

THE ELECTORAL LAWS (MISCELLANEOUS AMENDMENTS) ACT, 2010

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THE UNITED REPUBLIC OF TANZANIA



NO. 7 OF 2010

I ASSENT,

Jawahar Mlimole
.....

President

28 May, 2010
.....

An Act to provide for amendment of Electoral Laws with a view to making better provisions for reviewing the Permanent National Voters' Register, to provide for further provisions relating to election, voting, procedure for nomination of women for special seats.

ENACTED by Parliament of the United Republic of Tanzania.

PART I

PRELIMINARY PROVISIONS

Short title

1.-(1) This Act may be cited as the Electoral Laws (Miscellaneous Amendments) Act, 2010.

(2) The Written Laws specified in Parts II and III of this Act are amended in the manner specified in each of the relevant Parts.

PART II

AMENDMENT OF THE NATIONAL ELECTIONS ACT

Construction
Cap.343

2. This Part shall be read as one with the National Elections Act, hereinafter referred to as the "principal Act".

Amendment
of section 2

3. The principal Act is amended in section 2 by-

(a) adding in the appropriate alphabetical order the following new definitions:

"campaign period" means the whole period commencing immediately after the nomination day up to the day immediately preceding the election day;

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"Constitution" means the Constitution of the United Republic of Tanzania, 1977;

"voters' education" means dissemination of information relating to electoral processes and procedures;"

(b) deleting the "semi-colon" appearing at the end of the definition of-

(i) the term "Member of Parliament" and inserting thereat the phrase "and includes a Member of Parliament for women special seats;"

(ii) the word "nomination" and inserting thereat the phrase "and includes declaration of a Member of Parliament for women special seats;" and

- (c) deleting the definition of the term “contested election” and substituting for it the following:

“contested election” means an election in a constituency or a Presidential election which there are more candidates than are vacancies.

Amendment
of section 7

4. The principal Act is amended in section 7 by deleting subsection (2) and substituting for it the following provision:

“(2) Notwithstanding subsection (1), the Commission may appoint by office or name, from amongst public officers, such number of Returning Officers or Assistant Returning Officers for the purposes of conducting an election in a constituency.”

Amendment
of section
7A

5. The principal Act is amended in section 7A by deleting subsection (2) and substituting for it the following provision:

“(2) Notwithstanding subsection (1), the Commission may appoint by office or name, from amongst public officers, such number of Regional Registration Co-ordinators or Assistant Registration Officers for the purposes of registering voters as it may consider fit.”

Amendment
of section 15

6. The principal Act is amended in section 15 by -

- (a) deleting the word “update” appearing in subsection (1) and substituting for it the word “review”; and
(b) adding the following provision immediately after subsection (4):

“(5) For the purpose of this section, the Commission shall review the Permanent National Voters’ Register twice between a period commencing immediately after the General Elections and the date preceding the nomination day.”

Addition of
section 15A

7. The principal Act is amended by adding immediately after section 15 the following new provision:

"Registration
agents

15A.-(1) A political party may appoint one person to be a registration agent for each registration centre within the constituency, for the purpose of –

- (a) detecting qualified persons for registration; and
- (b) assisting the registration assistant to secure a smooth compliance with relevant laws and procedures pertaining to the conduct of registration of voters.

(2) For the purposes of subsection (1), every political party shall, by notice in writing, notify the registration officer of the appointment not later than seven days before the date set for the commencement of registration of voters or within such shorter time as the Commission may allow.

(3) The notice under subsection (2) shall state the name of the agent so appointed and the name and address of the registration center to which the agent is assigned.

(4) A political party may, in the notice given under subsection (2), appoint an alternate registration agent who may be present and perform, whether permanently or temporarily,

any of the functions of a registration agent in his absence from the registration centre.

(5) Where a registration agent dies or becomes incapable of acting as such, the political party concerned may appoint another registration agent in his place, and shall immediately give to the Registration Officer and Registration Assistant concerned a notice in writing of the name and address of the registration agent so appointed and registration centre to which he is appointed.

(6) The Registration Assistant shall, with the assistance and co-operation of the registration agent, deal with each complaint at the registration centre as soon as it arises and is brought to his attention by any person who wishes to be registered."

Amendment
of sections
17, 18, 19
and 20

8. The principal Act is amended in sections 17, 18, 19 and 20 by deleting the designation "Registration Officer" wherever they appear in those sections and substituting for them the phrase "Registration Officer, Registration Assistant or any other staff as directed by the Commission for the purposes of conducting registration of voters."

