Election Management Bodies in East Africa

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A. Summary

Tanzania’s federal structure, requiring separate elections for the Mainland and the islands of Zanzibar, has necessitated the creation of two election management bodies (EMBs) with different mandates. The National Electoral Commission (NEC) is responsible for Union elections, in both the Mainland and in Zanzibar, while the Zanzibar Electoral Commission (ZEC) is responsible for Zanzibar elections.

Both EMBs face significant challenges, the most critical of which is the perception that they are not independent and impartial, despite apparent legal guarantees of freedom from political interference. The system for appointment and removal of commissioners, especially for the Mainland, does not ensure their full independence from the executive; while financial and logistical dependence on the executive undermines the timeous completion of significant activities. There is a need to revise the requirements for the composition and tenure of commissioners, and also to ensure the adequate financial security of the two institutions.

In reality the legal framework for EMBs has not protected them from encroachment by the government and incumbent parties – on the Mainland, Chama Cha Mapinduzi (Party of the Revolution, CCM), and in Zanzibar, CCM in a government of national unity (GNU) with the Civic United Front (CUF).

The NEC and ZEC commissioners are appointed by the Union President and the President of Zanzibar, respectively, with very limited requirements for the qualifications stipulated in the Constitution. The only significant restriction for appointing ZEC commissioners is that the President of Zanzibar has to choose two out of seven names proposed by the official opposition. This requirement, however, ensures that the commission would always be split 5:2 whenever there is a controversial issue relating to party interests. The security of tenure of commissioners is legally precarious for the NEC, because the President can remove a commissioner for incompetence without being questioned. None has been removed to date, partly because these commissioners
have been ‘safe’ handpicked appointees. In the case of the ZEC, the President has to receive a report from an investigative committee made up of High Court judges before removing a commissioner.

Institutionally, the EMBs are not autonomous – they are dependent on the government for physical facilities, personnel and budget. They have to request resources from the Prime Minister’s Office on the Mainland (NEC) and the Second Vice-President’s Office in Zanzibar (ZEC).

The NEC has a small secretariat at the national level with no office and personnel outside the headquarters in Dar es Salaam. During elections, it utilises space in regional and district government offices, and uses designated government officials as returning and assistant returning officers. The independence of these officials is highly contested. Members of opposition parties believe that the officials have vested interests in the victory of the ruling party, as their positions are dependent on the continued incumbency of the government in power. The ZEC has offices up to the district level and has more leeway in employing personnel; yet in some cases the ZEC has not been able to prevent some Zanzibar government officials and politicians from influencing the conduct of elections.

The performance of the two EMBs in managing elections, from registration to vote counting and declaration of winners, remains inadequate.

There are glaring weaknesses in how the EMBs register voters. Neither receives adequate funds to update the permanent voters’ registers, which are updated twice in five years. The NEC register uses outdated technology. While the ZEC register is updated and fully digitised, registration problems are more serious in Zanzibar due to a legal provision that requires a person to have lived on the islands continuously for three years to register as a voter. Many potential voters are thus denied their constitutional right to freedom of movement and the right to vote.

The NEC approves nominated candidates to stand for election after intra-party candidate selections, but it has no role in supervising internal party processes. The paperwork required to submit candidate names to NEC officials is considerable and bureaucratic. A small error could lead to a nomination being nullified. As a result, the many contending political parties on the Mainland look for such errors to have contestants disqualified on technicalities. The process should be simplified and corrections to technical errors allowed. The nomination process has been less controversial in Zanzibar, where there are only two major contending parties, the CCM and the CUF.

The campaign process on the Mainland is increasingly characterised by corruption, use of abusive language and violence. The situation in Zanzibar has improved following the formation of the GNU. The main protagonists in the increasingly acrimonious election campaigns are the party in power – the CCM – and the most powerful opposition party, CHADEMA (Chama cha Demokrasia na Maendeleo, or Party for Democracy and Progress). The electoral code of conduct allows the NEC to sanction candidates
and political parties, including suspending them from campaigning, but it has hardly exercised these powers.

Voting, vote counting and declaration of results have been marred by controversy, particularly where opposition parties are strong, with fears of attempted manipulation of results often expressed. In highly contested constituencies, crowds have often massed around vote tallying stations waiting for results to be announced, often leading to confrontations when the police attempted to disperse them. The NEC’s use of government officials as returning officers has undermined any trust it might enjoy among opposition parties.

Foreign and domestic observers have at best given a qualified ‘free and fair’ verdict for the NEC and a ‘poor’ rating for the ZEC in the first three elections after the re-introduction of multi-party politics in 1995, 2000 and 2005. These elections led to deaths in Zanzibar in each instance. In 2010, the modality of a GNU was agreed on before the vote and no deaths occurred during the elections. Violence is now largely concentrated on the Mainland, where a contestation over the results of the 2010 elections ended in three people being killed in Arusha.

Tanzania is in the process of crafting a new Union Constitution. The NEC is likely to undergo significant changes following recommendations for transparently selected commissioners and to give the organisation more autonomy. At the same time, the CCM has been accused of trying to take advantage of its larger number of delegates (about two-thirds of the members) in the Constituent Assembly to manipulate the Constitution-drafting process to its advantage. In Zanzibar, attention to the ZEC in the constitution-making debate is limited, as debate is focused on increased power and autonomy for Zanzibar in the Union rather than internal constitutional arrangements. It is widely believed that the 1984 Constitution of Zanzibar is largely acceptable. The ZEC is seen as having improved considerably from the past, not in terms of its structure, but largely due to the GNU. Yet cracks in the GNU are beginning to emerge, and once the Union is settled, differences between the two main rival parties are likely to resurface.

**B. Political history**

Tanzania’s Constitution has evolved through four phases:

- The Independence Constitution of 1961;
- The Republican Constitution of 1962;
- The Interim Constitution of 1965; and
- The permanent Constitution of 1977 currently in use.

These constitutions have six distinctive features in common:

- Their making did not involve public debate and discussion;
- With the exception of the independence Constitution, the rest tend to
concentrate and centralise power in the executive arm and particularly in the chief executive, namely, the President (who is head of state, head of the government, head of the public service, and commander-in-chief of all armed forces);

- They raise the ruling party to the acme of power by making it the supreme organ in the United Republic;
- They suffocate autonomous organisations such as trade unions, cooperative unions and other civil societies;
- They do not incorporate the Bill of Rights (note that the Bill of Rights first appeared in the Constitution of the United Republic in 1984); and
- The ruling party can solely make or un-make the Constitution through amendments.

The net product of these characteristics is the politics of hegemony by the ruling party and the resultant repressive political culture over the past four decades since independence. Currently, the United Republic is writing a new Constitution, expected to be completed in April 2014. In order to understand the constitutional development in Tanzania and its impact on democracy, particularly on the electoral process and management, it is imperative to highlight such developments in Tanganyika and Zanzibar both before and after the Union of 1964.

**Tanganyika (Mainland Tanzania)**

Tanganyika went through different political and constitutional phases of development from the colonial period to 1964, when it joined with Zanzibar to form the United Republic of Tanzania.

Tanganyika was a German colony from 1884 to 1918, and then a British one from 1919 to 1961. The British colonial system was run through indirect rule. Each African ‘tribe’ at the local government level would be ruled by its own chief. As there were no clear-cut ethnic lines in many areas, the British created ‘tribes’ and chiefs. Colonial rule was not based on democracy, and elections came late to British Tanganyika. A legislative council was established in 1926 but its 20 members were all appointed by the British Governor. Only in 1956 did the Governor announce that the first elections would be held in Tanganyika in 1958, based on limited suffrage and race. Voters had to meet criteria based on education and income in order to vote for three candidates – a European, an Asian and an African (black) in a three-member constituency. This was intended to avoid an African majority as it was thought they could only win a third of the seats under the system.

The Tanganyika African National Union (TANU), the main nationalist party formed in 1954 and led by Julius Nyerere, was split on the issue of participation in the racially based elections. Though many of its leading figures called for a boycott of the elections,

Nyerere convinced the party to participate while mobilising White and Asian candidates to run on the TANU ticket. TANU won 28 out of the 30 seats; the other two being won by the African National Congress (ANC), a splinter from TANU established by those who had initially called for a boycott. After the divisive issue of race, TANU had to deal with other issues that threatened its nationalist future. The first opposition came from traditional chiefs, who had formed the United Tanganyika Party (UTP) with the assistance of the British colonial government. TANU also faced negative mobilisation from the All Muslim Nationalist Union of Tanganyika (AMNUT), a political party that campaigned for independence to be delayed so as to bridge the gap in the level of education between Christians and Muslims. TANU was able to win the support of moderate Muslims by promising to deal with the disparities in education after independence. As it would turn out, though, these challenges reappeared after independence and would influence the declaration of single-party rule.

Tanganyika won independence from Britain under the Westminster parliamentary model of government. The party with the highest number of seats in the legislature would form the government under a Prime Minister. The electoral system was that of simple plurality in single-member constituencies. In the 1960 elections, which were held before the independence date of 9 December 1961, TANU won a landslide victory with 70 out of 71 seats. The remaining seat was won by an independent candidate who was in fact a member of TANU; it meant that effectively, the country had a Parliament without an opposition. The popularity of TANU was still intact when it decided in 1962 to adopt a new Republican Constitution, creating a presidential system of government. In the elections for that position, Nyerere of TANU won 99.2% of the votes, and the other candidate, Zuberi Mtemvu of the ANC, won only 0.8%.

Although TANU seemed to be hegemonic in the early 1960s, serious political contestations had begun to emerge. In 1964, the army staged a mutiny against the continued presence of British officers, the East African Muslim Welfare Society (EAMWS) agitated for more positions for Muslims in state structures, and other state workers called for more Africanisation of the civil service and better pay. New political parties were formed: the People’s Convention Party, under Samson Mshalla; and the People’s Democratic Party led by Kasanga Tumbo.

The mutiny was crushed and the army was disbanded to be replaced by a new national army. The EAMWS was banned in 1968, its Kenyan leaders expelled from the country and many trade union leaders detained.

569 The Tanganyika (Constitution) Order in Council, 1961.
570 Nohlen et al. (1999), op. cit.
571 Ibid.
Zanzibar colonial politics was dominated by deep divisions based on race, partly due to slavery and the slave trade; these were reflected by the political parties. Three political parties participated in the elections in 1957, January 1961, July 1961 and 1963, which elected unofficial members of the colonial legislative council. The parties were the Afro-Shirazi Party (ASP), the Zanzibar and Pemba Peoples Party (ZPPP) and the Zanzibar Nationalist Party (ZNP). In terms of race, the ASP had its base among Africans and poorer Shirazi. The ZPPP was mainly supported by the higher-income Shirazi, while the ZNP was seen as the party of the Arab elites, although its language sought to appeal to multi-ethnic Zanzibar nationalism rather than narrow Arab nationalism.

There was a perception within the ASP that the colonial Commissioner of Elections was gerrymandering constituency boundaries in favour of the ZNP and ZPPP. In the 1963 elections, for example, the ASP won 54% of the vote and obtained 13 seats, while the ZNP–ZPPP coalition received 46% of the vote and won 18 seats. These results were very contentious.

Independence was granted on 10 December 1963 by the British to a ZNP–ZPPP parliamentary coalition government under the Sultan of Zanzibar. The ASP responded by staging a revolution on 12 January 1964 and establishing the Revolutionary Government of Zanzibar. ASP leader Sheikh Abeid Amani Karume suspended the 1963 Independence Constitution and proclaimed a constitutional decree that abolished all political parties except the ASP. He also abolished all elections. The ASP agenda centred on redistribution of power from the previous Arab elites to Africans.

The revolution was the culmination of deeply divisive and contested electoral politics. In a first-past-the-post electoral system, it is not uncommon to have disparity between the total number of votes and the number of seats. The controversy in Zanzibar over this issue was, however, so intense that the disparity was not accepted. As a result, its elections were mostly followed by violence. After the June 1961 election, for example, rioting led to the deaths of 69 people. The political violence intensified during the revolution in 1964. It was estimated that around 5,000 people were killed, most of them Arabs – especially the poorer ones living in the rural areas of Zanzibar. The ills of the past and the violence of the revolution left a lasting scar on Zanzibar, which came to haunt the re-entry of multi-party politics in 1992 as the contending political parties came to reflect the pre-revolution cleavages.

575 Zanzibar people who trace their origins to the Shiraz province of Iran.
578 Sharrif (2001), op. cit., pp. 314–315. There are no credible sources to get the exact figures of the deaths to date.
The Union
The events of 1964 on the Mainland and islands led to the establishment of a union between Tanganyika and Zanzibar. Confirmed in its authority after the suppression of the mutiny, TANU negotiated with the revolutionary government of Zanzibar for the creation of a new united republic named Tanzania.

The Interim Constitution of Tanzania of 1964 established the powers of the respective parts of the Union:
- Article 5 highlighted 11 activities where the Union President and legislature had authority in the entire United Republic;
- Article 5(b) allowed for a separate legislature and executive constituted according to the existing law in Zanzibar; and
- Article 5(d) referred to representation from Zanzibar in the Union legislature (without indicating how the candidates would be selected).\(^{579}\)

The Union, therefore, gave birth to two governments: the United Republic of Tanzania government, which managed Union affairs together with all Mainland affairs, and the Revolutionary Government of Zanzibar, dealing with non-Union matters in Zanzibar.

The Union of April 1964 was closely followed by the legal establishment of a one-party state in the Mainland as well as in Zanzibar (where the revolutionary government was already a single-party entity). A commission was appointed in January 1964 to look into the matter and reported in March 1964. Proposals were presented to the National Assembly and passed as constitutional amendments in June 1965.\(^{580}\) The elections in 1965 were, therefore, contested within the context of single-party politics.

It was officially argued that the reason for instituting a one-party state was to give voters a choice. TANU was so hegemonic, it was argued, that all TANU candidates would have carried the day. It was, therefore, seen as important to give voters a choice between two TANU candidates for parliamentary and council elections.\(^{581}\) The introduction of one-party rule was also seen by the commission as a way of rescuing the National Assembly from decline and decay, as the institution had turned into a rubber stamp because of lack of an opposition. As a result, legislation was passed rapidly and uncritically.\(^{582}\)

Under the new electoral system, voters had the choice between two parliamentary and local government council candidates from whom they could elect one for each level. There were, however, some limitations to potential candidates: they were screened by the party and only those who supported the system were allowed to participate. The same arguments for having two parliamentary candidates were not used for the

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\(^{579}\) Union of Tanganyika and Zanzibar Act, 1964 (The Interim Constitution), 25 April 1964.


\(^{581}\) Ibid.

presidential election. In presidential elections, only one candidate was allowed to stand and arguments in favour of one candidate were blurred.

