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## Who votes in Tanzania? An overview of the law and practices relating to parliamentary elections

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**Summary:** *The right to vote is among the pillars of a representative democracy. The right promotes democracy by ensuring that citizens participate indirectly in the affairs of the government of their country by freely electing the leaders they want. This article examines the theoretical and practical aspects of the right to vote in Tanzania. In particular, the article provides a critical examination of the laws and practices relating to parliamentary elections in Tanzania and their implications for the right to vote. The article argues that the right to vote is not effectively guaranteed in Tanzania, in law or in practice. In particular, the article demonstrates that the electoral laws as well as practices in Tanzania deny the citizens the right to freely elect their representatives/members of parliament. The electoral law and related practices give a mandate to few people who make decisions for the majority. The electoral laws and practices make citizens the rubberstamp of decisions taken by the few instead of their being the key decision makers.*

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**Key words:** *political rights; right to vote; elections*

## 1 Introduction

Tanzania claims to be a democratic state with a multiparty system since 1992.<sup>1</sup> The first general election under the multiparty system was conducted in 1995.<sup>2</sup> Among the key features of any democratic state is the fact that governmental powers are exercised by all adult citizens, either directly (in the case of a direct democracy) or through freely-elected representatives (in the case of an indirect democracy, as is the case in Tanzania).<sup>3</sup> A democratic state is further characterised by regular free and fair elections open to all citizens of voting age and the participation of citizens in the political system of the country.<sup>4</sup>

Members of parliament normally are elected during general elections. The general election occurs every five years. The general election also involves election of the President and counsellors. This article focuses on examining the laws that regulate parliamentary elections and related practices. The aim is to establish the extent to which the laws and practices promote the right of citizens to freely choose/decide who should be their representative or member of parliament.

However, before moving to the main discussion, it is important at this juncture to point out that the Constitution of the United Republic of Tanzania of 1977 (Constitution of Tanzania)<sup>5</sup> creates two governments, namely, the Government of the United Republic (Union Government) and the Revolutionary Government of Zanzibar and two organs with legislative and supervisory powers, namely, the Parliament of the United Republic and the House of Representatives (for Zanzibar).<sup>6</sup> Matters that are union-related are dealt with by the Government of the United Republic. These union matters are provided for in the First Schedule to the Constitution of Tanzania.<sup>7</sup>

1 The multiparty system was introduced in Tanzania through the Political Parties Act of 1992. See K Tambila 'The transition to multiparty democracy in Tanzania: Some history and missed opportunities' (1995) 28 *Law and Politics in Africa, Asia and Latin America* 482.

2 M Nyirabu 'The multiparty reform process in Tanzania: The dominance of the ruling party' (2002) 7 *African Journal of Political Science* 108.

3 G Clack (ed) *Democracy in brief* 3 [https://kr.usembassy.gov/wp-content/uploads/sites/75/2017/04/Democracy-in-Brief\\_kor-1.pdf](https://kr.usembassy.gov/wp-content/uploads/sites/75/2017/04/Democracy-in-Brief_kor-1.pdf) (accessed 20 April 2021).

4 As above.

5 As amended from time to time.

6 Art 4(2) Constitution of Tanzania.

7 The union between mainland Tanzania (the then Republic of Tanganyika) and the People's Republic of Zanzibar took place on 26 April 1964. During this time there were 11 union matters, namely, the Constitution of Tanzania and Government of the United Republic; external affairs; defence; police; emergency powers;

On the other hand, matters that are not union-related and concern Zanzibar are dealt with by the Revolutionary Government and non-union matters that concern mainland Tanzania are dealt with by the Union Government. A parliamentary election is not a union-related matter. Therefore, there are different electoral laws and different organs to supervise parliamentary elections for each part of the union. Whereas in mainland Tanzania parliamentary elections are supervised by the National Electoral Commission (NEC), in Zanzibar the Zanzibar Electoral Commission (ZEC) is responsible for supervising parliamentary elections (elections for members of the House of Representatives). This study focuses on the laws of mainland Tanzania and to avoid confusion, the name 'Tanzania' as used in this study, refers to mainland Tanzania.

The study is divided into several parts that entail a detailed discussion on the right to vote in Tanzania. These parts include the introduction followed by a discussion on 'free and fair election' in the context of the Constitution of Tanzania. The article subsequently examines the institutional framework for supervising elections in Tanzania before examining the laws of Tanzania regarding independent candidates. The other parts provide discussions on voter registration; the qualifications of parliamentary candidates; procedures for nominating parliamentary candidates; parliamentary campaigns and general observations. The last part is the conclusion.

## **2 Free and fair elections: An overview of the Constitution of Tanzania**

In a representative democracy citizens participate in the affairs of their country through representatives freely chosen during elections. However, for citizens to be considered as having chosen their representatives freely, the election should be free and fair. In the context of parliamentary elections, a free and fair election is a process that results in representatives or members of parliament being freely elected by the citizens of their own will.

According to the 1994 Inter-Parliamentary Union Declaration on Criteria for Free and Fair Elections<sup>8</sup> government authority derives

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citizenship; immigration; external trade and borrowing; the public service of the united republic; taxes such as income tax, corporation tax, customs and excise and harbours; civil aviation; and posts and telegraphs. Currently the number of union matters has increased to 22.

8 The Inter-Parliamentary Union is a global organisation of national parliaments dedicated to promoting peace through parliamentary diplomacy and dialogue. The Declaration on Criteria for Free and Fair Elections was adopted on 26 March 1994 by the Inter-Parliamentary Council at its 154th session held in Paris.

only 'from the will of the people as expressed in genuine, free and fair elections held at regular intervals on the basis of universal, equal and secret suffrage'.<sup>9</sup> A free and fair election requires every adult citizen to be granted an equal right and opportunity to participate in the election by voting and/or becoming a candidate in the election. States thus have an obligation to take legislative measures that guarantee that free and fair elections are conducted regularly.<sup>10</sup>

Furthermore, an election is said to be free and fair if all qualified citizens are registered as voters and every voter can decide whether or not to vote and can freely vote for the candidate or party of their choice.<sup>11</sup> A free and fair election also requires all registered political parties to be availed of an equal right to contest the election and persuade voters to vote for them.<sup>12</sup> According to the survey of various international conventions, a free and fair election has the following key elements: genuine elections; universal suffrage; equal suffrage; periodic elections; secret ballots; freedom of assembly; free expression<sup>13</sup> and freedom from discrimination.

