THE UNITED REPUBLIC OF TANZANIA

THE CONSTITUTIONAL REVIEW COMMISSION

CONSULTANCY ON THE REVIEW OF VARIOUS ASPECTS ON ELECTORAL SYSTEMS AND THE ELECTORAL COMMISSION IN TANZANIA

FINAL REPORT

BY

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Executive Summary

This study was commissioned by the Constitutional Review Commission to review various aspects of the electoral systems and the election management bodies in the United Republic of Tanzania. It aimed at reviewing judicial opinions, academic writings, various reports to the United Republic and political debates on Tanzania’s electoral systems and election management bodies so as to capture the political dynamics and the multiparty democratic imperatives of the institution of elections. To achieve this broad objective, the study therefore revisited various models and practices in other countries with regard to electoral systems and election management bodies in order to propose the legal and institutional framework suitable for the United Republic of Tanzania. The study has established that the existing electoral systems and the election management bodies are highly disputed and contested by key stakeholders. There is mistrust of the legal and institutional frameworks governing elections in Tanzania. The study recommends a comprehensive review of the entire legal and institutional regime governing the electoral systems and election management bodies so as to assure their effective functioning and trust among stakeholders. Specifically, it recommends the followings;

(i) Constitutional changes on the electoral system need to consider long term legitimacy and stability of the political system, notably to place safeguards against possibilities of sectarian governments and those based on sub-national identities. The Presidential election need to be a majority system, the possibility of increasing costs notwithstanding here. Hence, for the presidential post, we recommend that the president to be elected based on the
absolute majority votes (i.e. more than 50% of the total valid votes).

(ii) As for the parliamentary elections, we find that under the dominant party system, the plurality system excludes severely other political parties in the National Assembly. This “Winner takes all” system does not consider the votes obtained by the losing party irrespective of a small margin. We recommend for introduction of a mixed system comprising of the PR system and the Plurality system.

(iii) Women seat are important. The question is how the members are going to be accountable to women and not party leaders. Therefore criteria need to be set so that political parties can ensure an inclusive system of determining the PR lists.

(iv) A system of avoiding costly by-elections for constituency MPs and Councillors need to be put in place. A party of a dead MP could nominate a new candidate and subsequently would be appointed by the EMB. However, if an MP resigns then that MP makes his/her party lose the seat. The party which came second could nominate a candidate to be appointed by the EMB.

(v) We recommend that the President should continue appointing members of the electoral commission. However, the President should share his/her powers with another board. The board in question will invite applications of qualified individuals to apply. It will then shortlist potential candidates and finally carry out interviews in public. Those who qualify (their number must exceed that of the required
number) are presented to the president for the appointment.

(vi) We recommend that a member of a commission should have a fixed tenure (e.g. 6 or 7 years). And that a commissioner shall be appointed for a single term and is not eligible for re-appointment. Moreover, the members of the commission should serve on a full-time basis. A member of the commission should only be removed from office for serious violation of the Constitution or any other law, gross misconduct, physical or mental incapacity to perform the functions of office; incompetence or bankruptcy. The law should require that a person desiring the removal of a member of a commission on any ground specified above (1) present a petition to the President setting out the alleged facts constituting that ground; (2) investigation is done by an independent body whose findings should be binding to the president in deciding the matter.

(vii) The commission should have its offices countrywide and permanent staff. Moreover, it should have powers to select and employ its secretariat. This means that the current arrangement of using staff from local government authorities should be abandoned for the same reasons of transparency and fairness. As for composition at the national level, we recommend that the current practice to continue.

(viii) The electoral body should have the mandate to supervise all elections at national and local levels. This is because the commission will have all the infrastructures necessary to undertake elections at the stated level.
Moreover, the commission should supervise all referendums in the United Republic.

(ix) The Court of Law should be the final authority in determining justice pertaining to disputes arising from elections. This means that the court will be able to deliberate on all levels of elections: presidential, parliamentary, councils and local elections. However, in case of the Presidential results the law should be put in place to allow a period of at least one month before the new president can take office. This can allow a smooth transition of power.

(x) We recommend that the Electoral Commission should get its money from the government Consolidated Fund. Every financial year the commission should submit its budget to the parliament which will vote to it directly. The commission may also receive money from any other sources for the purposes of running its functions.

(xii) The electoral body of the United Republic should have its own office in Zanzibar. This will allow facilitating not only its effectiveness but also fairness. This is due to the fact that Zanzibar has its own machinery, procedures.
and laws governing its elections which might be different from those of the United Republic.

(xiii) We have considered the issue of maturity and ability from both Sociological and biological points of views and only to note that age in this sense is associated with responsibilities. Hence, at some point, it is expected that individuals have capacities to handle political responsibilities. We also considered the demographic structure of Tanzanians in which the youth constitutes the majority population. Taking all these together, we recommend that the current minimum age of 40 years for the post of president is still reasonable. This entails that an individual will have acquired the necessary competencies and experience at that age. However, we think that the maximum age limit for this post be 70 years. We have the opinion that beyond this age, especially in African context, one’s ability deteriorates to effectively discharge the responsibilities of this office. For other posts, we think the minimum age of 21 years is reasonable. The maximum can still be 70 years.

(xiv) We also recommend that the independent candidate be allowed. However, anyone who contests for a seat through this channel should not be allowed to cross-over to any political party with this seat. Similarly, the one who wishes to go through the party channel, he/she should also not be allowed to cross-over with the seat to the independent candidate status. The independent candidate can be allowed at all levels.
### Abbreviations and Acronyms

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>AMNUT</td>
<td>All Muslim National Union of Tanganyika</td>
</tr>
<tr>
<td>ANC</td>
<td>African National Congress</td>
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<tr>
<td>ARO</td>
<td>Assistant Returning Officer</td>
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<tr>
<td>ASP</td>
<td>Afro-Shiraz Party</td>
</tr>
<tr>
<td>AU</td>
<td>African Union</td>
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<tr>
<td>AV</td>
<td>Alternative Vote</td>
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<tr>
<td>BC</td>
<td>Borda Count</td>
</tr>
<tr>
<td>BV</td>
<td>Block Vote</td>
</tr>
<tr>
<td>CAG</td>
<td>Controller and Auditor General</td>
</tr>
<tr>
<td>CCM</td>
<td>Chama cha Mapinduzi</td>
</tr>
<tr>
<td>CHADEMA</td>
<td>Chama cha Demokrasia na Maendeleo</td>
</tr>
<tr>
<td>CRC</td>
<td>Constitutional Review Commission</td>
</tr>
<tr>
<td>CUF</td>
<td>Civic United Front</td>
</tr>
<tr>
<td>DC</td>
<td>District Commissioner</td>
</tr>
<tr>
<td>ed(s)</td>
<td>editor(s)</td>
</tr>
<tr>
<td>EISA</td>
<td>Electoral Institute for Sustainable Democracy in Africa</td>
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<tr>
<td>EMB</td>
<td>Election Management Body</td>
</tr>
<tr>
<td>et al.</td>
<td><em>et alii/alia</em> (and other people)</td>
</tr>
<tr>
<td>etc.</td>
<td><em>et cetera</em> (and so on)</td>
</tr>
<tr>
<td>FPTP</td>
<td>First Past The Post</td>
</tr>
<tr>
<td>HR</td>
<td>House of Representatives</td>
</tr>
<tr>
<td>i.e</td>
<td><em>id est</em> (that is to say)</td>
</tr>
<tr>
<td>IEBC</td>
<td>Independent and Electoral and Boundaries Commission</td>
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<tr>
<td>IIDEA</td>
<td>International Institute for Democracy and Electoral Assistance</td>
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<tr>
<td>List PR</td>
<td>List Proportional Representation</td>
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<tr>
<td>LV</td>
<td>Limited Vote</td>
</tr>
<tr>
<td>MMP</td>
<td>Mixed Member Proportional</td>
</tr>
<tr>
<td>MPs</td>
<td>Members of Parliament</td>
</tr>
<tr>
<td>Acronym</td>
<td>Full Form</td>
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<tr>
<td>NA</td>
<td>National Assembly</td>
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<tr>
<td>NCCR</td>
<td>National Convention for Construction and Reform</td>
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<tr>
<td>NEC</td>
<td>National Electoral Commission</td>
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<tr>
<td>OAU</td>
<td>Organisation of African Unity</td>
</tr>
<tr>
<td>PARO</td>
<td>Principal Assistant Returning Officer</td>
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<tr>
<td>PBV</td>
<td>Party Block Vote</td>
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<tr>
<td>PMO</td>
<td>Prime Minister’s Office</td>
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<tr>
<td>PR</td>
<td>Proportional Representation</td>
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<tr>
<td>PS</td>
<td>Parallel System</td>
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<tr>
<td>RC</td>
<td>Regional Commissioner</td>
</tr>
<tr>
<td>REC</td>
<td>Regional Election Co-coordinator</td>
</tr>
<tr>
<td>RO</td>
<td>Returning Officer</td>
</tr>
<tr>
<td>SADC</td>
<td>Southern African Development Community</td>
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<tr>
<td>SMC</td>
<td>Single Members Constituency</td>
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<tr>
<td>SNTV</td>
<td>Single Non-Transferable Vote</td>
</tr>
<tr>
<td>STV</td>
<td>Single Transferable Vote</td>
</tr>
<tr>
<td>TADEA</td>
<td>Tanzania Democratic Alliance</td>
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<tr>
<td>TANU</td>
<td>Tanganyika African National Union</td>
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<tr>
<td>TEMCO</td>
<td>Tanzania Election Monitoring Committee</td>
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<tr>
<td>TLP</td>
<td>Tanzania Labour Party</td>
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<tr>
<td>ToRs</td>
<td>Terms of Reference</td>
</tr>
<tr>
<td>TRS</td>
<td>Two-Round System</td>
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<tr>
<td>UMD</td>
<td>Union for Multiparty Democracy</td>
</tr>
<tr>
<td>UNDP</td>
<td>United Nations Development Programme</td>
</tr>
<tr>
<td>UPDP</td>
<td>United People’s Democratic Party</td>
</tr>
<tr>
<td>URT</td>
<td>United Republic of Tanzania</td>
</tr>
<tr>
<td>UTP</td>
<td>United Tanganyika Party</td>
</tr>
<tr>
<td>ZEC</td>
<td>Zanzibar Electoral Commission</td>
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1. SECTION ONE: INTRODUCTION AND BACKGROUND