Amendment
of section
35A

9. The principal Act is amended in section 35A by deleting the phrase "less than twenty-one days" appearing in subsection (1) and substituting for it the phrase "in the case of death, not later than fourteen days from the date of death".

Amendment
of section 37

10. The principal Act is amended in section 37 by -

(a) adding a new subclause "(3)" as follows:

"(3) Where a Member of Parliament resigns, or dies or otherwise relinquishes his office for reason other than under section 113, the Speaker shall, in writing to the Chairman of the Commission, and by notice published in the *Gazette*, declare that there is a vacancy in the seat of a member of parliament."

(b) renumbering subsections "(3)" and "(4)" as subsections "(4)" and "(5)"; and

(c) adding a new subsection "(6)" as follows:

"(6) Where a by-election is to be held and the date for dissolution of Parliament has been proclaimed or is known on account of the events specified in sub-article (3) of Article 90 of the Constitution of the United Republic, of 1977, no such by-election shall take place at any time during a period of twelve months immediately preceding the date of dissolution of Parliament."

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Amendment
of section 38

11. The principal Act is amended in section 38 by -

(a) adding immediately after subsection (1) the following new subsection:

"(2) Notwithstanding the provisions of subsection (1), the Commission may, on the nomination day, refuse to nominate a person as a candidate if it is satisfied that the person has been disqualified from participating in the nomination process by the Commission pursuant to the

- provisions of the Election Expenses Act, 2010.”;
- (b) renumbering subsections (2) up to (14) as subsections (3) to (15);
 - (c) adding immediately after paragraph (c) of subsection (4) as renumbered the following new paragraph:
 - “(d) a certificate issued by the District Party Secretary or the Secretary General, as the case may be, of a political party which has sponsored the candidate showing that the candidate has complied with the provisions of the Election Expenses Act, 2010 pertaining to disclosure of amount and sources of funds.”

Amendment
of section 40

12. The principal Act is amended in section 40 by –

- (a) deleting a “full stop” appearing at the end of paragraph (d) of subsection (1) and substituting for it the word “and”;
- (b) adding a new paragraph “(e)” immediately after paragraph “(d)” of subsection (1) as follows –

“(e) if the requirements of the Election Expenses Act, 2010 have not been complied with.”;

- (c) inserting the words “or the Attorney General” between the words “motion” and “and” appearing in subsection (3); and
- (d) adding a new subsection (7) immediately after subsection (6) as follows:

“(7) Notwithstanding any provisions of this section, the Registrar of Political Parties shall, upon filing an objection under subsection (3), the objection shall be subjected to the procedure laid down, under the National Elections Act”

Amendment
of section 47

13. The principal Act is amended in section 47 by -

- (a) by deleting subsection (3); and
- (b) renumbering subsection (4) as subsection (3).

Amendment
of section 50

14. The principal Act is amended in section 50 by deleting subsection "4".

Addition of
section 50A

15. The principal Act is amended by adding immediately after section 50 the following new section:

"Disqualification of
candidates

50A. The Commission may, upon determination of the objection filed by the Registrar of Political Parties on failure of a candidate to disclose the amount and sources of funds, disqualify the candidate from participating in the election process."

Amendment
of
CHAPTER
V

16. The principal Act is amended by deleting subtitle to "CHAPTER V" appearing immediately after section 54 and substituting for it the following:

"ELECTION, VOTING PROCEDURE AND NOMINATION OF MEMBERS OF PARLIAMENT FOR WOMEN SPECIAL SEATS"

Amendment
of section 63

17. The Principal Act is amended in section 63 by -

(a) adding immediately after paragraph (i) appearing in subsection (2) the following new paragraphs:

"(j) an officer of the Commission;
(k) Regional Elections Coordinator;" and

(b) renaming paragraphs (j) and (k) as paragraphs (l) and (m) respectively.

Insertion
of Part III

18. The principal Act is amended by inserting immediately after section 86 a new "Part III" as follows:

**“PART III
NOMINATION OF WOMEN FOR SPECIAL SEATS**

Nomination of
women for
special seats
Cap.2

86A.-(1) There shall be women special seats in the National Assembly as provided for in Article 66 of the Constitution.

(2) A political party which contests for parliamentary election held after the dissolution of the National Assembly may propose to the Commission names of eligible women candidates for nomination to women special seat.

(3) The Commission shall specify a number of women candidates to be nominated by each political party.

(4) The names of the women candidates proposed to the Commission shall be in order of preference.

Cap. 2 (5) The provisions of Article 67 of the Constitution shall apply to every woman who is sponsored by a political party.

