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**ANATOMY OF ELECTORAL  
SYSTEM OF TANZANIA**

by

**Cornel K. Mtaki  
and  
Said A. Bahroon**

**A GUIDE FOR CANDIDATES,  
MONITORS, OBSERVERS AND THE ELECTORATE**

**Dar es Salaam, 1995**

**ISBN 9987 28 008 0**

**With the support of the**

**FRIEDRICH-NAUMANN-STIFTUNG**



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## PREFACE

This small book is intended to be a critical guide for all interested parties. Candidates, polling agents, returning officers, local monitors and international observers may find this book useful.

For the purposes of precision and comprehension two things were very crucial in the preparation of this book. These were language and selection of what to write. As the book itself manifests, its language is affordable and its volume is inviting. To achieve both these two aspects necessitated the assumption of one risk. That is, the book is not exhaustive. As it combines the information contained in various statutes, it would have been bigger in volume. However, we decided to select only such information that appears to be most useful. We, therefore, recommend that whenever possible people should also read the major laws that have been discussed in this book, particularly the *Constitution*, *Elections Act* and the *Political Parties Act*.

Finally, we wish to sincerely advance our fullest gratitude to Friedrich-Naumann-Foundation generally and Mr. Ernst Specht (the Foundation's Permanent Representative) in particular for financing and production of this small but useful book. As the Foundation stands for FREEDOM and DEMOCRACY it considers free and fair elections as one of pillars for those ideals. That's why it decided to assist to achieve those ideals through the process of elections.

SEPTEMBER, 1995

S.A. BAHROON

# **PART ONE**



## CHAPTER I

### 1. INTRODUCTION.

General elections are due in October, this year. The coming elections are historical. It will be the first time since independence for Tanzania to have general elections under a multiparty system. The first and last multiparty elections were conducted in 1962. However, they were presidential only and not general elections which include both presidential and parliamentary elections. The 1962 presidential elections involved only two parties, the Tanganyika African National Union (T.A.N.U) and the African National Congress (A.N.C). Two candidates stood for their respective parties, Nyerere for T.A.N.U. and Zuberi Mtemvu for A.N.C. Nyerere won a landslide poll, polling 1,127,928 votes as against 21,276 won by Mtemvu.

It is significant to note that in that year, only 1,800,000 voters were registered out of an estimated population of 8,000,000. The coming elections may attract thirteen political parties with thirteen presidential aspirants. Tanzania today has an estimated population of over 27 million. In contrast with 1962 illiteracy rate is now lower than it were, implying that there would be more voters registering to exercise their crucial right to choose their own leaders.

It is also illustrative to note that while the 1962 presidential elections were conducted under a multiparty system governed by a liberal constitutional set up, with the Governor-General as Head of State, and a powerful National Assembly, the coming elections will be carried out under a 'suffocating legal climate' natured by the rulling one-party government with a rubber-stamping National Assembly whose members belong to the ruling party, exclusively.

To put it in a nutshell the following essential and decisive features will characterise the coming elections;

- (a) The current constitution is tailor-made to fit one-party authoritarian rule;
- (b) There are various laws that are oppressive and thus undemocratic;
- (c) The composition of the Electoral Commission of Tanzania is objectionable as it can hardly be impartial;
- (d) The electoral laws leave much to be desired as they do not promise free and fair elections;
- (e) The public media system (especially the RADIO) is always misused for the benefit of the ruling party CHAMA CHA MAPINDUZI (C.C.M.);
- (f) The electorate is both uninformed and misinformed about multiparty elections.

With this background in mind we can hardly visualize free and fair elections. It is for this pessimism that we have decided to author this small book on the coming elections. It is intended to provide guidance to the readership whose composition includes candidates, monitors, observers and the electorate generally. It is hoped that the targeted readership will find it handy indeed.

Part One examines and charts out the relevant electoral laws and outlines the electoral system, from the constitution of the Electoral Commission, registration of voters right through to the election petitions. That is to say, the gist of this book is in Part One wherein the whole electoral system is outlined, *albeit*, in a nutshell. Part Two dwells on monitors and observers. The need and the importance to have them is clarified. Part Three carries the remarks, opinions and recommendations as the authors conclude their work.



## CHAPTER II

### 2. THE ELECTORAL LAWS

The electoral laws of Tanzania include the *Constitution of the United Republic of Tanzania, 1977* (as amended), the *Elections Act, 1985* (as amended) and the *Political Parties Act, 1992* (as amended) hereinafter they are referred to as the *Constitution*, the *Elections Act* and the *PPA* respectively.

#### 2.1. The *Constitution of the United Republic of Tanzania*

The significance of the Constitution in relation to elections lies *inter alia* in Article 74 where the Electoral Commission of the United Republic of Tanzania (ECT) is established. The ECT has seven members all of whom are appointed by the President. The Chairman must be a judge of the High Court or the Court of Appeal of Tanzania. The current Chairman is a Justice of Appeal in the Court of Appeal of Tanzania, (Mr. Justice Lewis Makame).

Among the functions of the ECT are:-

- (a) to supervise and co-ordinate the registration of voters for the Presidential, Parliamentary elections, and Local Government Elections;
- (b) to supervise and co-ordinate the conduct of Presidential and Parliamentary elections;

The Chief Executive of the ECT is the Director of Elections who is also the Secretary to the ECT. He exercises and performs his functions as conferred upon him by the *Elections Act* or on the directions of the Commission. Registration Officers, Returning Officers and other persons concerned with the conduct of elections are obliged to carry out fully all directions and instructions issued by the Director of Elections.

## **2.2 The *Elections Act*, 1985**

The *Elections Act* was passed in 1985, seven years before the introduction of multipartism in 1992. The Act was tailor-made to suit the circumstances of one-party elections. It was necessary, therefore, to amend it according to the needs of multiparty general elections. The Act has been, therefore, amended six times since 1985.

The *Elections Act* is the most relevant piece of law that guides the whole process of elections, from registration through campaigns, voting, counting of votes to declaration of winners and subsequent election petitions, if any. Thus, it is the *Elections Act* that provides for the whole process of elections. It is, therefore, recommended that every person interested in the forthcoming elections, including candidates, returning officers, presiding officers, polling agents, observers and monitors as well as the electorate at large, should strive to understand the whole process of elections as laid down in the *Elections Act*. However, let it be said that this Act is very difficult, for all persons, to read. Its difficulty does not lie in its language alone but also in the fact that this law has been amended six times since 1985. It is, therefore, in seven different documents (Acts). Some of the amending provisions have themselves been amended. Thus, to say that the Act is difficult to read is not to understate the fact.

## **2.3 The *Political Parties Act*, 1992**

This Act was passed in 1992 following the re-introduction of the multiparty political system in Tanzania. It may be recalled that before 1992, the *Constitution* prohibited multiparty politics by declaring that Tanzania shall be ruled under one party system and that sole party shall be Chama Cha Mapinduzi (CCM). These provisions, together with others, were either repealed or amended to accommodate the multiparty political system. Following such constitutional changes it was, therefore, necessary to enact a specific law to regulate party politics. The *PPA* was, therefore, enacted, and it came into operation on 1st July, 1992.

The *PAA* applies throughout the United Republic of Tanzania, that is, on the Mainland Tanzania as well as in Zanzibar.

### **2.3.1 Registrar of Political Parties**

Among other things, the *PPA* provides for the office of the Registrar of Political Parties. The Registrar is assisted by a Deputy Registrar. Both are appointed by the President.

Apart from being appointed by the President, the Registrar is obliged to consult the Minister for Justice and Constitutional Affairs, in the performance of his functions. Even his office is located within the office of the Prime Minister. At present the President is also the National Chairman of CCM and the Prime Minister is a prominent member of the same who even sought to be nominated as CCM's Presidential candidate. To that extent alone, one is justified to argue that the Registrar of Political Parties is not independent. For that reason there is a likelihood that the opposition political parties may not get justice from such office.

The most important functions of the Registrar are:

- (a) to register political parties and,
- (b) to cancel their registration.

Thus, the Registrar may register any political party in accordance with the provisions of the *PPA* and may cancel any such registration where any political party has contravened any of the provisions of the said Act or which has otherwise ceased to qualify for registration under the said Act.

