THE UNITED REPUBLIC OF TANZANIA



I, JOHN SAMUEL MALECELA, for the time being discharging the functions of President, do hereby assent.

J. S. M.

No. 6 OF 1992

I ASSENT,

President

11th June, 1992

An Act to amend the Elections Act, 1985

I ---------- I

ENACTED by the Parliament of the United Republic of Tanzania.

Short title and construction Acts, 1985 No. 2

1. This Act may be cited as the Elections (Amendment) Act, 1992, and shall be read as one with the Elections Act, 1985, in this Act referred to as "the principal Act"

Amendment of section 2

2. Section 2 is amended in subsection (1)-

(i) in the definition "candidate" by deleting that definition and substituting for it the following new definition-

""candidate" means a person who submits himself for election to the National Assembly;";

(ii) by deleting the definition "the Commission" and. substituting for it the following new definition—

"National Electoral Commission" means the National Electoral Commission established by the Constitution;";

(iii) by repealing the definition "National Executive Committee";

(iv) in the definition "nomination" by deleting that definition and substituting for it the following new definition—

"" nomination" means nomination as candidate for election to the National Assembly;";

(v) in the definition of "nomination day" by deleting that definition and substituting for it the following new definition—

"" nomination day" means a day appointed for the nomination of candidates,";

(vi) by deleting the definition "party 11 and substituting for it the following new definition-

I'll political party" means a political party registered as such under an Act of Parliament;"

Repeal of section 4

3. Section 4 of the principal Act is hereby repealed.

Repeal and re-placement

4. Section 4A is hereby repealed and replaced by the following new section-

"The National Election Commission

4.-(I) The National Electoral Commission shall, subject to the Constitution and to this Act, consist of the following members:

(a) a Chairman who shall be a Judge of the High Court or of the Court of Appeal of Tanzania;

(b) a Vice Chairman;

(c) a member appointed from amongst the members' of the Tanganyika Law Society;

(d) four other members who are persons possessing either adequate experience in the conduct or supervision of Parliamentary election or such other qualifications as the President considers necessary for or pre-requisite to the effective discharge of the role of the Commission.

(2) The Commission shall be responsible for the overall supervision of the general -conduct of all Parliamentary and Presidential elections in the United Republic.

(3) Subject to the provisions of this Act, the Chairman shall preside at all meetings of the Commission and in his absence, the Vice-Chairman shall preside, or if he too is absent, the Commissioners present. may appoint one of their number to act in the place of the Chairman.

(4) The Director of Elections shall be the Secretary to the Commission and he shall be the chief executive of the Commission.-

Repeal of section 4B

5. Section 4B of the principal Act is hereby repealed.

Repeal of section 4C

6. Section. 4C of the principal Act is hereby repealed.

Repeal and re-placement of section 6

7. Section 6 of the principal Act is repealed and replaced by the, following new section-

"Director of Elections

6.-(l) There shall be a Director of Elections who shall be appointed by the President from amongst the names of senior Civil Servants of the United Republic recommended by the Commission.

(2) The Director shall exercise and perform all such functions and duties as are conferred upon him by this Act or on the directions of the Commission.

(3) Every Registration Officer, Returning Officer or other person concerned with the conduct of elections under this Act shall carry out fully all directions and instructions of the Director issued by him in pursuance of the provisions of this section. "

Amendment of section 8

8. Section *8* of the principal Act is hereby amended by deleting the designation "District Administrative Officer" and substituting for it the designation "District Officer"

Repeal of section 9

9. Section 9 of the principal Act is hereby repealed.

Amendment of section 28

10. Section 28 of the principal Act is amended in-

(i) Subsection (1) by deleting the phrase "the sum of" which appear in the second line of that subsection;

(ii) Subsection (9) by deleting the words "of the" which appear in the sixth line of that subsection.

Amendment of Heading of Part II

11. The Act is amended in Part 11 of Chapter IV by deleting the title "PRIMARY NOMINATION OF CANDIDATE" and substituting for it the title "NOMINATION OF CANDIDATES".

Amendment of section 37

12. Section *37* of the principal Act is hereby amended by deleting the word "primary" wherever it appears in the text of the section.

Amendment of section 38

13. Section *38* of the principal Act is hereby amended by deleting the word "primary" wherever it appears in the Section and in the marginal notes;"

Addition of new section 38A

14. The principal Act is hereby amended by adding, immediately after section *38,* the following new section-

"Deposits 38A.-(1) A candidate or one of the persons nominating him shall, at the time of delivering nomination paper pursuant to the provisions of section 38, deposit with a Returning Officer such sum of money as may be prescribed.