As far as the laws of Tanzania are concerned, articles 5 and 21 of the Constitution of Tanzania are relevant to free and fair elections. Article 5 is specific on the right to vote. The right is guaranteed to every citizen who is above 18 years of age and who is mentally fit. The Constitution further prohibits the imposition of any other ground that disqualifies the citizen from exercising the right to vote, save for the grounds provided for in the Constitution.<sup>14</sup> These grounds are discussed in detail in subsequent parts of the article.

Article 21 relates to public participation in public affairs. The article gives the right to every citizen 'to take part in matters pertaining to the governance of the country, either directly or through representatives freely elected by the people'.<sup>15</sup> Article 21 suggests that a representative of the people in a representative democracy is elected freely by the people. There can be no free will of the people to elect representatives of their choice if there is no free and fair election. Therefore, a free and fair election guarantees the participation of all

9 Inter-Parliamentary Council 'Declaration on Criteria for Free and Fair Elections', <http://archive.ipu.org/cnl-e/154-free.htm> (accessed 8 November 2021).

10 GS Goodwin-Gill *Free and fair elections* (2006) 8-11.

11 Civics Academy 'What are free and fair elections' *Civics Academy* (blog), <https://www.civicsacademy.co.za/video/free-and-fair-elections/> (accessed 20 April 2021).

12 As above.

13 A Kasumov 'International free and fair election instruments developed by UN and OSCE' (2012) 15 *Khazar Journal of Humanities and Social Science* 47, <https://doi.org/10.5782/2223-2621.2012.15.42> (accessed 8 November 2021).

14 Arts 5(1) & (2) Constitution of Tanzania.

15 Art 21(1) Constitution of Tanzania.

citizens in electing members of parliament. Furthermore, a free and fair election gives legitimacy to the chosen members of parliament. In other words, it is the free and fair election that guarantees citizens the right to vote for representatives of their own choice.

### 3 An institutional framework for the supervision of parliamentary elections

The institution responsible for supervising all parliamentary elections in Tanzania is the National Electoral Commission (NEC). The NEC is established under article 74(1) of the Constitution of Tanzania. It is responsible for the registration of voters and supervising the conduct of presidential, parliamentary and councillor elections. The NEC is composed of a chairperson, a vice-chairperson, one member from the Tanganyika Law Society (TLS) (the Bar association of Tanzania mainland) and four other members with adequate experience in elections.<sup>16</sup> The director of elections is the secretary to the Commission and the chief executive.<sup>17</sup> All the above members are appointees of the President.<sup>18</sup> The President also is vested with powers to remove any member of the NEC from office for reasons of illness, a failure to perform his duties, misconduct or for any other reason.<sup>19</sup> Other staff of the NEC are the returning officers. The law designates all city, municipal, town directors and district executive directors to be returning officers.<sup>20</sup> These also are appointees of the President.

The structure and composition of the NEC raises an important question as to its independence and impartiality when performing its functions. Since its establishment in 1993, the debate over the question of the independence of the NEC remains unresolved. Makulilo argues that the NEC 'does not pass the basic tests of an independent institution and hence its credibility is questionable'.<sup>21</sup> The NEC is accused of being attached to the government and the ruling party and further that it performs its functions in favour of the ruling party.<sup>22</sup> The President, who appoints members of the NEC, is affiliated to one of the political parties. In fact, the practice has been that the President, who is the head of state, is also the chairperson of

16 Sec 4(1) National Elections Act 2015.

17 Art 74(7) Constitution of Tanzania.

18 Art 74(1) Constitution of Tanzania; sec 4(4) National Elections Act.

19 Art 74(5) Constitution of Tanzania.

20 Sec 7(2) National Elections Act.

21 AB Makulilo 'Independent electoral commission in Tanzania: A false debate?' (2009) 45 *Representation* 435, <https://doi.org/10.1080/00344890903257409> (accessed 11 November 2021).

22 As above.

the ruling party – Chama cha Mapinduzi (CCM).<sup>23</sup> Further experience shows that most city, municipal, town and district directors who act as returning officers during parliamentary elections are appointed from among members of the ruling party. In fact, some of these are parliamentary contestants that were not elected or that were not nominated by the ruling party.<sup>24</sup>

In the case of *Attorney General & Others v Bob Chacha Wangwe* the impartiality and independence of the returning officers were questioned before a court of law. The petitioner, Bob Chacha Wange, sought to challenge the constitutionality of the provisions of the Elections Act that designated city, municipal, town and district directors to act as returning officers during elections. Central to the argument of the petitioner was that section 7(1) of the National Elections Act, among other sections, is contrary to article 21 of the Constitution of Tanzania which guarantees, among others, free and fair elections. The petitioner was of the view that it is practically impossible for the returning officers, who are the appointees of the President, to act independently and with impartiality during election supervisions. The High Court of Tanzania accepted the arguments of the petitioner and continued to hold that section 7(1) of the National Elections Act was unconstitutional and thus did not uphold the principles of free and fair elections. The above decision of the High Court was overturned by the Court of Appeal of Tanzania (the final appellate court in Tanzania) which argued that the law put in place safeguards that ensure the independence and impartiality of the returning officers.

