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**DEMOCRATIZATION STRATEGY:
THE FORMULATION OF PROPOSALS FOR
AMENDMENT TO THE ELECTIONS ACT, 1985**

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A. INTRODUCTION:

The aim of this paper is to provide some insight into the electoral process as one of the media of democratization in the United Republic of Tanzania with the view of improving the process and thereby enhancing democratization.

So, we shall first briefly look at the electoral process which will entail a quick survey of the relevant provisions of the Constitution of the United Republic of Tanzania, 1977 (hereinafter referred to as the Constitution) and the Elections Act 1985 (we shall refer to it simply as the Act). We shall see how the relevant legal provisions were put into practice in the various by-elections, the Local Government Elections of 1994 and the General Elections of 1995. Of necessity, we shall have to look at the supervision of elections.

Secondly, we shall quickly review some pertinent issues raised in certain reports on the status of the electoral democracy in Tanzania as well as those portions of the Government's White Paper on Constitutional Reform touching on the electoral democracy.

We shall then briefly consider alternative reform initiatives to address the issues pointed out above. Lastly, we are going to crystallise critical choices and issues for discussion.

B. CURRENT ELECTORAL DEMOCRACY:

1. The National Electoral Commission:

The National Electoral Commission, or the Commission, in short, is provided for in Article 74 of the Constitution and section 4 of the Act. It comprises seven Commissioners. There is a chairman who must be a judge of the High Court or a justice of appeal of the Court of Appeal. There is also a vice-chairman but no qualifications have been prescribed for that position. However, if the chairman hails from one side of Tanzania; the vice-chairman is required to be from the other part of the United Republic. One Commissioner must be a member of the Tanganyika Law Society. The remaining four Commissioners have to be people possessing adequate experience in the conduct or supervision of parliamentary elections or such other qualifications as the President considers necessary. Every Commissioner is appointed by the President for a term of five years. The appointment is renewable. The president also appoints the Director of Elections upon the recommendations of the Commission. The Director is the Secretary to the Commission and is the chief executive of the Commission.

The functions of the Commission are:

- a) to supervise and coordinate the registration of voters in the election of the President and Members of Parliament of the United Republic;
- b) to supervise and co-ordinate the conduct of the Presidential and parliamentary elections;
- c) to survey the boundaries and to divide the United Republic into various constituencies for the purposes of Parliamentary elections;
- d) to supervise and co-ordinate the registration of voters and the conduct of the election of local councillors in Tanzania Mainland; and
- e) to carry out any other functions in accordance with the law enacted by Parliament.

The first multi-party Commission was appointed by the President, Mzee Ali Hassan Mwinyi, on 14th March, 1993. It immediately came under fire mainly from the new political parties basically on two fronts. One, it was felt that since the President, who is also the chairman of the ruling party, is the appointing authority, then the Commission, as a matter of course, must favour CCM. Two, the new political parties wished that they had a say in the appointment of Commissioners.

The criticisms and suspicions were raised despite the fact that the Commission has been declared to be independent and that in discharging its functions it is not "obliged to comply with orders or directions of any person or any Government department or the views of any political party".

2. The Conduct of Elections:

The Commission conducted five by-elections and the local Government elections in 1994 before it conducted the General Election of 1995. As a result of the experience gained, a number of amendments to the Act and also some administrative corrective steps were taken to improve the electoral process.

The law required that District Administrative Officers be appointed Returning Officers for the constituencies in their respective districts. However, DAOs are under District Commissioners and Regional Commissioners who are also cadres of the ruling party and so, DAOs were felt to be prone to manipulations. There were tough District Administrative Officers, though, who

would not receive suggestions from their DCs or RCs. However, the Government, at times, played rough and transferred some of these functionaries midway an electoral process. That was the case in Ileje, 1993. The Commission, too received complaints against DC's interferences with DAOs in their capacities as ROs, for example in Igunga in 1995.

So, the new political parties were uncomfortable with that legal requirement. As a result during the 1995 General Election, the law was changed and the Commission was given a blank cheque to appoint and employ persons as ROs. That had its own crop of problems. Those persons who were appointed and who were not employees of the Government had to be provided with everything like offices, telephone, clerks or transport.