1.1 Introduction
It is widely recognized that electoral system reform is key to reforming a political system. Consequently, it becomes one of the important issues of constitutional choice. This was been commissioned by the Constitutional Review Commission (CRC) to review various aspects pertaining to the Electoral Systems and the Electoral Commission in Tanzania. The purpose of this task is to provide a comprehensive reference document which the CRC can use as it makes decisions on the proposed Electoral Systems for Tanzania and the type of Election Management Body (EMB) which would prevail in the new Union Constitution.

1.1.1 Objectives of the study
1.1.2 General Objective
The main objective of the study is to review judicial opinions, academic writings, various reports to the United Republic of Tanzania (URT) government and political debates on Tanzania’s electoral systems and EMBs so as to capture the political dynamics and the multiparty democratic imperatives of the institution of elections.

1.1.3 Specific Objectives
To achieve the general objective a number of specific objectives were identified:

- To highlight the challenges facing the current electoral systems and election management.
- To review different literature and opinions with regard to various aspects of the electoral systems and electoral management bodies.
• To examine the electoral systems and election management bodies in other countries and propose the legal and institutional framework suitable for the United Republic of Tanzania.

• Based on the review made to recommend on how to address the existing challenges with a view to improving electoral systems and procure independence of election management bodies in the United Republic of Tanzania.

1.2 Scope of the work
The consultants were required to cover various aspects of Electoral Systems and EMBs. Specifically the following elements made up the scope of the work:-

• Electoral systems and their suitability to the Tanzanian circumstances.

• The selection, appointment and tenure of office of members of the Electoral Commission and Secretariat.

• Structure and composition of the Electoral Commission

• The mandate and functions of the Electoral Commission

• Minimum and maximum age at which a person may legally qualify to stand for elective positions.

• Any other pertinent issue regarding the electoral systems and elections.

1.3 Methodology
The study involved a review of research reports, academic writings, papers, judicial decisions, reports by election observers, EMB reports, press releases, government reports, and dissertations relevant to the electoral system and the EMBs in Tanzania. Most of these were within the reach of consultants. Most of the work was the synthesis of the above to meet the requirements of the ToRs. Additional documents were sought and used to fill gaps which
arose. A survey of selected case studies in Africa with regard to electoral systems and election management bodies was done so as to inform the Tanzania’s case. Moreover, a few stakeholders were consulted in order to fill in very specific information gaps. Various models and scenarios have been highlighted in this report and discussed in the process of coming up with a summary of best practices of electoral systems and EMBs. This required us to undertake a contextual analysis of the Tanzania’s socio-economic and political situation.

With regard to the theoretical and conceptual frameworks for electoral systems and the election management bodies, this study wishes to acknowledge the overreliance on two handbooks. This is not to disregard other scholarly works though. The first one is the “Electoral System Design: The New International IDEA Handbook” of 2005. This book is instrumental as it presents the worldly electoral systems in comparative perspectives of Africa, Europe, Latin America, Asia, and the United States of America. Unlike other rubrics on electoral systems which are country specific, this book revisits both the theoretical and empirical cases on electoral systems worldwide. It is important to appreciate that the IIIDEA had the first version of this book in 1997 and it was called “the International IDEA Handbook on Electoral System Design”. The New International IDEA Handbook has been written by renowned experts on electoral systems. The second book is the “Electoral Management Bodies as Institutions of Governance” of 2000. This book presents a comparative study both theoretically and empirically on the electoral management bodies of the world. It is therefore a comprehensive guide with regard to the designing of the electoral management bodies. We need to capitalise that although these books provide the general knowledge of electoral systems and
electoral management bodies, the contexts of specific countries dictate modifications and relevant applications.

2. **SECTION TWO: AN OVER VIEW OF ELECTORAL SYSTEMS**

2.1 **Introduction**

Electoral systems are central for choice and representative governments. This is partly due to the fact that they decide the degree of inclusion of the people to participate in and influence government policies and practices (IIDEA 2005). Etymologically, electoral systems refer to mechanisms of translating the votes cast in a general election into seats won by political parties and candidates. However, this translation of votes depends on several other variables such as the electoral formula used (i.e. whether plurality/majoritarian, proportional, mixed or other system is used as well as the type of mathematical formula used to calculate the seat allocation), the ballot structure (i.e. whether the voter votes for a candidate or a party and whether a voter makes a single choice or express a series of preferences), and the district magnitude (not how many voters live in an electoral district, but how many representatives to the legislature that district elects). Therefore, the choice of a particular electoral system design has a bearing on other areas of electoral laws such as how district boundaries are drawn, how voters are registered, the design of ballot papers, and how votes are counted. It can also affect the nature of government to be formed (coalition government, majority control etc.), voter turnout, party discipline, electoral campaign, elite behaviour, recognition of independent candidates, women representation, conflict management etc (Matlosa 2004; IIDEA 2005; Scholl 1986).

2.2 **Types of Electoral Systems**

There are three broad families of electoral systems worldwide. They include the plurality/majoritarian system, proportional system, and
mixed system. Each of these has its variants. The plurality system has five sub-families namely the First Past The Post (FPTP), Block Vote (BV), Party Block Vote (PBV), Alternative Vote (AV), and the Two-Round System (TRS). On the other hand, the proportional system has the List Proportional Representation (List PR) and the Single Transferable Vote (STV) as its sub-families. The mixed system has two variants namely the Mixed Member Proportional (MMP) and Parallel System (PS). Other systems outside the three broad families include the Single Non-Transferable Vote (SNTV), the Limited Vote (LV), and the Borda Count (BC). Figure 1 below presents the electoral system families in a simplified way.

Figure 1: The Electoral System Families

Source: IIDEA Handbook 2005

Principally, there are some considerations in designing electoral systems. The literature on electoral systems provides several criteria such as (a) providing representation, (b) making elections accessible and meaningful, (c) providing incentives for conciliation, (d) facilitating stable and efficient government, (e) holding the government accountable, (f) holding individual representatives
accountable, (g) encouraging political parties, (h) promoting legislative opposition and oversight, (i) making the election process sustainable, and (j) consideration of international standards (IIDEA 2005: Norris 1997; McCrone & Stone 1986).