The single-party parliamentary elections were keenly contested on the Mainland and a good number of incumbent members of Parliament (MPs), including cabinet ministers, usually lost their seats. In the 1965 elections, when 94 constituency seats were in contest, 29 out of 50 incumbent MPs lost their seats, including two ministers and nine junior ministers. In the 1970 elections, half of the 74 incumbents, that is 38, were not returned.583

The new political system was centralised and unitary – a political culture based on consensus. In 1967, this consensus was given an ideological identity in the form of the socialist Arusha Declaration. Single-party rule was legitimised as socialist democratic centralism or ‘participatory democracy’. However, this new political system was seen by some as authoritarian; for example, the Preventive Detention Act of 1962 was used to quell dissent, while the Trade Union Ordinance stifled workers’ rights.584

During the period of single-party rule, the National Assemblies had many MPs who were not elected directly by the population. Since it was not a parliamentary system with an opposition where most of the seats would have been determined by direct votes, the government decided to introduce non-constituency seats that would not be openly contested. In the 1965 National Assembly, there were, for example, 94 such seats, exactly the same number as for constituency MPs. Fifteen MPs chosen by the National Assembly acted as an electoral college, representing special interests such as trade unions, cooperatives and women. Another 32 MPs came from Zanzibar as members of the Revolutionary Council; 20 other members were nominated from Zanzibar. The state decided that 17 Regional Commissioners would enter the National Assembly by virtue of their office. Ten members were nominated by the President. All MPs from Zanzibar were appointed because at that time, there were no elections in Zanzibar except for the Union President. The first legislative and Zanzibar presidential elections came with the 1979 Zanzibar Constitution, which allowed for such elections to be held in 1980.585

By the time of the 1985 general election, when President Ali Hassan Mwinyi took over from Nyerere, the number of constituencies had been increased from 106 to 119; but the National Assembly had 274 members – meaning there were 155 members who were not directly elected. During that time, 15 special seats were introduced for women. Most of those elected by the National Assembly sitting as an electoral college came from what were called party-affiliated organs, that is, for women, youth, workers, cooperatives and parents. In the last National Assembly under single-party rule in 1990, the number of constituencies increased to 130 but the number of MPs in the National Assembly

583 Nohlen et al. (1999), op. cit.
was 284, the difference being 154.\textsuperscript{586} It became clear that the directly elected MPs were a minority in the National Assembly, further lowering the democratic value of the general election. The logic of the ruling party, which had become supreme in 1975, was to allow for various groups in the society to be represented in the National Assembly. The practice was corporatist in the sense that anyone wishing to participate in decision-making in the society had to be screened by party organs. This situation fuelled the clamour for multi-party politics and democracy in Tanzania.

The situation in Zanzibar was quite different. Despite the fact that Tanzania was declared a single-party political system in 1965, there were effectively two sister parties, TANU on the Mainland, and ASP in Zanzibar. For a long time, Zanzibar did not have elections because it was under a revolutionary government. However, as part of the Union, some elections were imposed on Zanzibar. The first was the union presidential election in 1965, which in reality was just a plebiscite whose results were known beforehand. A joint party committee came together to appoint a presidential candidate.\textsuperscript{587} The people of Zanzibar at the time were not voting for MPs to the Union National Assembly. The MPs were simply picked by the Zanzibar Revolutionary Council (ZRC).

TANU and ASP decided in the 1970s to end the anomaly of having two political parties in a single-party state. They established a joint party commission consisting of 20 members to draw up a new party constitution, which led to the formation in 1977 of Chama Cha Mapinduzi (CCM). The same 20-person commission was charged with the task of drawing up a new draft Constitution for the United Republic of Tanzania. This was enacted by a Constituent Assembly exclusively made up of MPs in 1977, and it is still in force. The Union Constitution of 1977 created a uniform system for the whole of Tanzania and provided for a de jure one-party state until 1992, when it was amended to allow for multi-party politics. In 1979, a new Zanzibar Constitution was also adopted, allowing the first Zanzibar elections since 1964 to be held in 1980. The people of Zanzibar could now vote for one presidential candidate and for representatives to the newly created House of Representatives for Zanzibar, as well as for MPs to the Union Parliament. The ZEC was established to manage these elections. The electoral politics and management of Zanzibar in 1979 seemed to imply the creation of a homogeneous system with the Mainland. However, in 1984, a new Constitution for Zanzibar was promulgated, which created a separate electoral system for Zanzibar.\textsuperscript{588}

Multi-party politics returned to Tanzania in 1992, following various sources of pressures on the regime in power. There was pressure from Western donor countries, which threatened to cut off development aid unless there was progress towards democratisation. There was also the collapse of socialism in Eastern Europe, poor economic

\textsuperscript{586} Numbers were compiled from Nohlen et al. (1999), op. cit., pp. 881–885.
\textsuperscript{587} Ibid., p. 39.
performance at home and the ever-growing agitation of Tanzanian civil and political groups.\textsuperscript{589} It also followed recommendations of the presidential commission, chaired by Chief Justice Francis Nyalali, on whether Tanzania should be a single-party or multi-party system.\textsuperscript{590} In 1992, the Political Parties Act No. 5 was enacted to allow for a multi-party political system in Tanzania.

Currently, there are 21 political parties of which six are active. These are:

- CCM;
- CUF;
- CHADEMA;
- Tanzania Labour Party (TLP);
- National Convention for Construction and Reform–Mageuzi (NCCR-Mageuzi); and
- United Democratic Party (UDP).

The first general election for Union government following the return of multi-party politics was held in October 1995. There were a number of Union by-elections run under the auspices of multi-party politics held in 1993 and 1994, all won by the CCM.\textsuperscript{591}

Since 1992, there have been four general elections: in 1995, 2000, 2005 and 2010. Results from these elections indicate that the number of CCM parliamentary seats rose from 186 in 1995 to 202 in 2000, and 206 in the 2005 general election before dropping to 186 in 2010. It should also be noted that throughout these elections, there were unopposed candidates\textsuperscript{592} running on CCM tickets. The number of unopposed candidates was 25 in the 2000 elections and eight in the 2005 polls. This number rose to 17 in the 2010 elections.

Figure 5.1 summarises parliamentary election results of the different political parties.

In presidential elections, the CCM’s support is still high and has increased over the years. In the 1995 elections, the party mobilised 61.8% of the vote; in 2000 the figure increased to 71.7% and in 2005 to 80.28%. However, in 2010, the CCM’s support dropped to 62.84%. It is interesting to note that Augustino Lyatonga Mrema, who obtained 27.8% of the vote through the NCCR-Mageuzi in the 1995 elections, received only 7.8% of the vote when he ran for the TLP in the 2000 elections, which dropped to 0.75% in the 2005 elections. Even Prof. Ibrahim Haruna Lipumba of the CUF, who mobilised up to 16.3% of the vote in the 2000 elections, received only 11.68% in the 2005 elections and 8.28% in the 2010 elections. Figure 5.2 provides a summary of the political parties and their performance in presidential elections.

\textsuperscript{591} The first was held in 1993 at Kwahani in Zanzibar, followed by Iléje and Kigoma on the Mainland in 1994; see Tanzania Affairs, www.tzaffairs.org.
\textsuperscript{592} Unopposed candidate means that no votes are cast and the candidates are declared to have won the election.
Zanzibar elections since the return of multi-party politics

In Zanzibar, the return of multi-party politics rekindled, albeit with some modifications, the pre-independence politics. There were only two major contending political parties in Zanzibar: the CCM, the incumbent party, which is dominant on Unguja Island, and the CUF, which is dominant in Pemba. These two parties became violently opposed to each other – the CCM seeing itself as the custodian of the Zanzibar revolution, while

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593 Bakari & Makulilo (2012), op. cit., p. 197.
the CUF positioned itself as the champion against the ills of the past and the present that were linked to that revolution. Consequently, the CUF has been accused of being linked to Arab interests.

A closer analysis of the political situation produces a more nuanced understanding of the position of the parties. Suffice it to say, though, that they fought bitter battles until taking the decision to work together in a GNU.

In all general elections in Zanzibar before 2010, the results were contested and the CUF did not recognise the elected President. Violence usually ensued and resulted in deaths, the largest number being recorded in 2001 when 31 people were killed in Pemba and many CUF supporters fled to Kenya and Somalia as refugees. Efforts were made to reconcile the two parties. The first attempt was made in 1999 by the Commonwealth in the aftermath of the 1995 elections. That attempt, referred to as Muafaka I (‘Accord I’), failed. The second attempt was brokered locally by the two political parties at the national level. It was known as Muafaka II. The key issues in reference to Muafaka II were the recognition of Aman Abeid Karume as Zanzibar’s President by the CUF, and in turn, the CUF received pledges that the ZEC would be reformed and the Constitution reviewed to make it compatible with multi-party democracy. This was partially fulfilled, and notably called for the participation of political parties in the constituting ZEC, with each party providing two commissioners. The ZEC was reorganised in 2003 to allow for the inclusion of four commissioners, two from the CCM and two from the CUF. The President at that time faltered in implementing other agreements.594

A third Muafaka followed the 2005 elections, proposing a GNU, but failed because of last-minute disagreements between the two parties. Unexpectedly, however, the two top leaders of the CCM and the CUF in Zanzibar held secret talks that produced Maridhiano (‘Compromise’), which gave birth to the GNU in 2010.595 Two issues were part and parcel of the Maridhiano, namely the inclusion of the CUF in government through a free and fair election, as well as the issue of peace in Zanzibar. Notwithstanding, in one incident, the CUF demanded the immediate disbandment of the ZEC and the NEC before the 2010 general election on the grounds that the EMBs were neither independent nor impartial. Similarly, the CUF expressed concerns over election-rigging by the ZEC in favour of the ruling party.596 Even after conceding defeat after the announcement of presidential election results, the CUF candidate, Seif Shariff Hamad, expressed his mistrust of ZEC officials.597

The GNU has facilitated the sharing of power between the CCM and the CUF. The

596 The CUF through its letters CUF/HQ/ZEC/037/010/056 dated 18 October 2010 and CUF/HQ/KR/ MU/030/59 of 30 October 2010 to the ZEC and other key stakeholders.
winner occupies the Presidency and appoints the Second Vice-President, who is the head of government in the House of Representatives. The CUF obtained the position of the First Vice-President of Zanzibar and a number of cabinet ministries. Members of the smaller opposition parties in Zanzibar, which do not have a single MP or member of the House of Representatives, have protested against this CCM–CUF hegemony. While the constitutional amendments do not mention the CCM or the CUF as the sole participants in a GNU, in the current situation, only these two parties qualify to participate in government.\(^{598}\)

C. Election management bodies
Election management in Tanzania is under the mandate of two bodies, namely the National Electoral Commission (NEC) for Union elections and the Zanzibar Electoral Commission (ZEC) for Zanzibar elections. The two bodies manage elections through a number of functions such as registration of voters, demarcation of electoral boundaries, nomination of candidates, voter education, voting and vote counting, and declaration of results.

The National Electoral Commission
The Independence Constitution created the first Electoral Commission of Tanganyika, under the chairmanship of the Speaker of the National Assembly, assisted by three to five appointed commissioners.\(^{599}\) The Electoral Commission had two phases during the single-party era. The first worked from 1965 to 1990 and the second was established in 1990 and worked until 1992 when multi-party politics was restored. The EMB established by the Independence Constitution became the Electoral Commission of Tanzania (ECT), and in the 1977 Union Constitution came to be referred to as the Electoral Commission of the United Republic of Tanzania, albeit with unchanged powers. From 1965 to 1990, the ECT had five commissioners under the chairmanship of the Speaker of the National Assembly. The legal and administrative framework of Tanzania’s elections was set out in the following documents:

- The Interim Constitution of 1965;
- The Constitution of the United Republic of Tanzania, 1977 (hereafter ‘the Constitution’);
- The National Assembly (Elections) Act, 1964, and its Amendment Act of 1965; and

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\(^{598}\) Interviews with Zanzibar offices’ party leaders of CHADEMA, the NCCR and TADEA, Zanzibar, September 2012.

The Clerk of the National Assembly was the head of the secretariat, known as the Directorate of Elections, while senior government officials in the regions and the districts were appointed as returning officers.\textsuperscript{600}

From 1990, amendments to the 1985 Elections Act No. 1 replaced the Speaker of the National Assembly as head of the ECT with a judge of the High Court or Court of Appeal. The number of commissioners rose from five to seven. The Clerk of the National Assembly, however, remained Director of Elections. All members of the ECT were appointed by the President at his discretion. One change introduced in 1990 was to give the ECT some authority to deal with election complaints. Election petitions were handled by a panel consisting of the commission chairman, who was from Tanzania Mainland. He was assisted by a judge of the Zanzibar High Court and another member of the commission appointed by the chairman.\textsuperscript{601} The 1990 amendments were an attempt to make the commission more effective in dealing with more demanding electoral contestations, but it lasted only a short while because of the return to multi-party politics in 1992.

In 1993, the ECT was replaced by the NEC. The constitutional and legal framework for the NEC today is found in Article 74 of the Constitution, as elaborated by the Elections Act No. 1 of 1985. Both instruments have been amended several times to allow for a patchwork of reforms in electoral laws and regulations. The Constitution was last amended on this mandate in 2005. Article 66 of the Constitution was amended to allocate women special seats constituting 30\% of the total in the National Assembly. Moreover, it provided for the appointment of up to ten MPs (five of whom must be women) by the President. The Elections Act was amended in 1992, 2000, 2005 and 2010. At the same time, the 1979 Local Government Elections Act was amended in 1994 to give the NEC the mandate to manage local government (councillor) elections on the Mainland. Since then, the law has been amended before every general election. The logic of the amendments was to allow for reforms agreed to by the government, such as the counting of votes at the polling stations (1995) or the introduction of the permanent national voters’ register (2004). However, changes to legislation repeatedly recommended by the NEC over the years, such as an independent act for the NEC or legislation to allow an independent budget, have been ignored.\textsuperscript{602} The Electoral Laws (Miscellaneous Amendments) Act No. 7 of 2010 was enacted to empower the NEC to make and publish in the Government Gazette – after consultation with political parties – the Electoral Code of Conduct in order to promote free and fair elections.\textsuperscript{603}

\textsuperscript{601} Ibid., p. 400.
The Zanzibar Election Commission
The Zanzibar Constitution of 1979 created an Electoral Commission of Zanzibar (ECZ) along similar lines as the ECT established under the 1977 Union Constitution. The Speaker of the House of Representatives became the Chairperson of the ECZ and the Secretary of the House of Representatives became the Director of the ECZ. The President of Zanzibar appointed five other members to the commission. The ECZ ran closely monitored party elections, but the controls and screening of candidates was more stringent than on the Mainland because of fears of the old Arab regime working against the Zanzibar revolution. A new Constitution for Zanzibar was promulgated in 1984, together with the Zanzibar Election Act 11 of 1984. These became the legal instruments for the ECZ. The name and structure remained the same until in 1993, just as was the case for the Union, when the ZEC was formed at the return of multi-party politics in 1992.

Today, the legal and institutional framework of the ZEC is based on the following:

- Constitution of Zanzibar of 1984 (Articles 119 and 120);
- Political Parties Act No. 5 of 1992;
- Zanzibar Election Act No. 11 of 1984 as amended by Act No. 4 of 1990;
- Act No. 8 of 1992;
- Act No. 5 of 1995;
- Act No. 3 of 2000; and

The major reform in the composition of the ZEC was, however, implemented in 2001, following the signing of Muafaka II, which required the President of Zanzibar to consult with the leader of the opposition in the House of Representatives in appointing two members from the opposition parties to serve as ZEC commissioners.

