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The Challenges of Electoral Process Institutions of the Zanzibar and Union Elections of 1995, 2000 and 2005: Anything New With the Election Expenses Act, 2010?

Conrad John Masabo, Mr.

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The Challenges of Electoral Process Institutions of the Zanzibar and Union Elections of 1995, 2000 and 2005: Anything New With the Election Expenses Act, 2010?

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Introduction

Tanganyika and Zanzibar got their independence in 1961 and 1963 respectively under the Westminster Constitution which allowed the existence of plural politics though Zanzibar was forced to undergo bloody revolution to oust the minority government – the Sultan government. But as from "1965 the country became *de jure* one-party state, though in practice, the Tanganyika African National Union (TANU) was the only party on Tanzania mainland, and the Afro-Shirazi Party (ASP) was the only party on Zanzibar" (Chaligha, Mattes, Bratton and Davids, 2002, 4). However, "this was only realised on 5 February 1977 [when the two parties merged]... to form the Chama Cha Mapinduzi (CCM; 'Party of the Revolution') (EISA, 2006, 1). Throughout the period of single party system Tanzania continued and maintained the regular election culture after each five years period though it has its many shortfalls such as elections had.

Since the re-introduction of multiparty politics in Tanzania and conducting of multiparty elections spans almost 20 years and

15 years respectively. This roots back since when "The United Republic of Tanzania repealed the single-party clause in February 1992 and paved the way for a multiparty democratic environment" (EISA, 2005c, 1) which opened-up for the first multiparty election in October 1995 and now looking for the forth one in October (2010) this year.

Though "it is true that elections alone do not guarantee proper functioning of democracies, they are the most convenient means of effecting orderly political successions of office bearers ... for elections to become credible instruments to political succession its adherence to the rules of the game as well as procedures which had been agreed upon by players themselves" (Ahmed, 2005, 1). In that regard the constitutional and legal framework governing the electoral processes have been always central and among the fundamental issues during elections. They thus constitute most important "decrees... in setting conditions under which elections are conducted in a country" (EISA, 2005c, 1).

This paper then sets forth to critically assess the functioning of critical electoral institutions in Tanzania and more specific paying attention to whether The Election Expenses Act, 2010 have improved the conduction of the 2010 Zanzibar and Union Elections as opposed to those of 1995, 2000 and 2005 respectively in reducing corruption and corrupt practices related to elections. In attempting such task the essay begins by an introduction that gives in brief the political synoptic history of elections in Tanzania and a justification for the existence of election institutions as well as the rationale for the need to have strong and formidable leadership. From this footing the essay will then give a brief explanation of what is electoral process and the electoral system or formula that Tanzania uses as well as highlighting the institutions that are critical in elections both for Tanzania (mainland) and the Isles. The part that follows is devoted to present the discussion on the institutional opportunities of 1995, 2000 and 2005 in the three multiparty elections respectively. The fourth part discusses the institutional limitation. The fifth part presents a critical assessment of the role played by the Election Expenses 2010 and lastly is the concluding part.

Electoral Processes and Institutions

Elections constitute not only electoral processes and results but also subsequent interpretations of the outcomes (Killian, 2006, 2). Thus while electoral processes entails the series of steps undertaken to conduct elections; the interpretation of the outcomes are constituted in the electoral system. An electoral system encompasses procedures, laws, rules and regulations for the electorate to exercise their democratic right to choose their leaders and translate those ballots into actual representation in the National Assembly (EISA, 2005c, 3). It is "the means by which a country translates votes into parliamentary seats/political party representation in the country's parliament" (EISA, 2006, 8). For example, "in Tanzania, the single member plurality system, often also referred to as the first-past-the-post (FPTP) system is used to elect National Assembly representatives in each constituency" (*Ibid.*).The electoral system has many "consequences that go beyond the primary effects. Some systems encourage or even enforce the formation of political parties; others recognize only individual candidates. The type of party system "... internal cohesion and discipline of the parties ... the way parties campaign and the way political elite behave thus helping to determine the broader political culture; they may encourage, or retard, the forging of alliances between parties..." (IDEA, 2005, 6).