As for the by-elections after the 1995 General Election, the Commission preferred to appoint District Executive Directors to be ROs. But that, too, is not entirely without incidents as witnessed by the recent Government transfer of the DED on Newala, who was also the ROs for Mitema constituency, in the middle of the electoral process.

Then, the law requires that there should be a registration of voters everytime there is an election in any constituency. The registration of voters can be conducted at anytime 6 months before an election. The duration of the period for registration, however, has not been provided for by the Act. So, the Commission has been estimating what is adequate period, having in mind what is convenient to the electorate. At times, even in the 1995 General Election, registration time was extended because it was evident that not enough people had registered themselves. This requirement is both costly and inconvenient. For example, registration of voters was done in Temeke in August – September, 1995. It had to be done again a year later, July – August, 1996 for the by-election.

The Act, too, is silent as to when nomination of candidates is to be done in relation to the registration of voters. Since, a candidate requires a stipulated number of registered voters to support his/her nomination (25 for parliamentary and 2,000 for presidential), then registration must precede nomination. In the first three by-elections, before the 1995 General Election, conducted by the Commission, nomination was held after the completion of the registration of voters. The Commission realised in the Kigoma Urban Constituency by-election in 1994 that some people would only register themselves as voters when they know who were going to be the candidates. So, starting from the Igunga Constituency by-election, the practice has been to conduct nomination of candidates midway the period of the registration of voters. This enabled people to know who were the candidates while there were still some days for registration of voters.

During the campaign period, the use of the public news media was not regulated. However, the resentment of the monopoly which the ruling party had over Radio Tanzania came to a head in the Kigoma Urban Constituency by-election in 1994 when it was one of the grounds of the election petition. Access to the public media, RTD and the Daily News, has now been provided and these two organs, during the official campaign period, come under the co-ordination of the Commission (s. 53 of the Act).

For all the five by-elections and also for Local Government elections of 1994, votes were collected from the polling stations to a central place in a constituency where counting was done. The new political parties were critical of the arrangement and despite the security precautions undertaken of making the polling agents of all the candidates provide escort for the sealed ballot boxes, there were fears of rigging. For the 1995 General Elections, however, counting was done at every polling station.

Connected with the issue of counting, is the question of marking of ballots by voters to indicate their choices. The experience of the Commission is that there are no alarming numbers of spoilt ballots. In the Presidential Election results of 1995, for instance, in the whole of the United Republic, there were 333,936 spoilt ballots which was 4.9% of all the votes cast. For the seven constituencies of Dar es Salaam Region, a total of 10,378 ballots, equal to 3.2% of all the ballots cast of the Presidential election were spoilt while the figures for the parliamentary election were 18,332 votes to 5.7%.

After the declaration of election results, except in the case of Presidential election, candidates or voters who are aggrieved with the results can petition the High Court to nullify the results (s. 108 of the Act). These petitions are not confined to General Elections only but even in by-elections, petitions were lodged, for instance, in the Kigoma Urban Constituency in 1994 and the Temeke Constituency in 1996. The 1995 General Election was followed by a train of 134 petitions out of 232 constituencies. Eighty of those petitions were withdrawn. Of the remaining 54, four were struck out by the High Court because of irregularities, 40 were dismissed and only 9 petitions have been successful and the results were nullified. The Kigoma Urban Constituency petition is yet to be decided upon. Two persons whose election results were nullified, contested the by-elections and were re-elected. Five by-elections so far have been held because of the nullifications of results.

However, by-elections are not only held because of election petitions. The Temeke Constituency by-election was held basically because the incumbent MP resigned though later his election was nullified. The deaths of incumbent MPs has caused eight by-elections so far.

The electoral system which we use is first-past-the-post that is the candidate who wins by a simple majority gets elected. As a result of that, Tanzania is

divided into 232 constituencies; 50 in Zanzibar and 182 in Tanzania Mainland. This is the system in almost all Commonwealth Countries. In Tanzania we have added the special seats for women which are not less than 15% of all the seats: 232 constituency MPs + 5 members of the House of Representative of Zanzibar specifically elected by the House + the Attorney General of the United Republic i.e 238. So, the special seats are not less that 37 – (art.66 of the Constitution). The distribution of these seats is proportionately to the number of seats a party has secured.