Nevertheless, the decision of the Court of Appeal has not settled the debate on the question about the independence of the NEC. Acts such as the unfair removal of opposition candidates from the nomination list<sup>25</sup> and the unequal treatment of political parties during the election period<sup>26</sup> have caused unopposed candidates and others to continue to raise the alarm about the NEC's independence. The fact that a country holds regular elections is not sufficient to show that the country is democratic if the institution responsible

23 CCM has been the ruling party in Tanzania since it was found on 5 February 1977.

24 See the case of *Attorney General & Others v Bob Chacha Wangwe* Civil Appeal 138 of 2019.

25 Amnesty International 'Lawfare: Repression by law ahead of Tanzania's general elections' (2020) 10, <https://www.amnesty.org/en/wp-content/uploads/2021/05/AFRS630512020ENGLISH.pdf> (accessed 11 November 2020).

26 Tanzania Elections Watch 'Final observation report on the general elections held in Tanzania on October 28, 2020: Not free, not fair' (2021) 16, <https://tanzaniaelectionswatch.org/download/tanzania-elections-watch-final-report/#> (accessed 11 November 2021).

for supervising elections is not 'politically neutral, professional and committed to democratic values'.<sup>27</sup> To sum up the discussion, for an election supervisory body to be regarded as independent it should have the following attributes: fiscally autonomous; a durable tenure of office for commissioners that is protected by the Constitution; an autonomous structure that is free from the government of the day or any political party; impartiality; an inclusive appointment procedure for the members of the body after consultation with various stakeholders; professional competence of its staff; transparency in decision-making processes and the capacity to make and enforce decisions by the body.<sup>28</sup>

#### 4 Independent candidates

The term 'independent candidate' denotes a parliamentary candidate who is not affiliated to any registered political party.<sup>29</sup> It refers to a parliamentary candidate whose nomination is not subject to appointment or endorsement by a political party.<sup>30</sup> In this study the phrase 'independent candidate' is used to refer to a parliamentary candidate who is not sponsored by any registered political party.

An independent candidate is not only a common phenomenon in democratic elections but also is a recurring expression in the field of human rights. It is well settled that a country that observes democracy as well as human rights will not prohibit its citizens from contesting an election merely on the ground that they are not members of or are not affiliated to a political party. Article 25 of the International Covenant on Civil and Political Rights (ICCPR), to which Tanzania is a party, having ratified it in 1976, protects the right and opportunity of citizens to vote and to be elected. ICCPR further requires citizens to exercise the right to vote 'without any of the distinctions mentioned in article 2 and without unreasonable restrictions'. Requiring a parliamentary contestant to affiliate to a political party is said to be in violation of free and fair elections since it imposes an unreasonable or discriminatory disqualifying factor. As such, state parties to ICCPR are required to discourage

27 N Cheeseman & J Elklit, 'Understanding and assessing electoral commission independence: A new framework' (2020) 6, [https://www.wfd.org/wp-content/uploads/2021/03/WFD\\_A-new-framework-for-understanding-and-assessing-electoral-commission-independence.pdf](https://www.wfd.org/wp-content/uploads/2021/03/WFD_A-new-framework-for-understanding-and-assessing-electoral-commission-independence.pdf) (accessed 11 November 2021).

28 Makulilo (n 21) 437.

29 D Brancati 'Winning alone: The electoral fate of independent candidates worldwide' (2008) 70 *The Journal of Politics* 650.

30 P Ehin et al 'Independent candidates in national and European elections' (2013) 11, [https://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/493008/IPOL-AFCO\\_ET\(2013\)493008\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/493008/IPOL-AFCO_ET(2013)493008_EN.pdf) (accessed 9 November 2021).

these discriminatory practices both in their laws and practice. In its General Comment 25 the United Nations Human Rights Committee emphasised that ‘the right of persons to stand for election should not be limited unreasonably by requiring candidates to be members of parties or of specific parties’.<sup>31</sup> In relation to the right of citizens to vote for a representative of their own choice, the prohibition of an independent candidate denies citizens an opportunity to vote for the person they wish to elect, especially when that person is refused an opportunity by his party to contest a parliamentary election.

The Constitution of Tanzania makes it a mandatory requirement for parliamentary candidates to be a member of a registered political party. The NEC cannot nominate a person to be a parliamentary candidate if that person is not sponsored by a political party.<sup>32</sup> In 2005 the provision of the Constitution prohibiting private candidates was successfully challenged in the High Court of Tanzania in the case of *Reverend Christopher Mtikila v Attorney General*.<sup>33</sup> The High Court nullified this provision of the Constitution on the ground that it was unconstitutional. Nevertheless, this decision of the High Court was overruled by the Court of Appeal of Tanzania in 2009.<sup>34</sup> Later, in 2011, Reverend Mtikila and two non-governmental organisations brought an application to the African Court on Human and Peoples’ Rights (African Court) to challenge the prohibition of independent candidates.<sup>35</sup> The Court held that the prohibition of independent candidates infringes the African Charter, article 13(1), in particular, which protects the right of citizens to participate in the government of their country. The African Court also found that the prohibition prevented Tanzanians from participating in the government of their country through freely-chosen representatives. The Court further found that the prohibition against independent candidates violated the right to freedom of association. To remedy the violations found, the African Court ordered Tanzania to implement constitutional, legislative and other necessary measures within a reasonable time

31 Office of the High Commissioner for Human Rights ‘General Comment 25: The right to participate in public affairs, voting rights and the right of equal access to public service’ para 17, <https://www.equalrightstrust.org/ertdocumentbank/general%20comment%2025.pdf> (accessed 21 April 2021). Office of the High Commissioner for Human Rights <https://github.com/citation-style-language/schema/raw/master/csl-citation.json> (accessed 21 April 2021).

32 Art 21 of the Constitution subjects the enjoyment of the right to, among others, art 67 of the Constitution. Art 67 requires a person who desires to be elected member of parliament to be a member of a registered political party.

33 Misc Civil Cause 10 of 2005.

34 See *Honourable Attorney General v Reverend Christopher Mtikila* Civil Appeal 45 of 2009 Court of Appeal of Tanzania, Dar es Salaam.