(2) The deposit of an opposed candidate shall be forfeited to the government if he withdraws his candidature after nomination day or if the number of votes counted in his favour at the election, is. less than one-tenth of the total number of votes counted for the seat which he was a candidate, save that such deposit shall not be forfeited if the candidate dies;

(3) Where a deposit of a candidate is not forfeited under the provisions of subsection (2) of this section, it shall, as soon as is reasonably practicable after the declaration of the results of the election, be returned to him or paid to his personal legal representative as the case may be, by the Returning Officer."

Amendment of section 40

15. Section 40 of the principal Act is amended in subsection,(5) by deleting that subsection and replacing it with the following-

(5) Any candidate who is dissatisfied by the decision of the Returning Officer on the validity of an objection may, in such manner and within such period as the Commission may prescribe, appeal to the Commission and the decision of the Commission shall be final and conclusive and shall not be challenged in any Court, save by way of -an election petition presented pursuant to the provisions of Chapter VII on one or other of the grounds specified in that Chapter.

Repeal of section 41

16. Section 41 of the principal Act is hereby repealed.

Repeal of section 42

17. Section 42 of the principal Act is hereby repealed.

Repeal of section 43

18. Section 43 of the principal Act is hereby repealed.

Repeal and replacement of section 44

19. Section 44 of the principal Act is hereby repealed and replaced by the following new section-

"Un opposed candidate

44.-(1) Where only one candidate is nominated for an election in a constituency, such candidate shall be deemed to be elected and the. Commission shall, by notice in the Gazette declare him to have been elected.

(2) where a candidate withdraws after nomination, the provision of section 38A (2) shall apply and no party shall nominate a substitute candidate."

Repeal of section 45

20. Section 45 of the principal Act is hereby repealed.

Amendment of Chapter IV

20A. The Act is amended-

(i) in Chapter IV by deleting Part V;

(ii) in part "IV" by deleting that part and substituting for it with the following- "part III;"

(iii) in part "V" by deleting that part and substituting for it with the following "part IV".

Repeal and replacement of section 46

21. Section 46 of the principal Act is hereby repealed and replaced by the following new section—

"Nominated candidates and election

46. Where candidates are nominated for election in a constituency, the Commission shall, by notice published in the *Gazette*, appoint a day not less than sixty days and not more than ninety days after the day on which they have been deemed to have been nominated to stand as candidates for election day in the constituency; save that-

(a) where there are two or more contested elections during a parliamentary general election the Commission may appoint different election days for different constituencies;

(b) the Commission may revoke the appointment of an election day and appoint some other day within such period as aforesaid to be an election day."

Repeal and replacement of section 48

22. Section 48 of the principal Act is hereby repealed and replaced by the following section-

"Withdrawal of candidature

48. A candidate may withdraw his candidature by notice in writing signed and delivered by him to the Returning Officer not later than six o'clock in the afternoon of the day following nomination and if that day is not a working day, a day preceding that other day."

Amendment of section 49

23. Section 49 of the principal Act is hereby amended by deleting the, word "primary" wherever it appears in the section.

Amendment of section 50

24. Section 50 of the principal Act is hereby amended by deleting the word "primary" wherever it appears in the section.

Repeal and replacement of section 51

25. Section 51 of the principal Act is hereby repealed and replaced by the following new section-

"Election campaigns

51.-(1) Where there is a contested election in A constituency the election campaigns shall be organised by the candidate, the candidates political party or his agent.

(2) The polling agent or the candidate's party, as the case may be, shall furnish the District Commissioner with a schedule indicating the proposed programme for his campaign public meetings specifying times and places of those meetings.

(3) Any polling agent or a political party acting with the approval or consent of the candidate or of his political party may convene or address any public meeting held in the constituency other than one held pursuant to subsection (2), for the purpose of furthering the candidate's election or the programme of his political party."

Repeal of section 52

26. Section 52 of, the principal Act is hereby repealed.

Repeal and replacement of section 53

27. Section 53 of the principal Act is hereby repealed and replaced by the following new section-

"candidate to be identified by photograph

53.-(1) For the purpose of assisting Voters to identify a candidate, every candidate shall be identified by a photograph of the candidate which has been approved by the Returning Officer.

(2) The display of the photograph of a candidate during the election campaign shall be subject to the control of the Returning Officer.

Repeal of section 54

28. Section 54 of the principal Act is hereby repealed.

Amendment of section 57

29. Section 57 of the principal Act is hereby amended-

(i) in subsection (i) by deleting that subsection and substituting -for it the following:

"57--(1) Each candidate may appoint one person to be known as a polling agent to attend at each polling station within the constituency for which he is a candidate for the purposes of—

(a) detecting personation;
(b) representing and safeguarding the interests of a candidate at the polling station; and
(c) Co-operating with the presiding officer and polling assistants to secure the smooth compliance with the law and procedure pertaining to the conduct of the' voting and the elections at the polling station."