A number of reports after the 1995 General Elections and also the new political parties have expressed total dissatisfaction of this electoral system. It does not reflect correctly the strength of political parties. Thus for instance, in the 1995 General Election CCM polled 59.22% of total valid votes and obtained 80.2% seats while NCCR-MAGEUZI with 21.83% of votes got only 6.9% of seats.

C. PERTINENT ISSUES IN THE REPORTS ON THE ELECTORAL PROCESS:

1. Background:

A consultancy was commissioned by the Ministry of Justice and Constitutional Affairs in co-operation with a group of donors consisting of Denmark, Finland, the Netherlands, Norway, Sweden and the Delegation of the European Union. There were three consultants: Prof. Jorgen Elklit (university of Aarhus, Denmark), Mr. Mark Bomani and Prof. Chris Peter (University of DSM).

The objective of the consultancy was to review the election laws, regulations and procedures in Tanzania in the light of the 1995 General Election in order to come up with recommendations for the improvement of the electoral system. The consultancy assessed the most important problems and issues related to the conduct of elections and has indicated possible solutions to the problems identified. A report was presented on 28th January, 1998.

There was another study conducted by the Electoral Reform International Services for the British Department for International Development (DfID) with the aim of reviewing and analysing the structure, staffing and functions of the Commission. That study called Project Design Consultancy to Support the National Electoral Commission, was conducted by Mr. Osborne.

Then there is also the Government's White Paper on Constitutional Reform which has certain paragraphs which are concerned with the electoral system.

2. **Pertinent Issues Raised by the Consultancy:**

- a) **The Legal Framework:** For the last elections, amendments both to the Constitution and the Act continued to be done up to very close to the election time. (The amendment to provide for counting of votes at polling stations was made in August, 1995 while elections were in October). These delays made it difficult for the rules and regulations to be known to all political players.
- b) **The Independence and Appointment of the Commission:** The Commission has both, to be and to be seen to be independent of the Government. Thus there has to be actual and perceived independence. The actual independence depends on the legal provisions in respect of the appointment of Commissioners, the availability of financial and other resources and facilities conducive to proper functioning. The perceived independence, on the other hand, depends on the transparency of the appointment procedures and the way the Commission performs its tasks.
- c) **The Electoral System:** This has to be decided upon before considering anything else. The electoral system, in short, is the seat allocation system; how are votes are translated into seats or into a president.

Generally, there are two major groups of electoral system; single member constituencies (SMC) and proportional representation (PR). Some countries, like Tanzania, have mixed system. The disadvantages of SMC is (i) the number of seats won by a party does not necessarily reflect the popularity of the party; (ii) it is expensive: requires constituencies each with elaborate machinery to conduct election and the necessity of by-elections, and (iii) tends to breed corruption on the part of individual candidates. These vices are about or hardly applicable to PR.

- d) **Financing of Elections:** The delays in making funds available and the supply of insufficient funds to the Commission contributed substantially to many of the problems encountered in the General Election of 1995.
- e) **Staff of the Commission:** The commission does not have permanent staff apart from the Director. Members of the Secretariat are all seconded to the Commission and as such there is no cadre of electoral officers and the present officials are ill-equipped. Training them is risky as they can go back to their parent ministries or departments at any time.

- f) **Voter Education**: The quality of an election depends largely on the degree of the voters' awareness of the election rules and the options and the issues of the particular election. In a country which has just switched from a one-party to a multi-party system and with a high rate of illiteracy, voter education is crucial. The commission is ill-equipped to conduct voter education and it is also not desirable to leave voter education entirely to NGOs.
- g) **Voter Registration**: It is both cumbersome and costly to register voters every time there is an election. The exercise also cause administrative stress and lengthens the electoral process. On the other hand, having a permanent register of voter also has its problems. The initial cost is prohibitive. The technology is intricate and hard to find locally moreover, a culture has to be cultivated of making information available to the authorities about changes like turning to 18 years, change of residence or the desk of a voter.
- h) **Independent Candidates**: The current legal position is that a Candidate for any election (presidential, parliamentary or council) has to be a member of a party and has to be sponsored by the party. This infringes on the rights of individuals. But it also contributed to a number of unopposed candidates in the 1994 Local Government elections because the new political parties did not (and do not) have presence in all the words in the country. This is undemocratic. If independents were allowed the number of unopposed candidates would have been greatly reduced if not wiped out.
- i) **Election Petitions**: Election petitions against presidential results are not allowed under Article 41(7) of the Constitution. But as there might be just as much reason for contesting presidential as parliamentary results, the possibilities and the requirements for filing petition should be identical.