35 See *In the Consolidated Matters of the Tanganyika Law Society and the Legal and Human Rights Centre v the United Republic of Tanzania* Application 9 of 2011; and *Christopher R Mtikila v the United Republic of Tanzania* Application 11 of 2011.



and to report the measures taken to the Court. However, to date the Tanzanian constitutional and legislative framework remains the same. No effort has been put in place to allow independent candidates.

After having been elected, a member of parliament may cease to be a member of a political party to which he belonged when he was elected. Should this happen, article 71(1)(c) of the Constitution of Tanzania is clear that such a member ceases to be the member of parliament and is required to vacate the National Assembly. From past experience a member of parliament normally loses his membership of a political party mainly by being expelled or resigning his membership. Where the person ceases to be a member of parliament, a by-election must be conducted to fill such vacancy.<sup>36</sup> In practice, the political party sponsoring the respective member of parliament whose membership has been stripped or has ceased will write officially to the Speaker of the National Assembly to inform him about that fact. Having received the information, the Speaker will notify the NEC to make a formal declaration that there is a vacancy in a seat of the member of parliament.<sup>37</sup> Upon such a declaration the NEC then will conduct a by-election to fill the vacancy (in the case of an elected member of parliament). Recent experience suggests that the NEC will not conduct a by-election if the Speaker of the National Assembly acts irresponsibly by not making a formal declaration as required by law. Thus, there can be members of parliament who do not belong to any political party. For instance, the 19 expelled CDM members who are in parliament belong to no party. They are illegal members of parliament or rather, they are in parliament illegally following the Speaker's irresponsible conduct.<sup>38</sup>

By requiring members of parliament to be members of a political party, the Constitution of Tanzania limits the right of citizens to elect the representatives they want. The Constitution further makes

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36 See Art 76(2) Constitution of Tanzania.

37 Sec 37(3) National Elections Act.

38 On May 2020 *Chama cha Demokrasia na Maendeleo* (CHADEMA), the main opposition party in Tanzania, expelled its four members of parliament from the party. The party wrote to the Speaker of the National Assembly informing him of the expulsion. However, the Speaker objected to the expulsion and decided to continue to recognise the expelled members of parliament. The same event occurred in November 2020, when 19 members of parliament from CHADEMA were expelled from the party. The same Speaker who objected to the former expulsion also objected to this latter expulsion. In all incidents the expelled members of the parliament continued to save in their posts contrary to the requirement of the Constitution of Tanzania. See B Kiango & E Msuya 'Chadema expelled MPs saga in new turn' *The Citizen* 20 January 2021, <https://www.thecitizen.co.tz/tanzania/news/-chadema-expelled-mps-saga-in-new-turn-3262894>; Daily News Reporter 'Ndugai slums unwarranted expulsion of MPs' *Daily News* 4 November 2020, <https://dailynews.co.tz/news/2020-05-125eba36b5f2e12.aspx> (accessed 8 November 2021).

members of parliament accountable to their political party rather than to the voters. The prohibition subjects the fate of the member of the parliament in the National Assembly to be in the hands of political parties. It is for this reason that members of parliament in Tanzania hesitate to criticise their party's leaders for fear of being expelled and consequently losing their seat in parliament.<sup>39</sup>

## 5 Voter registration

Voter registration is among the important safeguards for ensuring 'equal and universal participation of eligible voters in a given election'.<sup>40</sup> Voter registration allows the NEC to know the number of registered voters. Knowing the number of registered voters helps in making various important decisions such as the number and location of polling stations as well as polling facilities and materials required.

Voter registration is required to be transparent, accurate and inclusive.<sup>41</sup> Voters should have an opportunity to inspect the voter register, to correct their details prior to the election date and to object to the inclusion of any unqualified voter in the voter register.

In Tanzania a citizen who is allowed to vote is one whose name appears in the Permanent National Voters' Register. Before preparing the final copy of the Permanent National Voters' Register, the NEC will issue a Provisional Voters' Register which gives citizens the opportunity to amend their details, for the inclusion of new voters and objections to the inclusion of ineligible voters.<sup>42</sup> Electoral laws identify persons who lack qualification to be registered in the Permanent National Voters' Register and consequently are unqualified to vote in that general election. Apart from non-citizens, persons of unsound mind and persons below the age of 18 years on the election date, persons serving imprisonment sentences exceeding six months, detained

39 In all the above incidents of expulsion of members of parliament from CHADEMA, the main reason was the failure on the part of the expelled members of parliament to comply with orders issued by the party. In the former incident where four members of parliament from CDM were expelled from the party, it was due to their attendance of the sessions of the National Assembly, contrary to the order issued by the chairperson of the party requiring all members of parliament from CDM to boycott the sessions of the National Assembly as a way of expressing their dissatisfaction with the way in which the government was handling the COVID-19 pandemic. In the latter incident the reason was that the expelled members agreed to take an appointment for members of parliament through special seats contrary to the order issued by the party not to recognise the 2020 general election results.

40 Conference on Security and Cooperation in Europe (Organisation) (ed) *Handbook for the observation of voter registration* (2012) 6.

41 As above.

42 Sec 11A National Elections Act.

criminal lunatic and persons detained at the pleasure of the President are also excluded from being registered in the Permanent National Voters' Register.<sup>43</sup>

Unlike Tanzania, many African countries, such as South Africa, Ghana and Kenya, are recognising the right of prisoners to vote.<sup>44</sup> This movement is in line with various international legal instruments including ICCPR,<sup>45</sup> and regional human rights instruments, mainly the African Charter.<sup>46</sup> Taking into consideration the fact that Tanzania is a party to the above legal instruments, it needs to honour its commitments by allowing prisoners to vote during general elections.

