

THE UNITED REPUBLIC OF TANZANIA



No. 13 OF 1990

I ASSENT,

President

5th June 1990

An Act to amend the Elections Act, 1985, to provide for a new machinery for the identification and resolution of election complaints and for other matters related to elections

[.....]

ENACTED by the Parliament of the United Republic of Tanzania.

1. This Act may be cited as the Elections (Amendment) Act, 1990, shall be read as one with the Elections Act, 1985, in this Act referred to as "the principal Act"; and shall come into operation on the date on which the Sheria ya Mabadiliko ya Sita ya Katiba ya Nchi, ya mwaka 1990, comes into operation.

Citation
Acts, 1985
No. 1

2. The principal Act is hereby amended in the manner shown in the following provisions of this Act.

Amend-
ment of
principal
Act

3. The principal Act is hereby amended by adding, immediately after section 4, the following new sections:

Addition
of section
4A, 4B
and 4C

"Compos-
ition and
role of the
Commis-
sion

4A.—(1) The Commission shall consist of the following members appointed by the President, namely—

- (a) a Judge of the Court of Appeal of Tanzania, who shall be the Chairman of the Commission;
- (b) a Judge of the High Court of Tanzania Zanzibar;
- (c) a member appointed from amongst the members of the Tanganyika Law Society;

(d) fowl other members who are persons possessing either adequate experience in the conduct or supervision of parliamentary elections or such other qualification as the President considers necessary for or to the effective discharge of the role of e Commis-
Sion.

(2) The president shall appointment person to be members of the Commission after consultations with such person or au-
thorities as he shall deem necessary or appropriate.

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

(4) Subject to the other provisions of this Act, the Chair-
man shall preside at all meetings of the Commission and in his absence the Vice-Chairman, if there is one, shall preside or if none is appointed Vice-Chairman or if he too is absent, the Commissioners present may appoint one of their number to act in the place of the Chairman at any such meeting.

(5) The Commission shall, after appropriate consultations, appoint by name or b office a person from amongst senior civil servants of the united Republic to be the Secretary of the Commission.

(6) There shall be provide within the Secretariat of the National Assembly such secretarial and other facilities and services as are necessary to facilitate the smooth and effective discharge of the functions and duties of the Commission, of the Director and of the Secretary of the Commission.

"Power of
the Com-
mission in
relation to
com
plaints

4B-(1) For the purposes of this and subsequent provisions of this Act---

"complaint" means any complaint of irregularities during any event or process in the conduct of the registration of voters, the campaigns, the voting or counting of votes in relation to elections carried out under this Act;

"election complaint" means a complaint launched by a person under this Act challenging the validity of an election in any constituency after the results have been declared

(2) The Commission shall, subject to this Act, have power to try and determine election complaints arising from irregularities committed during the conduct of elections in constituencies, and the decision of the Commission in any such election complaint shall be final and not subject to review in any court in the United Republic.

(3) There shall be an Election Complaints Panel of the Commission which shall, on behalf of the Commission, try and determine election complaints instituted before the Commission and its decision shall be deemed to be a decision of the Commission.

(4) The Election Complaints Panel shall consist of -

(a) the Chairman of the Commission;

- (b) the Commissioner who is a Judge of the High Court of Tanzania Zanzibar, and
- (c) one other Commissioner designated by the Chairman in that behalf.

4c.-(I) Subject to this Act, all complaints in relation to any process during elections held under this Act shall be reported forthwith by the complainant to the supervisory delegates, the presiding officer, the polling agent, the Returning Officer or any other relevant authority in charge of or concerned with the process in question.

Procedure
in relation
to com-
plaints

(2) Where a complaint is not reported in time pursuant to subsection (1), it shall not be raised at any stage subsequent to the time or period set for reporting such complaints.

(3) Any person or authority to whom a complaint is reported shall, subject to this Act, endeavor to solve, clear or deal otherwise with the complaint as soon as it is brought to his attention, but if he fails or cannot solve, clear or deal otherwise with the complaint he shall make an appropriate report on it to the authority next above him, in accordance with this Act.

(4) The Commission shall, in rules made under section 117, prescribe suitable forms which shall be used, for the purposes of-

- (a) lodging complaints to various authorities under this Act; or
- (b) recording the satisfaction of any candidate with the procedures followed at any stage of the elections; or
- (c) reporting to the Returning Officer or the Commission any matter specified in this Act;
- (d) transacting any other business or process in furtherance of the conduct or supervision of elections under this Act.