Election institutions that have been involved in the 1995, 2000 and 2005 elections can be grouped into five major categories; namely the legal institutions, election management institutions, election participating institutions, election monitoring institutions and the last are the apolitical institutions charged with provision civic education and election information communication. Having highlighted them, let us now discuss the institutional opportunities.

Institutional Opportunities

The United Republic of Tanzania's legislative framework retains the Constitution and electoral laws which are of particular relevant to the electoral processes. Over the past years electoral laws have been amended a number of times, addressing most of

the concerns raised by oppositions and independent observers, thus strengthening good conduct of elections. In addition, the electoral laws of both parts of the United Republic of Tanzania (URT) demonstrate the capacity to carry out electoral processes in an efficient and professional manner. The legal institutions governing the conducting of 1995, 2000 and 2005 elections consist of set of laws and regulations. It includes the provisions by The Constitution of the United Republic of Tanzania (CURT) of 1977 with all its amendments and The Zanzibar Constitution of 1984 with all its amendments. In the Tanzania mainland elections for example

> Presidential and National Assembly elections in Mainland Tanzania are held according to the 1977 Constitution of the United Republic of Tanzania (with relevant amendments), the Elections Act, 1985 (Act No 1 of 1985) with all the amendments up to and including 30 June 2000, and the Political Parties Act No. 5 of 1992. Local government and town council elections are regulated under the Local Authorities (Elections) Act, 1979 (Act No 4 of 1979) (EISA, 2006, 6).

For Zanzibar Elections the following "legislation regulates the isles' elections: The Zanzibar Constitution of 1984 with amendments up to 1995, The Ninth Constitutional Amendment Act, 2002, The Zanzibar Election Act of 1984, with amendments up to 1995, The Election (Amendment) Act, 2000, the Election (Amendment) Act, 2001, the Election (Amendment) Act, 2002" (EISA, 2005a, p. 6) and the Political Parties Act No. 5 of 1992 that operates in both parts of the union. These provide laws and legislations that are foundational to the electoral processes.

Also the CURT of 1977 Article 74 (1) and Zanzibar Constitution of 1984 Article 119 (1) provide the existence of the two statutory election management bodies namely the National Electoral Commission (NEC) and the Zanzibar Electoral Commission (ZEC) respectively, their composition CURT Article 74 (1) as amended by Act No. 4 of 1992 and Act No. 7, of 1993 [and] Article 119 (1) of Zanzibar Constitution of 1984 and Election Act, 4(1) of 1984 (TEMCO, 2000, 13-14) respectively.

Establishing a credible and depoliticized electoral management body (institution) is critical for election integrity

(EISA, 2005c, 6). This is so because "conducting an election in a country with millions of voters is a complicated exercise (Strom, 2007, 1). In Tanzania, there are two statutory bodies charged with the duty of delivering elections: the National Electoral Commission (NEC) and the Zanzibar Electoral Commission (ZEC). They form the institutional framework. The NEC/ZEC form this institutional framework, whose legal position, composition, organizational structure and functions are provided for in the Electoral laws of Tanzania Mainland and Zanzibar (TEMCO, 2000, 13). While "ZEC retains autonomy over the elections for the Zanzibar Presidency, House of Representatives and local councils, and the promotion and regulation of voter education; ... the National Electoral Commission of the United Republic of Tanzania (NEC) is responsible for the registration, supervision and conduct of the elections for the Union Presidency and Parliament on the mainland and in Zanzibar (de Marco, 2005, 18). Apart from afore mentioned duties, NEC and ZEC are responsible/tasked with four major functions namely for determination delimitations of constituencies, co-ordination of the registration process, co-ordination of election at all levels provision of civic and voter education. The survey of the 1995, 2000, and 2005 have revealed that NEC and ZEC have performed well except being accused of weakness when dealing with the ruling CCM and inefficiency and being biased towards the ruling party respectively and the ZEC attempts to weaken opposition by reducing the number of constituencies in Pemba from 21 to 18 and increasing