Petitions against parliamentary results, on the other hand, are allowed under Article 83 (3) and section 108 of the Act. Numerous petitions were filed immediately after the 1995 election and some are still in court even now.

Petitions are expensive, bog down normal court business and have adverse consequences to Parliament s MPs are left in uncertainties. In the case of a successful petition, further expenses are incurred in conducting a by election.

3. **Pertinent Issues in the White Paper:**

a. **Presidential Election:**

At the moment a presidential candidate is declared elected if he has scored more than 50% of the valid votes and if no candidate has done that, then, a second ballot is held for the first two candidates (Article 41(6) and section 35 G of the Act.). Holding a second ballot would further burden the tax-payers.

b. **Presidential Election Petitions:** At present Article 41(7) prohibits such petitions. It is felt that to allow them may put the country in jeopardy as a person whose term of office has expired will have to continue to act as the president for an indefinite period of time. The situation will not be any better if there is a provision for a caretaker president while awaiting the settlement of a petition.

c. **Independent Candidates:** Multi-partism provides a competition among parties and not individuals. The aim of elections is to have a party which will take the reins of power. The election of individuals will not attain that goal. Besides, allowing independents will affect adversely party discipline.

d. **Electoral System:** The single member Constituencies System (the first past the post) affords the opportunity to the voters to elect their MP. Directly and so, creates a nexus between the MP and the constituency. The opportunity is not available in PR. So, instead of going PR, the present system of special seats for women should be continued and the number of such seats be increased. The present system however has one short-coming and that is there are a number of persons whose experiences and expertise would greatly promote the working of Parliament. These people, however, are not inclined to expose themselves to the rigours of contesting elections. Thus the nation denies itself the services of such people.

e. **Disciplining MPs:** There is a need of disciplining MPS who do not perform their duties instead of putting-up with them for the entire tenure of five years.

f. **By-Elections:** Admittedly, by-elections are costly but they are necessary evil in order to promote democracy by filling up seas which have become vacant by whatever.

g. **The Appointment of the Commission:** The criticisms against the appointing authority of the Commission and the non-representation of political parties on the Commission or the suggestion of an organ

to advise the President on the appointment of the Commission are uncalled for. The Commission has to be technical and to consist of persons of integrity and who are generally acceptable and are non-partisan. The President is well placed to appoint such persons just as he appoints judges, for example.

- h. **Civil Servants and Politics:** There is no need to prohibit Civil Servants from participating in politics. The present set up of requiring senior Civil Servants to resign when they want to contest political position, is sufficient to ensure loyalty within the Civil Service.
- i. **Status of Regional and District Commissioners:** These officials should remain political as representatives of the President in their respective areas.

D. **REFORM INITIATIVES:**

a. **Legal Framework:**

The White Paper has far reaching effects on the electoral process. From the looks of things, constitutional reforms and hence amendments to the Act may take a lot of time. The Commission might be caught up in the same predicament in the year 2000 as was in 1995. The Government must resolve to have the amendments in place during the April, 2000 session of the Parliament. This will provide, at most, five months to the Commission which period is inadequate.

b. **The National Electoral Commission:**

- (i) The consultancy has suggested that Commissioners be appointed by the President but on the advise of a screening Board. The Commission does not mind that there be a means of advising the President on appointments to the Commission. But the composition of the Screening Board suggested by the Consutancy is unacceptable. The Board will consist of people who are themselves appointees of the President like the Chief Justice, or people with interest to serve like the Speaker. But the Commission is resolute that appointments should not be made on political basis because that will choke the working of the Commission.

However, if the Government resolves to help the Commission to have, not only actual but also perceived independence, then the question of its appointment may not feature seriously. For example, if the Government stops interfering with persons who have been appointed ROs, and DCs resist meddling with electoral processes.