(5) The Commission shall, in rules made under section 117, and after consultation with appropriate authorities, make rules regulating the procedure to be followed, and prescribing fees to be paid, in relation to election complaints."

4. Section 6 of the principal Act is hereby amended-

- (a) by deleting subsection (1) and substituting for it the following-

"(1) There shall be a Director of Elections who shall be appointed by the President and shall, subject to this Act and without prejudice to the generality of the role of the Commission, be responsible for the superintendence, direction and control of the registration of voters, and the conduct of the day to day business of Parliamentary and Presidential elections.

Amend-
ment of
section 6

(2) The President may appoint the Director by name or by reference to an office. ;

(b) by re-numbering subsection (2) as subsection (3), and deleting from it the passage subject to the direction of the Commission";

(c) by adding after subsection (3) the following:

"(4) 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."

Amend-
ment of
section 7

5. Section 7 of the principal Act is hereby amended by deleting the designation "District Development Director" and substituting for it the designation "District Executive Director"

Amend-
ment of
section 8

6. Section 8 of the principal Act is hereby amended-

(a) by substituting for subsection (1) the following:

"(1) Every District Administrative Officer shall be the Returning Officer for the constituency or constituencies in the district in relation to which he is the District Administrative Officer.

(2) Notwithstanding subsection (1), the Director may in any fit case, by notice published in the *Gazette*, appoint a person by name or by office to be the Returning Officer for any constituency instead of the one referred to in subsection (1) and where such a person is so appointed, the District Administrative Officer shall cease to be the Returning Officer for that constituency."

(b) by re-numbering subsections (2) and (3) as subsections (3) and (4) respectively;

(c) by deleting the present subsection (4) and substituting for it the following:

"(5) Returning Officers may, subject to the directions of the Director, employ such staff as they may require to carry out their functions under this Act. ;

(d) by re-numbering subsections (5) and (6) as subsections (6) and (7) respectively;

(e) in subsection (6) by deleting the phrase "upon his appointment" and substituting for it the words "before first embarking upon the functions of his office during any election,"

Amend-
ment of
section 52

7. Section 52 of the principal Act is hereby amended by deleting subsection (2) and substituting for it the following new subsections:

"(2) Before the commencement of the campaign in a contested election, each candidate shall be required by the supervisory delegates to submit in writing in the prescribed form to the supervisory delegates in the presence of the Returning Officer or his representative any complaints which he has in

relation to his opponent or to the conduct of the electoral business immediately before and since the date when the two of them were declared to be candidates in the election in the constituency.

(3) Any complaints submitted at this stage shall be signed by each candidate, the supervisory delegates and the Returning Officer or his representative, and shall be incorporated in the report of the supervisory delegates made pursuant to subsection (5).

(4) At the end of each campaign day there shall be a meeting of the candidates, the supervisory delegates, an Assistant Returning Officer and the leader of the campaign session, at which each candidate shall notify the supervisory delegates in writing in the prescribed form of his satisfaction or complaint, if any, arising from the conduct of the campaign on that day or on any previous day but not previously reported and the supervisory delegates shall deal with the complaint in accordance with the procedure prescribed for the purpose; and an account of the proceedings of the campaign on that day shall then be prepared in the prescribed manner by the Assistant Returning Officer and be confirmed and signed by both candidates and all the supervisory delegates.

(5) The supervisory delegates appointed for a constituency shall, in an appropriate report, which shall be copied to the Commission, bring to the notice of the Political Committee of the Party any complaint relating to a failure to afford a fair and equal opportunity to candidates, any non-compliance with the provisions of this part or with any rules of the Party made for the purposes of this Part, and any other irregularity during the election campaign which is complained of, and shall unless they are satisfied that any such failure, non-compliance or irregularity complained of has already been solved or is not of such a nature as to affect significantly the conduct of the campaign and that steps have been or are being taken to prevent its repetition, report the same to the Commission.

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

(a) by deleting subsection (1) and substituting for it the following

"(1) The District Executive Committee of the Party shall appoint in respect of each polling station within the constituency one person, who is acceptable to both candidates in a contested election, to be the polling agent at that polling station for the purposes of-

(a) detecting personation;

(b) representing and safeguarding the interests of both candidates at that polling station; and

Amend-
ment of
section 57

(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."