Yet, it is imperative to understand that as countries are not the same in terms of contexts, the choice and smooth functioning of a given electoral system will tend to vary. Hence, it is not uncommon to find that the so called the world electoral systems are adopted and practiced with some modifications to reflect the needs of a particular country. Broadly speaking, the suitability of electoral systems depends to a great extent on the socio-economic and political contexts as well as history of a specific country. The process of designing an electoral system is usually a contested one (Bratton and van Walle 1997). This, as already stated, is due to the fact that the electoral system of the day determines the degree of inclusion of people to influence the political process and major decisions of a given country. The International IIDEA 2005 therefore cautions that “to be successful, electoral system design processes must build understanding and trust—not just among politicians and election administrators, but among civil society organizations, among commentators, and above all among the citizens of a country undergoing democratic reforms.”

2.3 Electoral Systems and their Consequences

2.3.1 Plurality/Majoritarian Systems
The plurality systems are designed in such a way that after votes have been cast and counted, the candidates or political parties with the most votes are declared the winners. However, the plurality system has five sub-types which condition operational variations. It is important to underscore the fact that each sub-type (FPTP, BV,
PBV, AV, and the TRS) under this family has its own advantages and disadvantages thereby calling for particular contexts.

### 2.3.2 First Past The Post (FPTP)

It is the simplest form of the plurality systems in that it uses single-member districts and candidate-centred voting. The names of the nominated candidates are presented on the ballot paper and a voter is only allowed to choose only one candidate from the list. The candidate with the most votes after counting is declared the winner (IIDEA 2005; Milner 2004). This system can either be *absolute majority* whereby for a candidate to be declared the winner he/she must get more than 50% of the valid votes or *simple majority* whereby whoever wins the most votes in the absence of the 50% requirements is declared the winner. Examples of countries with this system include Tanzania, Zimbabwe, Zambia, Kenya, Uganda, Ethiopia, Sudan, Nigeria, Gambia, United Kingdom, India, Malaysia, Nepal, Canada, and United States.

<table>
<thead>
<tr>
<th>Advantages</th>
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<tbody>
<tr>
<td>It is administratively simple and easily to be understood by voters.</td>
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<tr>
<td>It provides a clear-cut choice for voters between two main parties.</td>
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<tr>
<td>It gives rise to the opposition in the legislature and thereby promoting accountability.</td>
<td></td>
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<tr>
<td>It gives rise to single-party governments thereby promoting stability of the political system.</td>
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</tr>
<tr>
<td>It facilitates broadly-based political parties. That means it discourages ethnic or regional based parties hence promoting national unity.</td>
<td></td>
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<tr>
<td>It excludes extremist parties from representation in the legislature.</td>
<td></td>
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<tr>
<td>It forges a link between constituents and their representatives hence promoting representation based on geographical areas rather than just political party labels.</td>
<td></td>
</tr>
<tr>
<td>It allows to choose between people rather than just between political parties.</td>
<td></td>
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<tr>
<td>It gives a chance for popular independent candidates to be elected.</td>
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### Disadvantages

<table>
<thead>
<tr>
<th>Disadvantages</th>
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<tbody>
<tr>
<td>It excludes smaller parties from fair representation.</td>
</tr>
<tr>
<td>It excludes minorities from fair representation.</td>
</tr>
<tr>
<td>It excludes women from the legislature especially in a patriarchal society whereby political parties are male-dominated.</td>
</tr>
<tr>
<td>It leads to “waste” votes thereby discouraging voter turnout.</td>
</tr>
<tr>
<td>Source: Adopted from (IIDEA 2005; Norris 1997; Warioba 2011)</td>
</tr>
</tbody>
</table>

2.3.3 **Block Vote (BV)**

Block Vote refers to the application of plurality voting in multi-member districts. This appears when there are many seats to be filled in a district. Voters are given many votes equivalent to the number of seats to be filled and therefore become free to vote regardless of their party affiliation. The BV is suitable in countries where political parties are weak or non-existent. Examples of countries with this system include Lebanon, Palestine, and Tonga.

The BV is praised for promoting voter’s ability to vote for individual candidates. It also increases the role of political parties and strengthening them in terms of coherence and organisational ability. In contrast, the BV sometimes may lead to fragmentation of party system. This is so due to the fact that voters vote for candidates of more than one party in the same district, thereby encouraging members of the same party to compete against each other for support. Likewise, when voters vote all their votes for candidates of a single party, the system tends to exaggerate most of the disadvantages of the FPTP, in particular its dis-proportionality (IIDEA 2005:44).

2.3.4 **Block Party Vote (PBV)**

The PBV operates with multi-member districts. Voters have a single vote, and choose between party lists of candidates rather than between individuals (IIDEA 2005:47). The party which wins most votes takes all the seats in the district, and its entire list of
candidates is automatically elected. Examples of countries that practice this system include Cameroon, Chad, Djibouti, and Singapore. This system is simple to use. It also promotes strong parties and above all it may allow parties to field candidates in order to facilitate minority representation. To the negative side, this system may lead to highly disproportional results especially where one party wins almost all of the seats with a simple majority of the votes (Norris 1997).

2.3.5 The Alternative Vote (AV)

Elections under the AV takes place in single-member districts. Voters are given opportunity to rank the candidates in order of their choice i.e. by assigning “1” for their most favoured candidate, and “2” for the second choice and so on. In this case, AV is best known as the preferential plurality in single-member districts. Voters use numbers to mark their preferences on the ballot paper. A candidate with the absolute majority valid votes in first-preference votes is declared the winner. If there is no candidate with the absolute majority votes in the first preferences, the least successful candidates are then eliminated and their votes reallocated according to their second preferences until one candidate has an absolute majority. As can be seen, AV is candidate centred (IIDEA 2005:48). Examples of countries with this system include Australia, Fiji and Papua New Guinea. The AV has several advantages. First, it allows votes of several candidates to accumulate thereby fostering diverse but related interests to be combined to win representation. Secondly, due to the fact that the majority support of absolute majority is a requirement, the AV has a potential of increasing political legitimacy of the elected candidates. Thirdly, the AV encourages candidates to make broadly-based appeals in order to win. Notwithstanding, the AV requires a reasonable degree of literacy and numeracy to be used effectively.
2.3.6 The Two-Round System (TRS)

This system takes place in two rounds of elections. Normally, the first round is conducted just like the FPTP. However, in case the candidate or party secures the required threshold i.e. more than 50%, then that candidate or party is declared the winner outright and hence no need for a second ballot. The TRS is a plurality system in which a second round of election is held if no candidate or party attains the required level of votes, normally more than 50% in the first election round. Depending on contexts, the TRS may take a majority-plurality form that is more than two candidates contest the second round and the one who wins the highest number of votes in the second round is elected, regardless of whether they have won an absolute majority, or the TRS may take a majority run-off form whereby only the top two candidates in the first round contest the second round (IIDEA 2005). The winner can simply obtain the most votes or the requirement of obtaining more than 50% votes may still be a condition depending on the nature of a particular country. The TRS is used by Gabon, Kenya, Haiti, Iran, Mali, Togo, and Egypt to mention a few. The TRS has several advantages. First, it gives the electors a second chance to vote for candidates. In this way, candidates can also strategise in order to attract those voters who did not consider them in the first round. Secondly, the system encourages bargains and trade-offs between candidates and parties. Thirdly, the TRS avoids the problem of “vote-splitting” (IIDEA 2005). On the other hand, the TRS has a number of disadvantages. For example, it leads to administrative pressure on the part of the electoral administrators to conduct a new election in a short period. Related to this is the issue of cost. Election is always an expensive undertaking. Thus running two elections doubles the cost. This is a big problem especially in poor countries. Finally, the TRS is likely to produce instability especially
is deeply divided societies. This is owing to the fact that like the FPTP it tends to exclude the second candidate or party even though it obtains 49% of valid votes. The case of Kenya is instructive to make this point clear.