Constitutionally, the ZEC’s mandate is restricted to the management of Zanzibar’s elections. However, the NEC delegated to the ZEC the management of Union elections in Zanzibar in the multi-party elections of 1995 and 2000. That assignment was withdrawn after the 2000 elections, which were seen as the most chaotic in Zanzibar since the return of multi-party politics in 1992 and affecting the Union polls in the Isles.

Structure, composition and staffing

**NEC commissioners**

There are seven NEC commissioners, all appointed by the President of Tanzania for a renewable term of five years. The current members are Rtd Judge Damian Z Lubuva (chairman), Rtd Judge Himid Mahamoud Himid (vice-chairman), Prof. Amon E Chaligha (member), Mchanga H Mjaka (member), Rtd Judge John J Mkwawa (member) and Rtd Judge Mary HCS Longway (member).

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604 Article 74 of the Constitution and Section 4(1) of the National Elections Act, Chapter 343. The current members are Rtd Judge Damian Z Lubuva (chairman), Rtd Judge Himid Mahamoud Himid (vice-chairman), Prof. Amon E Chaligha (member), Mchanga H Mjaka (member), Rtd Judge John J Mkwawa (member) and Rtd Judge Mary HCS Longway (member).
man and vice-chairman have to be judges of the High Court or Court of Appeal of Tanzania. It is also a constitutional requirement that when the chairman comes from Tanzania Mainland, the vice-chairman must be from Zanzibar and vice versa. One member of the commission is appointed from among members of the Tanganyika Law Society (the law association for Mainland Tanzania). The other four members can be appointed by the President from among Tanzanians ‘possessing adequate experience in the conduct and supervision of parliamentary elections’. However, there are no other restrictions on the President’s discretion in appointing members of the NEC.

The President has unfettered powers to remove a commissioner. The Constitution states that the President can remove a commissioner from his/her position for reasons of incompetence, ill health, or losing the qualification of being a commissioner. The President would have to state a reason for removal, but effectively, his/her decision cannot be questioned. So far, the President has not dismissed any commissioner. NEC commissioners have been appointed from among judges, former Inspectors-General of Police, lawyers and academics. Usually, there has been one woman, but no other considerations have overtly been made. In the ongoing constitution-making process, there is a call for the involvement of other groups like civil society organisations (CSOs) and political parties, but apart from gender balance, it is unlikely that other considerations, such as religion, will be pursued, as the principle of a secular state is strong in Tanzania.

**ZEC commissioners**

The ZEC has seven commissioners. The chairman is appointed by the President of Zanzibar as s/he sees fit, but the person has to have the qualifications and status equivalent to a High Court judge in any Commonwealth country. Two commissioners are appointed by the President on the recommendation of the Second Vice-President, who is the head of government in the House of Representatives. Two other commissioners are appointed by the President on the recommendations of the leader of the opposition in the House of Representatives. Another member is appointed from among the judges of the High Court, and the last member is appointed by the President as s/he sees fit. The President thus appoints three members, including the chairman, with the only limitations being based on qualifications, and two other members on the recommendation of the head of government in the House of Representatives, who belongs to his party and is also appointed by the President. Only the two commissioners put forth by the opposition are appointed with the President’s hands tied. All commissioners, including the chairperson, work part-time.

New members of the ZEC were appointed in May 2013 after the previous commissioners’ term expired. All appointees are men, a fact that led the Tanzania Media

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606 Ibid., Article 74(5).
607 The current members are Jecha Salim Jecha (chairman), Omar R Mapuri, Salmin Senga, Haji Ramadhani Haji, Nassor Khamis Mohammed, Ayoub Bakari and Judge Abdulkarim Ameir Issa.
Women’s Association (TAMWA) to comment that the current ZEC was worse on gender representation than the previous commissions, which had had at least one woman commissioner.\footnote{608 MI Ali, TAMWA Coordinator, Zanzibar, press release, ‘Gender Equality Needed in Zanzibar Decision-Making Bodies’, 5 May 2013; see also ‘Zanzibar Government Criticised for Disregarding Gender Parity’, \textit{Daily News}, 6 May 2013.}

The qualifications of some commissioners, including chairpersons, have often been questioned.\footnote{609 TEMCO (2011), op. cit., p. 56.} Constitutional loopholes allow the appointment of unqualified members, including chairpersons. For example, the Constitution specifies that the chairperson shall be appointed by the President as s/he deems fit.\footnote{610 Constitution, Article 119(1)(a).} It states that the chairperson shall be a person who is qualified to be a judge of a High Court or Court of Appeal in any Commonwealth country or a person who is respected in society.\footnote{611 Ibid., Article 119(2)(a).} Under this provision, the President appears to be at liberty to appoint anybody whom s/he deems fit, since being qualified to be a judge is not a binding requirement. A good example was in 1995 when the chairperson was only a district magistrate. It has been pointed out that only the vice-chairpersons (who are appointed by the commissioners themselves) have been meeting the criteria of being lawyers, which implies that the chairmen have been appointed on the basis of their loyalty to the ruling party.\footnote{612 Zanzibar Legal Society, interview, Zanzibar, September 2012.}

Commissioners are appointed for a period of five years and can be removed for reasons of illness or failure to perform their tasks properly. The President, in such circumstances, is required to form a special committee of at least two High Court judges or those of the Court of Appeal to investigate and make recommendations to him. No commissioner has been removed to date.

\textit{The NEC secretariat}

The NEC consists of the chairman and commissioners, as well as a small national secretariat headed by the Director of Elections, who is appointed by the President, on recommendation from the commission.\footnote{613 Chaligha (2010), op. cit., p. 401.} The secretariat has the following ancillary units:

- Administration and personnel;
- Accounting and auditing; and
- Legal.

Below the units, there are four sections:

- Information technology;
- Research and statistics;
- Election management; and
- Voter education.\footnote{614 NEC (2006), op. cit.}
At the field level, the structure of the NEC operates only during elections. At the regional level, a Regional Election Coordinator is appointed during elections. A returning officer is appointed for every constituency and is assisted by a number of assistant returning officers. Since the 2000 amendments to the Elections Act, the executive directors of local councils have been appointed as returning officers by virtue of their position, and ward executive secretaries have been the assistant returning officers. In practice, therefore, elections are managed at the local level by administration officials. The law does not, however, prevent the NEC from appointing another person if there are issues with the council executive.

The ZEC secretariat
The President also appoints the Director of the ZEC from two names proposed by the commissioners. The Director heads the permanent secretariat of the ZEC; unlike the NEC, the ZEC has offices down to the district level. There is also a registration officer for every constituency assisted by assistant registration officers. During elections, the ZEC has a freer hand than the NEC in choosing its returning officers and assistant returning officers, although civil servants are not proscribed from holding these positions.

Powers and functions of the EMBs
The Constitution and the Election Act of 1985 give the NEC the following seven responsibilities:

- Supervise and coordinate the registration of voters in the election of the President and MPs of the United Republic of Tanzania;
- Supervise and coordinate the conduct of the presidential and parliamentary elections;
- Review the boundaries and demarcate the United Republic into various constituencies;
- Coordinate the registration of voters for the election of councillors in Mainland Tanzania;
- Declare MPs and councillors for women special seats; and
- Perform any other function in accordance with the law enacted by Parliament.

The powers of the ZEC are described in the Constitution of Zanzibar 1984, its functions are laid out in the Election Act of 1984, namely:

- The overall supervision of the general conduct of all presidential, members of the House of Representatives and local authorities leaders elections in Zanzibar; and
- The promotion and coordination of voter education.

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615 Section 8(1) of the Election Act of 1985 as amended in June 2010.
616 Ibid., Section 7(1).
617 Constitution, Article 74(6).
618 Constitution of Zanzibar 1984, Articles 119 and 120.
619 Chapter 1.
The ZEC is also responsible for the determination of constituencies.\(^{520}\)

*Demarcation of boundaries*

The NEC is empowered by the Constitution to review boundaries and to demarcate Tanzania into different parliamentary constituencies.\(^{621}\) It gives the NEC the authority to demarcate constituencies after obtaining the consent of the President.\(^{622}\) The President, therefore, retains the power to decide on the creation of new constituencies.

The Constitution further sets out the criteria for creating new constituencies, including population, geography and communication.\(^{623}\) Furthermore, the NEC, after learning from Zambia, Malawi, Mozambique, South Africa and Botswana, and having consulted various stakeholders – including leaders of political parties – added the following criteria:

- Population quota;
- The economic status of the constituency;
- The size of the constituency;
- Administrative boundaries;
- A constituency not to cut across two districts or councils;
- A ward not to lie in two constituencies;
- Existing pattern of human settlement;
- The Union environment;
- The physical capacity of the Parliament building; and
- The number of special seats for women.

Hence, in 2010 the United Republic of Tanzania was divided into 239 constituencies instead of 232, as was the case in 2005.\(^{624}\)

The ZEC is empowered by the Constitution of Zanzibar to review boundaries and to divide Zanzibar into different constituencies.\(^{625}\) The limit on the number of constituencies is voted for by the House of Representatives, the lowest being 40 and the highest 55.\(^{626}\)

*Registration of voters*

The Constitution empowers the NEC to establish a permanent national voters’ register.\(^{627}\) To enable the commission to carry out this mandate, the Elections Act\(^{628}\) and the Local Authorities (Elections) Act\(^{629}\) are amended from time to time.

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\(^{520}\) Constitution of Zanzibar, Article 120.

\(^{621}\) Constitution of the United Republic of Tanzania, Article 74(6)(c).

\(^{622}\) Ibid., Article 75(1).

\(^{623}\) Ibid., Article 75(3).

\(^{624}\) The commission published all the constituencies in the *Government Gazette* No. 271 of 30 July 2010.

\(^{625}\) Constitution of Zanzibar, Article 120(1).

\(^{626}\) Ibid., Article 120(2).

\(^{627}\) Constitution of Zanzibar, Article 120(1).

\(^{628}\) Act No. 1 of 1985.

\(^{629}\) Act No. 4 of 1979.
The Constitution of Zanzibar states that every Zanzibari who has attained the age of 18 years is entitled to vote in elections. According to this provision, a Zanzibari:

- Must be a person who resided in Zanzibar prior to 12 January 1964; or
- Was born in Zanzibar, and has at least one Zanzibari parent; or
- Must be a Tanzanian citizen after 26 April 1964 and should not have lost such citizenship; or
- Has acquired citizenship by naturalisation.

After 2005, stringent measures were taken by law requiring a potential voter to carry an identity card.

**Voter education**

The Election Act gives the NEC the responsibility of providing voter education throughout the country, and to coordinate and supervise persons who provide such education. The ZEC is similarly mandated to provide voter education. It performs this function with the assistance of other stakeholders, such as CSOs and political parties. There is, however, no central voter education curriculum as yet.

**Nomination of candidates**

The Constitution provides that a person shall only be entitled to be elected to hold the office of President of the United Republic if s/he:

- Is a citizen of the United Republic by birth in accordance with the citizenship law;
- has attained the age of 40 years;
- is a member of, and a candidate nominated by, a political party;
- is qualified to be an MP or a Member of the House of Representatives;
- has not been convicted by any court of any offence relating to evasion to pay any tax due to the government within a period of five years before the general election.

A person is qualified for election or appointment as an MP if s/he:

- is a citizen of the United Republic;
- is at least 21 years old;
- can read and write in Kiswahili or English; and
- is a member and a candidate proposed by a political party.

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630 Constitution of Zanzibar, Article 7(1).
631 Legislative Act No. 5 of 1985, Section 3(1)–(4). These conditions are repeated in Section 12(1) of the Zanzibar Election Act No. 11 of 1984 (hereafter the Zanzibar Election Act).
632 Section 12(1) of the Zanzibar Election Act. Identity cards are issued under Legislative Act No. 7 of 2005.
633 Section 4(c) of the Election Act No. 1 of 1985.
635 Article 39(1) of the Constitution.
636 Ibid., Article 67(1).
The nomination process is cumbersome and bureaucratic because there are many conditions in the electoral law.\textsuperscript{637}

In Zanzibar, legal provisions for nomination to contest the Zanzibar presidency,\textsuperscript{638} procedures for nomination of members for election to the House of Representatives,\textsuperscript{639} and of candidates for councillorship\textsuperscript{640} are stipulated in the Zanzibar Election Act.

\textit{Management of elections}

The Constitution and the National Elections Act mandate the NEC to manage elections for the United Republic of Tanzania.\textsuperscript{641} Such powers extend to three types of elections, namely presidential, parliamentary and local government. The NEC manages the use of funds during elections.\textsuperscript{642} It performs this function with the assistance of the Office of the Registrar of Political Parties (RPP).

The ZEC is the sole manager of elections in Zanzibar and Election management in Zanzibar is governed by a framework of laws,\textsuperscript{643} which have been the subject of intense debate since the return of multi-party politics.

\textit{Declaration of results}

Parliamentary and councillor election results are declared at the local level.\textsuperscript{644} However, in presidential elections, the NEC is empowered to officially declare the election result after adding returns received from the 239 returning officers.\textsuperscript{645}

The ZEC is the only institution mandated to declare election results in Zanzibar.\textsuperscript{646} It is an offence for any other institution or person to perform this role.

\textbf{Independence of the EMBs}

\textit{Independence of the NEC}

The independence and autonomy of the NEC is enshrined in the Constitution.\textsuperscript{647} The NEC is an independent department and has no obligation to follow any order or directives from any person or government department, or opinion from any political party. Moreover, ‘No court is allowed to inquire into the election of a presidential candidate who

\textsuperscript{637} Articles 38, 38(a) and 39 of the Election Act.
\textsuperscript{638} Zanzibar Election Act, Chapter 3.
\textsuperscript{639} Ibid., Chapter 4.
\textsuperscript{640} Ibid., Chapter 5, sections 56–58.
\textsuperscript{641} Chapter 343 of the Constitution.
\textsuperscript{642} Election Expenses Act No. 6 of 2010.
\textsuperscript{643} Constitution of Zanzibar, Zanzibar Election Act; Political Parties Act No. 5 of 1992.
\textsuperscript{644} National Elections Act, Chapter 343; Local Authorities (Elections) Act, Chapter 292.
\textsuperscript{645} National Elections Act, Chapter 343, sections 35(e), 35(f)(8) and 81(b).
\textsuperscript{646} Constitution of Zanzibar, Zanzibar Election Act.
\textsuperscript{647} Article 74(11) and (12) of the Constitution of the United Republic of Tanzania.
is declared by the electoral commission (NEC) to have been duly elected and neither is any court allowed to inquire into any matter done by the NEC in discharging its duties.

In its report on the 1995 general election, the Tanzania Elections Monitoring Committee (TEMCO), a civil society coalition, posed the question: ‘Is the NEC independent?’ It responded by arguing that ‘ideally, Article 74(7) and 74(11) of the Union Constitution purports to accord independent status to [the] NEC at least at national level … Practically, however, the NEC does not pass the basic tests of an independent institution.’ TEMCO advanced four reasons for its position:

- First, the appointment of NEC commissioners is made by the President, who is also the chairman of the party in power.
- Second, appointees to the NEC have no security of tenure since the President can revoke their appointment at his or her discretion.
- Third, neither the Constitution nor the Elections Act secures funds for use by the NEC.
- Fourth, the NEC does not have its own staff at the regional and constituency levels. It relies on staff in local government administrations, who in most cases are CCM cadres.