(b) by adding after subsection (3) the following:

"(4) The presiding officer shall, with the assistance and co-operation of the polling agent, solve or deal otherwise with each complaint in his polling station as soon as it arises and is brought to his attention by a candidate, a polling agent, a voter or any other person registered and entitled to vote at the polling station concerned."

Amend-
ment Of
section 61

9 .Section 61 of the principle Act is hereby amended-

(a) by re-numbering the present provisions of the section as subsection (3);

(b) by providing the following provisions of section 61:-

"(1) Without prejudice to the provisions of sections 47(4) and 85, each polling agent shall be present at the opening of the voting at the polling station in respect of which he is appointed polling agent.

(2) Before the commencement of the voting at a polling station the polling agent shall be required by the presiding officer to submit to him in the prescribed manner any complaint that he has or has received, or any expression of his satisfaction with regard to the arrangements for voting in the polling station";

c) by adding immediately after subsection (3) the following new subsection:

"(4) If any voter has any complaint in relation to the conduct of the voting in the polling station or district in which he is registered he may, before or immediately after voting but before leaving the polling station, submit his complaint in the prescribed form to the polling agent, a polling assistant or the presiding officer; if the complaint concerns the conduct of the presiding officer it shall be recorded in the presence of the polling agent".

Amend-
ment of
section 69

10. Section 69 of the principal Act is hereby amended-

(a) by deleting subsection (1) and substituting the following:

"(1) Before the closing of the polling station after the closing of the poll, the polling agent shall be given the final opportunity to submit in the prescribed form whether or not and what complaint he has in relation to the manner the voting was conducted in the polling station, and any complaint reported shall be solved or dealt with otherwise in the best possible manner.

(2) At the conclusion of the polling, the presiding officer shall prepare a report, detailing all complaints raised during and after the close of the poll and the steps taken in respect of each of them. The report shall then be read before and be confirmed and signed by the polling agent, the presiding officer and a polling assistant, and shall be submitted to the Returning Officer in accordance with subsection (3).

(3) The presiding officer of each polling station shall as soon as practicable after the closing of the poll, in the presence of the candidates if they are present and of the polling agent, make into separate packets, sealed with his own seal and the seal of the candidates if they desire to fix their seals-

- (a) the unused and spoilt or cancelled ballot papers placed together;
- (b) the counterfoils of the used ballot papers;
- (c) tendered ballot papers;
- (d) the marked copies of registers or their parts;
- (e) the tendered voters list;
- (f) the keys for the locks to the ballot boxes used at the polling station;
- (g) the report prepared under subsection (2)."

(b) by re-numbering subsections (2), (3) and (4) as subsections (4), (5) and (6) respectively.

11. Section 71 of the principal Act is hereby amended-

(a) by re-numbering subsections (1) and (2) as subsections (4) and (5) respectively;

(b) by providing the following subsections:

"(1) The Returning Officer or, as the case may be, Assistant Returning Officer shall, before embarking upon the procedure for counting votes brief the candidates of any important occurrences reported to him from polling stations; and then require each candidate to-submit in the prescribed manner and before the other candidate and the counting agents of both candidates, whether or not and what complaint he has, other than that contained in the reports aforesaid, in relation to the conduct of the voting in the constituency.

(2) Any complaint submitted under subsection (1) shall be settled or dealt with otherwise, and the Returning Officer or, as the case may be, Assistant Returning Officer shall make out a report, in the prescribed form, concerning this stage of the proceedings in the election, which shall then be read out to, confirmed and signed by both candidates, their respective counting agents and the Returning Officer or Assistant Returning Officer, as the case may be.

Amendment
of section 71

(3) At the conclusion of every stage in the process of counting votes the candidates if present or their counting agents shall be required to state in the prescribed form whether or not and what complaint they have, or their satisfaction, in relation to each such stage concluded. Each complaint raised shall be settled or otherwise decided at that stage, and the returning Officer shall then prepare an account in the prescribed form detailing the situation at that stage, which shall be confirmed and signed by both candidates or their counting agents and the Returning Officer and later submitted to the Commission."

Amend-
ment of
section 80

12. Section 80 of the principal Act is hereby amended by adding after subsection (3) the following:

¹¹⁽⁴⁾At the conclusion of the counting of the votes each candidate or his counting agent shall, in the prescribed form, state whether or not and what complaint he has in relation to the counting of the votes. All complaints submitted at this stage shall be settled or dealt with otherwise, and shall then each be incorporated in the report of the Returning Officer to be submitted to the Commission under section 81, which shall be confirmed and signed by the candidates or their counting agents and the Returning Officer."