## 6 Constitutional qualifications

A person aspiring to contest the parliamentary election is required to meet the conditions prescribed in article 67 of the Constitution of Tanzania. The parliamentary candidate must be a citizen of the United Republic of Tanzania, who is not younger than 21 years and who is a member of and is a candidate proposed by a registered political party.<sup>47</sup> As pointed out earlier in the discussion, the laws do not allow a person to contest a parliamentary post as an independent candidate. The reforms that were to be introduced by the Proposed Constitution of the United Republic of Tanzania of 2014 allowed an independent candidate to contest parliamentary elections.<sup>48</sup> However, the intended constitutional reforms were abandoned by the fifth-phase government.<sup>49</sup> Moreover, the parliamentary candidate is required to have the ability to read and write in English or Swahili.<sup>50</sup>

A person is disqualified to contest the position of member of parliament if such person is of unsound mind and if the person was previously convicted and sentenced to death or to imprisonment for an offence involving dishonesty or violating laws concerning the ethical conduct of public leaders.<sup>51</sup> Other qualifications for one to contest the position of member of parliament are contained in the

43 Sec 11 National Elections Act.

44 Africa Criminal Justice Reform 'The right of prisoners to vote in Africa: An update' Fact Sheet (2020) 1, <https://acjr.org.za/resource-centre/fact-sheet-17-prisoners-vote.pdf> (accessed 8 November 2021).

45 As above.

46 See art 13(1) of the African Charter on Human and Peoples' Rights.

47 Art 67(1) Constitution of Tanzania.

48 Art 140(1)(c) Proposed Constitution of the United Republic of Tanzania of 2014.

49 The fifth phase government as used in this study refers to the government that was formed by the fifth President of Tanzania; the late Dr John Josphph Pombe Magufuli.

50 Art 67(1)(a) Constitution of Tanzania.

51 Art 67(2) Constitution of Tanzania.

laws providing for the nomination of parliamentary candidates, as discussed earlier.

Save for the requirement that a person contesting parliamentary election should be a member of a registered political party, other qualifications cannot be considered as unreasonable or discriminatory qualifications. No level of education is required. Practically, the National Assembly of Tanzania has been composed of persons with high academic qualifications, such as professors and holders of doctoral degrees, persons with middling academic qualifications and others with very low academic qualifications, for instance, standard seven-leavers.

## **7 Procedures for nominating parliamentary candidates**

The procedures for nominating parliamentary candidates involve three stages, namely, nomination by political parties, nomination by the NEC and the objection stage.

### **7.1 Nomination by political parties**

The procedures for nominating parliamentary candidates start at the party level. A person aspiring to contest parliamentary elections needs be proposed or nominated by his political party. Each political party will propose a person it wishes to be nominated by the NEC as its parliamentary candidate for a particular constituency. There are no uniform regulations or procedures for nominating parliamentary candidates at party level. Each political party has its own regulations providing the procedures for nominating parliamentary candidates. Some political parties use fully participatory methods for nominating parliamentary candidates, whereas others use partially participatory methods. Some parties opt for a top-down method where the nomination of a parliamentary candidate is made by the party leaders.<sup>52</sup>

In the 2010 general election Chama Cha Mapinduzi (CCM) was one of the parties that exercised a fully participatory method during party nominations. In this type of nomination members of the party are given the opportunity to cast preferential votes for party

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52 TEMCO 'The 2010 Tanzania general elections: Report of the Tanzania Election Monitoring Committee (TEMCO)' (2011) 27, [http://www.temco.udsm.ac.tz/images/stories/TEMCO\\_Reports/TEMCO\\_REPORT\\_2010\\_GENERAL\\_ELECTION\\_ENGLISH\\_VERSION.pdf](http://www.temco.udsm.ac.tz/images/stories/TEMCO_Reports/TEMCO_REPORT_2010_GENERAL_ELECTION_ENGLISH_VERSION.pdf) (accessed 10 November 2020).

members who are seeking the endorsement of the party to stand for parliamentary election.<sup>53</sup> After the preferential vote, district and regional party committees decide who among the applicants should represent the party in the parliamentary election. The final party decision or nomination is made by the party's National Executive Committee.<sup>54</sup> The party's National Executive Committee has overall powers as far as the nomination of parliamentary candidates is concerned. The Committee may nominate a candidate other than the candidate proposed by party members during preferential voting or a candidate proposed by the district or regional party committees. The decision of the party's National Executive Committee is final.<sup>55</sup> However, in the 2020 election CCM abandoned the fully participatory method; instead, a partial participatory approach was adopted.

In a partially participatory method a limited number of members cast preferential votes and the higher party authority makes the final nomination.<sup>56</sup> CDM is among the parties that often nominate their parliamentary candidates by way of the partially participatory method. In this method the members of the constituency or district meeting cast preferential votes and forward their opinion to the party's National Executive Committee which is responsible for making the final nomination. The members of the constituency or district meeting include the party's ward chairpersons, secretaries, treasurers and others.<sup>57</sup> To put it simply, not every member of the party is allowed to cast a preferential vote in the partially participatory method.

A brief observation on the procedures for nominating parliamentary candidates at party level is that the political parties are free to choose persons they wish to be their parliamentary candidates. The laws do not prescribe procedures that the parties should follow when nominating their parliamentary candidates. A further observation is that although some political parties have participatory procedures of nominating parliamentary candidates these do not guarantee that

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53 As above.

54 CCM *Constitution of Chama Cha Mapinduzi 1977* (Revised 2017, CCM 2017) art 102(10)(g), [https://ccm.or.tz/website/nyaraka/nyaraka\\_file/2020-12-11%2013:23:48\\_Katiba%20ya%20CCM%202017%20\(dec%202018\).pdf](https://ccm.or.tz/website/nyaraka/nyaraka_file/2020-12-11%2013:23:48_Katiba%20ya%20CCM%202017%20(dec%202018).pdf) (accessed 9 November 2021).