TEMCO concluded:

And how could the National Electoral Commission delink itself from [the] CCM given its composition, manner of its appointment, reliance on CCM government discretionary funding, and even more compromising, reliance on borrowed government personnel, most of whom were believed to be (or to have been in the immediate past) CCM members?

The report of the Commonwealth Observer Group stresses the importance of having an independent and impartial electoral commission. It states:

According to Article 74 of the Constitution, the Electoral Commission of the United Republic shall be appointed by the President. Further, the Director of Elections is also appointed by the President on the recommendation of the commission. There is no requirement for such an appointment to be supported by a decision of Parliament.

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648 Ibid., Article 41(7).
649 Ibid., Article 74(12).
651 Ibid., p. 193.
and no requirement for the President to seek input from Parliament with regard to potential appointees. Such a provision does not reflect good practice because it does not adequately provide for consultation and political confidence in a vital body that needs to be impartial and inclusive. Further, the ability to continuously renew a commissioners’ mandate can impact on the independence of the EMB. This concern is compounded by the fact that on the mainland, election officials are drawn from among government administrators. Further, the Regional Election Coordinator appointed by [the] NEC is marginalised and lacks authority vis-à-vis the returning officers.

While the NEC sees these provisions as a way of protecting it from litigation (which might paralyse an election process), opposition parties, CSOs and some academics see it as curtailing the rights of voters and candidates.653

The immunity clause for the NEC in the Constitution was put to the test in a 1996 appeal brought by the Attorney-General and two others against Amani Walid Kabourou of CHADEMA, who had successfully challenged the parliamentary victory of CCM candidate Azim Suleman Premji. The Court of Appeal of Tanzania held that the CCM was given more air time on Radio Tanzania Dar es Salaam than were given other political parties, and its broadcasts generally were biased in favour of the CCM candidate, such that it must have influenced the by-election results in favour of the CCM candidate.654

This meant that the NEC, which was responsible for managing that election, was biased.

While the NEC can claim that the Constitution legally protects its independence and autonomy, its powers belong to the appointing and controlling authority. All members of the NEC and its Director of Elections are appointed by the President. The only limitations to such appointing powers are the requisite qualifications of the chairman and the vice-chairman, and the requirement that there must be a candidate from the Tanganyika Law Society. Otherwise, in terms of actual individuals to be appointed, the President has no limitation, as there is no competition among the candidates to be selected.

The matter went to court in 1993 through a case filed by Mabere Nyaucho Marando and Edwin Mtei of CHADEMA, arguing that the President had no right to monopolise the exercise of creating the NEC. The High Court ruled that ‘the mere fact that members of the commission are appointed by the President, who is leader of a political party, does not ipso-facto imply that the commission cannot act independently’.655

655 High Court of Tanzania, Dar es Salaam, Civil Case No. 168 of 1993.
Some scholars agreed with the ruling, and Chaligha argued that the impartiality of the NEC depends on the credibility of individual commissioners. Mwaikusa likewise argued that the President has many appointees: s/he appoints the Chief Justice, judges of the Court of Appeal and High Court of Tanzania and there have never been any registered claim on the decisions of the Court of Appeal and the High Court to have favoured the government.

This view has been seriously challenged by Alexander Makulilo, who argues that it is ‘too simplistic as it purports to equate the NEC and the court in terms of their independence’. Instead of considering the basic tests of independence, the argument is centred on ‘the appointing authority as the common factor of independence to all presidential appointments’. The distinction of independence between the court and the NEC seems to be misplaced, since the court enjoys a relatively higher degree of independence:

- First, the President appoints judges of the Court of Appeal after consultation with the Chief Justice, and judges of the High Court after consultation with the Judicial Service Commission.
- Second, the tenure of judges is secured and protected by the Constitution. Judges are not responsible to the President after their appointment. They cannot be removed from office at the pleasure of the President. Their removal requires investigation by an independent commission of judges from Commonwealth countries. Moreover, the opinion of the commission is binding on the President.
- Third, the remuneration of the judges of the Court of Appeal and of the High Court is drawn from the Consolidated Fund of the Government of the United Republic of Tanzania. It should be noted that the NEC does not enjoy these advantages, while judges do.
- Fourth, in terms of mandate, the NEC’s is specific to elections, which determine who is to form the government, whereas the judiciary, as one of the three branches of government, deals with a wider mandate of administration of justice on all matters ranging from civil to criminal.

659 Article 118(3) of the Constitution.
660 Ibid., Article 109(1).
661 Ibid., Article 110a(2).
662 Ibid., Article 142(5).
Thus, equating the NEC and judges is a serious error. The NEC relies heavily on the
government to carry out its duties; it is dependent on the government for offices, vehi-
cles and personnel. This does not sit well with opposition political parties, which want
an independent and autonomous EMB with its own offices, funds and personnel.

Even more contested is the practice of appointing government officials as regional
elections coordinators and local government officials as returning officers and assistant
returning officers. Apparently, in an attempt to ensure their impartiality, the NEC
makes the co-opted officers sign an agreement that makes them liable to prosecution
in case of professional misconduct. There is, however, no evidence of any return-
ing officer being penalised for partisanship or incompetence. There has been some
evidence of pressure from the executive on the appointment of returning officers and
regional elections coordinators where the government had sought to influence appoint-
ment or dismissal.

**Independence of the ZEC**

The provisions in the Zanzibar Constitution, which give powers to the ZEC, are similar
to those in the Union Constitution that grant powers to the NEC. The Zanzibar Constitu-
tion states that the ZEC is an independent department and that it has no obligation
to follow any order or directives from any person or government department or opinion
from any political party. The ZEC has legal immunity from government departments,
political parties and the courts.

The Director of the ZEC believes that these constitutional and legal provisions grant
the commission independence and autonomy, which he estimates to be around 75%.
The impartiality and independence of the ZEC has, however, been a matter of conten-
tion since the return of multi-party politics in 1992. The CUF, the main opposition party
in Zanzibar, has consistently called for the disbanding of the ZEC. Its position appar-
ently did not change even after two members of the party joined the ZEC in 2003. On
the eve of the 2010 elections, when the GNU was imminent, the Secretary General of
the CUF was still calling for the disbanding of the ZEC and the NEC.

In an attempt to determine the independence and impartiality of the ZEC, TEMCO
used three criteria:

- Procedures for nominating commissioners;
- Security of tenure for commissioners; and
- An independent budget decided directly by the House of Representatives.

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edu/sites/successfulsocieties/files/interviews/transcripts/3473/amon_chaligha.pdf.
Elections*, URT.
665 Constitution of Zanzibar, Article 119(9&12).
666 Ibid., Article 119(12&13).
According to TEMCO, the ZEC does not pass the test.\textsuperscript{669} Makulilo is also of the view that the ZEC does not pass the minimum test of an independent and impartial body. Using the 2005 elections and the ZEC report as a reference, he has argued that the use of employees of the state invites the influence of regional and district commissioners, who wield considerable arbitrary powers in Zanzibar and who have been known to interfere with some of the decisions of the ZEC.\textsuperscript{670} For example, the CUF presidential candidate in the 2010 elections was prevented from campaigning in Zanzibar North Region on the orders of the regional commissioner. The same candidate and his party were prevented from campaigning in Donge constituency in the same region. A seasoned Cabinet minister had declared that the ‘people’ of Donge did not want to hear campaigning in their area.\textsuperscript{671} It is evident, therefore, that although the ZEC has a freer hand in choosing its returning officers and assistant returning officers, these officials operate in a political system in which some administrators ignore the ZEC and the law with impunity.

The legal and constitutional contestation against the ZEC by the main opposition party was reduced when the Constitution of Zanzibar was amended to allow for the GNU, and the presence of two CUF nominees in the commission. In the context of the current debates over the new Constitution for the Union and for Zanzibar, the smaller political parties in Zanzibar oppose entrenching the composition of the GNU as established since 2010, thus making permanent an interim situation, which is almost of equal strength between the CCM and the CUF, into a permanent constitutional position. They argue that there is a need to have wider party participation within the ZEC to avoid the hegemony of the two main parties. Alternatively, they propose that the ZEC be a non-partisan organisation made up of commissioners who are technocrats.\textsuperscript{672}

\begin{enumerate}
\item \textbf{D. Funding of elections}

According to the Elections Act, the cost of elections should be paid out of the Consolidated Fund\textsuperscript{673} – as is the case with funds for the judiciary.\textsuperscript{674} In practice, however, this does not happen for elections.\textsuperscript{675} The question of funding for the NEC and the elections in Tanzania has raised many complaints from the NEC itself, opposition political parties and academics. The NEC has been consistent, through periodic reports, in requesting

\begin{enumerate}[\textsuperscript{669} TEMCO (2011), op. cit., p. 52.\textsuperscript{670} Makulilo (2011) ‘The Zanzibar Electoral Commission’, op. cit., pp. 275–277.\textsuperscript{671} TEMCO (2011), op. cit., p. 72.\textsuperscript{672} Interviews with Zanzibar offices’ party leaders of CHADEMA, the NCCR and TADEA, Zanzibar, September 2012.\textsuperscript{673} Election Act, section 122.\textsuperscript{674} Article 142(5) of the Constitution.\textsuperscript{675} NEC (1997), op. cit., p. 62.}
fiscal autonomy from the government, but these requests have not been granted. The NEC receives funding on an ad hoc basis when there are elections or by-elections.

**The NEC budget**
The NEC budget comes from two sources: the government and the external donor community. Both sources are sometimes unreliable because funds can be inadequate or can be delayed. The NEC does not have a budget directly voted for by the legislature, instead its funds are voted for as part of the budget of the Prime Minister’s Office. Each time the NEC organises elections or a by-election, it has to request requisite financial and other resources from the Prime Minister’s Office. The availability of funds is, therefore, dependent on the state of funds in the Prime Minister’s Office as well as the Treasury.

Most donor contributions pass through a basket fund that pools resources to create an election project. Such a single project provided funds for both the NEC and the ZEC, as well other organisations engaged in voter education and local election monitoring covering both the Mainland and Zanzibar. These include CSOs and academic institutions, as well as the media.

The experience from the 1995 general election illustrates the funding problems the NEC faces. In February 1995, the NEC had estimates of Tsh 25.3 billion (approximately USD 14 million). By March 1995, the Treasury had paid only Tsh 1.15 billion (less than USD 1 million) when there were extensive preparations for the elections that needed to be completed. Finally, the total cost for the election came to Tsh 38.6 billion (approximately USD 20 million). The funds were paid in phases, without taking into consideration the elections time table. Some of the funds were paid after the election, which meant that for a considerable time, the NEC was indebted to many service providers.676

In the 1995 elections, donors had promised to give Tsh 8.6 billion (approximately USD 4 million). In the final analysis, the amount was paid, but they were paying only at the speed the government was paying, which was little by little. Consequently, some of the funds were also paid after the elections. The NEC was emphatic that inadequate and untimely funding was a source of many problems facing electoral management during those elections.677

Donor funding was significant in the 1995 and 2000 elections, which gave donors some say in the manner in which the polls were managed. In the 1995 elections, for example, donors pressurised the NEC to allow the counting of votes at polling stations. This was adopted and since then, it has reduced tensions surrounding the transfer of ballot boxes. A commission report indicated that a senior government official from the Prime Minister’s office tried to attend a NEC meeting where that decision was made; the NEC prevented him from doing so.678

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676 Ibid., p. 31.
677 Ibid., p. 32.
678 Ibid., p. 62.
It would also appear that the improved funding by the government for subsequent elections was partially an attempt to reduce donor influence in the conduct of elections in Tanzania. In the 2005 elections, the government funded 95% of the elections budget, while donor funding accounted for only 5%. The total amount of funds for that election came to Tsh 62.53 billion (approximately USD 33 million), of which the government gave Tsh 58.7 billion (USD 30 million) and donors Tsh 3.53 billion (USD 3.05 million). It needs to be pointed out, however, that donors provided some funds before the elections by funding the permanent national voters’ register. In the course of producing the register, the government provided Tsh 30 billion (USD 16 million), while the basket fund (UNDP, Denmark, the Netherlands, UK, Norway, Canada, Finland, Germany, Sweden, Ireland and Switzerland) gave USD 9.53 million. Italy gave EUR 160,000 and Japan donated Tsh 400 million (USD 218,000).679

In the 2010 elections, the government of Tanzania released to the NEC all funds budgeted for conducting the elections. The approved budget amounted to Tsh 60.5 billion (approximately USD 32 million). The amount is lower in dollar terms than the sum for the 2005 elections, but it needs to be noted that the elections in 2005 took much longer because they were postponed for six weeks following the death of a vice-presidential candidate for CHADEMA. This delay called for more funds for NEC activities, including the production of new ballots for the presidential election. In the 2010 elections, the NEC also received funds from the UNDP under the Election Support Programme (ESP). These funds purchased election materials and paid for voter education and capacity-building for NEC officials (Table 5.1).680

Despite improved funding from the government, NEC reports have consistently urged for a change to the law to grant it its own budget voted directly by the National Assembly and allocated through the Treasury. It has also asked for annual budget allocations so as to allow for the continuous updating of the national voters’ register, as well as the management of by-elections when the need arises. These requests have not been granted.

Table 5.1: Funds for the general elections in 2005 and 2010 in Tanzania

<table>
<thead>
<tr>
<th>Year</th>
<th>Government</th>
<th>Donor basket</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005</td>
<td>Tsh 58.7 billion (USD 30 million)</td>
<td>Tsh 3.53 billion (USD 3.05 million)</td>
</tr>
<tr>
<td>2010</td>
<td>Tsh 60.5 billion</td>
<td>Tsh 19 billion</td>
</tr>
</tbody>
</table>

Source: NEC 2006 and 2011

Funding of elections in Zanzibar

As is the case for the Mainland, the ZEC does not have its own budget directly approved by the House of Representatives in Zanzibar. Its budget has to be requested from the Office of the Second Vice-President, just as the NEC requests funds from the Prime Ministers’ Office. The Second Vice-President reviews the ZEC requests and makes decisions in consultation with the Ministry of Finance.