Amend
ment of
section 81

13. Section 81 of the principal Act is hereby amended by deleting paragraph (c) and substituting for it the following:

^{11(c)}compile a report and submit it to the commission, indicating-

- (i) the complaints raised at each stage of the election and the measures or decisions taken in respect of each;
 - (ii) the views of the candidates in relation to the election;
 - (iii) the result of the election,
- and the Commission shall then cause the results, together with the number of votes recorded for each candidate in each constituency to be published in the *Gazette*."

Addition
of new
section
81A

14. The principal Act is hereby amended by adding immediately after section 81 the following new section:

"Estoppels

81A.-(1) Where after the conclusion of any stage of the election it is provided that any person may submit any complaints in relation to the conduct of the elections during that stage, then if no complaint is submitted by such or any person at that stage no person shall be permitted to submit any complaint in relation to that stage at any later stage, save where the contrary is expressly provided.

(2) No complaint which was not submitted to the supervisory delegates, the presiding officer or the Returning Officer at the appropriate stage shall be relied upon by any person as a ground in an election complaint for nullifying the results of an election."

15. Sections 94, 96, 97, 98, 100, 102(l) and 107 of the principal Act which relate to offences of corrupt practices, are hereby repealed. , Repeal of sections 94, 96, 97, 98, 100, 102(l) and 107
16. Section 108 of the principal Act is hereby amended-
- (a) by deleting subsection (1) and substituting for it the following:
 "(1) The election of a candidate as a member shall not be questioned save on an election complaint instituted before the Commission." Amend-ment of section 108
 - (b) in-subsection (3) by deleting paragraphs (a) and (d), re-numbering paragraphs (b), (c) and (e) as (a), (b) and (c) respectively, and substituting for the term "court" or "High Court" wherever either occurs the word "Commission"
17. Section 109 is hereby repealed. Repeal of section 109
- 18.--(l) The Heading to Chapter VIII of the principal Act is hereby amended by deleting the word "COURTS" and substituting for it the words "THE COMMISSION". Amend-ment of Heading and of section 110
- (2) Section 110 of the principal Act is hereby amended -
 - (a) by deleting subsection (1) and substituting for it the following:
 "(1) Every election complaint shall be heard and determined by the Commission in accordance with the provisions of this Act";
 - (b) in subsection (2) and (3) by deleting the terms "the court" or "High Court" and substituting for them the word "Commission" -
 - (c) by adding after subsection (3) the following subsection:
 "(4) At the hearing of an election complaint, the Commission shall have power to compel the attendance of any person as a witness who appears to it to have been concerned or involved in the election in question or whose evidence may assist the Commission to reach a just and fair decision in the matter before it."
19. Section 111 of the principal Act is hereby amended by deleting the term "election petition" and substituting for it the term "election complaint". Amend-ment of section 111

Repeal
and re-
placement
of sections
112, 113
and 114

20. Sections 112, 113 and 114 of the principal Act are hereby repealed and replaced by the following-

"Reliefs
which
may be
claimed"

112. In instituting an election complaint, a complainant may claim all or any of the following reliefs to which he may be entitled, namely-

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

Certificate as to
validity of
election

113. At the conclusion of the trial of an election complaint, the Commission shall determine whether the member whose nomination or election is complained of, or any other and which person, was duly nominated or elected, or whether the election was void, and shall certify such determination to the Director. Upon such certificate being given, such determination shall be final, and the election shall be confirmed or a new election shall be held, as the case may require, in accordance with such certificate.

Reports
to the Di-
rector at
end of
hearing of
election
complaint

114.-(1) Where the Commission determines that a person is guilty of any illegal practice, it shall certify the same to the Director and if the person concerned is registered as a voter-

- (a) the Director shall delete his name from the register of voters in which he is registered;
- (b) the Director shall inform in writing the Registration Officer for the polling district concerned of such deletion;
- (c) forthwith upon being so informed, the Registration Officer shall take all such steps as, in the case of deletion of a name from the register under section 26 or section 28, he is required by section 29(2) to take.

(2) At the conclusion of the trial of an election complaint, the Commission shall also certify to the Director-

- (a) whether any illegal practice has not been proved to have been committed by or with the knowledge and consent or approval of any candidate at the election, and the nature of such practice, if any; and
- (b) the names and descriptions of all persons, if any, who have been proved to the satisfaction of the Commission to have been guilty of any illegal practice.