55 Experience also shows that in some cases some party members who were aggrieved by decisions of the party's National Executive Committee to nominate a person other than the one nominated by members of the party resigned their membership and joined other political parties. Some of these members would contest the same parliamentary elections through their new political parties.

56 TEMCO (n 52) 27.

57 CHADEMA *Constitution of Chama Cha Demokrasia Na Maendeleo* (2016) art 7.4.5, <http://chadema.or.tz/wp-content/uploads/2018/03/KATIBA-YA-CHADEMA-YA-MWAKA-2006-TOLEO-LA-MWAKA-2016.pdf> (accessed 10 November 2021).

the will of the majority will prevail. The reasons are that final decisions are made by a few persons, usually party leaders who have overriding powers over decisions of party members. Moreover, during party nomination candidates are accused of influencing the nomination procedures through corruption and other manipulations.<sup>58</sup>

## 7.2 Nomination by the National Electoral Commission

Nomination by NEC involves the following steps: First, the NEC will set a nomination date<sup>59</sup> and specify the date for issuing nomination forms to the candidates nominated by their respective political parties.<sup>60</sup> The NEC will set a single day for issuing nomination forms, usually from 08:00 to 22:00. If the candidate nominated by its political party fails to obtain nomination forms in that period, he or she forfeits the opportunity to be nominated by the NEC and consequently loses their right to stand for parliamentary election. It means that the political party whose candidate fails to obtain nomination forms will not have a contestant in that constituency.

Before the candidate is issued with nomination forms, he or she will have to provide the returning officers with an introduction letter to prove that the candidate is sponsored by a political party.<sup>61</sup> The candidate then will complete and submit, during the nomination day, four copies of the nomination forms.<sup>62</sup> The nomination forms require the personal particulars of the proposed candidate; a declaration that the proposed candidate is willing and qualified to contest the parliamentary election; certification by the regional/district secretary of the political party sponsoring the candidate; a declaration by the nominators/supporters nominating the candidate;<sup>63</sup> and a statutory declaration that the candidate meets the conditions set under article 67 of the Constitution.<sup>64</sup> Further, the candidate is required to make

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58 TEMCO (n 52) 20.

59 Sec 37(1) Tanzania Elections Act.

60 Reg 24(1) National Elections (Presidential and Parliamentary Election) Regulations of 2020.

61 Regs 24(2) & 7(3) National Elections (Presidential and Parliamentary Election) Regulations.

62 Form 8B; see the first Schedule to the National Elections (Presidential and Parliamentary Election) Regulations.

63 The National Elections Act requires a parliamentary candidate to be nominated/ supported by no fewer than 25 nominators who are registered voters in the district of the constituency where the candidate is contesting is located. See sec 38(1).

64 Reg 31(2) National Elections (Presidential and Parliamentary Election) Regulations, read together with First Schedule to the Regulations Form 10.

a declaration that he or she will abide by the electoral code of conduct.<sup>65</sup>

The date and time for submitting completed nomination forms is set by the NEC.<sup>66</sup> If the candidate proposed by his political party fails to submit the completed nomination forms plus other attachments during the prescribed time for submitting nomination forms, they forfeit the right to contest that parliamentary election. The completed parliamentary forms are submitted to the returning officers.<sup>67</sup> Regulation 27 of the National Elections (Presidential and Parliamentary Election) Regulations requires the returning officers or assistant returning officers, 'upon being satisfied that a proposed candidate qualifies to be nominated, certify the nomination in Form No 8B'. However, the decision of returning officers to nominate parliamentary candidates is not final. The nomination can be challenged, as discussed in the next part. If evidence is brought forward to prove the contrary, the nomination will be revoked.

The electoral law addresses the situation where there is only one nominated candidate (unopposed candidate) in a constituency. In particular, the parliamentary election regulations provide that where a single candidate is nominated the nominated candidate will be considered elected and waiting to assume office in the parliament upon taking the oath.<sup>68</sup> The law requires the NEC to publish in the *Government Gazette* a notice declaring unopposed candidates as being elected.<sup>69</sup> After such a declaration, citizens do not have an opportunity to cast a vote.

In practice, several circumstances may have an influence on there being an unopposed candidate. These include there being only one candidate nominated to stand for parliamentary election in that constituency; other nominated candidates fail to obtain nomination forms or fail to return completed nomination forms in the prescribed time; the returning officer nominates one candidate on the ground

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65 Regs 26(3) & (4) National Elections (Presidential and Parliamentary Election) Regulations.

66 Reg 25(1) National Elections (Presidential and Parliamentary Election) Regulations.

67 The returning officers are vested with powers to oversee parliamentary elections in constituencies. Among other functions, returning officers are responsible to issue and receive nomination forms, to nominate parliamentary candidates in their respective constituencies and to hear and determine objections to the nomination of parliamentary candidates. See sec 7 of the National Elections Act; sec 7 and reg 25(1) National Elections (Presidential and Parliamentary Election) Regulations.

68 Sec 44 National Elections Act and Reg 28 National Elections (Presidential and Parliamentary Election) Regulations.

69 Sec 44 National Elections Act.

that other candidates do not meet the conditions prescribed by the law; and a candidate successfully objects to the nomination of the other candidates that were nominated by the returning officer to contest the same constituency.<sup>70</sup>

The candidate may be elected unopposed because the members of the constituency they represent wish him/her to continue to represent them in parliament or because there is no other person to challenge their candidature, nevertheless, the laws and practices relating to unopposed candidates are questionable. The concept of unopposed candidates has been associated with the deterioration of democracy and an infringement of the right of the citizens to vote and to be elected. Usually, in many constituencies where candidates are elected unopposed, there have been claims by various groups that other candidates have been unfairly removed from the list of nominated candidates.<sup>71</sup>

The reactions of human rights and good governance activists to the laws and practices relating to unopposed candidates often are negative. In their 2010 election report the Tanzania Election Monitoring Committee (TEMCO) noted that being elected unopposed is a shortcut to victory and 'clever and unscrupulous politicians' use weaknesses in election laws to maximise the chance of being declared a member of parliament without going to the ballot box.<sup>72</sup> Circumstances in the manner in which unopposed candidates are passed also are doubtful. Returning officers have been accused of assisting unethical contestants to pass unopposed. For instance, in one constituency, in the 2010 general election a parliamentary candidate who had not been nominated was refused appeal forms by the returning officer.<sup>73</sup> Since appeal is a right of a candidate, it may be concluded that the returning officer purposefully refused the appellant appeal forms in order to assist the candidate from another political party to be elected unopposed. In another incident

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70 A detailed discussion of the laws and practices relating to the objections against parliamentary candidature is provided in the preceding part.