On the question of cancellation of a registered party it is submitted that the Registrar has been given wide powers which invite abuse. It is even worse when one recalls that the decision of the Registrar to cancel any political party is final and is not the subject of appeal in any court. Additionally, no suit lies against the Registrar, Assistant Registrar or any other officer appointed under the Act for anything done or omitted to be done in good faith or without negligence in the performance of any

function under the Act. Such provisions are usually not conducive to aspects of accountability, diligence and fairness. As far as our legal system is concerned any person aggrieved by any person or a body of persons or any tribunal may file a suit in a competent court of law seeking relief. We, therefore, wish to argue that the statutory shield availed to the Registrar cannot abrogate the right to judicial review.

### **2.3.2. Rights of Political Parties.**

Political Parties have their rights under the *PPA*, apart from those enshrined in and may be implied from the *Constitution*. These rights include:-

- (a) to hold and address public meetings;
- (b) to be protected and assisted by the security agencies;
- (c) for a fully registered political party, to put up candidates and to campaign for any candidates in any parliamentary or presidential elections or in a local authority elections;
- (d) to receive subventions from the government.

Political Parties are, therefore, advised and, indeed, urged to take these rights seriously, and consider their curtailment more seriously.

### **2.3.3 Funds and Resources of Parties**

The fully registered political parties derive their funds and other resources from:-

- (i) membership fees;
- (ii) voluntary contributions;
- (iii) the proceeds of any investment, project or undertaking in which the party has an interest;
- (iv) subventions from the government;
- (v) donations, requests and grants from any other source.

A point worth emphasis here relates to the question of subventions from the government. All parties, particularly and especially those participating in the forthcoming general elections, are urged to take this question of subvention as one of right and not mere of privilege. This right is

claimable. Subventions are very crucial as far as campaigns and organisational capacity are concerned. They should also consider the questions of how such subventions are issued, the adequacy of the amount issued and the timing of the issuance. In their totality, subventions should serve the purposes for which they are issued.

The fully registered political parties are required by law to maintain Bank accounts through their trustees. Such subvention from the government is only paid where a political party maintains such account.

The purposes for which subventions from the Government may be granted are any or all of the following:-

- (a) to assist a political party to defray expenses necessary for and which relate to the participation of the political party in an election by nominating and campaigning for a candidate of the party;
- (b) to enable a political party which has members in Parliament to carry out its parliamentary functions;
- (c) to assist a political party which, in the preceding general election, won not less than five percent of all the votes cast in the United Republic relating to either a parliamentary or a Presidential election, to defray such reasonable and necessary office expenses of the party other than expenses for such matters as travelling, salaries, allowances, house rent, acquisition or maintenance of motor vehicles or entertainment.

Subventions given for the purpose mentioned under paragraph (a) above shall be given in two equal instalments:-

- (a) the first instalment being an amount computed on the basis of the number of the candidates which a political party has nominated, to be paid soon after the nomination of the candidates.
- (b) the second instalment being an amount to be computed on the basis of the number of candidates nominated by the political party which participated in the whole electoral process until announcement of final results.

Subvention given for the purpose mentioned under paragraph (b) above shall be computed on the basis of the number of the members of Parliament who are members of that political party.

All in all, the amount which is payable as subvention to political parties shall be prescribed from time to time after taking into consideration the prevailing economic conditions and financial capability of the Government.

It is the Registrar of Political Parties who shall be responsible for the management and payment of subvention payable to political parties under the *PPA*.

#### **2.3.4 Political Parties' Responsibility.**

Political parties receiving such subventions are required by law to account for all the monies they receive. Such subventions are required to be spent only for that purpose for which they were given. Where the specified purpose is the furthering of an election and a political party does not take part in the election or a candidate of a party withdraws from the election or for any reason the money is not spent on the election, the political party to which the money was granted shall refund the whole or so much money which has not been spent for the election.

Where any political party neglects or otherwise fails to account for any money granted as subvention, it shall not be entitled to any subsequent subvention or instalment on any subvention payable to it.

Where the subvention which has not been accounted for is also refundable to the Government, the political party that failed to account shall forfeit its right to nominate a candidate to any subsequent election, until such subvention has been refunded.

## CHAPTER III

### 3. THE ELECTORAL PROCESS

The process of elections is a combination of many factors. It includes the participation of various institutions and persons. But the most important institution that plays a central role in the whole process of elections is the ECT which is established under article 74 of the Constitution.

#### 3.1 The Electoral Commission of Tanzania (ECT).

Its members are all appointed by the President. The President is also the Chairman of the ruling party, CCM. It is, therefore, thought and believed that the members of the ECT would definitely pay allegiance to the appointing authority. Besides it is said and some evidence is available, that some of the members of the ECT are CCM members thus, they would not do justice to other parties. When Mr. Mark Bomani resigned from the ECT to stand for presidential elections using CCM's ticket, all of us confirmed the fears as to the impartiality of the ECT. It would have been better and justifiable to appoint people of high integrity who do not belong to any political party and have such appointments confirmed by the Parliament, as is done in other countries. However, the Constitution bars members of the ECT and other persons concerned with the conduct of elections from belonging to any political party.

As said earlier the general function of the ECT is to supervise, direct and control the conduct of Presidential and Parliamentary elections.

In the performance of its functions the ECT is not obliged to conform to any advice or direction of any body or authority.

The ECT is not subject to judicial inquiry for anything done in the exercise of its functions. We submit that this is one of the most undesirable features and it finds no plausible justification. For purposes of space and time we argue generally that, no body of persons as important as the ECT, whose functions touch, influence, shape and even

affect other peoples' rights, including interested parties as well as the electorate, should be a judge of its own cause. All interested parties are advised to proceed to a competent court (High Court) whenever they feel that their rights have been or are likely to be infringed, by the ECT.

### **3.2 Presidential and Parliamentary Elections.**

In Tanzania, Presidential and Parliamentary Elections are held as part of the realisation of the fundamental objectives stated in Part II of Chapter 1 of the *Constitution*. Article 8 (1) of the *Constitution* states clearly that Tanzania is a state pursuing the principles of democracy and social justice and accordingly sovereignty belongs to the people and it is from them that the Government, through the *Constitution*, derives all its powers and authority. Therefore, democracy, social justice, and sovereignty cannot be realized and enjoyed if elections are not held regularly.

#### **3.2.1 When should Elections be held?**

Generally, Presidential and Parliamentary elections are required to be held every five years. However, there are instances when and where Presidential or Parliamentary elections may be held before the expiry of the five years.

The *Constitution* lists two instances in which the office of the President shall fall vacant necessitating Presidential elections to be held. These are;

- (a) if the Parliament is dissolved
- (b) if the President is impeached by the National Assembly and is subsequently removed from his office.

Parliamentary elections may be held in two cases namely:

- (a) if the Parliament is dissolved;
- (b) if the office of Member of Parliament falls vacant for any reason other than dissolution of Parliament, e.g. if the incumbent member dies, or is imprisoned.



### **3.2.2 Eligible Voters**

In Tanzania the active franchise, which is the right to vote, is enshrined in the *Constitution*. Accordingly, every citizen of Tanzania who has attained the age of 18 years is entitled to vote.

The *Constitution* together with the *Elections Act* prescribe the following as qualifications for registration as a voter:

- (a) the voter should be a citizen of Tanzania;
- (b) the voter should have attained the age of 18 years;
- (c) the voter should not be disqualified by the *Elections Act* or any other written law.

### **3.2.3 Disqualification of Voters**

The *Constitution*, together with the *Elections Act* enumerate conditions which can disqualify a person from registering as a voter. These are;

- (a) if the voter holds allegiance to another country;
- (b) if the voter is suffering from mental infirmity;
- (c) if the voter has been sentenced to death or is serving a sentence of imprisonment exceeding 6 months;
- (d) if the voter fails to prove or provide evidence of his age, citizenship, and other matters required by the *Elections Act*.
- (e) if the voter has been disqualified from registering as a voter because of committing offences related to elections in previous elections e.g. corruption and bribery.

### **3.2.4 Register of Voters**

Tanzania does not have a permanent register of voters. Registration of voters is undertaken whenever there is a general or by-election.

Every Returning Officer is required to make and maintain a register of voters for the polling district for which he is responsible. The register should include the following particulars in respect of every voter registered:

- (a) name of the voter;
- (b) the number of the certificate of registration issued to such voter. This is the document which identifies the voter on the polling day;
- (c) voter's sex, and
- (d) voter's residential address.

The Director of Elections is responsible for the maintenance and safe custody of the registers to ensure that they are not falsified or lost.

