expenditure incurred by a political party or candidate for the purpose of election campaigns; and
- (d) in relation to an election, all expenses incurred by the Government, political parties and candidates.

(2) All funds used for promotional art groups for purposes of presentation of a candidate to voters including the cost of providing food, drinks, accommodation or transportation which has been reasonably incurred by a candidate for members of his campaign team shall be deemed to constitute election expenses.

(3) For the purposes of subsection (2), "campaign team" means a group of persons formed by a candidate in the nomination process or a contested election for purpose of presenting or assisting that candidate in the election campaigns, who have been approved-

- (a) in the case of a Presidential candidate, by the Registrar;
- (b) in the case of a Member of Parliament, by the District Administrative Secretary; and
- (c) in the case of a Councilor, by the Ward Executive Officer.

Election expenses to be incurred by political parties
Cap. 258

8.-(1) It shall be an obligation of each political party to conduct and fund its election campaign by utilizing its own funds from the sources stipulated under the Political Parties Act.

(2) Subject to the limitations provided for under this Act, a candidate may use his own funds during election campaigns as may be necessary or required for the purpose of election campaigns.

Disclosure of
funds before
election
campaigns

9.-(1) A candidate shall be required to disclose at least seven days before the nomination day-

- (a) in the case of a Presidential candidate, to the Secretary General;
- (b) in the case of a candidate for the post of a Member of Parliament and a member of the Council, to the District Party Secretary,

of a political party which sponsored that candidate the amount of funds which the candidate-

- (i) has in his possession; and
- (ii) expects to receive,

intends to use as election expenses.

(2) Every political party which participates in any election shall, within thirty days after the nomination day, disclose to the Registrar all funds which it intends to -

- (a) use as election expenses; and
- (b) use for candidates sponsored by such political party as election expenses.

(3) The disclosure of funds by the candidate shall, for the purpose of this Act, in the absence of any other factors, be *prima facie* evidence that the candidate has complied with the requirement for disclosure of funds.

(4) For the purpose of subsection (3), it shall be sufficient for the District Party Secretary or the Secretary General, of a political party concerned, to issue a certificate showing that the candidate has complied with the requirement of subparagraph (i) of subsection (1).

(5) The disclosure of funds made pursuant to the provisions of this Act shall be confidential and shall not be divulged except when such information is the subject of a complaint or a complaint lodged by the Registrar or investigation initiated by the Registrar or if it is the subject of proceedings in the court of law.

Limit of
election
expenses

10.- (1) For the purpose of implementation of section 9 and this section, the Minister shall, by an order in the *Gazette*-

- (a) prescribe the maximum amount of election expenses depending on -
 - (i) the difference in the size of electoral constituency;
 - (ii) categories of candidates;
 - (iii) population of people; and
 - (iv) communication infrastructure;
- (b) vary the amount of election expenses to be used by political parties during election campaigns.

(2) Where in exceptional circumstances, a political party or a candidate expends funds in excess of the amount prescribed under sub-section (1) that political party or the candidate, as the case may be, shall be required to make a report to the Registrar containing reasons for the use of excess funds.

(3) A political party which or a candidate who uses funds in excess of the amount prescribed pursuant to sub-section (1) commits an offence.

Voluntary
donations

11.-(1) A political party may, for the purposes of financing election expenses, appeal for and receive voluntary donations from any individual or organisation, in and outside the United Republic, provided that the source of every donation, exceeding shillings one million for an individual donor and shillings two million for an organization shall, within thirty days of its receipt, be disclosed to the Registrar by the Board of Trustees of the political party concerned.

(2) Each political party shall ensure that all donations received by the party in the form of money are deposited in the special account opened by the party for election expenses, and all election expenses shall be paid from that account.

(3) Every political party shall disclose to the Registrar information relating to donations received pursuant to subsection (1) in a manner stipulated under the Political Parties Act.

(4) For the purpose of voluntary donations, a candidate may receive or accept donation for election expenses from an

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individual person or organisation.

(5) A person who uses or threatens to use force or violence, injures, damages or harms any person who donates or intends to donate any funds to a candidate, a member of his family or any of his undertakings commits an offence.

(6) The term "undertakings" as used in subsection (5) means business, property, employment, contract of service and any other similar trade.