2.4 Proportional Representation Systems (PR system)

PR systems are considered for their relative degree of inclusion of parties and/or candidates in electoral competition. As a general principle, the higher the district magnitude and the lower the effective threshold, the greater is its proportionality (IIDEA 2005, Lindberg 2005, Birch 2007). Hence the proposition that the PR systems translate fairly a party’s share of votes into a corresponding proportion of seats in the legislature. Examples of countries which practice this system include Rwanda, Mozambique, South Africa, Peru, and Sierra Leone. There are two major sub-types under this family namely the List PR and the Single Transferable Vote (STV). Before examining how each of these systems functions, it is important to understand, though at a general level, the advantages and disadvantages of the PR systems:

Table 2: Pros and Cons of the PR-Systems

<table>
<thead>
<tr>
<th>Advantages</th>
<th>Disadvantages</th>
</tr>
</thead>
<tbody>
<tr>
<td>It is relatively better in producing an inclusive and representative legislature.</td>
<td>It gives rise to coalition governments which are considered to be unstable.</td>
</tr>
<tr>
<td>Encourage formation of political parties to put forward lists.</td>
<td></td>
</tr>
<tr>
<td>It minimises the level of wasted votes. Hence it encourages high voter turnout.</td>
<td></td>
</tr>
<tr>
<td>It facilitates minority parties’ access to representation.</td>
<td></td>
</tr>
<tr>
<td>It prevents the rise of a single party dominance.</td>
<td></td>
</tr>
<tr>
<td>It leads to greater continuity and stability of policy.</td>
<td></td>
</tr>
<tr>
<td>It makes it easier for political parties and interest groups to share power proportionally.</td>
<td></td>
</tr>
<tr>
<td>Encourages parties to campaign beyond the districts in which they are strong.</td>
<td></td>
</tr>
<tr>
<td>It can facilitate to solve conflicts.</td>
<td></td>
</tr>
</tbody>
</table>
It serves as a platform for extremist parties.

It presents the inability of the voter to enforce accountability by throwing a party out of power.

It encourages small parties to get a disproportionately large amount of power and at times force large parties to form coalition with smaller parties.

Source: Adopted from (IIDEA 2005; Norris 1997; Warioba 2011)

2.4.1 List PR

As the name itself suggests, under this system, each political party presents a list of candidates to the electorate in each multi-member electoral district. Voters vote for a party, and that parties receive seats in proportion to their overall share of the vote in the electoral district. Finally, winning candidates are simply taken from the list in order of their position on the lists (IIDEA 2005; Lindberg 2005).

As stated earlier, the level of threshold set is critical to determine on the degree of inclusion of minor parties or otherwise. That is to say, if the threshold level is say 10%, the chance is that most minor parties will be excluded. The List PR is generally inclusive of minor parties. Moreover, it facilitates the representation of marginalised groups like women and the disabled. To the negative side, the List PR raises the party above the candidates since senior party leaders are the ones with the strong powers to decide on the fate of candidates. Related to this point is the fact that the accountability of the legislators to their respective constituencies is weakened. Moreover, it can limit the choice of candidates by electors especially when the list is closed. Finally, this system is not able to function in those countries where political parties do not exist or are still at their embryonic stage of formation.

2.4.2 The Single Transferable Vote (STV)

The STV is used in multi-member districts. Voters rank candidates in order of preference on the ballot paper in the same manner as under the Alternative Vote system. After the total number of first-preference votes are tallied, the count begins by establishing the
quota of votes required for the election of a single candidate (IIDEA 2005). The quota is calculated by the following formula:

$$\text{Quota} = \frac{\text{votes}}{\text{Seats}} + 1 + 1$$

The candidates that surpass a specified quota of first-preference votes are immediately elected. In successive counts, votes are redistributed from least successful candidates, who are eliminated, and votes surplus to the quota are redistributed from successful candidates, until sufficient candidates are declared elected. Voters normally vote for candidates rather than political parties, although a party-list option is possible. This system is mostly used in for local elections in Scotland and New Zealand.

The STV has general advantages like the PR systems. Moreover, it allows for choice between parties and between candidates within parties. It has a fair degree of proportionality. In this system, voters can influence the composition of post-election coalitions. STV also provides a better chance for the election of popular independent candidates than List PR because voters choose between candidates rather than between parties. Nonetheless, the STV has the following disadvantages: first, it demands high degree of literacy and numeracy. Second, the STV is complex. It can lead to fragmentation of parties since members of the same party are effectively competing each other as well as against the opposition, for votes. Thirdly, the STV can lead to a party with a plurality of votes nonetheless winning fewer seats than its rivals.

2.5 Mixed Systems
As the name suggests, Mixed electoral systems combine the positive attributes of both plurality (or ‘other’) and PR systems. This means that there are two systems with different formulae which run alongside each other. There are two sub-types under this category.
The first is the Mixed Member Proportional (MMP). The second one is called Parallel System.

### 2.5.1 Mixed Member Proportional (MMP)

This system combines both the results from the PR system and the plurality. In a way, the dis-proportionality arising from the plurality systems are compensated by the PR systems (Raynolds & Steenbergen 2006; Birch 2007; Karume 2004). Therefore, MMP is a mixed system in which the choices expressed by the voters are used to elect representatives through two different systems-one List PR system and (usually) one plurality system-where the List PR system compensates for the dis-proportionality in the results from the plurality system. For example, in Lesotho, the total number of seats is 120. In this country, 40 seats (33%) are allocated to PR seats and the remaining 80 seats (67%) are allocated to the FPTP (IIDEA 2005). Table 3 provides for more countries which use the MMP system.

The MMP retains the benefits of PR systems. At the same time it ensures that representatives are linked to their geographical areas. However, the MMP can create two classes of legislators, that is, one group responsible for the constituency and another from the national party list without geographical ties. They are tied primarily to the party. This can have adverse implications on the cohesiveness of the groups elected as representatives.
**Table 3: Countries using MMP System**

<table>
<thead>
<tr>
<th>Country</th>
<th>No. of PR Seats</th>
<th>No. of Plurality/Majority (or Other) Seats</th>
<th>Plurality/Majority (or Other) System</th>
<th>Total No. of Seats</th>
</tr>
</thead>
<tbody>
<tr>
<td>Albania</td>
<td>40 (24%)</td>
<td>100 (71%)</td>
<td>FPTP</td>
<td>140</td>
</tr>
<tr>
<td>Bolivia</td>
<td>82 (46%)</td>
<td>68 (52%)</td>
<td>FPTP</td>
<td>150</td>
</tr>
<tr>
<td>Germany</td>
<td>299 (50%)</td>
<td>299 (50%)</td>
<td>FPTP</td>
<td>598</td>
</tr>
<tr>
<td>Hungary</td>
<td>210 (54%)</td>
<td>175 (46%)</td>
<td>TRS</td>
<td>385</td>
</tr>
<tr>
<td>Italy</td>
<td>155 (25%)</td>
<td>475 (75%)</td>
<td>FPTP</td>
<td>630</td>
</tr>
<tr>
<td>Lesotho</td>
<td>40 (33%)</td>
<td>80 (67%)</td>
<td>FPTP</td>
<td>120</td>
</tr>
<tr>
<td>Mexico</td>
<td>200 (40%)</td>
<td>300 (60%)</td>
<td>FPTP</td>
<td>500</td>
</tr>
<tr>
<td>New Zealand</td>
<td>55 (46%)</td>
<td>65 (54%)</td>
<td>FPTP</td>
<td>120</td>
</tr>
<tr>
<td>Venezuela</td>
<td>85 (38%)</td>
<td>100 (61%)</td>
<td>FPTP</td>
<td>185</td>
</tr>
</tbody>
</table>

Source: IIDEA 2005

### 2.5.2 Parallel Systems

Parallel Systems, like MMP, use both PR and plurality components. However, the PR component of the system does not compensate for any dis-proportionality within the plurality districts. The balance between the number of proportional seats and the number of plurality seats depends on the contexts of a particular country. In some countries like Russia and Ukraine is 50:50 split. Yet, in others the seats from PR exceeds far those in the plurality system as with the case with Tunisia whereby 52 seats (80%) of seats arise from the PR system and the remaining 37 seats (20%) come from the plurality system (IIDEA 2005).

This system is useful in so far as it gives results which are somewhere between pure plurality and pure PR systems. In this case, it allows representation of minority parties as well as marginalised groups. However, this depends much of the percentage of seats allocated for the PR systems. To the negative, it is likely to produce two classes of representatives just like the MMP. Moreover, this system is complex and requires high degree of
literacy. Table 4 indicates the countries which practise the parallel systems.