### **3.2.5 Registration of Voters**

This is a crucial stage in the electoral process. The ECT is responsible for determining the duration within which voters should register. A short time limit will effectively bar many citizens from registering and voting. For the October, 1995 elections, voter registration has been set to commence on 6th August to 4th September 1995.

#### **3.2.5.1 Times for Registration**

The time when registration should commence and cease is determined by ECT. The Commission has set the registration time to be between 8.00 o'clock in the morning and 6.00 o'clock in the evening everyday for the whole of the registration period, Sundays and public holidays inclusive.

#### **3.2.5.2 Where to Register:**

An entitled voter is supposed to present himself for registration at the polling district within his locality. The polling districts in the constituency are determined by ECT. It is an offence to register more than once, e.g. in more than one constituency or in more than one polling district.

The Returning Officer in charge of the constituency is required to provide each polling district with registration facilities e.g. offices/spaces for registration, stationery, personnel etc.

### **3.2.5.3 How to register:**

An entitled voter has to undergo the following procedure before he is duly registered:

- (a) he/she has to satisfy the Returning Officer or any officer responsible for registration that he/she qualifies to register as a voter at the polling district he/she has presented himself/herself
- (b) he/she has to show that he/she is not disqualified from registration as a voter;
- (c) he/she must fill in such forms as he may be required, at the registration centre.

Upon satisfaction of the above conditions the voter will be formally registered and subsequently issued with a certificate of registration.

### **3.2.5.4 Loss of Certificate of Registration:**

A certificate of registration may be lost, defaced or destroyed. If this happens, the voter in person can apply to the Returning Officer for a new certificate. However, before the new certificate is issued the voter must;

- (a) make a declaration in the prescribed form, about the loss, deface or destruction of the certificate;
- (b) surrender the defaced or destroyed certificate to the Returning Officer.

### **3.2.5.5 Change of Residence:**

If a voter registered in one polling district changes residence to another polling district, the voter can present himself for registration in the new polling district. The certificate of registration previously obtained must be surrendered to the Returning Officer in charge of the new polling district. A voter who does not apply for a new certificate cannot be allowed to vote in the new polling district using the old certificate of registration.

### **3.2.5.6 Objection.**

A registered voter whose name does not appear in the register may apply to the Director of Elections and the Director or Returning Officer shall cause that name to be included in the register. If the application is rejected, the voter may object to such rejection.

A voter whose name appears in a register can object to the retention of his name in that register on the ground that he is not qualified or is no longer qualified as a voter. Similarly, a voter can object to the retention of the name of another person in the register on similar grounds or if that other person is dead.

All objections must be directed to the Returning Officer who receives and deals with them in accordance with the provisions of the *Elections Act*. Generally, the Returning Officer holds a public inquiry to determine the genuineness of the objections.

### **3.2.5.6 Appeals**

Appeals by a voter at the registration stage may lie to the Court of the Resident Magistrate in any one of the following cases:-

- (a) if a registration officer without lawful cause refuses to register an entitled voter;
- (b) if the Returning Officer refuses to register an entitled voter who has moved to that officer's polling district and the voter is ready to surrender the certificate of registration issued earlier;
- (c) if the Returning Officer refuses to issue a new certificate of registration in lieu of a lost, defaced or destroyed certificate;
- (d) if the voter/objector is dissatisfied with the decision of the Returning Officer on an objection which was referred to him.

Appeals must be filed within 21 days from the date of communication of such refusal or decision as the case may be. All appeals must be heard and determined before the polling day.

### **3.2.5.8 Duties and Functions of Returning Officer during Registration**

These can be summarised as hereunder:

- (a) To make and maintain a voters' register for each and every polling station;
- (b) To keep and maintain voters' registers in such manner as directed by the Director of Elections;
- (c) To provide facilities for registration of voters at each and every polling station;
- (d) To suspend the registration of voters if directed by ECT. The registration will resume after the expiry of the time specified in the directive;
- (e) To satisfy himself that every voter who presents himself for registration qualifies to be registered as a voter at a polling station within his jurisdiction;
- (f) To issue a qualified voter with a certificate of registration after registration;
- (g) To accept or reject applications for registration by voters who have changed their domiciles;
- (h) To accept or reject applications by voters asking for new certificates of lost, defaced, destroyed or amended certificates;
- (i) To administer a declaration in the prescribed form to any voter whose certification of registration is lost, defaced, destroyed or amended before issuing him with a new certificate;
- (j) To furnish a voter with written reasons whose application for registration, or application for registration after change of residence or application for new certificate of registration in lieu of the lost, defaced, destroyed or amended certificate has been refused;
- (k) To receive and determine applications by any person for inspection of the register of voters of any polling district;
- (l) To amend and include in the register of voters the name of a voter holding a valid certificate of registration whose name has been omitted from the register;

- (m) To object to the retention of any name in the register of voters on the ground that the person bearing that name is no longer qualified as a voter or is dead;
- (n) To receive objections submitted to him under sections 23 and 24 of the Act;
- (o) To hold public inquiries into all objections received by him in accordance with the procedure specified in the Act;
- (p) To amend the register of voters by including or deleting the name(s) of voter(s) pursuant to an order made by the Resident Magistrate's Court under section 28 of the Act, (after hearing appeals);
- (q) To demand the surrender of the certificate of registration from a voter who ceases to be a qualified voter within 10 days.

Although some of these duties are discharged by his subordinates e.g. registering clerks, the Returning Officer is finally responsible for any acts or omissions done by those officials.

### **3.3 Nomination of Candidates.**

#### **3.3.1 Presidential Candidates**

##### **3.3.1.1 The Role of Political Parties.**

Each registered political party intending to participate in Presidential elections has the right to nominate one member among its members as a candidate for the said elections. It is also the obligation of the party to name the candidate for the office of the Vice-President (otherwise known as Running-mate). However, the mechanism of nominating these two Presidential candidates at the level of the party is left entirely in the hands of each political party.

##### **3.3.1.2 Conditions for Presidential nomination**

Any candidate for Presidential elections is not duly nominated to stand for the elections unless he satisfies the following conditions;

- (a) he must be a member of a registered political party; Independent candidates are not allowed;
- (b) he must be nominated by his registered political party;
- (c) his name together with that of the Vice-President must be submitted to the ECT by his party within the time and date specified by the ECT;
- (d) he must be nominated in writing by not less than 200 nominators from each of at least 10 Regions of the United Republic out of which at least 2 Regions must be Tanzania Zanzibar;
- (e) he must deliver at the ECT before 4 o'clock on nomination day such number of copies of each of the nomination papers;
- (f) the delivery of the nomination papers must be accompanied with a deposit of Tshs.1 million.

### **3.3.1.3 Qualifications for Nomination.**

Apart from the conditions mentioned above, a Presidential candidate must also hold the following qualifications:

- (a) must be a citizen by birth of the United Republic;
- (b) has attained the age of 40 years;
- (c) must belong to a registered political party which shall nominate him;
- (d) is otherwise qualified for election as a member of the National Assembly or of the House of Representatives.

### **3.3.1.4 Sole Presidential Candidate.**

The ECT on receipt of the names of Presidential candidates from the registered political parties has the duty to scrutinize them in order to satisfy itself that each candidate meets the conditions and qualifications stated above. It is possible therefore that some candidates might fail to satisfy these conditions and qualifications and end up probably with one presidential candidate.

If the ECT validly nominates one Presidential candidate, the ECT shall declare such person to be the sole Presidential candidate. However,

to be validly elected to the office of the President, the sole candidate must obtain more than 50% of the total votes cast, otherwise fresh nominations for the Presidential candidates will be held.

#### **3.3.1.5 Right to Withdraw.**

A Presidential candidate may withdraw his candidature. The law does not require him to give reasons for his withdrawal. The notice of withdrawal should comply with the following requirements;

- (a) it must be in writing and signed by the candidate himself;
- (b) it must be delivered by the candidate to the ECT not later than 4.00 o'clock on the day following the nomination day. The nomination day means the day declared by the ECT as the last day for receiving names of aspiring Presidential candidates.

#### **3.3.1.6 Vice-Presidential Candidate.**

Unlike the Presidential candidate, the Vice-Presidential candidate is required to fulfil four conditions only, namely;

- (a) he/she should be a member of a registered political party;
- (b) he/she should be nominated by a party;
- (c) that party should submit his/her name together with that of the Presidential candidate to the ECT;
- (d) he/she should not hail from the same part of the Union with the Presidential candidate.

Otherwise the Vice-Presidential candidate is required to hold similar qualifications with those of the Presidential candidate.