The Director of the ZEC believes that the problem with funding is not linked to the relationship with the Second Vice-President, but rather to the constraints emerging from the limited size of the Zanzibar economy and government revenues. According to him, the experience of the 2010 elections indicated that the Office of the Second Vice-President did not unnecessarily block the ZEC from receiving its budgeted funds. The funds are generally adequate taking into account the limited resources Zanzibar has and the many priorities of the government. Other observers mention the government exerting pressure on the ZEC by withholding funds until certain decisions are made. Funds were, for example, withheld during voter registration until the ZEC acceded to instructions to accept only Zanzibar identity cards.681 The smaller political parties and CSOs believe that the ZEC needs to have its own budget, controlled by an independent board, to allow for effective and timely implementation of its activities. They point out, for example, that since 2010, the voters’ register has not been updated, thus denying the youth who have attained voting age and who are eager to register as voters the right to do so.682

Another source of funding for the ZEC is donor contributions, which are obtained through the same basket fund from which the NEC also gets its election grants. The contributors were the same (UNDP, Denmark, the Netherlands, UK, Norway, Canada, Finland, Germany, Sweden, Ireland and Switzerland) and operated under the ESP. There are some delays in the disbursement of funds from the ESP owing to the high standards of control set to ensure financial accountability; the limited accounting capacity within the ZEC prevented speedy disbursement of funds from the ESP.683 In previous elections, donor funds had political conditions following the acrimonious politics that attended the return of multi-partyism in 1992 in Zanzibar. Such conditions had included votes being counted at the polling stations, as well as pressure for a permanent national voters’ register. In the 2010 elections, no political conditions were linked to donor funds in Zanzibar, most likely because of the imminent formation of the GNU.684

682 Interviews with local representatives of political parties and CSOs, Zanzibar, September 2012.
684 Ibid.
Table 5.2: Funds for the general elections in 2005 and 2010 in Zanzibar

<table>
<thead>
<tr>
<th>Year</th>
<th>Government</th>
<th>Donor basket</th>
<th>NEC</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005</td>
<td>Tsh 1 billion</td>
<td>Tsh 1.3 billion</td>
<td>Nil</td>
</tr>
<tr>
<td>2010</td>
<td>Tsh 2.95 billion</td>
<td>Tsh 59.6 million</td>
<td>Tsh 125.9 million</td>
</tr>
</tbody>
</table>

Source: ZEC 2006 and 2011

E. Management of electoral disputes

Presidential elections

A particularly controversial provision of election law in Tanzania is that presidential election results declared by the NEC cannot be challenged in the courts. Once a presidential candidate is declared a winner by the NEC, no court of law can question that decision. This position is highly contested and there is a conviction among opposition parties and many analysts that it needs to be changed, while placing a time limit on such litigation and court decisions. There is already considerable pressure to remove this immunity in the new Constitution, which is currently being debated.

Similarly, in Zanzibar no court can inquire into the election of a presidential candidate who has been declared by the commission to have been duly elected. The provision contradicts the role of the judiciary, which makes the judiciary the final authority in adjudication of disputes. The High Court has had to invoke ‘inherent jurisdiction’ in order to circumvent the Constitution and settle disputes related to pre-election functions, the conduct of legislative elections, and their results. Generally, for election disputes, courts should be allowed to hear and decide on disputes arising from presidential electoral results. The current constitutional draft allows the court to decide on the validity of presidential results.

Parliamentary elections

Electoral disputes for parliamentary elections arise from the nomination stage. A candidate in a constituency (or ward, for councillors) can lodge an objection against the nomination of any of the councillor or parliamentary candidates. The objection is lodged with the returning officer in the case of a parliamentary candidate, and assistant returning officer if it is a councillor candidate. Aggrieved candidates can appeal to higher authorities – to the returning officer for councillor

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685 Chapter 2 of the Constitution, Article 41(7).
687 Article 34(7) of the Zanzibar Constitution.
688 Ibid., Article 93(1).
689 Ibid., Article 119(13).
candidates, and to the NEC national office for parliamentary candidates. Returning officers and assistant returning officers have been accused by opposition parties of rejecting the nomination of candidates without valid reasons.

In the 2010 elections, for example, the NEC upheld the appeals of two CHADEMA parliamentary candidates who had been disqualified by returning officers following objections to their nominations. The two had competed against two former Cabinet ministers, who, after the nullification of the other candidates’ nominations, were declared as having been elected unopposed. The experience of these appeals points to the impunity of returning officers, which the NEC ought to have penalised but did not. In the first case, involving a candidate in Nyamagana, Mwanza Region, the returning officer refused to issue the candidate with the appeal form. The candidate had to fly to Dar es Salaam to obtain the form from NEC headquarters in order to meet the 24-hour appeal deadline. In the second case, which involved the parliamentary candidate for Mtama, Lindi Region, the NEC had ruled in favour of his appeal against disqualification, but the returning officer kept the letter from him for two weeks, making the candidate lose valuable campaign time. Overall, the NEC received 56 appeals in relation to parliamentary elections and 124 in relation to council elections. Of these, the NEC allowed four appeals, all involving reinstating opposition party candidates who had been disqualified.

The system of lodging complaints in the High Court once the elections are over has a number of hurdles. The aggrieved party (candidate, voter or Attorney-General) has to lodge the petition within 14 days of the elections. A person seeking redress needs to pay a deposit of Tsh 5 million (approximately USD 3,200) for every accused respondent. The three possible respondents targeted for litigation could be the winning candidate or his/her party, the NEC and the Attorney-General. For any other respondent mentioned, a similar deposit is required. One may request the court to reduce the deposit by arguing that one has limited means. The law states that the petitioner has to formally consult the judge on the amount s/he is able to pay. However, the election law states that the petitioner shall request the court to consider the amount to be paid as deposit. As a result, a number of cases were later thrown out of court on the technicality that the petitioner had paid the amount without consulting the court. It is a bizarre twist that

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691 Election Act, Article 40.
694 Election Act, Article 111(3).
695 Ibid., Article 111(2).
696 The clause to give the judge the choice to reduce the amount to be paid was put into law after the Ndyanabo case, in which the lawyer successfully petitioned the Court of Appeal in 2002, which ruled that the law requiring every election results petitioner to pay Tsh 5 million was unconstitutional because it denied some citizens access to justice.
697 Election Act, Article 111(3).
one has to request the court to make a decision even when one did not request a reduction of the amount to be paid.

After the parliamentary elections in 2010, only two results were overturned by the High Court for the elections in Arusha Urban and Sumbawanga, but on appeal, the deposed MPs – for CHADEMA and the CCM – won back their seats. In the case of Arusha constituency, for example, CHADEMA candidate Godbless Lema initially lost in court to three voters who challenged his election on the grounds that he had campaigned in such a way as to exploit religion, sex and residence differences to undermine the opposing candidate, Dr Batilda Buriani. The Appeal Court overturned the High Court decision on the grounds that the respondents in the appeal case did not have *locus standi* to challenge the election. In other words, the voters had no right to bring the election petition when their rights as voters had not been violated in any way.698 The appeal did not comment on the accusations against Lema.

**Parliamentary elections in Zanzibar**

Electoral disputes in Zanzibar have mainly been generalised and have hardly involved individual cases. The CUF rejected the results of the elections in 1995, 2000 and 2005.699 Attempts to resolve major electoral disputes took the form of reconciliation talks – *Muafaka I*, *Muafaka II* and ultimately *Maridhiano*. There were, therefore, no individual candidates going to court to challenge the declared results. Though the ruling CCM has remained in power in Zanzibar since the return of multi-partyism in 1992, this state of affairs is anything but ‘stable’. Notwithstanding the fact that elections have been neither free nor fair, the margin of victory between the CCM and the major opposition party, the CUF, has in most cases changed only slightly. Since 1992, Zanzibar has conducted four general elections, that is, in 1995, 2000, 2005 and 2010. The CCM won all these elections. In 1995, the CCM obtained 50.2% of the total valid votes against 49.8% for the CUF. In 2000, the CCM won 67.04% of the vote and the CUF 32.96%. The 2000 elections were described by TEMCO as ‘aborted’, while international observers called them ‘a sham’ owing to open rigging, manipulation, and violence. In 2005, the CCM won 53.2% of the vote and the CUF 46.1%. In contrast, in 2010, the CCM obtained 50.1% and the CUF 49.1%.

In the 2010 elections, individual electoral disputes were expected within the context of the prospective GNU. The ZEC established sub-committees to deal with these disputes. The results of their deliberations have not been made available. At the same time, election clerks had been instructed not to issue complaints forms to people who needed them. Many of the clerks were allegedly recruited on the basis of their party affiliation and their closeness to ZEC officials.700

It seems that candidates in Zanzibar are not used to contesting election results

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698 Court of Appeal of Tanzania, Civil Appeal No. 47 of 2012.
700 Interview with Zanzibar Legal Society officials, Zanzibar, September 2012.
through the courts. Many observers found it curious that in Zanzibar, where people are politically sensitive and there are many political complaints, there was not a single post-election court case. The partial explanation for this is that in the past, closely contested constituencies were few; generally parties had strong areas where they dominated. Another reason is that many parties did not have adequate funds for the legal costs involved in court cases, even though there are no cash guarantee deposits required for Zanzibar election petitions.\textsuperscript{701} In addition, lack of trust in the judicial system is said to discourage parties and candidates from pursuing legal action.

F. EMB relations with other actors

The NEC’s relationship with the ZEC

The Union election mandate is not problematic on Mainland Tanzania but it is so for Union elections in Zanzibar. The Constitution requires the NEC to consult with the ZEC from time to time.\textsuperscript{702} This implies that there is no hierarchy in the relationship between the NEC and the ZEC. The relationship is informal and there are no joint committees. That would not have been a problem if the NEC was able to adequately fulfil its Union elections mandate in Zanzibar. There was a time when it was not the case, as the NEC was forced to delegate the running of Union elections to the ZEC. When the 2000 election in Zanzibar was aborted, results in 16 Union constituencies out of 50 were nullified. The NEC did not issue a statement to condemn what happened, although Union elections were adversely affected. The NEC took over the mandate of running Union polls in Zanzibar during the 2005 elections and has been doing so ever since, using the ZEC register and its own for those not registered by the ZEC.

Relations with the Registrar of Political Parties

The Political Parties Act – legislation which came with the constitutional amendments that allowed multi-party politics in 1992 – states that ‘There shall be a RPP in the office of the Prime Minister or in such other office as the President may determine who shall be appointed by the President.’\textsuperscript{703} The office of the RPP in Tanzania is separate from the NEC and the two have different mandates.

This different mandate was reflected in 2010 when CHADEMA complained that the rallies of the CCM presidential candidate were systematically going beyond the prescribed 6pm deadline. The RPP announced an extension of the daily campaign time to 7pm. The chairman of the NEC renounced the Registrar’s intervention, stating that

\textsuperscript{701} TEMCO (2011), op. cit.
\textsuperscript{702} Article 74(13) of the Constitution.
\textsuperscript{703} Section 4(1) of the Political Parties Act No. 5 of 1992.
it fell outside his mandate and reiterated that the time limit was 6pm. The Registrar
publicly admitted the error.\(^{704}\)

The two offices are likely to remain separate because there are no apparent advan-
tages of joining them. However, the independence of the office of the RPP vis-à-vis the
incumbent party has often been questioned by opposition political parties.

**Relations with political parties**

The relationship between the NEC and political parties, especially opposition parties,
has not always been easy. Since its inception, the NEC has sought to engage political
parties through meetings to discuss electoral laws and make recommendations that
have not been taken up by the government or implemented. Proposals for changes to
the electoral system have been ignored. A few proposals such as the counting of votes
at polling stations and more balanced reporting by the public media were taken up.\(^{705}\)
When two opposition parties refused to sign the Code of Conduct that was created as
a voluntary pact in 2005, it was quickly enacted into a law and thus became binding in
the 2010 elections. CHADEMA refused to sign the declaration to accept the Code of
Conduct in protest.\(^{706}\)

Both the NEC and the ZEC involve members of political parties in seven out of their
eight committees, namely:

- Electoral Authorities and Electoral Process;
- Voter Education and NGOs (non-governmental organisations);
- Supplies and Logistics;
- Information and Public Relations;
- Government and Political Parties;
- International Organisations and Observers; and
- Code of Conduct for Elections.\(^{707}\)

However, the eighth committee on the management of elections is the most important
because it makes most of the critical decisions on the running of elections. No political
party members are part of this committee and parties consequently have no effect on
the most important decisions.

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\(^{704}\) TEMCO (2011), op. cit.
\(^{705}\) NEC (1997), op. cit., p. 65.
Relations with the judiciary

The Constitution stipulates that in election matters, all complaints, except those pertaining to a presidential election, shall first be heard by the High Court in respect of parliamentary elections: 708

(i) Every proceeding for the purposes of determining the question of whether – (a) the election or appointment of any person to be MP was valid or not; or (b) an MP has ceased to be an MP and his seat in the National Assembly is vacant, or not, shall, subject to the provisions of sub-article (2) of this Article, first be instituted and heard in the High Court of the United Republic.

The jurisdiction of the High Court in hearing election petitions is not only statutory but constitutionally stipulated. The Constitution provides further that a petitioner dissatisfied with the decision reached by the High Court can go to the Court of Appeal, which has the final say in all matters including election petitions, except presidential elections, which cannot be contested in any court of law. 709

In the case of the election of a councillor, the Local Authorities (Elections) Act 710 provides as follows:

The election of a candidate as a member shall not be questioned except in an election petition ... The election of a candidate as a member shall be declared void on any of the following grounds which are proved to the satisfaction of the court.

Relations with Parliament

The Union Parliament and the House of Representatives of Zanzibar are the sole organs responsible for law-making. The NEC and the ZEC are creatures of the Constitutions of the Union and Zanzibar, respectively. The law-making bodies in the respective countries enact laws under which the EMBs operate. The NEC and the ZEC simply implement laws as enacted by the Houses. Indeed, it is a one-way relationship, except that in the course of implementing the laws enacted by the legislative bodies, the NEC and the ZEC exercise delegated powers by creating operational rules and regulations in the administration of elections.

708 Article 83(1) of the Constitution.
709 Article 83(4) of the Constitution.
710 Local Authorities (Elections) Act, section 107(1&2) (Chapter 292 R.E. 2010).
Relations with the media, civil society and election monitors

The NEC describes its relationship with the media as being very good – it has organised several meetings with the media and other stakeholders during general elections and has tried to be transparent with them. This is, however, largely an exercise in public relations. It is the responsibility of the NEC to ensure that the media, especially public media, are fair to all candidates and political parties during the elections.

There are problems with the public media, which have the tendency to favour the incumbent party. The pressure on the media can be illustrated by an incident in which the CCM presidential candidate collapsed on the podium during the inauguration of party campaigns in front of TV cameras on 21 August 2010. Not only did the TV stations decline to show the footage, but there was a total blackout on the news in both public and private media, including the newspapers on the following day. One can only imagine the type of pressure that was exerted on the media to produce such an outcome.

Likewise, when the competition heated up, the government newspaper, Daily News, published two controversial editorials. The first was on 24 September 2010, which stated that the CHADEMA presidential candidate would not be the fifth president of Tanzania. The second was on 31 October 2010, the voting day, which stated blatantly: ‘Vote for CCM, Vote for Unity’. The NEC did not comment on the two editorials even though it was its responsibility to ensure that the public media was not biased.

The media situation was better in Zanzibar during the 2010 elections. The voter education information disseminated by the electronic media in Zanzibar was produced by the Tanzania Broadcasting Corporation and validated by the ZEC.

The relationship between the NEC and CSOs has often been cordial. The NEC holds meetings with NGOs during election preparations. However, it has not prevented those organisations from reporting anomalies during elections. The NEC is responsible for coordinating voter education in the whole country and CSOs wishing to engage in voter education have to obtain permission from the NEC. The impact of that relationship on voter education is limited.

The same applies to election monitoring bodies. TEMCO, the largest and most systematic domestic election monitoring body, was established in April 1994 by 22 member organisations (most of them CSOs), including the University of Dar es Salaam. In the 1995 elections, TEMCO deployed 136 monitors in 180 constituencies from 6 August to 31 October 1995. It has observed all elections since that time. In the 2010 elections, it had 152 member organisations and was funded by the UNDP. It had long-term observers in most constituencies on the Mainland and Zanzibar, as well as about 7,000

711 NEC (2006), op. cit.
713 Ibid.
714 TEMCO (2011), op. cit., p. 81.
short-term observers.\textsuperscript{716} It has operated without many barriers from the NEC, except bureaucracy. All of its observers have to be vetted and issued with identification cards by the NEC and the ZEC, which can be cumbersome.