### Table 4: Countries Using Parallel Systems

<table>
<thead>
<tr>
<th>Country</th>
<th>No. of PR Seats</th>
<th>No. of Plurality/Majority (or Other) Seats</th>
<th>Plurality/Majority (or Other) System</th>
<th>Total no. of Seats</th>
</tr>
</thead>
<tbody>
<tr>
<td>Andorra</td>
<td>14 (50%)</td>
<td>14 (50%)</td>
<td>PBV</td>
<td>28</td>
</tr>
<tr>
<td>Armenia</td>
<td>55 (43%)</td>
<td>75 (57%)</td>
<td>FPTP</td>
<td>131</td>
</tr>
<tr>
<td>Azerbaijan</td>
<td>25 (20%)</td>
<td>106 (89%)</td>
<td>TRS</td>
<td>125</td>
</tr>
<tr>
<td>Georgia</td>
<td>150 (64%)</td>
<td>85 (36%)</td>
<td>TRS</td>
<td>235</td>
</tr>
<tr>
<td>Guinea</td>
<td>75 (67%)</td>
<td>38 (33%)</td>
<td>FPTP</td>
<td>114</td>
</tr>
<tr>
<td>Japan</td>
<td>180 (37.5%)</td>
<td>308 (62.5%)</td>
<td>FPTP</td>
<td>480</td>
</tr>
<tr>
<td>Kazakhstan</td>
<td>10 (12%)</td>
<td>67 (87%)</td>
<td>TRS</td>
<td>77</td>
</tr>
<tr>
<td>Korea, Republic of</td>
<td>55 (19%)</td>
<td>242 (81%)</td>
<td>FPTP</td>
<td>299</td>
</tr>
<tr>
<td>Lithuania</td>
<td>70 (50%)</td>
<td>71 (50%)</td>
<td>TRS</td>
<td>141</td>
</tr>
<tr>
<td>Monaco</td>
<td>8 (33%)</td>
<td>16 (67%)</td>
<td>BV</td>
<td>24</td>
</tr>
<tr>
<td>Pakistan</td>
<td>70 (20%)</td>
<td>272 (80%)</td>
<td>FPTP</td>
<td>342</td>
</tr>
<tr>
<td>Philippines</td>
<td>52 (20%)</td>
<td>208 (80%)</td>
<td>FPTP</td>
<td>260</td>
</tr>
<tr>
<td>Russia</td>
<td>225 (50%)</td>
<td>225 (50%)</td>
<td>FPTP</td>
<td>450</td>
</tr>
<tr>
<td>Senegal</td>
<td>55 (46%)</td>
<td>65 (54%)</td>
<td>PBV</td>
<td>120</td>
</tr>
<tr>
<td>Seychelles</td>
<td>9 (36%)</td>
<td>25 (74%)</td>
<td>FPTP</td>
<td>34</td>
</tr>
<tr>
<td>Taiwan</td>
<td>49 (22%)</td>
<td>176 (78%)</td>
<td>SNTV</td>
<td>225</td>
</tr>
<tr>
<td>Tajikistan</td>
<td>22 (35%)</td>
<td>41 (65%)</td>
<td>TRS</td>
<td>63</td>
</tr>
<tr>
<td>Thailand</td>
<td>100 (20%)</td>
<td>400 (80%)</td>
<td>FPTP</td>
<td>100</td>
</tr>
<tr>
<td>Timor-Leste</td>
<td>75 (85%)</td>
<td>13 (15%)</td>
<td>FPTP</td>
<td>88</td>
</tr>
<tr>
<td>Tunisia</td>
<td>52 (80%)</td>
<td>37 (20%)</td>
<td>PBV</td>
<td>189</td>
</tr>
<tr>
<td>Ukraine</td>
<td>225 (50%)</td>
<td>225 (50%)</td>
<td>FPTP</td>
<td>450</td>
</tr>
</tbody>
</table>

Source: IIDEA 2005

#### 2.6 Other Systems

These include the Single Non-Transferable Vote (SNTV), Limited Vote (LV), and the Borda Count. As can be noted, they do not purely exhibit the dominant electoral systems discussed earlier. This is despite the fact that their impact lies between the PR and Plurality systems.

##### 2.6.1 Single Non-Transferable Vote (SNTV)

Under SNTV, each voter casts one vote for a candidate but (unlike FPTP) there is more than one seat to be filled in each electoral district. Those candidates with the highest vote totals fill these
positions. The SNTV has the following advantages. One is that, compared to the plurality, it is able to facilitate the representation of minority parties and independents. Two is that it encourages parties to become highly organized and instruct their voters to allocate their votes to candidates in a way which maximizes a party’s likely seat-winning potential. Thirdly, it easily accommodates Independent candidates. Finally, the system is praised for being easy to use and understand. Nonetheless, parties whose votes are widely dispersed will win fewer seats than otherwise and larger parties can receive a substantial seat bonus which turns a plurality of the vote nationally into an absolute majority in the legislature. It also gives rise to many wasted votes. The SNTV can potentially lead to internal party fragmentation as multiple candidates of the same party compete. Finally, as the system gives voters only one vote, it contains few incentives for political parties to appeal to a broad spectrum of voters.

2.6.2 Limited Vote (LV)
Like SNTV, the Limited Vote is a plurality/majority system used in multi-member districts. Unlike SNTV, electors have more than one vote—but fewer votes than there are candidates to be elected. Counting is identical to SNTV. This system is suitable for various local-level elections. Like SNTV, LV is simple for voters and relatively easy to count. However, it tends to produce less proportional results than SNTV (IIDEA 2005; Raynolds & Steenbergen 2006).

2.6.3 Borda Count (BC)
The Borda Count is a preferential electoral system in which electors rank candidates as for the Alternative Vote. It can be used in both single- and multimember districts. There is only one count, there are no eliminations and preferences are simply tallied as ‘fractional votes’. The advantages and disadvantages of the Borda Count are similar to the ones of the other preferential electoral systems.
2.7 Electoral Systems and their Potential Cost

Elections are expensive undertaking. They normally involve huge sum of money as well as logistical issues. Although each electoral system works in a particular context, implying variations in cost, it is imperative to take stock of the general clues and implications as to cost and logistics. Generally, the List PR systems, especially national closed-list systems, score well when it comes to being cheap to run and requiring few administrative resources. So does the PBV. Next in the list are the SNTV and LV systems, followed by BV and FPTP. These are then followed by the AV, STV, Parallel, Borda Count, and MMP systems. The system which is most likely to put pressure on any country’s administrative capacity is the Two-Round System. Table 5 below indicates 12 electoral systems and their respective cost with regard to drawing electoral boundaries, voter registration, ballot paper design and production, voter education, number of polling days, by-elections, and counting. It is important to be stressed once again that although this schema provides general cost implications, specific countries have their own way of doing things depending on their contexts.
Table 5: Potential Cost Implications of 12 Electoral Systems

<table>
<thead>
<tr>
<th></th>
<th>Drawing Electoral Boundaries</th>
<th>Voter Registration</th>
<th>Ballot Paper Design and Production</th>
<th>Voter Education</th>
<th>Number of Polling Days</th>
<th>By-elections</th>
<th>The Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>FPTP</td>
<td>🟢</td>
<td>🟢</td>
<td>🟢</td>
<td>🟢</td>
<td>🟢</td>
<td>🟢</td>
<td>🟢</td>
</tr>
<tr>
<td>BV</td>
<td>😞</td>
<td>😞</td>
<td>😞</td>
<td>😞</td>
<td>😞</td>
<td>😞</td>
<td>😞</td>
</tr>
<tr>
<td>TRS</td>
<td>🟢</td>
<td>🟢</td>
<td>🟢</td>
<td>😞</td>
<td>🟢</td>
<td>😞</td>
<td>😞</td>
</tr>
<tr>
<td>AV</td>
<td>🟢</td>
<td>🟢</td>
<td>🟢</td>
<td>😞</td>
<td>🟢</td>
<td>😞</td>
<td>😞</td>
</tr>
<tr>
<td>PBV</td>
<td>😞</td>
<td>😞</td>
<td>🟢</td>
<td>😞</td>
<td>🟢</td>
<td>😞</td>
<td>😞</td>
</tr>
<tr>
<td>List PR</td>
<td>🟢</td>
<td>😞</td>
<td>😞</td>
<td>🟢</td>
<td>🟢</td>
<td>😞</td>
<td>😞</td>
</tr>
<tr>
<td>STV</td>
<td>😞</td>
<td>😞</td>
<td>😞</td>
<td>🟢</td>
<td>🟢</td>
<td>😞</td>
<td>😞</td>
</tr>
<tr>
<td>Parallel</td>
<td>😞</td>
<td>😞</td>
<td>😞</td>
<td>😞</td>
<td>😞</td>
<td>😞</td>
<td>😞</td>
</tr>
<tr>
<td>MMP</td>
<td>😞</td>
<td>😞</td>
<td>😞</td>
<td>😞</td>
<td>😞</td>
<td>😞</td>
<td>😞</td>
</tr>
<tr>
<td>BC</td>
<td>😞</td>
<td>😞</td>
<td>😞</td>
<td>😞</td>
<td>😞</td>
<td>😞</td>
<td>😞</td>
</tr>
<tr>
<td>SNTV</td>
<td>😞</td>
<td>😞</td>
<td>😞</td>
<td>😞</td>
<td>😞</td>
<td>😞</td>
<td>😞</td>
</tr>
<tr>
<td>LY</td>
<td>😞</td>
<td>😞</td>
<td>😞</td>
<td>😞</td>
<td>😞</td>
<td>😞</td>
<td>😞</td>
</tr>
</tbody>
</table>

Key: 🟢 = Low cost and complexity; 😞 = Medium cost and complexity; 🟥 = High cost and complexity.