### **3.3.2 Parliamentary Candidates.**

#### **3.3.2.1 Nomination day.**

Like Presidential elections, Parliamentary elections are preceded by nomination of candidates. The ECT through a notice published in the Government Gazette is bound to appoint a day known as the nomination day, depending on the nature of the election.



If it is a general election, the nomination day shall not be less than 5 or more than 25 days after the dissolution of Parliament. And if it is a by-election the nomination day shall be not less than 20 nor more than 50 days after the occurrence of the event necessitating the by-election.

The ECT is free to appoint different nomination days for different constituencies.

### **3.3.2.2. Conditions for Nomination.**

A Parliamentary candidate is duly nominated if he fulfils the following conditions:

- (a) he/she is a member of a registered political party participating in the Parliamentary elections;
- (b) he/she is nominated by that political party;
- (c) he/she is nominated in writing by not less than 25 voters registered in the polling districts within his constituency;
- (d) if the nomination paper executed by his/her nominators is accompanied by the following documents:
  - (i) a statutory declaration made and signed by the candidate before a magistrate declaring the candidate's qualification to stand for election;
  - (ii) a certificate by the Returning officer in charge of the constituency;
  - (iii) three post card size photographs of the candidates;
- (e) the candidate or one of the persons nominating him/her delivers the nomination paper to the Returning Officer not later than 4.00 o'clock in the afternoon of the nomination day;
- (f) the nomination paper should be accompanied by a deposit of such some of money prescribed by the ECT;
- (g) he/she should not be nominated as a candidate in more than one constituency;
- (h) he/she should not be nominated by a person who has already nominated another candidate.

### **3.3.2.3 Qualifications for Election.**

To stand for Parliamentary elections, a candidate should also hold the following qualifications;

- (a) he/she should be a citizen of Tanzania though not necessarily by birth;
- (b) he/she should have attained the age of 21 years;
- (c) he/she should know to read and write in Kiswahili or English;
- (d) he/she should be a member of a registered political party which should also nominate him/her.

### **3.3.2.4 Disqualifications for Election.**

Besides listing the qualifications which a Parliamentary candidate should possess the *Elections Act* goes further to mention specific cases which can disqualify a candidate from running for Parliamentary election. These are;

- (a) if he/she possesses or acquires citizenship of another country;
- (b) if he/she is adjudged to be lunatic or declared to be of unsound mind;
- (c) if he/she is under sentence of death or is serving a sentence of imprisonment exceeding a period of 6 months;
- (d) if within the period of 5 years prior to the general elections date he/she has been convicted and sentenced for imprisonment for an offence involving dishonesty or contravention of the *Leadership Act 1995*;
- (e) if he/she holds a senior position in any office in the Government of the United Republic other than an office to which the President may make appointments from among members of the National Assembly;
- (f) if he/she is disqualified from registering as a voter because of committing offences connected with any elections;
- (g) if he/she is also a candidate for election to the office of the President;

- (h) if he/she holds or acts in any office responsible for the conduct of election for Members of Parliament or the registration of voters for the same election. Here members of the ECT, Returning Officers etc are automatically excluded.

### **3.3.2.5 Objections Against Nomination**

Objections against the nomination of a Parliamentary candidate are permitted provided they are sent to the Returning Officer before 4.00 o'clock in the afternoon of the day following nomination day.

Any objection may be made by the following persons only;

- (a) by another candidate in the same constituency;
- (b) by the Director of Elections, or
- (c) by the Returning Officer.

Such objection should be based on any one of the following grounds only;

- (a) that the candidate's particulars are inadequate to identify him;
- (b) that the nomination paper does not comply with the requirements of the law, e.g. it is signed by less than 25 voters, the particulars of the nominators are incomplete, etc;
- (c) that the nomination paper was not submitted in accordance with the provisions of the law, e.g. it was submitted after the expiry of the time and date set by ECT;
- (d) that the contents of the nomination papers indicate that the candidate is disqualified to stand for elections;
- (e) that the nomination paper is not accompanied by the relevant documents e.g. biography of the candidate, statutory declaration, etc.

The Returning Officer is empowered to decide on the validity of every objection as soon as possible. A candidate who is dissatisfied with the decision of the Returning Officer may appeal to the ECT, whose decision is final and conclusive. However the decision can be challenged in the

High Court by way of an election petition after the elections, or alternatively by way of *ceriorari*, which is an order issued by the High Court to nullify the proceedings and decision of an administrative tribunal or authority vested with powers to act or determine matters affecting rights of individuals.

### **3.3.2.6 Unopposed Candidate.**

If in a constituency there is only one candidate who is duly nominated, the candidate shall be deemed to be elected. Meanwhile the ECT will declare his election by publishing a notice to that effect in the Government Gazette.

### **3.3.2.7 Withdrawal of Candidature.**

A Parliamentary candidate can withdraw his/her candidature for election by doing the following;

- (a) by delivering to the Returning Officer a notice of withdrawal in writing and signed by him/her;
- (b) a copy of the notice should be sent to the local branch of the political party sponsoring him/her;
- (c) the notice should be delivered to the Returning Officer not later than 6.00 o'clock in the afternoon of the day following nomination.

It appears that upon withdrawal of a candidate, the party affected cannot nominate a substitute candidate, for by then the nomination day will have expired. A withdrawing candidate is not entitled back the deposit he made during submission of the nomination paper.

### **3.3.2.8 Death of Candidate**

If one of the candidates dies after 4.00 o'clock in the afternoon on the nomination day and before closing of a poll in an election, the Returning Officer is bound to cancel the election in the constituency. Subsequently the ECT shall appoint another nomination day being not later than 30 days after such cancellation.

### **3.3.2.9 Duty of Returning Officer during Nomination.**

During the Parliamentary nominations the Returning Officer is charged with the following duties and obligations;

- (a) to issue a certificate to accompany the candidate's nomination paper;
- (b) to provide nomination papers to candidates or voters as they may require;
- (c) to receive from candidates or nominators candidates' nomination papers duly filled in;
- (d) to cause copies of nomination papers to be posted in a conspicuous place outside his office;
- (e) to receive deposits from candidates or persons nominating them;
- (f) to return unforfeited deposits to candidates or their personal representatives;
- (g) to receive objections on nomination of candidates within the specified time and decide on their validity as soon as possible;
- (h) to raise objections on his own motion on any candidate within his jurisdiction;
- (i) to receive notices of withdrawal from candidates within the specified time;
- (x) to cancel elections if one of the candidates dies and notify the ECT of the same.

### **3.4 Election Campaigns**

The purpose of election campaigns is to familiarize voters with the political parties and candidates standing for election and their respective programmes in order to allow every voter to vote on the basis of well informed opinion.

#### **3.4.1. When do Presidential and Parliamentary Campaigns Commence?**

The ECT is responsible for determining the dates when election campaigns should commence and end. For the October 1995 elections the dates have been fixed at 29th August to a day before the polling day.

### **3.4.2 Who may Campaign?**

Only three parties are allowed to organise and conduct Parliamentary and Presidential election campaigns;

- (a) the candidate himself;
- (b) the candidate's political party; and
- (c) the candidate's agents.

### **3.4.3 How is the Campaign Conducted?**

There are two ways of conducting the election campaign;

- (a) by convening and addressing public meetings. Before addressing the meetings the agent or the candidate's party is required to furnish the Returning Officer with a schedule of the candidate's campaign program specifying the time and places where the meetings will be held;
- (b) by use of public media e.g. the state radio (RTD), state television and print media, (Daily and Sunday News). All political parties participating in the elections are entitled to equal accessibility to the public media.

The Returning Officer may summon a meeting of all the candidates or their agents for the purpose of drawing a coordinated campaign program in his constituency. Copies of the coordinated programme should be submitted to the District Commissioner and the Police Officer commanding the police within the constituency.

Once the coordinated program is delivered to the Police Officer, the political parties need not give further notice to the police officer as required by the *PPA 1992* and the *Police Force Ordinance, Cap 322*.

### **3.4.4 Is Canvassing Allowed?**

Canvassing involves local party workers visiting the homes of voters and asking them whether they intend to vote for their party's candidate. As long as this form of campaign is not expressly prohibited by law it can be argued that canvassing is impliedly permitted.

### **3.4.5 Are Guest Speakers Allowed?**

It is not clear from the law whether guest speakers such as renown scholars, artists, musicians etc. can be invited to speak at public meetings duly convened by the parties for furtherance of campaigns. As long as political parties are empowered to conduct campaigns, we find nothing wrong in parties inviting guest speakers.