The same applies to international observers, who usually arrive in the country a few weeks before the voting day. This leaves them at the disadvantage of not knowing what has been happening prior to the elections. Many reports end up being favourable to the results. In the 2010 elections, for example, foreign observers congratulated the people of Tanzania for holding credible, peaceful, free and fair elections. The African Union team also congratulated Tanzanians on their political maturity, as well as the NEC, the ZEC and the security agencies. The East African Community mission commended the elections as conducted and believed that they had been free and fair. The European Union (EU) team commended the peaceful and generally orderly election day, although key stages of the electoral process lacked transparency.\textsuperscript{717}

### Security issues

Violence in Tanzanian politics used to be a serious problem during the Zanzibar elections. All elections before 2010 had cases of violence, as discussed earlier. In Zanzibar, the relationship between the CUF and the police was very hostile. Electoral violence has now become a serious problem on the Mainland and is undermining the credibility of the NEC, which has not been able to deal with it. It has been indicated that the CCM and CHADEMA have fuelled violence by operating with party security systems that are becoming increasingly lethal.\textsuperscript{718}

The performance of the police has been uneven – some regional police commanders and officers commanding districts have done a good job of neutralising volatile situations, while others have made tense situations worse. The police have often, however, been the cause of violence. Opposition party members believe that most police commanders see their role as protecting the incumbent party. They believe that change will come only when the present high echelon of the police retires.\textsuperscript{719} The police have also attacked members of the media, confiscating their cameras and computers.\textsuperscript{720}

Security presents a major challenge for by-elections and the general election in 2015. The question is not only the training of police about political and human rights, which has already been carried out. The problem lies with political party leaders who fear losing power (in the case of the CCM) and their desire to capture political power (in the case of CHADEMA). CCM politicians pile pressure on the police to take action against their strongest political opponents, while CHADEMA uses youth to mobilise for confrontations. Both are a recipe for violence.

\textsuperscript{718} J Mtiaro, CUF Deputy Secretary-General, interview, August 2012; Deus Kibamba, interview, August 2012.
\textsuperscript{719} Faustine Sungura, Secretary of NCCR-Mageuzi, interview, Dar es Salaam, August 2012.
\textsuperscript{720} Deus Kibamba, interview, August 2012.
G. A critical assessment of election management in Tanzania

Voter registration
The NEC is responsible for keeping a voters’ register for presidential, parliamentary and local council elections. Until 2004, voter registration was carried out during the six months before each election, and the process was contentious, with allegations of phantom voters in the form of false voting stations and ballot boxes. There were, therefore, calls for a permanent voters’ register. In 2004, a permanent national voters’ register was introduced after amendments to the law. The amendments replaced the old system of periodic registration during each election by empowering NEC to establish the national voters’ register and to operationalise it.

Actual registration in the permanent national voters’ register started in October 2004 and was generally well received. Voter turnout has been high. In 2005, the projection was to register 16,570,230 voters; this is the estimated number of people above the age of 18, based on the 2002 national household survey. In the end, 15,942,824 people were registered – 96% of those targeted. The voters’ register was upgraded in different country zones in the period 2007–2008. The total number of those registered increased to 18,014,667. Out of these, 2,074,065 were new voters.

The significant weakness of the NEC’s management of the voters’ register is the failure to allow an easy transfer of registration from one constituency to another or even from one ward to another. Before the national voters’ register, the transfer process was simple: voters just needed to take a letter from the returning officer of the previous constituency where they had registered, to the returning officer of the new constituency where they intended to vote and they were allocated a new polling station, as well as eligibility to vote in all three elections. At present, voter registration transfers are cumbersome, especially close to elections; even if one succeeds, one is not allowed to vote in all three elections (presidential, parliamentary and local government). The justification in preventing people from voting in the three elections on the Mainland, which is governed as a unitary system, is difficult to establish. This restriction is contrary to Tanzanians’ constitutional right to freedom of movement and of settling anywhere in the country. It results in a denial of citizens’ rights to vote for an MP or a councillor anywhere on the Mainland.

Another problem related to registration is the lack of funds to update the voters’ register. At present, it can only be updated twice every five years. The process of updating, which is done from one zone to another, allows only two weeks for people to appear and register. This time is inadequate as people have to allocate time for registration within

722 Section 12(1) of the Elections Act No. 1 of 1985 and section 15B(1) of the Local Authorities (Elections) Act No. 4 of 1979.
723 NEC (2006), op. cit.
their schedules. Youth are more affected when there are by-elections, because these occur between general elections and new registration is done only before the general elections; youth who have turned 18 since the general elections are therefore excluded from voting in by-elections.

Failure to transfer registered voters to new polling stations was one of the numerous factors that contributed to low voter turnout in the 2010 elections, with the national average standing at 42.8%. This compared very poorly to 84.4% and 72.28% for the 2000 and 2005 elections, respectively. A study by Research and Education for Democracy in Tanzania (REDET) identified many reasons given by respondents for the low turnout. These included dissatisfaction with political parties, the NEC and the political system, as well as the buying of voting cards to prevent some supporters of the opposition from voting. However, a good number of Tanzanians could not vote because they were away from the places where they had registered to vote. The most talked-about case was that of university students who had registered at their campuses, but were on long vacation in different parts of the country during the elections. This constitutes disenfranchisement of Tanzanian citizens, who were exercising their constitutional right of freedom of movement.

**Voter registration in Zanzibar**

Voting rights in Zanzibar are exclusive and highly controversial. Indeed, since the return of the multi-party system in 1992, it is alleged that mechanisms have been designed by the ruling party and its government to ensure that members and followers of the CUF are systematically disenfranchised. The critical question is ‘Who is eligible to vote in Zanzibar?’ The spirit of the law is that for one to vote, one must have attained the age of maturity and must be a citizen. These were the conditions applied during the single-party elections and they were inclusive enough to allow all potential voters to vote.

However, restrictions on registration were imposed after 1995, when a requirement of five years residence on the islands was imposed for one to be eligible to vote. After the 2000 general election, the Zanzibar Election Act was amended to change the criterion of residence. A resident, according to this provision, is a person who resides permanently in a constituency, and has lived there for a period of not less than 36 months consecutively prior to the registration day. Students, security officers, government employees and people who serve in international organisations are exempted. After 2005, stringent measures were taken by law to require a potential voter to carry a Zanzibar identity card. To get the Zanzibar identity card, however, one must pro-

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727 TEMCO (2011), op. cit.
728 Bakari & Makulilo (2012), op. cit.
729 TEMCO (2011), op. cit.
730 By Act No. 12 of 2002, Section 12(2) & (3) (ii) (a–e) of the Zanzibar Election Act.
731 Through amendments to Section 12(1) of the Zanzibar Election Act.
duce a birth certificate (which costs Tsh 2,500) and an introduction letter from the street/village executive officer (Sheha). Voter registration is thus highly contested and politicised by the two major political parties, the CCM and the CUF. The CCM and its government dominate the process of defining who is an eligible voter, mainly to their advantage.

The requirement for a prospective voter to hold a Zanzibar identity card has posed two critical problems on franchise. One is that the process of securing the identity card is relatively expensive. TEMCO estimates the total cost in the region of Tsh 32,000 (about USD 22) and time-consuming. In a way, potential voters have to buy their right to vote. Second, the Shehas who initially have to issue a letter of introduction as a gateway towards registration are often CCM cadres. For example, at the Shehia (village) of Machui in Unguja South region, the Sheha was at the same time the CCM branch publicity secretary. Indeed, Shehas occupy a strategic position to deny potential voters registration. It must be emphasised that in Zanzibar, party identification is quite known by individuals and even by households, making it easy for the Shehas to play the politics of exclusion, mainly to the detriment of CUF members.

TEMCO observed that a requirement for prospective voters to have the Zanzibar identity card was a hindrance to, and prevented a significant number of potential voters from, registering. The overwhelming powers of the Shehas interfered with the voter registration process, since they determined the eligibility of potential voters by deciding who could receive the identity card. The CUF director for elections, Juma Said Sanane, for example, remarked that about 200,000 CUF supporters in Unguja and Pemba were denied a Zanzibar identity card by the Shehas.

The permanent voters’ register was updated before the 2010 elections, and in Zanzibar the ZEC organised this in two stages between July 2009 and May 2010, with a voter education campaign through radio, TV and the press to encourage eligible voters to register. The register is fully digitised and more advanced than the NEC’s. However, only 407,658 people registered as voters, a 20% reduction from the 507,225 registered in 2005. The Commonwealth Observer Group attributes the low voter registration for Zanzibar to three major reasons:

- The overly stringent requirement in order to qualify register: ‘In order to qualify to register to vote a person must have permanent residency for a period of 36 months in a given constituency, thereby excluding Zanzibaris who may have been residing abroad during that period.’

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732 Legislative Act No. 7 of 2005.
733 Bakari & Makulilo (2012), op. cit.
734 TEMCO (2011), op. cit., p. 4.
735 TEMCO (2011), op. cit., p. 4.
736 Bakari & Makulilo (2012), op. cit.
739 A further 44,406 voters were registered to vote in the Union Elections but not in the Zanzibar elections.
740 Commonwealth Secretariat (2010), op. cit., p. 15.
• The condition that voters produce an identity card, ‘which required a formal application procedure and payment of costs equivalent to some USD 20’\textsuperscript{741} that many people were not ready to spend.

• The discretionary authority of the Shehas, ‘whose powers in this regard, though circumscribed by the constitutional amendments governing the 2010 elections, remain controversial’.\textsuperscript{742}

In some instances, Shehas facilitated under-age voter registration in favour of the CCM. In Donge Vijibweni in Unguja North B, TEMCO witnessed

\begin{quote}
a large number of under-age youth appearing for registration. They were brought in groups by a person who, upon request by the TEMCO observer, refused to identify himself. Even when the observer tried to inquire about the issue with the registration officials, they were uncooperative and said they were not allowed to answer any question.\textsuperscript{743}
\end{quote}

What this implies is that the Shehas cleared them for the Zanzibar identity cards and ultimately allowed them to qualify for registration as voters. The problem of under-age voters was pervasive throughout the registration process. TEMCO contends that:

\begin{quote}
the allegation of registering under-age voters surfaced at several registration centres. Some of the people who came for registration appeared too young to be 18 years old. Indeed, registration of the under-age was one of the common objections raised by the CUF party agents.\textsuperscript{744}
\end{quote}

A study commissioned on the question of low voter registration for the 2010 elections in Zanzibar and conducted by REDET and the Zanzibar Legal Services Centre (ZLSC) shows that 154,350 people with Zanzibar identity cards – the prerequisite for registration – were not on the ZEC voters’ register of 2010.\textsuperscript{745} The difference was considerable in the islands, which have a small population. The ZEC director argued, in response, that the qualification for obtaining a Zanzibar identity card was easier in 2005 than in 2010 when the system was tightened. In addition, restrictions on registration of people in Zanzibar who are on the move is important for planning purposes, such as ensuring that there is the right number of ballots in a polling station.\textsuperscript{746} Neither planning

\textsuperscript{741} Ibid.
\textsuperscript{742} Ibid.
\textsuperscript{743} TEMCO (2011), op. cit., p. 2.
\textsuperscript{744} TEMCO (2011), op. cit., p. 5.
\textsuperscript{745} REDET & ZLSC (2012), op. cit., p. iv.
\textsuperscript{746} Salim Ali Kassim, op. cit.
exigencies nor the narrow interests of the two main political parties, the CCM and the CUF, can justify the denial of constitutional rights to ordinary citizens. At present, it is possible for one to be born in Zanzibar and remain there all one’s life and still fail to qualify to be a voter, just because one has not remained in the constituency one was going to vote in for three consecutive years.

In 2009, CHADEMA and the NCCR filed a case in the High Court of Zanzibar against the ZEC and the Attorney-General. The two institutions were accused of deliberately denying the people of Zanzibar their rights to vote by introducing a minimum residency criterion. The case was dismissed on the grounds that it was not presented to the court by a competent lawyer. The two parties could not take it to the Court of Appeal (Union) because the written ruling has not been issued to date.747

All other stakeholders, apart from the party in power, have criticised the registration process in Zanzibar. The registration time of two weeks in every zone is seen as limited because it goes according to zones and many voters are left unregistered. There is also an over-reliance on the lowest government administrator at the village level, the Sheha, who is given wide discretion to determine who is and who is not to be registered. These administrators are consulted to establish whether someone has lived in the area of registration for three years and whether that person qualifies to have a Zanzibar identity card. Shehas have systematically favoured CCM cadres and have disowned members of other political parties, leading to many complaints and, at times, violence.

The REDET and ZLSC study dismissed the excuse of apathy as the reason for low registration, as well as the submission by the ZEC that for the 2005 elections many people registered as Zanzibar voters with the intent of selling their vote. The major reasons given by the study are linked to purposeful restrictions on eligible citizens, either directly by the Sheha or technically by imposing a fee. Needless to say, many of those who were not registered were rural area residents.748

The ZEC should be made more independent and autonomous to ensure that it acts impartially. The Shehas should not work directly in connection with elections in Zanzibar, since many of them are CCM cadres.

**Nomination of candidates**

Nomination of candidates starts at the party level. Competition is intense in the larger parties and vicious in the ruling party because of the general belief that once one wins the CCM nomination, one is likely to be elected.749 Nomination issues only come to the NEC once the parties formally submit the names of their candidates on the day of nomination – not less than 60 days and not more than 90 days before an election is held.750

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747 CHADEMA (Zanzibar) and NCCR-Mageuzi (Zanzibar), interviews, Zanzibar, September 2012.
748 REDET & ZLSC (2012), op. cit., p. 41.
749 TEMCO (2011), op. cit.
750 Section 46(1) of the National Elections Act, Chapter 343 R.E. 2010.
After the nomination day, the NEC has to deal with objections placed on candidates so as to disqualify them should the need arise. Such objections are raised either by rival candidates or by their political parties.

Challenges against candidates’ nomination forms are common on the Mainland because of the desire to eliminate strong opposition on a technicality, so as to reduce competition or even eliminate it and win unopposed. Challenges against candidates’ nomination forms are common on the Mainland because of the desire to eliminate strong opposition on a technicality, so as to reduce competition or even eliminate it and win unopposed. Candidates and parties make huge efforts to avoid errors in their nomination forms because they would not be able to correct them after the nomination day. With so many candidates returning their forms on the nomination day, there are, at times, illegal manoeuvres to prevent some candidates from presenting their papers before the deadline. For example, in the 2010 elections, one candidate had his briefcase containing his nomination forms stolen on the nomination day and he could not fill in new forms in time.

The NEC’s problems in performing its functions lie with its credibility and the trust it enjoys among key stakeholders. The EMB is sometimes unable to make decisions owing to legal limitations. It is because of this that the NEC has consistently demanded to have its own Act of Parliament as its foundation.