The Political Parties Act of 1992, which applies to both Zanzibar and the Mainland, provides for the establishment of the office of the Registrar of Political Parties, which is responsible for regulating and governing the operations of political parties... [as well as] for the registration of political parties by the Registrar's Office (EISA, 2006, 14). Political parties are associations of individuals with political goals or objectives of ultimately capturing state power (REDET, 2009, 86). In Tanzania then, they are the legal and formal platforms or avenues under which any one with political ambition has to file in his/her interest. This is

because at present the "Constitution of the Union prohibits independent candidates from seeking election in all the three separate elections: presidential, National Assembly (or House of Representatives) and local government elections, and only political parties duly registered are entitled to nominate candidates" (EISA, 2006, 17). In that regard they constitute another election institution in Tanzania. A remarkable step was manifested by the signing of the political party code signed in August 2005 by all 18 registered parties by then. This five-page document is a voluntary 'gentlemen's agreement between political parties, the government and the NEC.

The forth institutional category constitutes the mass media both public and private, the Civil Society Organisations (CSOs), Religious Organisations, Community Based Organisations (CBOs) Non-Governmental Organisations (NGOs) and all other interest and pressure groups such as Tanzania Women Lawyers Association (TAWLA), Tanzania Gender Network Programme (TGNP) a group which is and was required to remain apolitical in its operations. For example, in Tanzania's media scene has developed rapidly since the advent of the multiparty era in mid 1990s; private media [particularly] has expanded quickly, exposing most Tanzanians to alternative communication tools (EISA, 2005c, 13). Again, another step forward was realized as from July 2000 when media practitioners promulgate this Code of Conduct as the best means to cover the upcoming elections

> ... under the auspices of the Media Council a Code of Conduct to govern media was formulated. This was a manifesto for both print and electronic media on how to cover the political events in the run up to the general elections. Areas of emphasis in the media policy included focusing on the importance of providing balanced and impartial reporting; providing voter education, seeking the truth for journalists reporting on elections; promoting democratic values; refraining from publishing a party's content that violates the Constitution or the election law; and many more (*Ibid*. 14).

All other groups were also charged with the duty of offering civic and voters' education as proposed by the donor community. They were also charged with insuring that elections were conducted in a free and fair manner by participating in election

monitoring. In cementing this argument, Prof. Ernest T. Mallya, observes as follows; that:

> ... the religious Organisations participated in the monitoring of elections of 1995 and 2000. one of the umbrella election-monitoring organisations – the Tanzania Election Monitoring Committee (TEMCO) – included some sixty organisations some from the two main religions such as Baraza Kuu la Waislamu (BAKWATA), ELCT, CCT, Christian professional of Tanzania (CPT) and so on (REDET, 2006, 407- 408).

Last category of institutions is the electoral monitoring bodies. These constitute the local, regional and international bodies. These have been very influential in evaluating the electoral processes more specifically when Tanzania reintroduced the multiparty elections following the constitutional reforms of 1992 that allowed for the existence of multiparty politics. These are such as Tanzania Election Monitoring Committee (TEMCO). The main international observer groups were from the National Democratic Institute, the African Union, SADC, the SADC Parliamentary Forum, the SADC Electoral Commissioners' Forum and the Electoral Institute of Southern Africa. Over 100 others were co-ordinated by the United Nations Development Programme (de Marco, 2005, 40). Other groups the Commonwealth Observer Group, The EISA Election Observer Mission and SADC Observer to mention but only a few. The reports of EISA and The Commonwealth Observer Group and that of the SADC have helped in improving elections especially those of 2000 and 2005 respectively.

Institutional Limitations

Having seen the functions of the institutional opportunities in the electoral process of the Zanzibar and union elections, these institutions have also some limitations that hinder them to function effectively in the electoral process though not limited to the following.