30. Section 59 of the principal Act is hereby amended in paragraph (a) by deleting the words "where applicable" which appears in the fourth line. Amendment of section 59

31. Section 61 of the principal Act is hereby amended- Amendment of section 61

(i) in subsection (1) by adding the following proviso,.
"Provided that absence of the polling agent shall not invalidate the votes;"

(ii) in subsection (3) (i) by inserting the word "is" between a word "voter" and "illiterate"-

(iii) in subsection (4) by deleting the phrase "polling agent" which appears in the fifth line and substituting for it the phrase "presiding officer."

32. Section 62 of the principal Act is hereby amended by- Amendment of section 62

(i) by deleting the phrase "supervisory delegate" wherever it appears in the section and substituting for it the phrase "polling, agent";

(ii) by deleting the marginal note and substituting for them the following marginal note: "Voting by polling agents" "

33. Section 64 is hereby amended by deleting subsection (1) and sub' Repeal and replacement of section 64(1)

stituting for it the following-

"64.-(1) Where the Presiding Officer at any polling station. has reason to believe, or where a candidate or polling agent present at any polling station alleges that any person wishing to vote at that polling station is not a voter entitled to vote at that polling station, the Presiding Officer shall warn such person that he may commit an offence under this Act by so voting. "

34. Section 68 of the principal Act is hereby amended in the last line by deleting the word "upon" and substituting for it the word "open" Amendment of section 68

35. Section 74 of the principal Act is hereby amended by re-writing the contents of paragraph (d) and the concluding phrase as follows:- Amendmen of section 74

(d) which is unmarked or void for uncertainty shall be not counted:
Provided that special ballot issued under the provisions of section 62 shall be counted if it complies with the provisions of that section and any directions given by the commission under that section.

36. Section 76 of the principal Act is hereby amended by deleting paragraph (d) and substituting for it the following paragraph: Amendment of section 76

"(d) unmarked or void for uncertainty; and shall on request allow any counting agent to copy the statement."

Repeat of section 81A

37. Section 81A of the principal Act is hereby repealed.

Amendment of Section 86

38. The principal Act is hereby amended in section 86 by-

(i) inserting the word "and" in the second line between the words "Election" and "a contested Parliamentary Election"

(ii) re-numbering paragraph "(c)" which appears between paragraphs (d) and (f) as "(e)";

(iii) deleting the word three which appears in the second line of the re-numbered paragraph (e) and substituting for it the word "two"

Amendment of section 88

39. Section 88 of the principal Act is hereby amended-

(i) in subsection (1) in the last paragraph by deleting the word "five" and substituting for it the word "twenty" -

(ii) in subsection (2) by deleting the word "two" and substituting for it the word "ten" -

(iii) in the last sentence of subsection (2) by deleting the full stop and adding the following: "... or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment"

Amendment of section 89

40. Section 89 of the principal Act is hereby amended-

(i) in subsection (1) by deleting the word "two" which appears in the seventh line and substituting for it the word "ten";

(ii) by deleting subsection (3) and replacing it with the following-

"(3) In this section "official office" and "official capacity" means an office in the service of the United Republic or a capacity in respect of the United Republic."

Amendment of section 90

41. Section 90 of the principal Act is hereby amended —

(i) in subsection (1) (b) by deleting the word "five" which appears in last line in paragraph (b) and substituting for it the word "twenty"-

(ii) in subsection (2) by deleting the word "two" which appears in the sixth line, and substituting for it the word "ten"

Amendment of section 91

42. Section 91 of the principal Act is hereby amended-

(i) in subsection (1) (h) by deleting the word "five" which appears in the last paragraph and substituting for it the words "twenty" -

(ii) in subsection (2) by deleting the word "two" which appears in the sixth line and substituting for it the word "ten"

Amendment of section 93

43. Section 93 of the principal Act is hereby amended in subsection (7) by deleting the words "five" and "two" and substituting for them the words "twenty" and "four" respectively.

Amend-ment of section 95

44. Section *95* of the principal Act is hereby amended by repealing that section and substituting the following: —

"penalty for perso-nation

95. Every person who is guilty of personation or of aiding, abetting, counselling or procuring the commission of the offence of personation, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding twenty thousand shillings or to both such fine and imprisonment."

Amend m ent of section 101

45. The principal Act is hereby amended in Section 101 by adding the following words as marginal notes—
"Persons deemed to be guilty of personation."

Amend-ment of section 103

46. Section 103 of the principal Act is hereby amended by deleting the words "one" and "six" which appear in the seventh and eighth lines and substituting for them the words "fifty" and "eight" respectively.