**Nominations in Zanzibar**

Nomination of candidates has been less controversial in Zanzibar than on the Mainland because only two political parties are dominant. The Union legal provisions discussed earlier are equally applicable in Zanzibar for Union parliamentary seat candidates. Only the CCM and the CUF have elaborate participatory systems for nominating candidates. They have a minimum of two contestants in every constituency and so no candidate is nominated unopposed. For the other small parties, candidates are usually hand-picked by party authorities or are self-appointed.

The approval of nominations by the ZEC consists of receiving and accepting forms from candidates. In the 2010 elections, the ZEC received only five objections to nominations: one from Unguja, and four from Chake Chake, Pemba. One objection, of a CCM candidate against an NCCR-Mageuzi opponent from Chake Chake, relating to an inadequate number of nomination signatures where two supporters had signed twice under different names, was affirmed by the ZEC.

**Demarcation of constituencies**

The demarcation of constituencies is always contested. Although the Constitution gives the NEC the power to demarcate constituencies, in practice the decision to establish new constituencies is often political. While in some countries population is the only criterion for determining constituencies for the legislature, in Tanzania other factors come...
into play. Some of these are geography and communication. Politicians from various regions have been mounting pressure to create new constituencies. Decisions to create new constituencies are, however, made at the central government level by the Prime Minister in consultation with the President.

In exercising its own powers, the NEC has been conservative in recommending the establishment of new constituencies. In the 2005 elections, for example, the NEC stated that it did not find reason to conduct any extensive review of the boundaries of the constituencies and added only one new constituency, following the establishment of a new town council at Kibaha.756

The situation was different in the 2010 elections. Constituencies were increased from 232 to 239. The seven new constituencies were not originally the NEC’s idea but resulted from a tendency of President Jakaya Kikwete to expand different establishments as part of his populist politics. While his predecessor, Benjamin Mkapa, created only one new region, Kikwete created four regions and 19 districts.757

It is recommended that a body be legally mandated to demarcate constituency boundaries. The present practice is perceived as being biased in favour of the party in government.

**Constituency demarcation in Zanzibar**

Demarcation of election constituencies in 2005 resulted from the implementation of the requirements of the Zanzibar Constitution, the Zanzibar Election Act and the Declaration of the House of Representatives of January 2004. According to the declaration, the House of Representatives ordered the ZEC to:

- Probe the numbers, boundaries and names of the election constituencies;
- Take into consideration the requirements of section 120(2&3) of the Zanzibar Constitution while conducting the probe; and
- Officially publish a notice specifying the alteration of numbers, boundaries and names of those constituencies before the end of 30 April 2004.

The ZEC announced its report on the constituencies’ boundaries for the general election of 2005 on 15 February 2005 (Table 5.3).

756 NEC (2006), op. cit.
Table 5.3: Demarcation of boundaries in Zanzibar in 2005

<table>
<thead>
<tr>
<th>District</th>
<th>Population</th>
<th>No. of constituencies before</th>
<th>No. of constituencies after</th>
</tr>
</thead>
<tbody>
<tr>
<td>North A</td>
<td>84,147</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>North B</td>
<td>52,492</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Central</td>
<td>62,391</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>South</td>
<td>31,853</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>West</td>
<td>184,204</td>
<td>4</td>
<td>9</td>
</tr>
<tr>
<td>Urban</td>
<td>205,870</td>
<td>12</td>
<td>10</td>
</tr>
<tr>
<td>Wete</td>
<td>102,060</td>
<td>6</td>
<td>5</td>
</tr>
<tr>
<td>Micheweni</td>
<td>83,266</td>
<td>5</td>
<td>4</td>
</tr>
<tr>
<td>Chake Chake</td>
<td>82,998</td>
<td>5</td>
<td>4</td>
</tr>
<tr>
<td>Mkoani</td>
<td>92,473</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>Zanzibar</td>
<td>981,7754</td>
<td>50</td>
<td>50</td>
</tr>
</tbody>
</table>

Source: ZEC 2006

Voter education

The NEC is empowered to conduct and coordinate voter education in the whole country.\textsuperscript{758} CSOs and other organisations wishing to engage in voter education have to obtain permission from the NEC. This task, however, occurs only during elections and the NEC mostly acts as a clearinghouse of voter education, rather than a permanent coordinator. As a result, issues of civic education have lagged behind. It has been observed that the NEC has not been provided with meaningful financial assistance to engage in voter education.\textsuperscript{759} The result is that most of the voter education has been conducted by CSOs, political parties, churches and other faith-based organisations through donor funds managed by the UNDP. There is no standard voter education curriculum that is issued, except that any organisation or individual wishing to provide such education must present the materials to the NEC for approval. The UNDP commissioned a resource book to be used in the 2005 and subsequent elections.\textsuperscript{760} Even then, voter education efforts were sporadic and the majority were held in urban areas.\textsuperscript{761}

The challenge in Tanzania is to link voter education to civic education in general, especially considering the trend of low voter turnout. Voter and civic education need to be long-term because during elections, it is difficult to compete with partisan positions provided to potential voters by the political parties. It is recommended that a standard curriculum be developed to enhance the provision of voter education. There should be an adequate budget to fund country-wide voter education.

\textsuperscript{758} National Election Act, 1985, Section 4(c).
\textsuperscript{759} TEMCO (2011), op. cit.
Voter education in Zanzibar

The ZEC is responsible for promoting and coordinating voter education in Zanzibar.\textsuperscript{762} There is also no voter education curriculum. CSOs and other entities wishing to offer voter education have to get permission from ZEC, but these organisations do not have adequate funds to carry out this kind of education. A law should be enacted to ensure civic education is provided continuously. CSOs should be given adequate resources to assist in providing voter education.

Management of campaigns

Overall, the NEC’s legal power is not sufficient in relation to management of campaigns, violence, election expenses, and enforcing the Code of Conduct. There is no proper coordination among the institutions that are involved in the management of elections such as the police and RPP.

Campaigns are an important part of general elections and for more than two months, the country is dominated by campaign activity. The legal period for campaigns starts immediately after the nomination of candidates and runs up to the eve of Election Day.\textsuperscript{763} Since the first multi-party elections in 1995 and through to 2010, the NEC has sought to manage the process to address the major problems linked to this activity. The election regulations require political parties and candidates to provide the NEC with a proposed schedule of campaign meetings to enable the commission to prepare a coordinated programme for campaigns that would then be binding on all parties.

The increasing chaos and violence linked to election campaigns led the NEC to convene a conference of all political parties to come up with a Code of Conduct for the 2005 elections. The Code of Conduct became a voluntary document in 2005 after two political parties, CHADEMA and the NCCR-Mageuzi, refused to sign it because they believed the CCM would not have respected it and the NEC would not be able to sanction the party in power.\textsuperscript{764} By 2010, the Code of Conduct for presidential, parliamentary and councillor elections had become compulsory because the National Assembly had passed it through amendments to Section 124A of the 1985 Election Act in August 2010. Many legislative proposals over the years had been ignored by the National Assembly but this one was taken up without delay. It was clear that the state had an interest in it and CHADEMA and the NCCR-Mageuzi were bound by the code, notwithstanding their reservations.

The code is legally binding on candidates, political parties, the government and the NEC. The task of enforcing the code is given to committees at national, constituency and ward level under the chairmanship of NEC officials. The secretary is also an NEC official, with only one participant coming from political parties. The law is silent on how

\textsuperscript{762} Zanzibar Election Act, section 1(5).
\textsuperscript{763} The Elections (Presidential and Parliamentary Elections) Regulations, Government Notice No. 279, Article 39, 13 August 2010.
\textsuperscript{764} Faustine Sungura, Secretary of NCCR-Mageuzi, interview, Dar es Salaam, August 2012.
the parties’ representative is to be selected. The committees seek to ensure that the regulations and the Code of Conduct are respected by all political parties and candidates. The Code of Conduct for political parties specifies up to 35 items, among them the requirement to respect electoral laws and ensure party members and supporters adhere to it. Parties are also expected to respect the NEC and its decisions, to avoid chaos, as well as to avoid campaigning on the basis of insults, race, ethnicity, gender and religious segregation.

In implementing the Code of Conduct, the NEC faces three important challenges:

- The first is addressing the question of a level playing field for all political parties. The NEC, under the National Elections Act, sets the campaign time limits and draws up time tables to ensure that political parties do not clash at sites.
- The second issue concerns campaign violence, which usually is the consequence of verbal attacks between party leaders and supporters.
- The third problem is the use of bribes and other forms of inducement to woo potential voters, which is illegal. This problem has persisted and is growing at an alarming rate in spite of the enactment of the Election Expenses Act, 2010, intended to curb electoral corruption and the excessive use of money in elections.

Over the years, opposition parties have complained that there is no level playing field when it comes to election campaigns and that the ruling party has not been penalised for violating regulations, such as ignoring the campaign time limit of 6pm, and undermining the NEC’s authority. There have been incidents in which the police have taken down opposition leaders from the podium at 6pm without extending similar sanctions to CCM leaders. For example, in the 2010 elections, following CHADEMA’s complaint that the CCM presidential candidate’s campaign rallies were consistently going beyond the 6pm time limit, the RPP tried to extend the campaign time to 7pm. The NEC chairman pointed out that the matter was not the prerogative of the RPP and that the time limit for political campaigns would remain 6pm. There was, however, no warning to the CCM or its candidate.

The problem of violence has over the years involved supporters of the CCM and the strongest opposition party of the time – the NCCR-Mageuzi in 1995, the CUF in 2000 and 2005, and CHADEMA in 2010. While the police dealt with actual issues of criminal violence, the NEC could have taken more decisive steps to reinforce the work of the police force. The Code of Conduct allows NEC-dominated committees to penalise offenders. Council candidates can be fined Tsh 50,000 (USD 32) if their supporters engage in violence, and parliamentary candidates can be fined Tsh 200,000 (USD 128) for a similar offence. More importantly, the NEC can prevent a candidate or

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766 Ibid., Chapter 2.
party from campaigning.\textsuperscript{768} It is important for the NEC to take such a stance because there are increasing incidents of the Code of Conduct being violated during elections. The prevalence of violations such as violence, bribery and insulting language during campaigns gives the impression that the NEC is largely ineffective in enforcing the Code of Conduct.\textsuperscript{769}

\textit{Campaign management in Zanzibar}

The election campaign period in Zanzibar has also been characterised by irregularities and violence. In the 2000 elections, for example, three issues were of major concern:

- The role of the police;
- The problem of getting space for conducting rallies, which mostly affected the CUF; and
- The use of threatening language in campaign rallies by CCM and CUF leaders.

There was tension between the police and CUF supporters, who believed the law enforcement officers were biased and employed excessive force against them. In one incident, CUF supporters beat up three police officers and confiscated a gun. In another, policemen shot and wounded five CUF supporters.\textsuperscript{770}

The conduct of the campaigns for the 2010 elections improved because of the context of the \textit{Maridhiano} compromise leading to the GNU. For the first time, the election in Zanzibar was not a winner-take-all contest. The GNU agreement before the elections made sure that the two competing parties would be in office.

The campaign rules and regulations used in the 2010 elections in Zanzibar were laid down by relevant Union and Zanzibar laws. Union election campaigns in Zanzibar were guided by the Elections Regulations, 2010, the Code of Electoral Conduct, 2010 and the Elections Expenses Act, 2010.\textsuperscript{771} Zanzibar elections applied the laws, regulations and Code of Conduct for political parties.

The Code of Conduct for political parties in Zanzibar disallowed 14 practices, which included:

- Disrupting the rallies of opposing parties;
- Using language that was insulting, slanderous or demeaning to other candidates or parties;
- Campaigning in mosques, churches or other religious buildings;
- Soliciting votes on the basis of tribe, religion, denomination or race; and
- Transporting people to campaign rallies.\textsuperscript{772}

\textsuperscript{768} Ibid., p. 24.
\textsuperscript{769} TEMCO (2011), op. cit., pp. 122–130.
\textsuperscript{770} TEMCO (2001), op. cit., pp. 117–118.
\textsuperscript{771} The Election Expenses Act, 2010, Government Notice No. 246.
\textsuperscript{772} TEMCO (2011), op. cit., p. 63.
During the campaigns, there were instances of the use of abusive language, some use of religious discrimination and in one case, two people were seriously injured following an incident of stone throwing. These were, however, minor compared to the 1995, 2000 and 2005 elections, which were a security nightmare.\textsuperscript{773}

Other stakeholders attest to the improved environment and attribute it to police maturity and the formation of the GNU. However, there were cases in the 2010 elections where the police were engaged in skirmishes with voters.\textsuperscript{774} In a recent by-election in Bububu, violence between the police and CUF supporters re-emerged, marking the return of tensions between the GNU partners. Six suspected CUF supporters were arrested and charged with rioting.\textsuperscript{775}

**Voting, vote counting and declaration of results**

There was a marked improvement in the management of the voting day in the 2010 elections compared to 2005 and previous polls. In the 2005 elections, for example, names in voter lists were not alphabetically arranged. In centres with multiple polling stations, voters could not find the correct polling station easily. The problem was significant in Dar es Salaam. In the 2010 elections, the lists were alphabetical and voters were guided by an election clerk to the correct polling booth. There were, however, isolated cases where some voters were allocated polling stations far from where they had registered. In some cases, the distances were long enough to discourage people from voting. As it would become apparent later, the calm on voting day was partly due to low voter turnout.\textsuperscript{776}

The NEC’s performance in vote counting and the declaration of election results has not been exemplary. It was observed and documented that where opposition parties were strong and likely to win, vote counting and tallying took a long time, and declaration of the winner was significantly delayed.\textsuperscript{777} The NEC attributed the delays in declaring results to the failure on the part of returning officers and assistant returning officers to adequately master the new vote tallying procedure, the Results Management System (RMS). Kibamba, Tendwa and Mtatiro have attributed these delays to politics and not technicalities, especially when it occurred mostly in areas where the opposition was strong.\textsuperscript{778} That tendency has encouraged some opposition parties to take a confrontational stance from the beginning by urging followers to stay around polling and tallying stations after casting their ballots to ‘protect their votes’, implying that delays signified

\textsuperscript{773} According to the Director of the ZEC (Salim Ali Kassim, interview, op. cit.), there were no election-related deaths in the run-up to the 2010 elections. In 1995, more than 20 people died after the elections, while the aftermath of the 2000 elections had the highest number of casualties. There were also deaths in the 2005 election in Pemba.

\textsuperscript{774} Interviews with Zanzibar offices’ party leaders of CHADEMA and TADEA, Zanzibar, September 2012.

\textsuperscript{775} The Citizen, Dar es Salaam, 18 September 2012.

\textsuperscript{776} TEMCO (2011), op. cit.

\textsuperscript{777} Ibid., pp. 192–193.

\textsuperscript{778} Deus Kibamba, interview, August 2012; John Tendwa, interview, Dar es Salaam, September 2012; J Mtatiro, CUF Deputy Secretary-General, interview, August 2012.
attempts to change results through vote rigging. Violent confrontations were recorded as the police tried to remove such supporters in Segerea and Ubungo constituencies in Dar es Salaam, Nyamagana constituency in Mwanza, and Arusha Urban constituency.\textsuperscript{779}

The EU, which was the largest external observer group, stated in its report that the NEC was deficient in such fundamental areas as effective communication within the different levels of the commission. Public information, which could have enhanced transparency, for example, in the registration of voters and in the transmission of results, was lacking. Information was not effectively conveyed to stakeholders and the general public, thus creating unnecessary mistrust.\textsuperscript{780}

The largest internal observer group, TEMCO, in its final statement declared the performance of the NEC in the 2005 and 2010 general elections to be free and fair. Makulilo has questioned this assessment, arguing that there were no qualitative changes from the 1995 and 2000 Union elections, which had been characterised as free but not fair.