To begin with is lack of competent personnel. Although when one compares to the 1995 general election one may note some improvement in the 2000 election. (TEMCO, 2000, 17) However the fact remains the same, the institutions still suffers lack of

enough, skilled and competence personnel to administer the electoral process especially at the grass root level. This was revealed when the country was preparing for election, the larger part of electoral process such as voters' registration up to vote counting was done by people who were not skilled enough and experienced in the electoral process such as teachers and other personnel to conduct the electoral process from the beginning up to the end. As the result since 1995-2005 general elections several problems and errors in the whole process were reported. The report by TEMCO on how mistakes and errors were observed as the result of using incompetent personnel in the electoral process from 1995, especially in voters' registration and vote counting revealed that:

> Several NEC [and ZEC] personnel were incompetent in handling the registration process. Cases of double registration, missing of the last two numbers in the voter's registration certificates or mixing the registration numbers, have been reported in the several registration centres. For example, in Kawe constituency, about 42 voter's registration certificates had their numbers mixed up, and or missing the last two digits (*Ibid.*)

Second is the problem of unclear standards on how to prove the eligibility of voters. This is due to the fact that, since 1995-2005 elections, even to the forth-coming election there is no clear standards on how to prove the eligibility of a voter during voters' registration, and voting day. NEC and ZEC did not give the means to identify the right person to be registered and who is not supposed to be registered. As the result some people who were eligible to vote were not registered and those who were not eligible were registered since the power to decide who is to be registered and not, were in the hands of the registration clerks. In support of these explanations, the report by TEMCO observed this. We quote:

> Due to lack of clear standards on how to prove the eligibility of a voter, registration clerks in several constituencies exercised considerable discretionary powers in determining eligible voters. For example, in Sengerema, Musoma and Bukoba rural, some people were denied registration even after producing proof, while others in some constituencies were allowed to register. [The same happened in Zanzibar] In some constituencies potential voters were denied to register under the pretext of being underage or not being residents... in the constituency, or ignorance of registration clerks in electoral laws. (TEMCO, 2000, 17-18).

Thus because people were denied the right to be registered as well the right to vote, NEC and ZEC as an institutions to make successful arrangement of electoral process in the country was then condemned of not handling the matter properly and this make it to be one of the limitation facing or faced the institutions in the previous and even the coming election if the matter will not be handled carefully.

Third is the lack of adequate civic education to voters is another limitation facing/ faced the institutions NEC and ZEC in handling the electoral process. Though since 1995-2005 general elections people have been participating in all electoral processes, the level of participation can be measured from one election to another in the presidential and parliamentary elections. The fact is that, for any country to have a successful electoral process "civic education and voter education are vital for educating and mobilizing people to register for voting" (TEMCO, 2000, 18), and participate fully in elections. In the country since 1995 to 2005, there has been little civic education and voters education given during or after the year of election. As to why do we subscribe this is due to the fact that, although we have a lot of mass media in the country to be used in disseminating civic education to the public "NEC did not fare well in this area prior to and during the registration process. [For example] The RTD [Radio Tanzania Dar Es Salaam by then] programmes on civic education and vote education sponsored by NEC did not capture or attract a wide audience throughout the country....the posters prepared by NEC's civic education...were not disseminated widely, particularly in rural areas" (*Ibid.*).

The fourth limitation of the institutions is lack of self-independence. However the question of NEC and ZEC independence is a matter of debate. In one way the institutions are independent as it is described in article 74 (7 and 11) of the Union constitution that NEC is "the supremacy organ... in supervising the general conduct of all presidential, parliamentary and local government elections" (TEMCO, 2000, 19). In addition to this,

Article 41(7) of the Union Constitution states that also categorically that "No court is allowed to inquire into the election of a presidential candidate who is declared by the electoral commission ... to have been duly elected" (TEMCO, 2000, 17) the same is revealed in Zanzibar constitution. Thus from these point of view the two institutions are independent. On the other hand the two institutions are not independent. The reasons as to why they are not independent are. First all members of the commission are Presidential appointees. Secondly, the two institutions are not self-supporting financially. Third, the NEC and ZEC lack enough human and physical resources to run their programmes independently. The report by EISA on how the economic dependence of the institutions affects the elections it states as follows:

> In almost each election administered by both commissions... operations have had to be undertaken with insufficient funding. ... in the 1995 report, ... NEC places blame for almost all its shortcomings on the untimely funds from both the government and donors. It believed, as did others who observed the process, that the commission was not given early and timely funds to enable it carry out its time table, and this situation was actually the main cause of most of the problems which surfaced during elections (IESA, 2005a, 10).