Cap. 2 (6) The Commission shall, subject to Articles 66, 67 and 78 of the Constitution and in accordance with the order of preference indicated in the list proposed by each political party, declare such number of women candidates from the respective political parties as Members of Parliament for women special seats.

(7) The Commission shall send a notification of the declaration to the Speaker of the National Assembly and to the Secretaries-General of the respective political parties.

Cap. 2

(8) The list of names of women candidates proposed to the Commission in accordance with Article 78(4) of the Constitution by each political party for the General Elections shall, subject to Article 76(3) of the Constitution, be the same list that shall be used by the Commission for purposes of filling any vacancy in the office of a Member of Parliament for women special seats during the whole period of the life of Parliament.

Repeal of sections 87, 97 and 98

19. The principal Act is amended by repealing sections 87, 97 and 98.

Repeal and replacement of Section 100

20. The principal Act is amended by repealing section 100 and replacing it with the following provision:

“Bribery, corruption and undue influence in relation to members and officers of the Commission

100. Where any person does any act constituting bribery, corruption or undue influence in respect of a member or officer of the Commission referred to in section 6 with intent that such a member or officer, as the case may be, shall discriminate in favour of one or other of the candidates at the

election, or where any such member or officer does any such act on account of discriminating or having discriminated in favour of one or other candidates, such person shall be deemed, according to the circumstances of the case, to have committed an offence of bribery, corruption or undue influence."

Amendment
of section
105

21. The principal Act is amended in section 105 by inserting the phrase "or to imprisonment for a term of not less than one month and not exceeding six months or to both" immediately after the word "shillings" appearing at the end of that section.

Repeal of
section 109
Repeal and
replacement
of section
113

22. The principal Act is amended by repealing section 109.

23. The principal Act is amended by repealing section 113 and replacing it with the following:

"Certification as to
validity of election

113.-(1) The court shall, at the conclusion of the trial or appeal of an election petition, determine whether a Member of Parliament whose nomination or election is complained of, or any other person or which person, was duly nominated or elected, or whether the election was void, and shall certify such determination to the Director of Elections.

(2) After the certification made under subsection (1), the election shall be confirmed or a by-election shall be held, as the case may require, in accordance with the certification".

Amendment
of section
114

24. The principal Act is amended in section 114 by deleting-

(a) the opening words of subsection (2) and

substituting for them with the following:

“At the conclusion of the trial of an election petition or appeal, the court shall certify to the Director of Elections-”

(b) the “marginal note” and substituting for it the following:

“Report of the court on corrupt or illegal practices”

Amendment
of section
115

25. The principal Act is amended in section 115 by –

- (a) adding the words “and appeal” after the word “petition” appearing in the “marginal note”;
- (b) deleting the word “fourteen” appearing in subsection (1) and substituting for it the word “thirty”.
- (c) deleting subsection (2) and substituting for it the following subsections:

“(2) The court shall hear and determine an election petition within twelve months from the date of filing a petition.

(3) The court shall hear and determine an appeal within twelve months from the date of lodging the appeal.

(4) An appeal lodged pursuant to this section shall lie to the Court of Appeal.”

Addition of
section 124A

26. The principal Act is amended by adding immediately after section 124 the following new provisions:

“Electoral Code of
Conduct

124A.-(1) The Commission shall, for the purpose of promoting fair, free and orderly elections, and

upon consultation with all political parties and the Government, make and publish in the *Gazette* the Electoral Code of Conduct prescribing –

- (a) ethical conducts for of political parties, the Government, and the Commission during election campaigns and elections; and
- (b) mechanisms for enforcement of the Electoral Code of Conduct.

(2) The Electoral Code of Conduct shall be subscribed to by–

- (a) every political party;
- (b) every candidate before he submits the nomination form;
- (c) the Government; and
- (d) the Commission,

and shall bind the parties signatory to the Electoral Code of Conduct.

(3) Any person who contravenes the provisions of the Electoral Code of Conduct shall be liable to a penalty as may be prescribed by the Electoral Code of Conduct.”

PART III

AMENDMENT OF THE LOCAL AUTHORITY (ELECTIONS) ACT

Construction
Cap. 292

27. This Part shall be read as one with the Local Authority (Elections) Act hereinafter referred to as the “principal Act”.