### **3.4.6 Identity of Candidates**

Apart from the short biography, every candidate will be identified by his photograph approved by the Returning Officer. Note that the display of photographs of a candidate during the election campaign is subject to the control of the Returning Officer.

### **3.4.7 Offences.**

A person will be deemed to have committed offences relating to election campaign if he commits any one of the following:

- (a) if by utterance, print or broadcasting publishes a statement of withdrawal of a candidate for the purposes of promoting the election of another candidate;
- (b) if before and during campaign period he gives, lends or agrees to give or lend money to a voter in order to induce the voter to vote or refrain from voting;
- (c) if he/she gives or agrees to give employment or office to a voter in order to induce the voter to vote or refrain from voting;
- (d) if he/she makes any gift, loan, or offer to any person with the intention of inducing that person to elect one of the candidates;
- (e) if he/she advances money to another person with the intention of using that money to bribe during elections.

This list of offences is not exhaustive.

## **3.5 Voting.**

### **3.5.1 Notice of Election.**

Prior to the election day the Returning Officer is enjoined to give a notice in his constituency covering the following matters;

- (a) the day and the time of commencement and close of the poll. The time of commencement and close of the poll is 8.00 o'clock in the morning and 6.00 o'clock in the evening respectively;
- (b) the address of the polling stations;
- (c) the voters assigned to each polling station;
- (d) the full names, addresses, occupation and photographs of candidates.

This information is necessary in order to facilitate the polling process on the polling day.

### **3.5.2 Who is Entitled to Vote?**

Every person registered as a voter is entitled to vote provided that no circumstances have arisen since his registration which would otherwise disqualify him as a voter.

### **3.5.3 Where to Vote?**

He/she is allowed to vote at the polling station assigned to him/her in the polling district for which is he/she registered. He/she cannot poll elsewhere. Travelling during or a few days before the polling day should be discouraged, otherwise transit voters will lose their right to vote.

### **3.5.4 Who may Vote outside his/her Polling Station?**

In spite of the restrictions imposed above there is a category of voters who are allowed to vote outside their allocated polling stations. These are;

- (a) the candidates;
- (b) Returning Officers;
- (c) Presiding Officers;



- (d) Police Officers assigned to the polling stations; and
- (e) Polling agents/assistants.

The right to vote will arise if they have registered themselves as voters.

### **3.5.5 Voter Identification**

Before voting a voter must identify himself to the presiding officer or polling assistant by producing his/her certificate of registration. Alternatively he/she can produce another identity which has been vetted by the Director of Elections.

### **3.5.6. Admission to Polling Stations.**

To ensure that the ballot is secret, a limited number of people is allowed to remain in the polling stations. The voters are admitted in the polling station before the voting but implored to leave immediately after voting. Persons allowed to remain in the polling station are:-

- (a) the presiding officer incharge of the polling station;
- (b) polling assistant (deputy of the presiding officer);
- (c) polling agent or alternate polling agent(an appointee of the candidate to represent and safeguard the interests of the candidate at the polling station);
- (d) voter (leaves soon after voting);
- (e) person assisting an incapacitated voter e.g. a blind or physically incapacitated voter (leaves soon after the incapacitated voter has voted);
- (f) an observer, (local and international);
- (g) member of the ECT;
- (h) Director of Elections;
- (i) Police Officer overseeing security at the polling station;
- (j) the candidate.

The alternate agent is appointed to perform any of the functions of a polling agent in absence of the latter from the polling station temporarily or permanently.

### **3.5.7 Method of Voting.**

Voting at a polling station is conducted in the following manner:

- (a) Polling agents are required to be present at their respective polling stations before voting commences. However their absence does not necessarily invalidate the votes;
- (b) The presiding officer before voting commences shall require the polling agent to submit to him any complaint that he/she has or has received from other people or any expression he/she has about the voting arrangements;
- (c) Before the polling stations open, the presiding officer opens and shows the ballot boxes to those admitted to the polling station to prove that the boxes are empty. The boxes are then locked and sealed;
- (d) Every voter who wishes to vote identifies himself to the presiding officer or polling assistant by producing the registration form issued when the voter registered himself/herself;
- (e) The voter's name is checked against the election register before he is given the ballot paper;
- (f) The voter records his vote on the ballot paper by putting a mark against the name of the candidate of his choice;
- (g) If a voter is incapacitated (e.g. blind) or is illiterate he/she can seek assistance of any person of his/her choice to assist him/her record his/her vote. Such assistance cannot be sought from the presiding officer, a polling assistant or a polling agent or any other person involved in the conduct of elections;
- (h) To conceal the vote, the voter is required to fold the ballot paper before placing it in the ballot box;
- (i) A voter who has accidentally spoiled his ballot paper can vote using a fresh ballot paper once the first ballot paper is cancelled;
- (j) At the end of polling the ballot boxes are sealed to prevent further votes from being added.

### **3.5.8 Closing of the Poll.**

If the polling at any polling station is interrupted or obstructed by riot or open violence, the presiding officer can adjourn the polling to the next day provided notice is given to the Returning Officer.

A presiding officer is required to close the poll at the closing time prescribed by law. However, the presiding officer is not entitled to close the poll if by the closing time there are voters in the polling station who have not voted. These should be given sufficient time to enable them vote.

### **3.5.9 What Should be done on Closing of the Poll?**

Soon after closing of poll the presiding officer is charged with a number of responsibilities:

- (a) He/she must, in the presence of the candidates and their polling agents put the following documents in separate packets which will be provided by the ECT. The packets must be sealed by the seal of the presiding officer and of the candidates if any. The documents involved are:-
  - (i) the unused, spoilt or cancelled ballot papers;
  - (ii) the counterfoils of the used ballot papers;
  - (iii) tendered ballot papers;
  - (iv) the marked copies of registers (voter's register);
  - (v) the list of tendered voters;
  - (vi) the keys for the locks to the ballot boxes;
  - (vii) the Presiding Officer's report.
- (b) He/she must prepare a statement accounting for the number of ballot papers which were given to him/her. This statement is called the ballot paper account;
- (c) he/she must seal the ballot boxes in such a manner that they cannot be opened. Candidates may also add their own seals on the boxes;

- (d) he/she must give an opportunity to polling agents to submit their written opinions or complaints in relation to the manner the voting was conducted;
- (e) he/she must prepare a report detailing all complaints raised by polling agents during and after the close of the poll. In the report he/she should indicate measures that were taken to deal with the complaints raised;
- (f) he/she must read the report prepared above to the polling agents and the polling assistant. If they confirm the report, all of them, together with the presiding officer shall sign it;
- (g) lastly, he/she must submit the report, the sealed packets and ballot boxes and the ballot paper account under tight security to the Returning Officer;

### **3.5.10 What are the Duties and Functions of the Various Participants During Voting?**

The electoral process involves many participants such as the ECT, the Director of Elections, the Returning Officers, the polling assistants, the candidates, the polling agents or alternate polling agents, and the voters themselves. Below is a list of the duties and functions of some of the participants:-

#### **3.5.10.1 Returning Officer.**

- (a) To give notice of election;
- (b) To provide sufficient number of polling stations in his/her constituency;
- (c) To appoint polling assistants to assist at the voting;
- (d) To appoint among the polling assistants the presiding officers. The presiding officers are in charge of the polling stations;
- (e) To provide each polling station with a voting booth;
- (f) To place at each polling station the names and photographs of the candidates;
- (g) To provide each polling station with notices containing instructions relating to the voting procedure;

- (h) To provide each presiding officer with the necessary number of ballot boxes and ballot papers;
- (i) To provide each polling station with voting and writing materials e.g. voting ink, etc;
- (j) To provide each polling station with copies of the relevant registers of voters;
- (k) To authorise persons, other than police officers, to provide security at polling stations;
- (l) To receive notices adjourning polling from the presiding officers;
- (m) To receive the sealed packets, sealed ballot boxes and the ballot papers account from the presiding officers;
- (n) To receive the names of polling agents from the candidates and the polling stations to which they have been assigned.