71 TEMCO (n 35) 36.

72 As above.

73 As above. In the above incident a candidate from CCM for Nyamagana constituency in Mwanza successfully objected to the nomination of the candidate from CHADEMA. The returning officer thus declared CCM candidates to have been elected unopposed. The CDM candidate wished to appeal to the NEC but the returning officer refused to issue him with an appeal form (Form 9B). The CDM candidate must collect the form from NEC headquarters, at Dar es Salaam. During the election the CDM candidate was elected as a member of parliament.



a candidate disappeared on the day of the return of nomination forms. Efforts to locate the candidate were in vain.<sup>74</sup>

Since 2005 the number of parliamentary candidates elected unopposed has increased significantly. The number of candidates who were elected unopposed was eight in 2005, in 2010 this number doubled.<sup>75</sup> In 2015 the number of candidates declined to one<sup>76</sup> but in 2020 the number increased to 28 candidates.<sup>77</sup> Moreover, the trend has been that since 2005, only parliamentary candidates from one political party, CCM, the ruling party, are elected unopposed in general elections. This fact creates the sense that the laws and practices relating to unopposed candidates provide an opportunity for the abuse of the electoral laws by corrupt returning officers and/or government officials.

### 7.3 Objecting to the nomination of a parliamentary candidate and hearing procedures

Parliamentary electoral laws allow objections against the candidature of any nominated candidate on several grounds. These grounds include that the particulars of the candidate are not sufficient to identify him; that the nomination forms do not comply with the law and that the candidate has not complied with the requirements of the laws.<sup>78</sup> This last ground focuses on the legal/substantive qualifications of the candidate. In particular, the last ground aims at ensuring that the nominated candidate meets the conditions set by the Constitution of Tanzania and other electoral laws of the country and, generally, the ground is in conformity with the provisions of the Constitution. On the other hand, the first and second grounds do not concern the legal/substantive qualifications of the candidate but are concerned with the way in which the candidate's nomination form is completed. The grounds are more of the nature of procedural requirements than substantive requirements. To be more precise, the grounds focus on minor mistakes that can be corrected, without infringing the provisions of the Constitution, regarding the qualifications for one to stand for parliamentary election.

<sup>74</sup> TEMCO 'Report on the 2015 election in Tanzania' (May 2016) 91, <http://www.temco.udsm.ac.tz/index.php/publications/reports/reports-2016> (accessed 8 November 2021).

<sup>75</sup> TEMCO (n 52) 36.

<sup>76</sup> National Electoral Commission 'Taarifa ya Tume ya Taifa ya Uchaguzi kuhusu uchaguzi wa rais, wabunge na madiwani, 2015' (2016) 47.

<sup>77</sup> Government Notice 917 of 2020.

<sup>78</sup> Sec 40(1) National Elections Act.

The returning officers are vested with powers to certify that the nomination forms conform to the requirements of the law, and further to nominate the candidate having certified that the candidate qualifies to be nominated. This means that the returning officers inspect the forms to ensure that the forms are in conformity with the laws. They are able to identify minor errors, including typographical errors, lack of attachments and others. It is the view of the author that since these minor errors do not diminish the constitutional qualifications to be nominated as parliamentary candidate, instead of allowing for objections at a later period, the returning officers could require the candidate to correct the mistakes before they officially receive the candidate's nomination forms. This practice means, when the nomination forms are received by the returning officer, the forms comply with all procedural requirements. There could be an exception where the candidate refuses to correct the errors after being asked to do so by the returning officer.

Not very person can object to the nomination of the parliamentary candidate. Persons with the right to object to the nomination of the parliamentary candidate are the returning officers, the registrar of political parties, the director of elections and parliamentary candidates.<sup>79</sup> Objections are made in writing and these have to be lodged with the returning officer within 24 hours from the time of nomination.<sup>80</sup> The above requirement does not apply to objections made by returning officers.<sup>81</sup>

The powers to hear and make decisions on the parliamentary nomination objections are vested in the returning officers and the NEC. By vesting the returning officers with the power to decide on objections made, there are two assumptions: first, that the returning officer is vested with powers to revise his or her own decision to nominate a parliamentary candidate and, second, that the nomination by the returning officer is provisional and would be conclusive if no objection is made within time. The latter assumption makes greater sense than the former.

The candidate against whom the objection is made has to be notified of the objection and must be availed of an opportunity

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79 Sec 40(20) National Elections Act and Reg 30(1) National Elections (Presidential and Parliamentary Election) Regulations.

80 Reg 30(2) National Elections (Presidential and Parliamentary Election) Regulations.

81 Sec 40(5) National Elections Act. If an objection is made by the returning officer, the officer is required to inform the respective candidate in writing about the objection before making his finding. After making his finding he has to forward same to the NEC.

to reply to the objection before the returning officer makes his or her decision on the objection.<sup>82</sup> If satisfied with the grounds of the objection, the returning officer can delete the name of the candidate from the list of nominated candidates.<sup>83</sup>

A parliamentary candidate aggrieved by the decision of the returning officer can appeal to the NEC within 24 hours from the decision of the returning officer.<sup>84</sup> During appeals determination, the NEC has powers to remove the candidate from the list of nominated candidates or to reinstate the candidate whose name was removed from the list of nominated candidates by the returning officer.<sup>85</sup> The decision of the NEC can be challenged by way of an election petition after the conclusion of the election.<sup>86</sup>

It is important to note that the NEC does not deal with parliamentary candidates' objection appeals only, but also deals with presidential candidates' objections as well as the counsellorship candidates' objection appeals. Therefore, the process of determining parliamentary objection appeals may take a long time, which may impact the campaign schedules of the reinstated candidates.