Amend-ment of section 104

47. Section 104 of the principal Act is hereby amended in subsection (2) by deleting the words "two hundred" and substituting for them the words "five thousand".

Amend-ment of section 106

48. Section 106 of the principal Act is hereby amended in subsection (1) (c) in subparagraphs (i) (ii) by deleting the passage "National Executive Committee" of the Party" or the "Central Committee of the Party" and the words "Political Party" and the words "Political Committee of the Party" and substituting for them the words "National Electoral Commission" and "the Returning Officer" respectively.

Repeal and re-placement 108

49. Section 108 of the principal Act is hereby repealed and replaced by the following new section —

"Av-oidance of election and elect-tion peti-tion

108.-(I) The election of a candidate as a member shall not be questioned save on an election petition.

(2) 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 namely -

(a) that, during the election campaign, statements were made by the candidate, or on his behalf and with his knowledge and consent or approval with intent to exploit tribal, racial or religious issues or differences pertinent to the election or relating to any of the candidates or where the candidates are not of the same sex, with intent to exploit such difference;

(b) non-compliance with the provisions of this Act relating to election if it appears that the election was not conducted in accordance with the principles laid down in such provisions and that such non-compliance affected the result of the election;

(c) that the candidate was at the time of his election a person not qualified for election as a member.

(3) Notwithstanding the provisions of sub-section (2); where upon trial of an election petition respecting an election under this Act the court finds that an illegal practice in connection with the election has been committed by or with the knowledge and consent or approval of any of the candidate's agents and the court further finds, after giving the Attorney General or his representative an opportunity of being heard, that the candidate has proved to the court -

(a) that no illegal practice was committed by candidate by himself or with- the knowledge and consent or approval of such candidate or his agent; and

(b) that the candidate took all reasonable means for preventing the commission of any illegal practices at such an election;

(c). that in all other respects the election was free from illegal practice on the part of the candidate and his agents,

then, if the court so recommends, the election of such candidate shall not by reason of any such practice be void."

Amendment of section 110

50. Section 110 of the principal Act is hereby amended-

(i) by deleting all references to "the Commission" and substituting for them with references to "the court"; and

(ii) by deleting all references to "complaints with references to petitions"

(iii) by deleting the word "Commission" which appears at the title of Chapter VIII and substituting for it the word "court".

Amendment of sections 111, 112, 113, 114 and 116

51. Sections 111, 112, 113, 114 and 116 of the principal Act are hereby, each amended by deleting the words "the Commission" and "election complaint wherever they occur, and substituting for them the words " "the court" and "election petition" respectively

Repeal and replacement of section 115

52.1 Section 115 of the principal Act is amended by repealing that section and replacing it with the following new section—

"Time for presentation and determination of election petition

115.-(1) Every Election petition shall be presented within fourteen days from the date of the declaration of the results of the election by the Returning Officer.

(2) The Court shall hear and determine each election petition within two years from the date of presentation of the election petition before it."

53. Section 117 is repealed and replaced by the following new section- Repeal and replacement of section 117

• 'Rules of Court

117.-(1) The Chief Justice may make rules of court regulating the procedure and practice to be followed and prescribing the fees to be paid on and in relation to petitions and applications under this part."

(2) Rules made under this part shall be published in the *Gazette.*

54. Section 121 of the principal Act is amended by deleting the word " supervisory delegate" which appears in the second line. Amendment of section 121

55. The principal Act is amended in section 123 by deleting that Section and substituting for it with the following- Amendment of section 123

"Service of notices

123. A notice under this Act shall be deemed to have been served on or given to any person-

(a) if served on him personally;

'b) if left for him at his last known address; or

(c) if sent by registered post addressed to him at his last known address"

56. The principal Act is amended in Section 124 by deleting the words "of the Purpose" which appears in the first line of paragraphy (a). Amendment of section 124

57. Section 129 of the principal Act, is hereby amended by repealing paragraph (c). Amendment of section 129

58. The principal Act is amended in sections 47(l)(d), 56(e), 59(a) and 104(l) by deleting the word "symbol" and substituting the word "photograph. " Amendment of section 47,(1)(d): 56(e); 59(a) and 104(1)

59. Section 130 is repealed and replaced by the, following new section- Repeal and replacement of section 130

"Transitional provisions

130. Notwithstanding the amendment of the Election Act, 1985 and section 74 of the Constitution- all rules, regulations and directions made by the Electoral-Commission before the commencement of this Act shall continue in force and effect until amended, replaced or altered' in any, other manner by the Minister, the Commission or the Chief Justice.'

Passed in the National Assembly on 11th May, 1992.

G. F. Mlawa,

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Clerk of the National Assembly

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