#### **3.5.10.2 Presiding Officer.**

- (a) To ensure compliance with the law and procedure pertaining to the conduct of voting at the polling station;
- (b) To receive the names of polling agents/alternate polling agents from candidates for that particular polling station;
- (c) To deal or solve with the assistance of polling agents any complaints brought to his attention by candidates, polling agents or voters;
- (d) To open and show to persons allowed in a polling station before polling commences that the ballot boxes are empty and thereafter close and seal them;
- (e) To demand identification from voters before he/she allows them to vote. If they fail to identify themselves, he/she may refuse to give them the ballot papers;
- (f) To comply with the provisions of section 61(3)(d) before he/she issues a ballot paper to a voter;
- (g) To explain, in the presence of the polling agents, the voting procedure to illiterate voters;
- (h) To issue new ballot papers to voters who have accidentally spoilt their ballot papers. The spoilt paper should be cancelled;

- (i) To remove any person from the polling station who misconducts himself or fails to obey lawful orders given by the presiding officer;
- (j) To warn any person intending to vote at his polling station who is actually not a voter entitled to vote there that he may commit an offence if he proceeds to vote;
- (k) To permit a voter who has been warned to vote provided he records in writing the full name and address of that voter;
- (l) To deal with tendered ballot papers in accordance with the requirements of section 65 of the Act;
- (m) To adjourn the voting proceedings until the following day if they interrupted or obstructed by riot or open violence. Notice of adjournment should be sent immediately to the Returning Officer;
- (n) To keep open the polling station to enable voters who are present during the poll closing time to exercise their right to vote;
- (o) To receive voter's complaints in relation to the conduct of voting in the polling station.

Other obligations of the Presiding Officer relate to the closing of the poll. These have already been discussed (See 3.5.8)

### **3.5.10.3 Polling Assistant.**

- (a) To assist the Presiding Officer in securing smooth compliance with law and procedure during voting;
- (b) To demand identity of voters before being allowed to vote;
- (c) To satisfy himself/herself that voters allowed to vote have not already voted at the polling station or elsewhere;
- (d) To issue ballot papers to voters who have duly identified themselves to him/her;
- (e) To sign the Presiding Officer's report after confirming it;
- (f) To receive complaints from voters in relation to the conduct of voting in the polling station.

#### **3.5.10.4 Candidate**

- (a) To appoint polling agents or alternate polling agents to attend to each polling station and communicate the appointments to the Returning Officer not later than 7 days before the election day;
- (b) To submit his/her complaints related to voting to the presiding officer;
- (c) To identify and notify the presiding officer of persons who are not entitled to vote at the polling station in question and furnish the presiding officer with the reasons or evidence for believing that such person is not entitled to vote there;
- (d) To request the presiding officer to require any person wishing to vote to furnish such evidence of his/her identity with the person described in the certificate of registration;
- (e) To seal with his/her own seal if he/she desires the separate packets made under section 69 of the Act;
- (f) To seal with his/her own seal the ballot boxes after closing of the poll if he/she desires.

#### **3.5.10.5 Polling Agent/Alternate Polling Agent**

- (a) To represent and safeguard the interests of his/her candidate at the polling station;
- (b) To co-operate with the presiding officer and polling assistant to ensure smooth compliance with the law and procedure related to the conduct of voting;
- (c) To be present at the opening of the voting at the polling station allocated to him/her, but his/her absence does not invalidate the votes cast.
- (d) To submit to the presiding officer any complaint he/she has or has received or his/her satisfaction with the arrangements for voting in the polling station before voting commences;
- (e) To assist the Presiding Officer in resolving complaints brought to his/her knowledge during the voting process;
- (f) To prepare a report incorporating the complaints that he/she has or has received in relation to the manner the voting was conducted in the polling station;

- (g) To confirm and sign the report prepared by the presiding officer at the conclusion of the polling;
- (h) To witness the marking by presiding officer of the separate packets and seal them with the candidate's seal.
- (i) To identify persons who are not entitled to vote at the particular polling station and notify the presiding officer.

#### **3.5.10.6 Voter**

- (a) To appear and vote at a polling station assigned to him/her;
- (b) To behave and obey all lawful orders given by the presiding officer. A voter who misconducts himself/herself may be kept in custody until he/she appears in Court;
- (c) To communicate any complaint that he/she has on the voting process to the presiding officer;
- (d) To identify himself/herself to the presiding officer or polling assistant by producing the registration certificate before being allowed to vote;
- (e) If the voter is incapacitated he/she may seek assistance from any person of his choice to assist him/her to record his/her vote;
- (f) If the voter is illiterate the presiding officer, in the presence of polling agents shall explain the voting procedure to the voter;
- (g) To refrain from putting any marks on the ballot paper which will identify the paper with him/her;
- (h) He/she is not allowed to show the ballot paper on which he/she has voted to any person except the presiding officer for the purpose only of ascertaining that he/she has voted correctly;
- (i) To obtain another ballot paper from the presiding officer if the other paper is accidentally spoiled;
- (j) To submit any complaint in relation to the conduct of the voting in the polling station to the presiding officer or polling assistant before leaving the polling station.

#### **3.5.10.7 Offences.**

There are many offences which may be committed at the stage of voting. We will highlight the common offences only, which are;



- (a) if any person misconducts himself in the polling station or fails to obey lawful orders given by the presiding officer;
- (b) if any person enters with the maintenance of secrecy during the voting process e.g. if he attempts to communicate any information relating to voting in a polling station to another person;
- (c) if a person who has already voted votes for the second time;
- (d) if a person induces a person who has already voted to vote for the second time;
- (e) if a person delivers his registration certificate to another person for the purpose of enabling that person to obtain a ballot paper to vote;
- (f) if a person votes or induces another person to vote while he knows that he or such other person does not qualify to vote;
- (g) if he delivers an invalid certificate of registration for the purpose of obtaining a ballot paper.

### **3.6 Counting of Votes**

The counting of the votes takes place as soon as possible after the end of polling. The candidates and their agents have the right to be present at the scene where the votes are counted.

#### **3.6.1 Who is Responsible for Counting the Votes?**

Counting agents and enumerators are primarily responsible for counting the votes. All polling agents or alternate polling agents become counting agents soon after the close of the poll. Enumerators are appointed by the Returning Officer. The counting of the votes at each polling station is presided by the Returning Officer assisted by his/her polling assistant.

#### **3.6.2 Who may attend the counting?**

Only the following persons may be present at the place where votes are counted;

- (a) the Presiding Officer;
- (b) a polling assistant;

- (c) a polling agent or alternate polling agent (counting agents);
- (d) a candidate;
- (e) a police officer or any other person responsible for security at the counting place;
- (f) a Returning Officer;
- (g) an Assistant Returning Officer;
- (h) a Regional Coordinator;
- (i) a member of the ECT;
- (j) the Director of Elections or an electoral officer of the ECT.

### **3.6.3 Where to Count the Votes.**

Both the votes for Presidential and Parliamentary election cast at a polling station are supposed to be counted at that polling station. However, the ECT, the Director of Elections or the Returning Officer may direct that votes of a number of neighbouring polling stations or of all polling stations in a polling district should be counted in one place.

The order to have the votes counted in one place should be occasioned by the following factors;

- (a) security reasons;
- (b) absence of counting facilities at the polling stations;
- (c) inadequacy of counting space at the polling stations;
- (d) any other reasonable causes.

### **3.6.4 Procedure for Counting.**

The Presiding Officer of each polling station, assisted by his/her polling assistant is required, as soon as practicable after the closing of the poll to proceed counting the votes at the polling station. The counting should be undertaken continuously in the presence of the persons allowed in a counting place.

Additionally, at the conclusion of every stage in the counting process, the candidates or their polling (counting) agents are required to fill in the forms provided to them stating whether or not they are satisfied with the

counting process at every stage. Complaints may also be raised in the said forms.

Efforts should be made to resolve or settle every complaint raised at every state. Thereafter the Presiding Officer should prepare a report in the prescribed form detailing the complaints and how they were resolved.

Finally the Presiding Officer, the polling assistant and the polling agents should confirm and sign the reports prepared by the Presiding Officer at every stage of the counting and the Presiding Officer shall submit the same to the Returning Officer.

### **3.6.5 Method of Counting.**

Before the counting begins the Presiding Officer, the polling assistant and the polling agents, in the presence of the other persons allowed in a counting place, do the following;

- (a) ascertain and record the number of all persons who voted at the polling station;
- (b) count and record the number of all the unused ballot papers, including spoilt ballot papers and put them in a special envelope. The envelope should be sealed;
- (c) inspect each seal and padlock affixed to the ballot box to ascertain whether or not they have been opened or tampered with;
- (d) unuseal the seals and unlock the padlock on the ballot box;
- (e) open the ballot box;
- (f) the Presiding Officer should take out and count aloud each ballot paper and record the total of the ballot papers found in the ballot box.