Amendment
of section 2

28. The principal Act is amended in section 2 by-

- (a) inserting in appropriate alphabetical order the following new definitions:
- “campaign period” in relation to councilors’ election, means the whole period commencing immediately after the nomination day up to the day immediately preceding election day;
- “election officer” includes the Regional Election Co-ordinator, Returning Officer, Assistant Returning Officer, presiding officer; polling assistant, Regional Registration Coordinator, Registration Officer, Assistant Registration Officer, Registration Assistant, Camera Operator and Direction Clerk;
- “registration officer” means a person appointed under section 10 and includes an Assistant Registration Officer”;
- (b) deleting the “semi-colon” appearing at the end of the definition of “member” and inserting thereat the phrase “and includes a Councilor for women special seats;”
- (c) deleting the “semi-colon” appearing at the end of the definition of term “nomination” and inserting thereat the phrase “and includes declaration of councilors for women special seats;”

Repeal and
replacement
of section 13

29. The principal Act is amended by repealing section 13 and replacing for it with following:

"By-election

13.-(1) The Minister shall declare a seat of any member of a Council to be vacant when he is informed in writing by the Chairman of the Council that-

- (a) a member has died or resigned;
- (b) a member is, by virtue of the terms of or under this Act or any other written law, disqualified from or should be declared to be incapable of becoming or continuing to be a member;
- (c) the election of a member is declared void;
- (d) the seat of a member is deemed to be vacant under this Act; or
- (e) a member has ceased to be a member of a political party which sponsored that member as a candidate.

(2) Any vacancy which is declared vacant pursuant to subsection (1) shall be deemed to be a casual vacancy for the purpose of this Part.

(3) For the purpose of filling casual vacancies which occurred in various wards during the calendar year, the Electoral Authority shall hold

the by-election at least twice in a year on such dates as the Electoral Authority shall, by order published in the *Gazette*, appoint.

(4) An order under this section shall specify the day or each day or days on, and the hours within which returning officers may receive nominations of candidates for election in any ward to which the casual vacancy occurred.

(5) A member filling a casual vacancy shall hold office for the unexpired portion of the term of the office of the member whose seat is vacant.

(6) Where a casual vacancy occurs within twelve months immediately preceding the ordinary date of the expiry of the term of the member in respect of whom the vacancy occurs, a nomination or election shall not be made or held to fill the vacancy, but the vacancy shall be filled at the next ordinary nomination or election.

(7) A poll shall not be conducted in any by-election in which there is no a contested election."

Amendment
of section 14

30. The principal Act is amended in section 14 by deleting the term "Electoral Authority" appearing in subsection (1) and substituting for it the term "Returning Officer".

Addition of
section 17A

31. The principal Act is amended by adding immediately after section 17 the following new provision:

“Registration
agents

17A.-(1) A political party may appoint one person to be a registration agent for each registration centre within the ward, for the purpose of –

- (a) detecting qualified persons for registration; and
- (b) assisting the registration assistant to secure a smooth compliance with the relevant laws and procedures pertaining to the conduct of the registration of voters.

(2) For the purpose of subsection (1), a political party shall by notice in writing notify the registration officer of the appointment not later

than seven days before the date set for the commencement of registration of voters or within such shorter time as the Electoral Authority may allow.

(3) The notice under subsection (2) shall state the name of the agent so appointed and name and address of the registration centre to which the agent is assigned.

(4) Where a registration agent dies or becomes incapable of acting as such, the political party concerned may appoint another registration agent in his place, and shall immediately give to the Registration Officer and Registration Assistant concerned a notice in writing of the name and address of the registration agent so appointed and registration centre to which he is appointed.

(5) A political party may, in the notice given

under subsection (2), appoint an alternate registration agent who may be present and perform any of the functions of, a registration agent in the absence of the registration agent from the registration centre, whether permanently or temporarily.

(6) The Registration Assistant shall, with the assistance and co-operation of the registration agent, deal with each complaint at the registration station as soon as it arises and is brought to his attention by any person who wishes to be registered."

Amendment
of section 21

32. The principal Act is amended in section 21 by -

- (a) deleting the word "up-date" appearing in subsection (1) and substituting for it the word "review"; and
- (b) adding the following provision immediately after subsection (4):

"(5) For the purposes of this section, the Commission shall review the Permanent National Voters' Register twice between a period commencing immediately after the General Elections and the date preceding the nomination day."

Amendment
of section 23

- 33.** The principal Act is amended in section 23 by—
- (a) deleting the words “Registration Officer in charge” appearing in the opening words to subsection (1) and substituting for them the phrase “Registration Officer, Registration Assistant or any other staff as directed by the Electoral Authority for the purpose of conducting registration of voters.”
 - (b) deleting the words “Registration Officer” appearing in paragraph (b) of subsection (1) and substituting for them the phrase “Registration Officer, Registration Assistant or any other staff as directed by the Electoral Authority for the purpose of conducting registration of voters.”

Amendment
of section 27

- 34.** The principal Act is amended in section 27 by deleting the words “twenty one” appearing in subsection (1) and substituting for them the word “fourteen”.