(3) Before any person, not being a party to an election complaint nor a candidate on behalf of whom the seat is claimed by an election complaint, is certified by the Commission under this section, the commission shall give such person an Opportunity of being heard and of giving and calling evidence to show cause why he should not be so certified.

(4) When the Commission certifies that an illegal practice has been committed by any person, that person shall be subject to the same disqualifications as if at the date of the said certificate he had been convicted of that practice or offence.

(5) When the Commission certifies that an illegal practice has been committed by any person with the knowledge and consent or approval of a candidate, then in addition to any other consequences, the candidate shall be subject to the same disqualifications as if at the date of the said certificate he had been convicted of that practice.

(6) The Director shall forthwith-

- (a) cause a copy of such certificate to be published in the Gazette;
- (b) delete from the register the name of any person registered in it who appears from the record to be disqualified from voting at an election;
- (c) inform in writing the Registration Officer for the relevant polling district of every such deletion of the name of the person who is registered as a voter in that polling district.

(7) Forthwith upon being so informed, the Registration Officer shall take all steps as may be necessary for ensuring that the person concerned returns the certificate of registration and any other relevant document for cancellation."

21. Section 115 of the principal Act is hereby repealed and replaced by the following:

"Time for presentation and determination of election complaint

115.-(I) Every election complaint shall be presented within fourteen days from the date of the declaration of the result of the election by the Returning Officer.

(2) Any election complaint presented to the Commission challenging the results of an election on any ground other than complaints previously submitted to the Commission through the report of the supervisory delegates or of the Returning Officer shall be summarily dismissed by the Commission.

(3) The Commission shall hear and determine each election complaint within not more than six months from the date of presentation of the election complaint before it".

Repeal and replacement of section 115

Repeal
and re-
placement
of section
116

22. Section 116 of the principal Act is hereby repealed and replaced by the following:

"Votes to
be struck
off at a
scrutiny

116.-(1) On a scrutiny at the hearing of an election complaint the following votes only shall be struck off, namely:-

- (a) the vote of any person (other than a candidate or official, voting under section 13(4) or (5) whose name was not in the register of voters of the polling district in which he voted;
- (b) the vote of any person who committed or procured the commission of personation at the election;
- (c) the votes of any person proved to have voted more than once at such election save the first vote recorded by such person, where such first vote can be identified to the satisfaction of the Commission;
- (d) the vote of any person who, by reason of a conviction for an illegal practice or by reason of the report of the Commission, or by reason of any conviction for an offence against this Act or any other law, was disqualified from voting at an election.

(2) On a scrutiny at the hearing of an election complaint the Commission may take into account any vote recorded on a tendered ballot paper if in the opinion of the court there is justification for doing so.

(3) The vote of a registered voter shall not, except in the case specified in paragraph (d) of subsection (1) of this section, be struck off at a scrutiny by reason only of the voter not having been or not qualified to have his name entered on the register of voters.

Repeal
and re-
placement
of section
117

23. Section 117 of the principal Act is hereby repealed and replaced by the following:

"Regula-
tion of
procedure
etc.

117.-(1) The Commission may make rules regulating the practice to be followed and prescribing fees to be paid in relation to applications under this Part, including conditions for the representation of parties by legal counsel.

(2) The Commission may, subject to this Act regulate its own procedure, including the determination of places and times of its sittings.

(3) Rules made under this section shall be published in the Gazette"

Repeal of
section
118

24. Section 118 of the principal Act is hereby repealed.

25. Notwithstanding the amendment of the Elections Act, 1985, and of section 74 of the Constitution:-

- (a) all acts and things done by the Commission before the commencement of this Act shall, after the commencement of this Act, be deemed to have been done by the Commission and shall continue in full force and effect until altered or changed by the Commission;
- (b) all rules, regulations and directions made by the Commission before the commencement of this Act shall continue in force and effect until amended, replaced or altered in any other manner by the Commission; and
- (c) all acts and things done by the Commission in furtherance of preparations for elections in 1990 before the commencement of this Act shall, after the commencement of this Act, be deemed to have been done by the Commission for that purpose.

Saving
and trans-
itional
provisions

Passed in the National Assembly on the eleventh day of April, 1990.

MMwindad

M. MWINDADI,
Clerk of the National Assembly