At this stage the actual counting of the votes is now ready which should be undertaken in strict compliance with the following procedure;

- (a) the Presiding Officer should unfold each ballot paper, display it for viewing by the persons present and announce aloud the candidate for which the vote has been cast. If the ballot paper is

blank, spoilt or invalid the Presiding Officer should state this fact aloud.

- (b) the displayed ballot papers should be arranged in separate lots facing upwards according to the candidate for which they were cast. Blank, spoilt or invalid votes should be arranged accordingly.

If votes from several polling stations are counted in one place, votes from each polling station should be counted separately in the manner outlined above. At no stage should the Presiding Officers mix the ballot papers.

### **3.6.6. Uncounted Votes.**

A ballot paper carrying the following defects will not be counted as a valid vote;

- (a) if it does not bear the official mark used for voting;
- (b) if the vote is recorded on the ballot paper contrary to the voting instructions e.g. the mark is placed at the wrong place;
- (c) if the voter makes some marks on the ballot paper which identify the paper with that voter;
- (d) if the ballot paper is not marked at all or is void for uncertainties.

All ballot papers which are rejected should be endorsed by the Returning Officer or ARO by adding the word "Rejected".

### **3.6.7 Controversial Ballot Papers**

The decision on any controversial ballot paper is supposed to be made by the Presiding Officer after consultations with the polling assistant, the polling agents or the candidates, if present. If the decision is disputed, it shall be subject to review by the Returning Officer. The review is undertaken when the Returning Officer makes the addition of votes from all the polling stations in his constituency.

The Returning Officer's decision is final and it can only be reviewed by way of an election petition to be filed after the elections.

### **3.6.8 Obligations at the Conclusion of the Counting.**

When the counting exercise has come to an end the Presiding Officer is required to do the following;

- (a) seal up in separate packets the valid, the disputed and the rejected ballot papers;
- (b) prepare separate reports in the manner and form directed by ECT of the Presidential and Parliamentary results for his polling station. The reports should be signed by the Presiding Officer and the polling agents;
- (c) require the polling agents or the candidates, if present, to state in the prescribed form their satisfaction or complaints in relation to the counting of the votes;
- (d) affix in a conspicuous place a copy of the report of the election results at the polling station;
- (e) provide each polling agent with a copy of the results above;
- (f) lock up and seal all the packets of ballot papers in the ballot box;
- (g) transmit and hand over to the Returning Officer the ballot box and the report of the partial results of the election at his polling station. Polling agents should accompany him/her when transmitting the ballot box and the report.

### **3.6.9. Counting of Presidential Votes.**

The procedure for voting and counting of Presidential votes is similar to the procedure pertaining to Parliamentary voting and counting discussed above. Therefore it is the responsibility of all persons involved in the voting and counting of the Presidential votes to abide by the law which has been discussed above.

### **3.6.10 Declaration of Presidential Results**

It is the obligation of the ECT to declare the results for the Presidential elections. Before declaration of the results the Returning Officer should comply with the following;

- (a) he/she should ensure that all the reports of the results (prepared by Presiding Officers) and the ballot boxes containing the ballot

papers have been received from all the polling districts in his/her constituency;

- (b) he/she must determine the validity of the disputed votes. Remember that his/her decision is final and only subject to review by High Court by way of an election petition.
- (c) he/she must add together the figures of:
  - (i) all the votes cast in the constituency;
  - (ii) the votes in favour of each candidate;
  - (iii) the rejected ballot papers.
- (d) on the basis of (a), (b) and (c) above, he/she must prepare a report of the partial results of the Presidential election in his/her constituency and submit it to the ECT.
- (e) he/she must certify and give a copy of the report prepared above to each of the polling agents or the candidates if present;
- (f) he/she must display a copy of the report in a conspicuous public place.

### **3.6.11 What should ECT do Next?**

On receipt of the reports prepared by all the Returning Officers, the ECT is required to do the following;

- (a) add together all the respective totals certified to it by each Returning Officer and declare the results. A successful candidate must collect more than 50% of the total valid votes cast;
- (b) If there is any doubt as to the accuracy in the addition of the votes in any constituency the ECT may direct the repetition of the addition of the figures for all or some of the polling stations in the constituency. The ECT cannot order a recount of the votes. Probably this can only be done at the level of a constituency.

### **3.6.12 Second Presidential Ballot.**

A second ballot can be ordered if during the initial ballot no candidate managed to receive more than 50% of the total number of valid votes cast. During the second ballot only the candidates with the first and second highest number of votes shall be allowed to stand for the election.

Any candidate securing more than 50% of the votes cast or receives the greatest number of votes cast will be declared the winner.

Unlike Parliamentary results Presidential results cannot be challenged in any court of law. Unfortunately this negates the whole concept of democracy and is contrary to the whole idea behind the principle of free and fair election.

### **3.6.13 Persons to Witness Addition of Presidential Results.**

The following persons are empowered to attend and witness the addition of the presidential results from the Returning Officers by the ECT;

- (a) member of ECT;
- (b) Director of Elections;
- (c) Electoral officers of ECT;
- (d) candidates;
- (e) counting agents;
- (f) police officer responsible for security;
- (g) observers duly authorised by ECT;
- (h) any other person authorised by ECT.

### **3.6.14 Declaration of Parliamentary Results.**

It is the obligation of the Returning Officer to declare the results in a parliamentary election. Like in Presidential elections, addition of votes from all the polling stations in a constituency has to be done, this time, by the Returning Officer.

### **3.6.15 Who May Attend the Addition of the Votes?**

The following persons may attend and witness the addition of the votes from the polling stations in the constituency;

- (a) the Returning Officer/Assistant Returning Officer;
- (b) Regional Coordinator;
- (c) member of ECT;
- (d) Director of Elections/Electoral Officer of ECT;

- (e) candidates;
- (f) counting agents;
- (g) police officer or any other person responsible for security;
- (h) authorised observers.

### **3.6.16 Checking Additions/Recounting the Votes.**

If there is any doubt, the candidate or the polling agent may request the Returning Officer to check on the additions to ascertain their accuracy

Alternatively they can ask for a recount of all the votes or the votes from any polling station. But the recount will be allowed only if the results from that polling station were disputed by the polling agent or the candidate. Hopefully, the Presiding Officer's report will also reflect the disputed results from his/her polling station.

A request for checking the accuracy of the additions or recounting of the votes should not be rejected by the Returning Officer unreasonably.

### **3.6.17 Equality of Votes.**

Where there is an equality of votes among the candidates, the Returning Officer should make a recount of the votes. If the recount, once again, shows an equality of the votes, the Returning Officer should report that fact to ECT which will in turn appoint a convenient day to be the nomination day.

### **3.6.18 Obligations after Declaration of Results**

Following the declaration of the results, the Returning Officer is obliged to do the following:

- (a) send a notification of election to the successful candidate;
- (b) a compiled report to be submitted to the ECT. The report should include:
  - (i) the complaints raised at every stage of the election and the measures taken in respect of each complaint;



- (ii) the candidate's view in relation to the election;
- (iii) the results of the election.

Unlike Presidential results, Parliamentary results can be challenged in the High Court by way of an election petition.

### **3.7 Duties and obligations.**

At the level of counting the votes once again, the different actors in the process are invested with different duties and obligations. Below we mention them albeit in brief.

#### **3.7.1 Returning Officer/Assistant Returning Officer**

- (a) To admit the counting agents duly nominated by the candidates to the place where the votes are counted;
- (b) To make arrangements for counting of the votes in the presence of the counting agents soon after closing the poll;
- (c) To appoint enumerators to assist him/her in the counting of votes;
- (d) To keep the ballot papers with their faces upwards while counting the votes;
- (e) To endorse with the word "Rejected" all votes which are not counted;
- (f) To prepare a statement showing the number of ballot papers which have been rejected in conformity with section 76 of the Act;
- (d) To make a recount of the votes if there is an equality of the votes;
- (h) To notify the ECT if there is an equality of the votes when a recount of the votes is made;
- (i) to recount the votes if there is an express request to that effect by the candidate or his counting agent;

Other obligations include those mentioned in paragraphs 3.6.4, 3.6.5, 3.6.7 and 3.6.8.