Source: IIIDEA Handbook 2005
3. SECTION THREE: ELECTORAL SYSTEMS IN TANZANIA

3.1 Introduction
The Electoral system in Tanzania has been influenced by the Westminster model but also by inventions made in the course of moulding the political system as it sought to survive and to create its own political culture. The historical electoral experience left a legacy in the Electoral system of multipartism. This section revisits the electoral systems from colonial era to the current multiparty democracy.

3.2 Colonial Experience
The election systems created by colonialism in Tanganyika were based on plurality but with limited suffrage. Also at one time it was based on multi-member constituencies along race lines, Africans, Asians and European. The colonial electoral system therefore was not democratic. Yet, the nationalist party was able to mobilize for a large nationalist electorate which marginalized sectarian tendencies whether based on ethnicity, religion or race. An example is how TANU was able to win the 1958/59 race based election by getting candidates from all races. The legacy has been that on the Mainland for a long time, serious electorate cleavages based on sectarian interests have been avoided. On the eve of Independence (i.e. in 1961) TANU won an absolute majority in the legislative Elections and obtained a Parliament without an opposition.

Tanganyika became a Republic in 1962 and Presidential elections were held that year using a plurality electoral system elaborated in the Republican Constitution. TANU’s Nyerere won a landslide against African National Congress’s Mtemvu. Despite TANU’s hegemony the next General elections in 1965 would be held under single party rule.
The Union between Tanganyika and Zanzibar in 1964 created a de facto single party system. TANU was the only party represented in the National Assembly. In Zanzibar there were no elections after the Revolution and ASP was in control. The Westminster model of democracy was abandoned soon with the One party rule constitution of 1965.

3.3 Single Party Era
The electoral system which was established with single party rule in Tanzania and used for the first time in the 1965 Elections had several ways of translating votes to seats. The question of party allocation did not arise because there were only sister parties doing almost the same thing when it came to Elections, TANU on the Mainland and ASP in Zanzibar. The rationale for such different ways has not always been given publicly; decisions were made in the Party.

The Presidential Elections under single party rule took the form of a referendum or plebiscite on the candidate. The candidate was proposed by the party and was presented to the electorate for a “yes” or “no” vote. Nyerere was the candidate from 1965 to 1980. He was able to win Presidential elections with comfortable majorities. In 1965 it was 96.46% in 1980 it was 95.5%. His successor Mwinyi also was comfortable in winning with 95.68% in 1985 and 97.78 % in 1990 (Nohlen et al 1999).

In the parliamentary elections the party screened candidates and nominated two who were presented to the electorate. There was however cases of unopposed candidates where no other candidates sought party nomination. The rationale for such a system was given
by Nyerere before the single party rule. That TANU had been so hegemonic that its candidates would have won despite their quality. By having two candidates the voters had choice of electing the better candidate. The electoral system for Parliamentary elections was plurality in single member constituencies.

The parliamentary elections were highly contested with high turnover of incumbents. In the 1965 Elections, for example, out of fifty incumbent MPs twenty nine lost their seats including two ministers and nine junior ministers. In the 1970 Elections out of seventy four incumbents more than half, thirty eight, were not returned (Harris 1967, Kjekshus 1974). The same simple plurality single member district applied to elections of councilors at the level of local governments.

What was characteristic in the single party rule National Assemblies was that there were many MPs who were not elected directly by the general electorate. In the 1965 National Assembly there were for example 94 such members. There were 15 MPs chosen by the National Assembly acting as an electoral college. Then 32 members came from Zanzibar as members of the Revolutionary council, 20 other members were nominated from Zanzibar. Seventeen (17) Regional Commissioners entered the National Assembly by virtue of their office and 10 members were nominated by the President. All MPs from Zanzibar were appointed because at that time there were no elections in Zanzibar except for the Union President. The first legislative and Zanzibar President Elections came with the 1979 Zanzibar Constitution which allowed for such elections to be held in 1980 (EISA 2002).

In the 1985 General Elections when President Mwinyi was first elected the number of constituencies were increased from 106 to
119 but the National Assembly had 274 members the difference was 155. The twenty national MPs elected by the National Assembly seating from a list from the Regions were scrapped but 15 women special seats were introduced. Most of those elected by the National Assembly (NA) sitting as an electoral college came from party affiliated organs, for women, youth, workers, cooperatives and parents.

In the last National Assembly under single party rule in 1990 the number of constituencies increased to 130 but the number of MPs in the NA was 284, the difference being 154. It became clear the number of directly elected MPs were a minority in the NA degrading further the democratic value of the General Elections. The logic of ruling party was to allow for various groups in the society to be represented in the NA, the practice was corporatist in the sense that anyone wishing to participate in decision making in the society had to be screened by party organs. This situation fuelled the call multiparty politics and democracy in Tanzania.

3.4 Multiparty Democracy

The multiparty electoral system started to operate with by-Elections: the first was Kwahani in Zanzibar followed by Ileje, Kigoma, Tabora North and Igunga on the Mainland. The single-member constituency system was applicable here. The full application of the multiparty electoral system came during the 1995 General Elections with the additional Presidential and women special seats elections. The Presidential election was plurality based on majority. The winning candidate had to get more than 50%.

In the National Assembly nominated MPs and National MPs were abolished. The 15 seats for women were transformed to special seats for women making 15% of overall National Assembly seats.
These women MPs were appointed from party lists using the PR system. The National Assembly of 1995 had 37 women MPs for the special seats; it had also 232 constituencies MPs 182 from the Mainland 50 from Zanzibar (EISA 2002).

In the 2000 General Elections the Electoral system changed for the Presidential elections in that it was still based on plurality but not based on majority. The removal of the majority requirement for the Presidential candidate, which continues to date, was given no clear justification. Since the origin is the incumbent government it might be construed that there was fear of losing its usual outright majority. Another change in 2000 concerned the legislature. A new category of MPs was introduced; these were 5 additional MPs from Zanzibar elected by the House of Representatives (HR) in Zanzibar constituting itself as an electoral college. The rationale for having such members is not evident and nor its origin within the government. The genesis of amendments to the 1985 Election Act is not always clear only very few of the changes originate from NEC others originate from the government and it is difficult to discern the rationale behind.

Since the entry of multiparty elections what has been consistent is the increase of women seats. In 2000 the number increased from 37 to 48. In 2005 and 2010 the number increased to 75 and 102 respectively. In 2000 and 2005 the increase was due to increase of the percentage of women seats to 20% and 30% respectively. In 2010 it was because the number constituency MPs had increased from 232 to 239 following the introduction of new Regions and Districts. Women special seats MPs were obtained through a PR system operation with lists provided by political parties. NEC has been responsible for making the proportion calculations based on
the total number of votes every party obtained in the legislative elections.

The electoral system after the entry of multiparty politics has been contested, especially by political parties and other stakeholders who are either calling for the introduction of a fully PR or partial PR system. What is at stake here is partially political for political gain, the incumbent wishing to preserve its advantage of being able to win many seats through the first past the post and the opposition not being able to win outright in many constituencies wish to have their votes counted. It has been established that the nature of electoral system has impact on the party systems in a political system; political parties are therefore most likely calling for reforms which can favour their winning chances. What is important here is a fair electoral system in terms of democratic representation, political stability and reasonable costs to the nation.