(7) Any person who contravenes the provisions of subsection (5) shall, on conviction, be liable to a fine of not less than shillings one million and not more than shillings five million or to imprisonment for a term of not less than six months and not more than two years or to both.

Restriction of
foreign funding
to election
expenses

12.-(1) No political party, Non-Governmental Organisation, Faith Based Organisation, Community Based Organisation, other body or institution or any member of such political party, Non-Governmental Organisation, Faith Based Organisation, Community Based Organisation, body or institution and no other person shall receive, bring or cause to be brought into the United Republic, any funds or anything which can be cashed or converted into funds which, on the ground of a donation or on other ground, is intended to be used or, in the discretion of such political party, Non-Governmental Organisation, Faith Based Organisation, Community Based Organisation, body, institution, member or other person, may be used to further the interest of any political party, own candidature or any other person who has been nominated or may be nominated as a candidate for any contested election.

(2) The term "funds" as used in subsection (1) shall be construed to include:

- (a) money;
- (b) a motor vehicle;
- (c) an aircraft;
- (d) transportation;
- (e) T-shirts;
- (f) a flag;

- (g) printing, publication or distribution of leaflets, brochures or any other publications;
- (h) broadcasting, radio or television equipment;
- (i) provision of food or drinks;
- (j) promotional art groups; and
- (k) any other thing intended to be used for furtherance of election campaigns.

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(3) Except as provided for under the Political Parties Act, the restriction imposed by subsection (1) shall not apply to any funds received within, brought or caused to be brought into the United Republic during any period, in the case of-

- (a) the General Elections, ninety days before the election day; and
- (b) a by- election, thirty days before the election day.

(4) Any political party, Non-Governmental Organization, Faith Based Organization, Community Based Organisation, other body or institution or any member of such political party, Non-Government Organisation, other body or institution and any other person who uses any fund referred to in subsection (1) contrary to the provisions of that subsection or fails to comply with any requirements or conditions stipulated in terms of that subsection (1), commits an offence.

Organisations
to disclose
sources of
funds

13.-(1) Any Non-Governmental Organisations, Faith Based Organisations or Community Based Organisations which, for the purpose of election, wishes to participate in any activity referred to in subsection (3) shall be required to disclose sources and the amount of funds that shall be used for that activity.

(2) Subject to subsection (1) Non-Governmental Organisations, Faith Based Organisations or Community Based Organisations shall not use more than the amount prescribed by the Minister in the regulations.

(3) Without prejudice to subsection (1), all money of Non-Governmental Organisations, Faith Based Organisations or Community Based Organisations shall be used for purposes of -

- (a) advocacy;

(b) public awareness,
for furtherance of election campaigns.

(4) Within ninety days after the election, Non-Governmental Organisations, Faith Based Organisations or Community Based Organisations referred to in subsection (1), shall furnish to the Registrar information in relation to expenses incurred for the election.

(5) A Non-Governmental Organization, Faith Based Organization or Community Based Organization which contravenes the provisions of this section commits an offence and shall, upon conviction, be liable to a fine not less than shillings five million or to imprisonment for a term not exceeding three years or to both.

Expenses for
nomination
process

14.-(1) All expenses to be incurred during the nomination process within the political parties shall be borne out by a political party concerned.

(2) For the purpose of this section, the Minister shall, in consultation with the Registrar and political parties with full registration, make uniform regulations which shall be observed during the nomination process by all political parties.

PART IV ACCOUNTABILITY

Disclosure of
fund for
election
campaigns

15.-(1) All funds provided by an association or group of persons or by any person for the nomination process or election campaigns of a political party, whether as a gift, loan, advance, deposit or donation, shall be paid to the political party concerned and not otherwise and the political party shall disclose the received funds in the returns respecting election expenses.

(2) A political party which fails to disclose any gift, loan, advance, deposit or donation received as required under subsection (1) commits an act of prohibited practices.

Receipt of
election

16. Any person who effects payments in respect of any

expenses election expenses shall ensure that the payment made is vouched for by a bill stating the particulars and by a receipt or some other evidence of payment.