### **3.7.2 Enumerators**

- (a) To count or recount the votes as may be ordered by the Returning Officer; and
- (b) To maintain and assist in maintaining the secrecy of the counting of the votes at the counting station.

### **3.7.3 Candidates**

- (a) To appoint counting agents and notify the Returning Officer the names and addresses of the agents;
- (b) To submit to the Returning Officer any complaints in his/her possession before the counting commences;
- (c) To confirm and sign the report prepared by Returning Officer pursuant to the complaints raised by the candidates;
- (d) To confirm and sign the various reports prepared by the Returning Officer during the various stages in the counting process of the votes;
- (e) To request the Returning Officer to recount the votes;
- (f) To furnish the Returning Officer with views on the elections generally.

### **3.7.4 Counting Agents.**

- (a) To attend the briefing session by the Returning Officer before counting of the votes begins;
- (b) To confirm and sign the various reports prepared by the Returning officer during the various stages in the process of counting the votes;
- (c) To witness the opening of the ballot boxes by the Returning Officer from the polling stations;
- (d) To object to the Returning Officer's decision to reject a ballot paper;
- (e) To request for a recount of the votes;
- (f) To witness the verification by the Returning Officer of the ballot paper account and make a copy of the statement prepared by the Returning Officer thereof.

### **3.8 Elections Petitions**

The process of elections is long. It commences when registration of voters starts. It does not end when winners are declared. It continues, to encompass whatever complaints may arise after elections. There may be complaints as to corruption, illegal practices, rigging of elections, etc. Such complaints when presented to the court formally, are known as election petitions.

#### **3.8.1 Who may petition?**

The following categories of persons are allowed to petition:

- (a) a person who lawfully voted or had a right to vote at the election to which the petition relates;
- (b) a person claiming to have had a right to be nominated or elected at such elections;
- (c) a person alleging himself to have been a candidate at such election;
- (d) the Attorney General.

It would have been justifiable and rational to include political parties that placed candidates to be elected, as entitled to petition.

#### **3.8.2 Where are petitions filed**

Election petitions are required to be filed in the High Court of Tanzania. There are, so far, ten centres where High Court registries may be found. These are, Dar es Salaam, Dodoma, Mwanza, Tabora, Mbeya, Mtwara, Arusha, Moshi, Tanga and Bukoba.

#### **3.8.3 When are petitions filed?**

An election petition must be filed within fourteen days from the date of the declaration of the results of the election by the returning officer.

Challenging the results of elections where there there have been justification for doing so is part and parcel of the democratic process.

### **3.8.4 What claims can a petitioner make?**

**A petitioner is entitled to make the following claims namely:-**

- (a) a declaration that the election is void;**
- (b) a declaration that the nomination of the person elected was invalid;**
- (c) a declaration that any candidate was elected;**
- (d) a scrutiny, where the seat is claimed for an unsuccessful candidate on the ground that he had majority of lawful votes.**

# **PART TWO**



## **CHAPTER 1V**

### **4. MONITORS AND OBSERVERS**

It is crucial that there be monitors and observers both, local and international, during the whole process of elections. The ECT had issued an official announcement to the public, through the media, that it would invite such monitors and observers.

#### **4.1 Who are monitors and observers?**

These are people who check the whole process of elections, to make sure that the elections have been conducted in a peaceful atmosphere and that no undue influence of whatever nature was allowed. According to the Guidelines issued by the ECT “Local monitoring” means the monitoring of the various stages of electoral process by local organisations duly recognised for that purpose. “International observation” is the same process but done by international organisations and foreign governments.

#### **4.2 Why Monitor Elections?**

Monitoring of elections is momentous in view of the fact that, by nature, a human being would always wish to win, for which reason the temptation to get undue advantage is great and real. It is therefore important that such temptations are contained and are not put into practice.

Monitoring is also essential for the purpose of acceptability and respectability of results by all interested parties. The general responsibility of monitors and observers is to see to it that elections have been free and fair. Only where such situation exists, acceptance and respect would remain cherished dreams.

#### **4.3 Background Materials and Briefings.**

The National Electoral Commission will provide local monitors and international observers with background materials on various aspects of the country.

These will include:-

- (a) information pertaining to the history and geography of Tanzania and the current political development;
- (b) information on the electoral process including the relevant laws;
- (c) a list of polling centres for the electoral areas to be covered by the local monitor or the international observer;
- (d) a list of Political Parties; and
- (e) the names of the Presidential Candidates and their respective Political Parties.

#### **4.4. Scope of Monitoring and Observation**

The scope of local monitoring and international observation shall consist of monitoring and observing the following:

- (a) to assess and evaluate the impartiality of the National Electoral Commission;
- (b) to assess and evaluate the impartiality and legality of the decisions taken by the National Electoral Commission in respect of electoral disputes;
- (c) the Registration of voters;
- (d) the course of the election campaigns;
- (e) the access to the use of the media by candidates;
- (f) the voting process; and
- (g) the determination of the election results.

#### **4.5. Rights of Local Monitors and International Observers.**

Local Monitors and International Observers have the following rights:

- (a) to request for and obtain reasonable information on any aspect of Civic Education programmes, the candidates' campaign programmes, activities relating to registration of voters, nominations and polling;
- (b) to be present at the polling stations;



- (c) to inspect ballot boxes and polling booth before the beginning of the casting of votes;
- (d) to have freedom of movement throughout the country except Military Instalations and other restricted areas; and
- (e) to communicate freely with any political party.

**4.6. Obligations of Local Monitors and International Observers.**

Local Monitors and International Observers shall be obliged:

- (a) to respect and abide by the laws of Tanzania;
- (b) to exercise their role with impartiality, independence and objectivity;
- (c) to refrain from interfering or intermingling with the duties of the election officials;
- (d) to cooperate with election officials;
- (e) a local monitor or an international observer would be disqualified from monitoring or observing if he/she campaigns or displays favouritism for an election candidate or his/her political party.

**4.7. Mode of Reporting.**

- (a) A Local Monitor and an International Observer shall report any irregularity noted in the electoral process to the National Electoral Commission or to a competent officer of the National Electoral Commission who will examine the activities reported as irregular and take corrective measures where necessary.
- (b) The Organisation of a Local Monitor or an International Observer shall provide copies of their reports to the National Electoral Commission.

**4.8. Code of Conduct for Local Monitors and International Observers.**

All Local Monitors and International Observers must adhere to the following code of conduct:

- (a) strict impartiality;
- (b) not to express any opinion to the press on electoral process;
- (c) not to issue a public statement about the electoral process before the election results have been officially announced;
- (d) not to play an executive role or to act as a commission of inquiry, and
- (e) to return any identification material issued to him/her by the National Electoral Commission and any other material which will specifically be required to be returned.

## **PART THREE**

## CHAPTER V

### 5. CONCLUDING REMARKS

In this small book we have endeavoured to set out the whole electoral process by traversing through the electoral laws and charting out roles, rights, duties, obligations and responsibilities of all institutions and persons who are involved in the electoral process. In doing so, we have come across some controversial or problematic matters. We attempted suggestions where we deemed them necessary. We, therefore, wish to reiterate our emphasis on major points.

Firstly, that although the right to vote is socially inherent, unless disqualified by law, it can only be successfully enjoyed where an eligible voter registers himself/herself to become an entitled voter. Registration gives one the right to vote on the polling day.

Secondly, under the *PPA* the Registrar of Political Parties is conferred with wide discretionary powers, some of which are not subject to court's scrutiny. We wish to reiterate our position that no judicial or quasi-judicial body such as the office of the Registrar of Political Parties can avoid or evade judicial review of its decisions. Thus, any aggrieved person is advised to proceed to High Court to seek remedy against infringements done by the Registrar. The same opinion applies, in the same manner, to the decisions made by the ECT.

As far as *PPA* is concerned Presidential elections are not challengeable. But Parliamentary elections are. As we fail to see any rationale in this position, we advise aggrieved persons to proceed and challenge Presidential election results as well where there are justifiable grounds of doing so. Election petitions are part of the process of Free and Fair elections.

Lastly, but not least, we wish to reiterate that the responsibility of making sure that the elections would be free and fair falls on all of us. Every individual, organizations such as NGOs and especially those persons who are directly involved in any way, have a social duty to discharge. We all have a right to a freely elected government. Let us all take that right seriously by not allowing any infringement no matter who perpetrates such infringement. Take useful and lawful action whenever you feel that there is or there would likely be such infringement.

**FREE AND FAIR ELECTIONS MANIFEST DEMOCRACY.**