Biases of the media are another institutional problem the respective institution encountered in the previous elections. In a democratic state and democratic election free flow of information is very important. Accurate and unbiased information is needed by the people to make correct decision, the media should take into account equality by producing balanced report and every candidate should equal access to the media during the elections campaigns period. As for the previous elections things were not conducted the way it supposes to be done in a democratic state. The media both private and public were condemned of favouring the ruling part in the whole electoral process. The report by EISA observed these and it stated:

> In both elections of 1995-2005, despite the presence of electoral laws and policies that provide strict guidelines for the media to provide no partisan coverage among others, we saw a media environment in which political parties continued to face unequal access. Furthermore... the 2000 elections... revealed that all the news distributors...failed to discharge their duty to inform the electorate impartially. Both private and government...media appeared to be biased in...favour of the ruling party. (IESA, 2005a, 14)

Lastly is the constitution itself. The fact is that, though constitution provides the guidelines to be followed in the electoral process, yet the constitution still limits individual persons to contest in the elections independently. The constitutions still holds that for a person to qualify to contest to any post should come from a given political party. Thus this part of the constitution limited the individuals' right to contest as independent candidates since the 1995-2005. It is our hope that in the future elections will have been omitted.

The Election Expenses Act 2010: An Overview and Critical Assessment

The 2010 General Elections, have on top of the existing legal framework institution complied with the innovative electoral institution: The Election Expenses 2010, which came into operation on the 1st day of April 2010. Among other reasons that led to the enactment of this act, is the desire to curb the corruption practices that were wide spread during the last three General elections and more seriously that of 2005. The Act is divided into eight parts and proposes the manner in which all election expenses are to be incurred, mobilised, disclosed and accounted for.

Part I provides for the preliminary matters including the title and commencement, application and interpretation of words, certain terms and designation used in the act. Part II focuses on the actual process of administration of the election expenses. It stipulates the function of the Registrar of Political parties as a chief administrator for enforcement of the act and overseeing its implementation, the powers to inspect all political party/parties as well as candidate(s) and the power to request information pertaining to the election expenses of a party or candidate. Part III concentrates on the phenomenon Election expenses. It stipulates and gives meaning of election expenses, election expenses to be

incurred by political parties, the need for funds disclosure before election campaigns, limits of election expenses, procedures for accepting voluntary donation from individual or organisation, within and outside the United Republic of Tanzania, restriction of foreign funding to election expenses, the need to disclose source of funds by the organisation that want to participate in lawful activities within specified time (ninety days, and thirty days for General Elections and a by election respectively). Lastly under this part is the guidance to the expenses to be incurred during the nomination process.

Part IV focus on the accountability by the candidates and political parties. It begins by the call to disclose the funds for election campaigns, the need for receipts of election expenses, appropriation of election expenses incurred by a political party, the need to present verifiable report to the party by a candidate who was sponsored that given party and the political party to do the same to the Registrar of Political parties a report containing true returns in specified forms what is referred to as Returns as to election expenses, the obligation to keeping records for the purpose of financial accountability, and lastly is the implication of failure to disclose funds with ought any reasonable explanation.

Part V presents a list and manner in which some acts, participants and processes will be judged as prohibited practices. It presents matters related to unfair conducts, unconscionable funding, conveyance of voters, disqualification of candidates and prohibition of prohibited practices prior to nomination process. Part VI which follows concentrates on offences and penalties under the Election expenses Act 2010. It provides for general offences and penalties and offences relating to the powers of the Registrar of Political parties. Part VII provides for General Provision on issues pertaining duties of government media, the role of government in maintaining peace and security, protection from liability to employees of the Office of the Registrar, National Electoral Commission and other government officials and lastly is regulations making by the minister basing on the recommendation by the registrar. Part VIII which is also the last part of the act is concerned with the Consequential Amendments.