Legal reforms are recommended to ensure that election observers and party agents get an opportunity to monitor the tallying of presidential aggregated results.

\textit{Voting, vote counting and declaration of results in Zanzibar}

The processes of voting, vote counting and declaration of results have always generated tension in Zanzibar because outcomes are generally very close. The conduct of the ZEC has often been called into question by the CUF for lacking impartiality. In the 1995 elections, the ZEC was very ambivalent in proclaiming electoral results. There were initial unofficial reports that gave the CUF victory, in response to which the CCM wrote a letter of protest calling for the nullification of the results. The ZEC was silent for four days before declaring the CCM the winner.\textsuperscript{781} Inevitably, the CUF did not accept defeat, and violence resulting in deaths followed.

The experience of the 2000 elections has been discussed earlier: the ZEC decided to go ahead with elections in spite of the chaos and disorganisation that characterised them. Many polling stations opened late and there were not enough ballot boxes. The ZEC interrupted the counting process and later nullified results in 16 constituencies where reruns were held in the week that followed.\textsuperscript{782} The ZEC declared votes between the CCM and the CUF that did not fit the trend of other elections: in 1995, it was 50.8\% for the CCM to 49.8\% for the CUF; in 2000 it was 67.04\% to 32.96\%; and in 2005 it was 53.2\% to 46.1\%.\textsuperscript{783} The 2000 elections stood out as being very different because of a boycott by the opposition in the re-run of the polls.

\textsuperscript{779} TEMCO (2011), op. cit., p. 192.
The Director of the ZEC believed that the declaration of elections results in 2010 was exemplary because it was done within 24 hours after voting ended. There is no strict legal limit to the time allowed for declaring results, but in previous elections the EMB took several days before it announced outcomes, usually amid raised political temperatures. There was still some tension outside the central tallying station in 2010 when the ZEC declared the CCM candidate winner. Finally though, and reluctantly, the CUF presidential candidate accepted the victory of the CCM candidate. CUF supporters joined CCM followers to celebrate the GNU. The reaction, therefore, can be attributed to Maridhiano, which created an atmosphere where the ZEC could operate smoothly since, for the first time, it was not a winner-take-all election.

H. Constitutional review and reform of EMBs

During the ongoing process of crafting a new Constitution, both the NEC and the ZEC have to be reformed and fundamentally restructured. Some opposition political parties have called for reforms to the EMBs even before a new Constitution because they argue that the Constitution might not be ready before the 2015 elections. They would not abide elections held under the current EMBs for fear that they could compromise and again use government or local government officials as returning officers and assistant returning officers. This has been categorically stated in presentations by CHADEMA and the CUF to the Constitutional Review Commission (CRC).

Reform of the NEC

Demands for reforms first focused on the NEC, and were initially voiced by CUF, followed by other political parties. The chairman of the CRC has argued that one could not change the election law before Tanzanians have established the nature of the electoral system they want to have in the new Constitution. He believes that the process of getting a new Constitution will be completed by April 2014 and that there will be more than a year to make the requisite changes to the law. Whether the draft Constitution will receive majority support at the referendum remains to be seen. Regardless of the outcome, the NEC is likely to undergo radical changes before the next elections. The views presented to the CRC show an overwhelming desire for substantial changes.

It is instructive that the recommendations presented recently by the chairman of the NEC to the CRC call for significant changes to the structure of the EMB. The NEC proposed that ‘independent’ needs to appear in the name of the EMB. It recommended that candidacy for the position of commissioner needs to be open and transparent, and that the commissioners need to be selected by an independent technical body. The

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786 J Mtatiro, CUF Deputy Secretary-General, interview, August 2012; J Mnyika, IPP media, interview, 14 December 2012.
787 Warioba, S, Raia Mwema, 2 January 2013.
recommended candidates then need to be confirmed by Parliament and appointed by the President. It is proposed that the commissioners be sworn into office by the Chief Justice. Other propositions from the NEC include the supremacy of the courts on election matters, the institutional independence of the EMB, and the possibility of an MP changing parties without losing his/her seat.\textsuperscript{788}

The NEC recommendations are progressive but they also indicate that the commission is aware that as it stands today, it is neither independent nor autonomous. These proposals would be acceptable to many; unfortunately they have not been reflected in the first draft of the Constitution, which is quite weak in the area of EMBs. The draft Constitution provides for commissioners to be appointed by the President on the recommendation of an appointing committee made up of the Chief Justice, judges and Speakers of the proposed legislatures. The proposed appointing committee would not be independent since the Speakers would have been elected by the party or coalition with the majority in each legislature.\textsuperscript{789} In addition, there is the question of how to get Speakers to appoint commissioners before the elections. These proposals have not respected popular views expressed by the people, who do not support appointment of commissioners by government officials.

Alternative views have come from some political parties proposing that commissioners be appointed from political parties. CHADEMA, for example, proposed a commission of 25 members – 18 of whom would come from political parties.\textsuperscript{790} The idea of a partisan EMB is not popular even among opposition parties, such as the CUF. Many call for a new process for selecting and confirming members of the EMB. There might be differences about the final appointing authority, with some proposing the National Assembly and others the President, but the critical factor is the transparency in the selection and confirmation process.

One important proposition in the ongoing Constitution debate is that all actions of the new EMBs could be questioned in a court of law, including the declaration of the winner in the presidential election. This is included in Article 78 of the draft Constitution, which proposes that the aggrieved candidate lodges an appeal within seven days and the court gives judgment within 14 days.\textsuperscript{791}

\textbf{Reform of the ZEC}

The calls for reforms of the ZEC in Zanzibar have been muted because of the GNU. The most vocal voices had been within the CUF, but the party is now in the coalition government. The participation of the two political parties in the ZEC has been seen as beneficial for them and there is reluctance to reopen the debate. The Director of the ZEC stated that it would not be prudent for the elections management body to propose

\begin{footnotesize}
\textsuperscript{788} Lubuva, D, \textit{Habari Leo}, Dar es Salaam, 19 January 2013.
\textsuperscript{789} URT (2013) \textit{Rasimu ya Katiba ya Muungano wa Tanzania} [Draft Constitution of the United Republic of Tanzania], Articles 181 & 182.
\textsuperscript{790} Jamhuri media, 29 January 2013.
\textsuperscript{791} URT (2013), op. cit., p. 42.
\end{footnotesize}
changes. Experience has shown that when the ZEC proposed changes, they were rejected even if the same proposals were being adopted when proposed by political parties.

The smaller parties and CSOs propose a completely new EMB with a diversity of independent-minded and academically qualified commissioners coming from CSOs, academic institutions and other non-governmental sources. They propose that the EMB needs to have its own office, equipment and budget.

In the constitutional review process, participants from Zanzibar have not analysed the organs of the Zanzibar government. They are interested in increasing the power and autonomy of Zanzibar within the Union. They argue that they have their own Constitution, which is popular in Zanzibar, especially following the ten amendments that gave greater autonomy to Zanzibar in 2010, and which some observers see as usurping the sovereignty of the Union Constitution. While the structure of the ZEC is still contested by the opposition in Zanzibar, the honeymoon for the GNU and a preoccupation with the demand for greater autonomy for Zanzibar in the ongoing constitution-making process have temporarily reduced the intensity of the pressure to restructure the ZEC.

I. Conclusions

Free and fair elections are critical to Tanzania’s quest for democracy and citizens’ participation in public affairs. The integrity of EMBs is more critical today than it has been before for a number of reasons.

- First, a very clear trend that became evident in the 2010 elections, and is becoming more apparent in by-elections held since then, shows that the majority of Tanzanians are staying away from the polls. Part of the reason is that they do not trust the electoral system, including the EMBs. The possible danger is that they might believe that the solution to participation in public affairs is outside the system.
- Secondly, while the CCM could in the past claim to be truly hegemonic in terms of having a sweeping majority, that claim cannot be sustained today. It is fast losing support and the opposition is getting stronger. Any serious political fallout after contested election results could be very destructive to the society. 
- Thirdly, the call for a new Constitution started as a quest to reform the NEC and the ZEC. Attempts to retain the EMBs in their current form are likely to undermine the whole constitution-making process.

The challenge of delivering free and fair elections cannot be addressed by EMBs alone. There is the question of reforming the political system, especially by dealing with the domination of regimes that purport to support democratic practice when they actually harbour authoritarian tendencies. There is also the issue of political culture. The tendency in African elections is for both ruling and opposition political parties not to accept electoral defeat. However, in a situation where the ruling party wants to remain
in power at any cost and the opposition wants to capture power at all costs, the existence of an independent and autonomous EMB can avert chaos.

This study examined the independence of the NEC and the ZEC and the possibility of having autonomous EMBs in the ongoing constitutional reform process. The independence of the NEC has been questioned consistently by opposition political parties and independent analysts since the first multi-party by-elections after 1992 and the first multi-party elections in 1995. Those who argue that the NEC and the ZEC are independent point to constitutional provisions, which apparently guarantee their autonomy. The reality, however, is that those legal provisions have been used to protect the NEC and the ZEC from being questioned for malpractices and faults in the management of elections.

Meanwhile, the incumbent political parties have been reluctant to change the structure and character of both the NEC and the ZEC. Despite requests for specific laws that would enhance the EMBs’ budget autonomy and freedom to employ staff, these legal reforms have not been undertaken.

At the same time, the appointment of commissioners gives the Union and Zanzibar presidents a great deal of leeway. While constitutions point to the qualifications of commissioners – especially the chairpersons, who are expected to be senior judges – the appointment process is not transparent. This situation has fuelled perceptions among members of the opposition, as well as other political parties, that the President could appoint commissioners who would favour the ruling party.

The performance of the NEC and the ZEC in the management of elections has been mixed, from a qualified free and fair rating to poor, according to observers’ reports. Union elections managed by the NEC have exposed problems with elections in the region of Dar es Salaam in 1995 and chaos in Zanzibar in 2000. As for the ZEC, observers’ reports show its performance as being very poor except in the 2010 elections.

One of the practices most contested by opposition parties is the use of civil servants as returning officers and assistant returning officers. These are seen as interested people whose continued appointments depend on the incumbent party’s continued stay in power.792

**J. Recommendations**

This study makes the following specific policy recommendations.

**Independence of the NEC and the ZEC**

- With the ongoing process of writing a new Constitution in Tanzania, the independence of the NEC and the ZEC from the state needs to be recognised and enforced.

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792 J Mtatio, CUF Deputy Secretary-General, interview, August 2012; Faustine Sungura, Secretary of NCCR-Mageuzi, interview, Dar es Salaam, August 2012.
• The process of appointing NEC and ZEC commissioners – even where it is based on compromise – needs to be open and transparent. Candidates need to be interviewed and screened by an independent technical team, and a gender-balanced list presented to the National Assembly for confirmation before appointment by the President.

• Members of the NEC and the ZEC need to have security of tenure enshrined in the Constitution. They should be removed only on grounds of gross misconduct after being investigated by a committee of High Court judges.

• The NEC and the ZEC need to have their own organisational law, physical infrastructure and secretariat represented right up to the district level. Most opposition political parties have no confidence in government officials running elections at the constituency and sub-constituency level. Government officials should not be involved in managing elections.

**Funding of elections**

• The NEC needs to have its own funds voted directly by the legislature and paid from the Consolidated Fund in the Treasury. Similarly, the ZEC needs to have its own organisational law and its own funds voted directly each year by the legislature and paid from the Consolidated Fund in the Zanzibar Treasury.

• The two EMBs need to improve their relations with donors, particularly those involved in elections support, to facilitate the financing of activities related to elections, including the provision of voter and civic education.

• Donors, on the other hand, should make sure that they honour their financial pledges to the EMBs adequately and on time. This would allow the EMBs to prepare for the management of elections.

• Likewise, donors should adequately fund CSOs so that they can provide civic and voter education to the majority of citizens.

**Demarcation of constituency boundaries**

• There should be an independent body, composed of seasoned professionals and civil society representatives, in charge of boundaries demarcation on the Mainland as well as in Zanzibar.

**Voters’ register and voter registration**

• The technology of the permanent national voters’ register needs to be updated and digitised to modern standards.

• The national voters’ register has to allow citizens to register continuously and to vote anywhere in the country within the limits set by best practices in the EAC and the Southern African Development Community.

• The three-year residence requirement for registration of Zanzibar voters is contrary to the Bill of Rights in the Zanzibar Constitution and should be abolished.
Nomination of candidates
- The process for nominating election candidates needs to be simplified so as to verify the identity of the candidate.
- It needs to be less bureaucratic in order to avoid nullification of nominations for small technical errors.
- Emphasis needs to be placed on the identity and curriculum vitae of candidates. This will reduce attempts by candidates and parties to disqualify competitors.

Electoral violence
- The NEC and the ZEC need to mete out penalties as outlined in the Code of Conduct for political parties, which include suspending a candidate or a political party from campaigning.
- While the Zanzibar election campaigns were less violent in 2010, there was apparent impunity in a politician preventing the CUF from campaigning in his area. The ZEC should not be silent in the face of political impunity.

Voting, vote counting and declaration of results
- The process of vote counting and relay of results is still contested because the NEC gives a lot of leeway to returning officers and assistant returning officers, while the ZEC is not seen as being transparent enough.
- The NEC needs to institute strict appointment standards for personnel and to closely supervise them to avoid their manipulation.
- To avoid heightened political tensions in Zanzibar, transparency in vote counting, tallying and announcement of results needs to be well entrenched. Transparency should be promoted, particularly during the final tallying of presidential election results.

Voter education
- The NEC needs to deal not only with voter education but also with civic education in light of the recent decline in voter turnout. The NEC can use CSOs to conduct this activity during the period between elections.
- The NEC needs to develop a standard voter education curriculum.
- Voter education by the ZEC is limited to short periods before elections. The ZEC needs to engage academics and CSOs to develop voter and civic education.
- The ZEC needs to develop a civic education curriculum.
- The ZEC can use CSOs to coordinate this activity in the period between elections.
- CSOs should actively engage in providing civic and voter education. They should make sure that they reach the majority of citizens in both rural and urban areas.
• CSOs should also be accountable to the people and the financiers who fund their activities.

Electoral disputes
• All NEC and ZEC electoral decisions should be open to challenge in courts of law, including the declaration of the winner in the presidential elections.
• Litigation needs to be conducted promptly and judgment delivered within a specified short period so as to avoid a governance vacuum. The limits of seven days for litigation and 14 days for judgment seem reasonable.

Relationship with other actors
• The NEC and the ZEC need to build good relations with the legislature in order to ensure that legal reforms to the electoral system are implemented.
• The EMBs need to work closely with political parties in order to improve transparency in election administration and hence boost its credibility.
• The NEC and the Office of the RPP should be merged to harmonise their activities and to be cost effective.
• The government should embrace comprehensive reforms that would separate the ruling party from the state. This would ensure fair political competition and independent and impartial EMBs.
• Similarly, the ruling party should be limited from using the state machinery to its own advantage.