Amendment
of section 42

- 35.** The principal Act is amended in section 42 by -
- (a) adding immediately after subsection (2) the following new subsection:
 - “(2) Notwithstanding the provisions of subsection (1), the Electoral Authority may, on the nomination day, refuse to nominate a person as a candidate if it is satisfied that the person has been disqualified from participating in the nomination process by the Electoral Authority pursuant to the provisions of the Election Expenses Act, 2010.”
 - (b) renumbering subsections (2) up to (14) as subsections (3) to (15);
 - (c) adding immediately after paragraph (c) of subsection (4) as renumbered the following new paragraph:
 - “(d) a certificate issued by the District Party Secretary of a political party which has sponsored the candidate showing that the candidate has

complied with the provisions of the Election Expenses Act, 2010 pertaining to disclosure of amount and sources of funds.”

Addition of section 52A

36. The principal Act is amended by adding immediately after section 52 the following new section:

“Disqualification of candidates

52A. The Electoral Authority may, upon determination of the objection filed by the Registrar of Political Parties on failure of a candidate to disclose the amount and sources of funds, disqualify the candidate from participating in the election process.”

Amendment of section 63

37. The principal Act is amended in section 63 by –

- (a) adding immediately after paragraph “(j)” appearing in subsection (2) a new paragraph (k) as follows: “(k) an officer of the Electoral Authority;” and
- (b) renaming paragraphs (k) and (l) as paragraphs (l) and (m).

Addition of Part XIA

38. The principal Act is amended by adding a new Part XIA immediately after Part XI as follows:

“PART XIA

NOMINATION OF COUNCILORS FOR WOMEN SPECIAL SEATS

Nomination of women for special seats
Cap. 287
Cap. 288

86A.-(1) There shall be women special seats in the local authorities as provided for under the Local Government (District Authorities) Act and the Local Government (Urban Authorities) Act.

(2) Every political party which contests councilor's elections in an ordinary election of councilors under the Local Government (District Authorities) Act and the Local Government (Urban Authorities) Act in the Councils may propose to the Electoral Authority, names of eligible women candidates for nomination to women special seats.

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(3) Subject to section 35 of the Local Government (District Authorities) Act or, as the case may be, section 19 of the Local Government (Urban Authorities) Act, the Electoral Authority shall specify the number of women candidates to be nominated by each political party.

Cap 288

(4) Each political party sponsoring women candidates for election

shall, in not less than thirty days before election day, propose to the Electoral Authority a list of such candidates.

(5) The names of the women proposed to the Electoral Authority shall be in order of preference.

(6) Every woman candidate proposed to the Electoral Authority shall be required to complete the nomination form.

(7) The provisions of section 39 of this Act shall apply to every woman who is sponsored by a political party as a candidate.

Cap 287

Cap 288

(8) The Electoral Authority shall, subject to section 39 of this Act, the Local Government (District Authorities) Act, and Local Government (Urban Authorities) Act, and in accordance with the order of preference or priority indicated in the list proposed by each political party, declare such number of women

candidates from the respective political parties to be elected councilors for women special seats.

(9) The Electoral Authority shall send a notification of election to the Council and the Secretaries-General of the respective political parties."

Amendment
of section
109

39. The principal Act is amended in section 109 by adding the words ""hereinafter referred to as "the court"" between the word "court" and a "full-stop" appearing in subsection (1).

Amendment
of section
114

40. The principal Act is amended in section 114 by –

(a) deleting the marginal note and substituting for it the following:

"Time for presentation and determination of election petition"; and

(b) adding the following new subsection:

"(3) The court shall hear and determine each election petition within eighteen months from the date of presentation of election petition"

Repeal and
replacement
of section
125

41. The principal Act is amended by repealing section 125 and replacing it with the following–

"Regulations

125.-(1) The Electoral Authority may make regulations for the better carrying out of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Electoral Authority may make regulations prescribing –

(a) anything which is authorized under the provisions of this Act; and

(b) forms of documents and declarations for the purposes of this Act.

(3) Where any form has been

prescribed under this section such form shall be used for the purposes to which it relates or to which it is capable of being adapted and may be translated into and used in such language as the Electoral Authority may direct.”

PART IV

CONSEQUENTIAL AMENDMENTS

Repeal of section 42 Cap. 287

42. The Local Government (District Authorities) Act is amended by repealing section 42.

Repeal of section 26 Cap. 288

43. The Local Government (Urban Authorities) Act is amended by repealing section 26.

Passed in the National Assembly on the 12th February, 2010.

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Clerk of the National Assembly