- (ii) It is suggested that the Commission be given its own establishment so that there are election officers who can then be trained and be developed as such. If that cannot be done before the year 2000 then at least there should be a commitment by the Government that all persons, without exception, who are currently with the Commission, will not be posted from the Commission until after the elections.
- (iii) As for ROs the law has to provide that Government officials, DEDs, to be appointed and the law to specify that once a DED has been appointed then, until the finalisation of the respective election, should not be transferred or, in anyway, moved from the respective constituency.
- (iv) It follows from (iii) above that Civil Servants should not be allowed to be actively involved in party politics. This ensures the impartiality of the officers who can be appointed to manage elections.
- (v) It follows from (iii) and (iv) that RCs and DCs should be Civil Servants and not political appointments. It is true they represent the President but NOT the Chairman of political party in their respective areas.

c. **Electoral System:**

The mixed electoral systems should continue. It will not acceptable to reduce the number of the existing constituencies. So, the suggestion by the consultancy to take administrative district as constituencies is unacceptable. Besides, using administrative districts is prone to gerrymandering. However, the increased special seats should not be for women only but include men as well. In order to ensure that women are represented, the party lists should contain male and female names alternatively. The distribution of seats should be proportionately to votes polled in the whole country and not to the number of seats won. This will reflect the popularity of parties. There should not be nominated MPs. If such people with the qualities advantageous to functioning of

h. **By-Elections:**

The prohibition of a by-election within a specified period before a General Election will only have impact if the period is long enough and more than a year. Otherwise, by-elections, too, are necessary evils. What can wipe them out completely is the adoption of PR through and through. But that is unacceptable as already seen.

The other remedy against by-elections is the adoption of the single transferable votes (STV). This is where a voter marks the candidates on a ballot paper according to his/her preference. In that case it can be known who is the first, the second and so on. So, if the MP dies the runner-up automatically succeeds. But this might not be a cure of by-elections caused by petitions. It also requires literacy or a big dose of voter education.

i. **Voter Registration:**

The cost involved in terms of finance, time and convenience in conducting voter registration every time there is an election is considerable. Admittedly, the initial cost of establishing a permanent register is going to be big but in the long run that is the cure. The problems pointed out of technology and culture could be squarely addressed. Besides, at the present there is the problem of determining who is a person ordinarily resident in a given area. Also, there is a serious question of determining the citizenship of inhabitants particularly along the seven borders of this country.

j. **Voter Education:**

This is a serious problem especially in the year 2000 when there are going to be three elections conducted at the same time. It may greatly help if there is a special commission or organ entrusted with civic education as in Ghana. The Commission, in its present state, cannot cope. But for the time being the Commission has to coordinate and supervise voter education.

k. **Financing of Elections:**

The Commission has recommended in its report on the 1995 General Election that the Government to set aside some money, on every budget session, into a bank account for conducting elections. This has not been needed. With only seventeen months before the General Elections and with only two budget sessions left, the Government has to turn to the donor community now and make a serious campaign for support. The Commission on its part has to

conduct comprehensive and exhaustive research on how to cut down drastically election costs.

E. **CRITICAL ISSUES FOR DISCUSSION:**

We are going to list down issues which are crucially important and which demand decisions if the General Elections in the year 2000 is to be successful and to be an improvement on the 1995 General Elections.

a. **Financing the Elections:**

This is at the top of the agenda. Everything else has to take financing into consideration. In 1995 the election budget was over Shs. 33 billion. In the year 2000 it is going to be Shs. 60,790,312,738/= and if there is going to be a second presidential ballot that will require Shs. 15,947,463,100/= more.

b. **Electoral System:**

With the colossal budget figure in mind and considering the economic position of the country and the fact that not a single cent has been set aside for the election, can we afford not to look for a cheaper electoral system? Donors can come to our rescue but then are the elections going to be ours or donors?

c. **Legal Framework:**

After deciding on the electoral system to be used the legal framework has to be put in place and preferably before the end of this year so that all stakeholders know the position. Can this be done? Can there be a short cut to the present process of soliciting people's views on the constitutional changes?

d. **Voter Education:**

How best can it be conducted to provide maximum results within the time available to the General Elections?

e. **The National Electoral Commission:**

- Appointment of Commissioners.
- Electoral Commission Staff.
- Independence of the Commission

f. **Civil Servants and Politics:**

Is it desirable to have them participate the politics?

g. **RCs and DCs as Political Appointees:**

Will Civil Servants working in their areas and who are going to be appointed to conduct election be transparently independent?

h. **Registration of Voters:**

How to do it effectively and cheaply?

i. **Petitions and By-Elections:**

Can they be avoided completely or minimised?

- THE END -