3.5 Summary of Views for Reforms

3.5.1 The Government

The government proposed for the simple majority system for the presidential post. This was against the absolute majority which requires the winning candidate to secure more than 50 per cent of the votes. For the government, the absolute majority could not have grounds in the multi party era as during the one party system it was crucial for the approval of the unchallenged candidate to the mass. Hence the candidate who would secure simple majority should be declared as the winner of the presidential post. The government insists that by applying simple majority electoral system, there will not be Runoff elections which are costly and therefore a burden to the tax payers. On the part of the MPs, the government proposed for the simple majority system (First Past the Post) instead of the proportional representation. It explained that
through the simple majority the citizens are able to make their representatives accountable unlike how it might be in the proportional representation system. Moreover, the simple majority system is the common system used in the commonwealth countries (Extracted from Kisanga Presidential Committee, 1999).

3.5.2 Presidential Commission Reports

- **Nyalali Commission (1992)**
  This commission proposed for the mixed system i.e. simple majority and proportional representation. For the simple majority system, the commission recommended for the directly elected members coming from parties which have participated in elections. But these parties should each have won a minimum of 5 per cent of all votes cast in the election. This is from the ground that, the past the post system (simple majority) works in favour of big parties and to the disadvantage of the small ones. Under this system the country might find itself being ruled by one dominant party for a long time. Moreover, the commission asserted that, small parties which may have support of many people and good national policies, under this system will not be able to make it into Parliament. When this happens then competition disappears. As for the proportional representation system the commission proposed to apply for those individuals who manage to get relatively substantial but not enough votes to get them into Parliament. This system will avoid the wastage of votes cast to the candidates who have not been able to make it in the parliament.

- **Kisanga Committee (1999)**
  On the presidential post, the Kisanga committee proposed for the absolute majority system by which a presidential candidate is declared a winner only if s[h]e has garnered more than 50 percent of the votes. This is important by taking the fact that absolute majority will promote the unity of the United Republic of Tanzania.
Also to avoid a sectarian president who emerges out from certain sect of the society; such as tribe, religion and region. Commenting on the claim from the government, that a runoff is costly, the committee down played such stand by asserting that the cost involved with electing a sectarian president is far worse than the cost of a run off.

On the MPs, the committee proposed for the coexistence of simple majority system and proportional representation system. To implement this, the number of constituencies has to be cut down so as to give the room for the PR seats. Also it recommended that, the seats from PR should be relatively low to those of the simple majority. The committee explained this position as aimed at strengthening the minority parties and hence promote competitive democracy. This is due to the fact that, in the proportional representation system, the political parties are the ones which compete and not the candidates. Also, according to the committee, the establishment of the PR system would reflect the situation of the world as different countries have been using this system.

### 3.5.3 Election Observers

TEMCO in its election report of 1997 maintained that, there should be the introduction of the proportional representation system or a combination of the PR system and the simple majority system which is in use currently. TEMCO asserts that, the reason behind the proposed electoral system is based from the recommendation of the Nyalali Commission (1992) and it has since been supported by several opposition parties.

### 3.5.4 Views from the People

The views of the people for the electoral system can be extracted from the Kisanga Committee (1999). Its report revealed that out of
44768 people who offered their views, 2490 (5.56 per cent) were in favour of the introduction of the PR system while, 42276 (94.43 per cent) vowed for the continuation of the FPTP system. The need for the continuation of the FPTP system was on the ground that, it promotes responsiveness of the MPs to their constituencies. Also the PR system might lead to violence in the country; and lastly, the PR system is prone to the weak Legislature which can lead to weak government. However, commenting on these views, the Kisanga Committee attributed such views with the lack of knowledge of PR system on the part of the people which resulted into such views against the PR system.

3.5.5 Scholarly Works

There are several scholarly works which have highlighted the need to change the current electoral system of Tanzania. These works elucidated that first-past-the-post system does not promote representation and the inclusiveness which are at the core value democracy. There are two strands from these scholars; the one strand suggest totally for the PR system while the other side proposes for the mixed system of FPTP and the PR systems. The position by the second strand emanates from the fact that there is the need to mitigate the defects which arise from PR and FPTP. Those who take the first strand, of PR system, include the following: Isabela Moses Warioba (2011) “The-First-Past The-Post electoral system versus proportional representation in Africa: A Comparative, M.A Dissertation (Unpublished) Edoardo Mondlane University,


**3.5.6 Consultancy Reports**

The report titled “Review of the 1995 General Election in Tanzania” A Consultancy Report by Jorgen Elklit, Mark D. Bomani, and Chris Peter commissioned by The United Republic of Tanzania, Ministry of Justice and Constitutional Affairs; recommends for the introduction of the mixed system; which combines both PR system
and FPTP system. Among other justifications of the mixed system, the report states that the mixed system is important for avoiding the by-elections which are costly to the nation. Also, the mixed system is important for reflecting the votes received by the party and its seats in the parliament.

3.5.7 Views from Political Parties

- CCM in its views submitted to the Constitution Review Commission in 2013, vowed for the simple majority system for the presidential post instead of absolute majority. CCM explains that absolute majority system is prone to violence and prone to the Run off election which is unbearable in terms of financial costs due to the fact that Tanzania is economically poor to afford those costs (CCM, 2013).

- CUF, on the presidential post, proposes for the use of an absolute majority system, thus 50 plus 1, instead of the simple majority. For the parliament, it proposes for the PR system so as to ensure the representation of every vote cast in the election unlike the current system, FPTP, of which the votes are wasted (CUF, 2013).

- As for CHADEMA, on parliament seats, their position on the electoral system has been on the need to establish a mixed system of which the FPTP system is supplemented by the PR system (CHADEMA, 2013).

3.5.8 Views from CSOs

- Jukwaa la Katiba Tanzania (2013), in its views submitted to the Constitution Review Commission, calls for replacement of the current system of FPTP with the PR system for the
parliament seats. This is important for the realization of representativeness.

- Also views by Association of Higher Learning Academics in Public Universities and Colleges call for the establishment of absolute majority system (50 plus one) for the presidential post.

3.5.9 Individuals

- The former chairman of NEC Justice Lewis M. Makame made his personal observation that “Our politics would benefit by having a mixture of voted constituency seats and some system of proportional representation” (Daily News, 5/2/1995).

- The former CCM deputy-chairman Mr. Pius Msekwa maintained that “Proportional Representation is not a perfect system either. In this system you are almost obliged to form a coalition government after every General Election. This is something which leaves the country without a government for a long time due to inter-party negotiations that go with it” (The Citizen, 12/5/2010).

- Prof. Mwesiga Bregu, a political science lecturer at the St. Agustine University contends that “we have been talking about the shift for the ‘winner takes all system’ to a proportional representation one because it gives the opportunity for solutions to problems facing the country to be worked out collectively” (The Citizen, 12/5/2010)

- Judge Mark Bomani is calling for the mixed system which will have the equal number of the MPs from the proportional
representation system and the simple majority (Raia Mwema, 14/11/2012).

- Mr. Ismail Jussa, the CUF former director of foreign affairs, maintained that in 2005 the CUF had 14 per cent of the total votes on the Mainland but ended up without a single MP he said “this shows how unfair the system is in proportional representation CUF could have been entitled to about 30 sets based on the percentage of the total votes we got; this system is out dated” (12/5/2010)

### 3.6 Analysis and Recommendations of the Electoral System

Tanzania’s political system is best described as one dominant party (Whitehead 2009; Ruotsalainen 2009; Raphael, C. 2011; Moehler 2005; Mgasa 2011; Sansa 2004; Liviga 2009; Makulilo 2008; Kaya 2004; Ahluwalia & Zegeye 2001; Mtimkulu 2006). The ruling party CCM is indeed a dominant party. This state of affairs is however not natural. The party has enjoyed the history of this country which partly accounts to its dominance. The literature on the dominant party suggests that the ruling party initially fought for independence and subsequently managed to unite Tanzanians. Moreover, the three decades of one party rule (from 1965 to 1990s) consolidated further the strength of CCM. It has to be noted that under the single party rule the political space was suffocated to the extent that it did not allow the existence of opposition parties as well as autonomous organizations. The workers, youth, parents, the military, and all agents of the state were under the party. This situation reached a climax in 1975 when the party became the supreme organ in the United Republic hence “party supremacy” (Msekwa 1977; Shivji 2006; Makulilo 2008).
This political dominance was furthered by the command economy whereby the state owned all major means of life. During the single party era it was difficult to get services or employment if one was not a member of the ruling party. Thus, the line between the party and the state was not possible to be drawn (Mwakyembe 1985). In describing this situation, Hyden and Mmuya have gone far to say that the state in Tanzania is in the pocket of the ruling party (Hyden and Mmuya 2008).