Apportionment of election expenses incurred by a political party

17.-(1) With the consent of the candidates concerned, a political party may expend on the advertisement of candidates sponsored by such political party and their meetings and in that event shall-

- (a) apportion the expenditure between such candidates as may be appropriate; and
- (b) within thirty days after the polling day, inform each candidate of the amount so apportioned to him, and the amount so apportioned shall form part of the candidate's election expenses.

(2) Any advertisement referred to in section (1) shall include the name of the Board of Trustee of the political party in question and a statement that it is published under the authority of that political party.

(3) The Board of Trustees of a political party shall, within ninety days after the polling day, render, in respect of every candidate sponsored by such party, to the Registrar true returns in the prescribed form showing expenditure incurred in terms of subsection (1) and the amount apportioned to each candidate.

Returns as to election expenses

18.-(1) Any candidate who receives funds as election expenses shall, within sixty days from the polling day, prepare and submit a verified report to the political party which sponsored that candidate in the election.

(2) Every political party which sponsored a candidate shall, within one hundred and eighty days after the submission of the report by the candidate, transmit to the Registrar the report containing true returns in the prescribed form in relation to the candidate, a financial statement of all expenses incurred together with all bills and receipts or some other evidence of payment.

(3) The report shall contain-

- (a) a financial report of election expenses;

- (b) an account of all funds received by a candidate or any other person on his behalf for the purpose of election expenses incurred, with a statement of every payment and sources of those funds;
- (c) statement by the candidate verifying the report and stating that no payment not permitted by the Act was made with his knowledge and consent and to his knowledge and belief every expenses incurred are entered in the report of the political party; and
- (d) the audit report thereon as required under this Act.

(4) Where the political party fails to file the financial report and the audited report as required by this Act, that political party shall, in addition to payment of default fine of shillings three million and the requirement to file financial report at any later time, be disqualified to contest in any election including the next General Elections unless that political party files such financial report and the audited report to the satisfaction of the Registrar before the next nomination day.

(5) Any candidate who, irrespective of whether has won or lost in the election, fails to prepare a report referred to under subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding shillings two million or to imprisonment for a term not exceeding one year or to both.

(6) For the purpose of this section, the Registrar may, on sufficient cause, extend the time for a political party to submit the audited report.

Obligation to
keep records

19.-(1) For the purposes of financial accountability under this Act, it shall be the duty of every candidate, and each political party, Non-Governmental Organization, Faith Based Organization and Community Based Organization which participated in activities referred to in subsection (3) of section 13 of this Act to keep records of-

- (a) funds received for election expenses indicating the amount and the nature of funds received;
- (b) names and postal, physical and electronic addresses of donors;
- (c) funds anticipated to be received and their sources;
- (d) funds expended for nomination, election campaigns and election; and
- (e) funds expended by candidates as nomination and election expenses.

(2) The political party shall ensure that -

- (a) donations consisting of goods or services are valued and recorded in accordance with this Act; and
- (b) financial statement as required under this Act together with auditors report are filed with the Registrar.

(3) The Registrar shall, for the purposes of record keeping under this section, make guidelines prescribing the manner in which records shall be prepared and maintained.

(4) All records relating to funds used as election expenses shall be audited by the Controller and Auditor-General in accordance with the provisions of the Political Parties Act.

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Failure to
disclose funds

20.-(1) A political party which, and every candidate who is required under the provisions of this Act to disclose the amount and sources of funds intended to be used as election expenses fails to disclose such funds, shall, in the absence of any reasonable explanation, render itself or himself liable for disqualification from participating in the election.

(2) Where after hearing a presentation by a political party or the candidate concerned, the Registrar is satisfied that such a political party or a candidate is liable for disqualification from participating in the election, the Registrar shall file an objection with the Director of elections.

(3) Upon receipt of an objection filed by the Registrar, the National Electoral Commission may issue an order disqualifying the political party or the candidate.

(4) Without prejudice to the preceding provisions of this section, the Attorney General, a person who was a candidate, voter or a political party which sponsored a candidate, may file an election petition challenging the nomination of a candidate by a political party or election of a candidate who contravened the requirement for disclosure of funds under this Act.