## 8 Parliamentary campaigns

Parliamentary campaigns begin immediately after nomination and end the day preceding election day. The laws do not explicitly state how many days are available to the parliamentary candidate to conduct a campaign, however, reading through the provisions providing for the appointment of the election date, the days available for parliamentary campaigns should be at least 60 days and a maximum of 90 days.<sup>87</sup> This does not mean that all parliamentary candidates in a constituency or throughout the country should have an equal number of days for campaigning. This is because the period that is set for hearing and determining objections and appeals runs concurrently with the campaign period. Therefore, those parliamentary candidates who appeal against the removal of their names from the list of nominated candidates will have to wait

82 Sec 40(4) National Elections Act.

83 Reg 30(6) National Elections (Presidential and Parliamentary Election) Regulations.

84 Sec 40(6) National Elections (Presidential and Parliamentary Election) Regulations.

85 Reg 32(4) National Elections (Presidential and Parliamentary Election) Regulations.

86 Reg 32(6) National Elections (Presidential and Parliamentary Election) Regulations.

87 Sec 46(1) National Elections Act.

for the final decision of the NEC to learn whether their names have been reinstated. During this period when the appellants are waiting for the final decision, other parliamentary candidates continue with their election campaigns. It follows, therefore, that even if the appellants succeed in their appeal, they will have fewer days for campaigning compared to their fellow parliamentary candidates whose nominations were not challenged.

In the 2020 parliamentary election parliamentary campaigns started on 26 August and ended on 27 October 2020. The NEC started to determine nomination objection appeals on 8 September 2020 and finalised the work on 17 September, 23 days after the start of the campaigns. During the above-mentioned period the NEC determined 160 parliamentary objection appeals out of which 66 appeals succeeded and the candidates whose names were removed from the list of nominated candidates were reinstated.<sup>88</sup> It should further be noted that the decisions of the NEC are communicated officially by letter addressed to the appellant. Thus, the reinstated candidates had to wait for the official letters from the NEC before starting their campaigns. The waiting period took some days, since there were many objection-appeals. Therefore, some parliamentary candidates found themselves losing up to half of the total period available for campaigns. That being the case, the reinstated parliamentary candidates had to reschedule their campaign timetables and some candidates could not reach all members of the community or areas in their respective constituencies due to a lack of time.

## 9 General observations

Tanzanian parliamentary election laws and practices contain several weaknesses that deny citizens the right to vote for the members of parliament they wish to elect. Generally, the weaknesses in the laws and practices are a result of vesting powers in the hands of a few people to decide who is to be member of parliament. In the end, citizens become rubberstamps of the decisions of the few. In particular, weaknesses include the lack of democratic and participatory procedures for nominating parliamentary candidates at the party level. Even in the case of some political parties that involve party members at an early stage, the political party leaders have overriding powers to nominate parliamentary candidates who will represent the party in the parliamentary elections.

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<sup>88</sup> <https://www.nec.go.tz/uploads/documents/sw/1600449332-09-18-2020-17.29.31.pdf> (accessed 21 September 2020).

Another notable weakness is the prohibition on private candidates. This prohibition causes members of parliament to be more loyal to their political party and party leaders than to the voters. The prohibition also limits the right of voters to vote for the representatives of their choice. Furthermore, the prohibition contributes to the abuse of powers by party leaders, especially in endorsing their friends to contest parliamentary elections.

The laws and practices for nominating parliamentary candidates by the NEC enable a limited number of people to determine who is to be a member of parliament in a particular constituency. This is true with respect to the laws and practices relating to unopposed candidates. The laws and practices relating to the endorsement of unopposed candidates take away the rights of citizens to elect their own members of parliament by providing an opportunity for the returning officers illegally to remove contestants from parliamentary elections. It is advised that in order to ensure that citizens exercise their rights to vote and, further, in order to reduce the abuse of parliamentary electoral laws, where a single candidate is nominated in the constituency, the candidate should equally be subjected to a vote.<sup>89</sup>

Furthermore, the institution responsible for supervising parliamentary elections is not independent. The President, who is a member of a political party, is vested with powers that give him an opportunity to control the functioning of the NEC. The powers to appoint and discharge members of the NEC have the result that NEC members are accountable to the President. In such a situation it is practically impossible for the NEC to work independently and professionally. Therefore, the NEC needs be reformed in order to guarantee its independence and efficiency.

Weaknesses are revealed in election campaigns where there is not equality among parliamentary contestants due to the period within which objection appeals are heard and the period in which campaigning is to start run concurrently. Therefore, a parliamentary contestant whose candidature is challenged ends up having less time for campaigning compared to the contestant whose candidature is not challenged. The effects of having unequal campaigning time are evident where a parliamentary candidate fails to campaign in all areas of the constituency due to the lack of time.

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89 Tanzania Civil Society Consortium for Election Observation and Legal and Human Rights Centre (Tanzania) 'Report on the 2015 general elections of United Republic of Tanzania' (March 2016) 74.

## **10 Conclusion**

The right to vote is at the heart of representative democracy. It provides legitimacy to political leaders including members of parliament. As demonstrated in this article, the right to vote should be guaranteed both in laws and practices. Without guarantees it is practically impossible for citizens to elect or vote for the members of parliament they prefer. The Tanzanian laws and practices relating to the protection and promotion of the right to vote fall short of established international standards. These shortfalls are a result of vesting powers in a few people instead of the citizens to decide who is to be their representative or member of parliament.