It has the construction and miscellaneous amendments (Cap. 258) focusing on the amendment of the Political Parties Act.

The work done by the Office of the Registrar of the Political Parties in overseeing the implementation of the Election Expenses Act provision deserves praise for work done. To a large extent, it made the new law known and looked over its execution. There was a drop of public bribing during the elections as well as restriction of all ill practices normally done by candidates to attract voters. It instilled the sense of accountability by candidates and their parties. It really acted like a watchdog to both parties and candidates and set a benchmark for assessing the corrupt practices during elections. Various people have brought before the registrar and warned of the suspected attempts.

Article 2 (a) and (b) marks the first weakness of the act in overseeing conduct of election. It remits the application of the law to main land Tanzania and in Tanzania Zanzibar in respect to candidates for the office of the President of the United Republic and for an office of a Member of Parliament. If one my ask what who regulates the election expenses of for the offices of the Zanzibar Presidency, House of Representatives and local councils? I am yet to get the answer, and if we have an institutions why should we have two institutions doing slightly similar function in Zanzibar? Is it not misuse of the funds, if not they why can't Tanzania Zanzibar have their Political Parties registrar? Why should we then compel each part to have members in all parts of the United Republic?

Article 4 and 5, of the Act stipulate and spell out that the Office of the Registrar of the Political Parties is anchored with powered to supervise the administer election expenses as well as to the power to investigate or examine books, papers and documents of any political party. With the political system we have in the country; is it possible for the office concerned to access the parties' central committees document always stated as secret but containing the statements of intention of how the party is organised to make it win the elections? Does the office of the registrar have the right and competent personnel to undertake such duties? How are they assured of their security? What

happens if a party denies the office clear path to access the documents needed?

Article 23 (1) (a) and (b), (2) and (3) for example; they all stipulate and prohibit conveyance of the voters. We have witnessed in the last election parties and candidates going astray these provisions. Why did the office of the registrar remain silent? Why did it not use its discretionary power to inflict punishment as prescribed by Article 26 and 27 of the same Act? Articles 28 (1) and 29 (1) (a), (b), and (c) seek to provide equal access to use of the government (public) media by the candidates for the office of President and deployment of police forces to provide security respectively. Where did double standards come from such as a running matter to be escorted by three police vehicles while other presidential candidates hardly gone only a few police forces in a single van? Why did the government offer double standards in air time of the candidates of different parties? Why did the Tanzania Communication Regulatory Authority allow the operation of the junk short electronic message bearing the then incumbent president name to be circulated widely in Tanzania which all receivers were denied of the right to replay? Why a routine of broadcast interruption when some candidates aired out their threatening political policies? If they were threatening the peace and security why were they not hold accountable as the law requires? Why was the office of the registrar silent?

In general; the Office of Registrar of the Political parties still face the chronic disease of lacking teeth to bite basing on the fact that it was still accountable to the then incumbent. It has thus sometimes bent laws in favour of the master. This is because the registrar as a presidential appointee has no absolute power to deal and make the incumbent accountable for the ill business. Suggestions are made, that in order for the Office of the Registrar of Political Parties to bite, the appointment and accountability of the office bearers should not be state house rather the public either through their parliament

Conclusion

Throughout this presentation I have explored the institutional opportunities and limitations of the main electoral participating institutions. But no matter how best they perform they are still lamented at. It has been reported that not all parties have the same plane. The general lament has been needed to have a free and independent NEC and ZEC for almost all the accusations of elections are mainly shooting to this organ. For it to operate smoothly without any interference there is a need to empower the financial status of NEC/ZEC by creating a special vote in the national budget. Also there is still a greater cry over the lack of civic education; poor communication network can lead to poor or underperformance.

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