PART V PROHIBITED PRACTICES

Unfair conducts

21.-(1) During the nomination process, election campaign or election, an act of prohibited practice shall be committed by-

- (a) every person who, before or during the campaign period, directly or indirectly, by any other person on his behalf, gives, lends or agrees to give or to lend, or offers, promises, or promises to procure or to endeavor to procure, any money or valuable consideration to or for any voter or to or for any person on behalf of any voter or to or for any other person, in order to induce any voter to vote or to refrain from voting, or corruptly does any such act, on account of such voter having voted or refrained from voting at any nomination process or election;
- (b) every person who directly or indirectly, by himself, his agent or by his political party on his behalf, gives or procures or agrees to give or to procure or to endeavor to procure, any office, place or employment, to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce such voter to vote or to refrain from voting, or corruptly does

- any such act, on account of such voter having voted or refrained from voting at any election;
- (c) every person who, before or during the election campaigns period directly or indirectly, by himself, his agent or by his political party on his behalf, makes any gift, loan, offer, promise, procurement, or agreement to or for any person in order to induce such person to procure or to endeavor to procure, the nomination of a person as a Councillor, a candidate by a political party, the election of any person as a Member of Parliament or the President or the vote of any voter at any nomination process or election;
 - (d) every person who, upon or in consequence of any such gift, loan, offer, promise, procurement or agreement, procures or engages, promises or endeavors to procure the nomination of a person as a candidate by a political party, the return of any person as a Councillor, a Member of Parliament, the President or the vote of any voter at nomination process or an election;
 - (e) every person who, for purposes of promoting or furthering a nomination process or an election campaign, or during the nomination or campaign, or during the nomination or campaign period, advances or pays, or causes to be paid, any money to or for the use of any other person, with the intent that such money, or any part of that money, shall be expended in bribery at any nomination process or election or who knowingly pays, or causes to be paid, any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any nomination process or election;
 - (f) every voter who, before or during the nomination process or election campaign period directly or indirectly, by himself or by any other person on

his behalf, receives, agrees to receive or contracts for any money, gift, loan or valuable consideration, office place or employment for himself or for any other person, for voting or agreeing to vote or for refraining from or agreeing to refrain from voting at any nomination process or election; and

- (g) every person who, after any nomination or election, directly or indirectly, by himself or by any other person on his behalf, receives any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or refrain from voting at any nomination process or election.

(2) Where it is alleged that the act constituting prohibited practice was committed by an agent or any other person on behalf of the candidate, it shall be a defense for the candidate if he proves that it was committed without his knowledge, consent or approval or that of his agent.

(3) For the purposes of this section an act or transaction shall not be deemed to constitute prohibited practice if it is proved to have been designed to advance the interests of community fund raising, self-help, self-reliance or social welfare projects within the constituency and to have been done before the nomination process or election campaign, as the case may be.

Unconscionable
funding

22. The following persons shall be deemed to commit unconscionable funding within the meaning of this Act:

- (a) every person who corruptly, by himself or by any other person, on his behalf, either before, during or after the nomination process or election directly or indirectly gives, or provides, or pays, wholly or in part, the expense of giving or providing food, drink, entertainment or provisions to or for any person, for the purpose

of influencing that person, or any other person, to vote or to refrain from voting at such nomination process or election; and

- (b) every person who corruptly accepts or takes any such food, drink, entertainment or provision.

Conveyance of voters

23.-(1) No payment or contract for payment shall, for the purpose of promoting or procuring the nomination or election of a candidate at any nomination process or election, be made-

- (a) on account of the conveyance of voters to or from the poll station, whether for the hiring of vehicle, vessels or animal of transport of any kind whatsoever, or for railways fares, or otherwise; or
- (b) to or with a voter on account for the use of any house, land, building, or premises for the exhibition of any address, bill, account of the exhibition of any address, bill or notice.

(2) Subject to such exception as may be allowed in pursuance of this Act, if any payment is made in contravention of this section either before, during, or after an election, the person making such payment or contract shall commit an act of prohibited practice, and any person receiving such payment or being a party to any such contract, knowing it to be in contravention of this section commits an act of prohibited practice.

(3) A person commits an act of prohibited practice who let, lend or employ for the purpose of conveyance of voters to and from the polling station any vehicle, vessel or animal of transport of any kind which he keeps or uses for the purpose of letting out for hire, and if he lets, lends or employs such vehicle, vessel or animal of transport knowing that it is intended to be used for the conveyance of voters to and from the polling station.

(4) A person who hires, borrows, or uses for the purpose of conveyance of voters to and from the polling station any

vehicle, vessel or animal transport of any kind which knowingly that the owner thereof is prohibited by subsection (3) to let, lend, or employ for that purpose commits an act of prohibited practice.

(5) Nothing in subsection (3) or (4) shall prevent a vehicle, vessel or animal of transport of any kind being let to, or hired, employed, or used by a voter or several voters at their joint cost for the purpose of being conveyed to or from the polling station.

(6) Notwithstanding anything in the preceding provisions of this section-

- (a) where it is the ordinary business of a voter as an advertising agent to exhibit for payment bills and advertisement, a payment to or contract with such voter, if made in the ordinary course of business, shall not be deemed to be a prohibited practice within the meaning of this section; and
- (b) where voters are unable at an election to reach their polling station from their place of residence without crossing the sea, a branch or its arm or river, means may be provided for conveying such voters equally to their polling station or to enable them to cross in order to reach their polling station.

(7) For the purpose of paragraph (b) of subsection (6), it shall be the responsibility of the Government to ensure the means of conveyance is always made available equally to all such voters who wish to avail themselves to their polling station.

Disqualification
of candidates

24.-(1) Every political party shall undertake and complete the nomination process within twenty one days before the nomination day.

(2) Any candidate who, by himself, his agent or by his political party which commits an act amounting to a prohibited practice as stipulated in this Part shall himself or itself liable for

disqualification from participation in the nomination process or election.

(3) For the purpose of sub-section (2), a candidate shall not be liable for prohibited practices committed by a political party without consent or connivance of the candidate, whether expressly or impliedly.

(4) Where the Registrar is satisfied that the candidate who, by himself, his agent or his political party has committed a prohibited practice for which that candidate or political party is liable for disqualification from participation in the nomination process, he shall, in the case of -

- (a) a candidate, notify the political party concerned to nominate another candidate in place of the candidate; and
- (b) a political party, notify the political party concerned that it may be barred from sponsoring a candidate in a ward, constituency or Presidential election.

(5) Where, during the nomination process, a political party whose candidate is liable for disqualification has failed to nominate another candidate *in lieu* of the candidate who is liable for disqualification, the Registrar shall inform Director of Election that the political party concerned which sponsored that candidate in a contested election in a relevant ward, constituency or Presidential election may be disqualified.

(6) A person who has been nominated by virtue of the operation of subsection (4) shall be subjected to all procedures relating to nomination of candidates as stipulated under the National Elections Act or the Local Authority (Elections) Act.

(7) Where a candidate, or his agent or his political party commits an act which amounts to a prohibited practice in respect of which no action was taken, the Attorney General may institute criminal proceedings or an election petition against that candidate.

(8) Without prejudice to the provisions of subsection (7), a person who commits an act of prohibited practice shall, irrespective of whether that person has won or lost in the election,

be proceeded against in accordance with the provisions of Chapters VII and VIII of the National Elections Act, the Local Authority (Elections) Act or the Prevention and Combating of Corruption Act.

Prohibition of prohibited practices prior to nomination process

25. The Prohibition of prohibited practices stipulated in this Part shall extend and have the same effect to a person who, by pronouncement or conduct, has shown an intention to participate in the nomination process.

PART VI OFFENCES AND PENALTIES

General offences and penalties

26. Any person who commits an offence under this Act to which no specific penalty is prescribed shall on conviction be liable to -

- (a) in the case of a political party, to a fine not exceeding shillings three million;
- (b) in the case of a candidate, to a fine not exceeding shillings one million;
- (c) in the case of an organization, corporation or institution, to a fine not exceeding shillings five million.

Offences relating to powers of the Registrar

27. Any person who-

- (a) obstructs the Registrar or his representative from exercising powers of the Registrar under this Act;
- (b) refuses to produce books, papers and documents as requested by the Registrar;
- (c) produces false books, documents or false information to the Registrar;
- (d) makes false statement in any returns or financial report; or
- (e) destroys any books, papers, documents or thing relating to the subject matters of investigation, examination or inspection;

commits an offence and shall be liable on conviction to a fine not

exceeding shillings five million.

PART VII

GENERAL PROVISIONS

Duties of
Government
media

Cap.343

28.-(1) The candidate for the Office of the President in an election shall have the right to utilize the Government broadcasting service and television during the election campaign, in accordance with the provisions of the National Elections Act.

(2) The Government media shall include in their publications information related to the electoral process without bias and such publication shall not tamper with information or discriminate against any candidate.

Peace and
security

29.-(1) The Government shall, for the purpose of maintaining peace and security during nomination process, election campaign and election, deploy the police force provide such security-

- (a) to any place where nomination process or election campaign is conducted by a political party;
- (b) in respect of Presidential candidates; and
- (c) to any other place, area or to persons as it may determine.

(2) The expenses for deploying the police force personnel for the purpose of this section shall be borne out by the Government.

Protection from
liability

30. No matter or thing done by any officer, officer or employee of the Office of the Registrar, the National Electoral Commission or any other official of the Government shall, if the matter or thing was done in good faith for the purposes of performance of any functions or exercise of any powers provided for under the provisions of this Act, shall make such officer or employee personally liable for the matter or thing done.

Regulations

31.-(1) The Minister may, on the recommendation of the Registrar make regulations for or with respect to any matter which by this Act is required or permitted to be prescribed or which is necessary for giving effect to this Act.

(2) Before making recommendation to the Minister about any regulations which are to be made, the Registrar shall submit the draft regulations to every fully registered political party for purposes of inviting opinions from the general public and in particular, political parties, in such manner as may be appropriate, at least thirty days before the draft regulations are submitted to the Minister.

PART VIII
CONSEQUENTIAL AMENDMENTS

Construction
Cap. 258

32. The provisions of this Part shall be read as one with the Political Parties Act.

Miscellaneous
amendments
Cap. 258

33. The Political Parties Act is amended-

- (a) in section 13 by inserting the phrase "Subject to the provisions of Part III of the Election Expenses Act, 2009" just before the words "Every party" which appears in subsection (2); and
- (b) by inserting after section 13 the following provisions:

"Protection of informer and witness	13A.-(1) Every person who is or becomes aware of the commission or the intention to commit by another person, whether that person is a voter, a candidate, a leader of a political party or not, to commit an offence of prohibited practice shall be required to give information to the Registrar.
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(2) No information relating to commission of an offence under this Act shall be admitted in evidence in any civil or criminal proceedings and no witness in any civil or criminal proceedings shall be obliged to -

- (a) disclose the name or address of any informer who has given information to the Registrar with respect to an offence under this Act or the name or address of any person who has assisted the Prevention and Combating of Corruption Bureau in any way in relation to such an offence; or
- (b) answer any question if the answer to such question would lead, or would tend to lead, to discovery of the name or address of such informer or person.

(3) Where any book, document or paper which is the subject of evidence or liable for

inspection in any civil or criminal proceedings contain an entry in which that informer or person is named or described, or which might lead to the discovery of that informer or person by the public, the court shall cause all such passages to be concealed from view by the public or to be obligated so far as may be necessary to protect the informer or such other person from discovery by the public.

(4) Any informer who suffers reprisal, retaliation or victimization, injury or any harm from a person accused of corruption, perpetrators of offences of corruption, prohibited practices and their accessories shall be afforded reasonable protection, compensation and assistance by the Government upon ascertainment by the Registrar the magnitude of victimization, injury or harm.”

Passed in the National Assembly on the 11th February, 2010.



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Clerk of the National Assembly

MAENDELEO DIALOGUE

Democracy in Tanzania

ELECTORAL REFORM OR ASSAULT ON DEMOCRACY?

Since 1995 election stakeholders especially political parties have always expressed their dissatisfaction with elections results on ground that the Election Management Bodies (EMBs) namely NEC and ZEC are not independent, impartial and incompetence.

Without formulating a new constitution in the country, Tanzania will never improve democracy. A new social contract between the ruled and the rulers was called for explaining that the country should not continue to put patches in the old constitution for that will never bring democratic reforms.

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