As can be noted from that background, the transition from the one party to multiparty system was indeed controlled by the ruling party to its advantages. Hyden describes this as “a top down democratization” (Hyden 1999). Under this state, opposition parties have to remain relatively weak (Bratton & van Walle 1997). This is despite the fact that there are other factors internal to opposition parties that undermine their performance (Raphael 2011).

A casual observation of electoral results since the inception of multipartism indicates that the ruling party has always won the popular votes above 60%. In 2005 it votes went up to 80%. In terms of seats in the Parliament, the party has won above 75%. Taking this situation, it seems that the opposition is numerically weak.

Yet on the other hand this country has been praised for maintaining peace and unity. Despite over 120 tribes, Tanzanians have downplayed the tribal identity unlike Kenya. However, religious cleavages are deep to the extent of threatening peace. In recent times religious tension and conflicts are central to Tanzania. Some people have lost their lives and others seriously been wounded. Economically, Tanzania falls under the poor nations. Just like its counterparts in Africa, the country is heavily suffering from the debt crisis and at times high inflation.
After considering the models of electoral systems particularly their advantages and disadvantages as well as the social-economic and political conditions in Tanzania, and the opinions of different stakeholders, we have observed that the Presidential election in the Republican system seems not to be contested. What is contested is the lack of the majoritarian condition. Changes do occur in politics even in situations where a certain stability had emerged over the years. Britain for many years had been considered a two party system, yet in the last election a coalition government had to be established. Constitutional changes on the electoral system need to consider long term legitimacy and stability of the political system. Notably to place safeguards against possibilities of sectarian governments and those based on sub-national identities. The Presidential election need to be a majority system, the possibility of increasing costs notwithstanding here. Hence, for the presidential post, we recommend that the president to be elected based on the absolute majority votes (i.e. more than 50% of the total valid votes). This will assure the nation a president who has the support of the majority people beyond sectarian considerations.

As for the parliamentary elections, we find that under the dominant party system, the plurality system excludes severely other political parties in the National Assembly. Winner takes all system does not consider the votes obtained by the losing party irrespective of a small margin. For example in Zanzibar, the CUF had been excluded from participating in the government affairs notwithstanding its popular votes of about 49% in 1995, 2000 and 2005. This situation undermined the legitimacy and stability of the winning party which formed the government. So, the plurality system has a problem of wasting votes. It was in 2010 that in Zanzibar this problem was
minimised by allowing the second winner at the set threshold to get included in the government.

Our recommendation therefore is to introduce a mixed system comprising of the PR system and the Plurality system. We propose that the ration of seats under this arrangement be that 50% seats to be obtained from the PR and the remaining 50% from the plurality. This means that the SMC need to be reduced to give way to those to be elected through PR. The size of constituencies needs to take population as the major criteria and a limit in the differences in population between constituencies need to be set.

Women seat are important. The question is how the members are going to be accountable to women and not party leaders. Therefore criteria need to be set so that political parties can ensure an inclusive system of determining the PR lists.

Finally, a system of avoiding costly by-elections for constituency MPs and Councillors need to be put in place. A party of a dead MP could nominate a new candidate and subsequently would be appointed by the EMB. However, if an MP reigns then that MP makes his/her party lose the seat. The party which came second could nominate a candidate to be appointed by the EMB.
4. SECTION FOUR: ELECTION MANAGEMENT BODIES (EMBs)

4.1 Introduction

Effective management of electoral systems requires institutions that are inclusive, sustainable, just and independent. It includes, among other things, electoral management bodies (EMBs) that have the legitimacy to enforce rules and assure fairness with the cooperation of political parties and citizens (López-Pintor 2000; Elklit & Reynolds 2005). As main referees of elections, EMBs should be impartial and autonomous from any interested parties in a given election. However, this depends on how they are designed. Hence the question is to what extent an EMB as a referee of the electoral game is independent and impartial in discharging its business. The term independence itself is debatable. For instance, Dacey (2005:7) notes “It is incorrect to assume that an organisation either is, or is not, institutionally independent. The extent of its independence will rather fall on a continuum, ranging from highly independent to not at all independent, and its location on the continuum will depend on the extent of its institutional independence in a number of different dimensions.” This simply means that independence is relative and not absolute.

There are several meanings of the term “independence” of an EMB. However, at the bottom line of all conceptions lies the question of institutional and/or behavioural dislodging of an EMB from an organ or person with interest1 in the outcome of the electoral competition. True to this argument is the popular principle of natural justice that ‘No man a judge in his own cause2’. This

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1 Interested parties in elections are narrowly referred here to specifically mean contestants in an election. This includes political parties and candidates. If an EMB inclines to any one of the contestants it will be partial. The principle of impartiality requires an EMB to treat all contestants impartially and fairly.

2 See ‘Rule against bias’ in H.W.R. Wade and C.F. Forsyth. 2000. Administrative Law, 8th Edition, Oxford University Press, p.445. It has been normal and mandatory for the judges and magistrates to decline determining justice in a case that involves their friends, relatives or any other interest that they are
principle normally is observed in order to ensure fairness and impartiality by a court of law in rule adjudication. In light of this principle, thus, any affiliation of an EMB to an organ or a person with interest in the outcome of an election is likely to undermine its independence, impartiality and legitimacy. This argument is also reflected in the Social Contract Theory of Thomas Hobbes that ‘Man is by nature egoistic’. In this regard, human behaviour should be contained to ensure fairness and justice. Thus both structural and behavioural dislodging are important for an EMB to act impartially.

Yet, independence can either be structural (formal/actual) independence or perceived (behavioural/fearless) independence. The former refers to that independence which is defined by laws on matters like appointment and dismissal of commissioners, its budget, powers, structures and functions of the commission. The latter is that independence based on the credibility, integrity, fearless of the Commission to act independently and impartially. It is possible for an electoral body to have actual independence but to miss the perceived one. This section revisits the world models of EMBs which will form basis for our final recommendations in terms of how the commissioners are appointed, their security of tenure, structure and powers, functions, independence and budget.

4.2 Models of EMBs

The literature on EMBs (Mozzaffar 2002; Pastor 1999; Karume et al. 2004; Fall et al. 2011; Makulilo 2009; 2011; Bashiru 2002; and López-Pintor 2000; Elklit & Raynolds 2005; Adwoa 2013) underscores different typologies of EMBs. Five models are discussed in this report:-

attached to. The attachment of interest may thus be formal or informal, direct or indirect. Similarly, an EMB that has attachments of any sort with one of the contestants in an election is likely to act in favour of that particular contestant against its counterparts.
(a) Non-autonomous EMBs located within the formal government bureaucracy: This approach works well in advanced countries where the civil service is respected as independent and politically neutral. The term government as used by the author seems to be confusing. One can doubt whether government is synonymous with civil service department. However, by this definition the government denotes the executive branch of the government.

(b) Semi-autonomous EMBs located within the formal government bureaucracy but under the supervision of an autonomous body: In this case the commission should also be supervised by a judicial body. The independent election commission is composed of selected judges, who oversee the government ministry responsible for conducting election. This model cannot work well in an environment where the judiciary is not sufficiently independent.

(c) Autonomous EMBs (also known independent electoral commissions) located outside the formal bureaucracy of the government: The commission is manned by experts and is directly accountable to the parliament. When the parliament is not one sided, such a commission can be very credible. Moreover, it works well to the extent that voters and political parties have confidence in the independence and integrity of those appointed.

(d) Multiparty election commission: It is composed of representatives of the political parties. If there are many parties in a parliament these commissions do not work effectively. Similarly if there is a serious political divide between and among parties, consensus on a decision is
difficult to make. Thus the potential danger of this model is to politicize the administration of elections and sometimes the commission finds itself in a deadlock. However this model is useful in building confidence in countries emerging recently from conflicts in which factions doubt honesty and integrity of the election system.

(e) Representative Model: This is perhaps the most recent approach of designing election commission. The commission draws its members from different groups in a society. Such groups may constitute political parties, civil society, religious organisations, youth, women, elders, academics, judges, etc. The most important point here is the representativeness of groups. Two problems may arise here notably how to reach consensus since the interests of specific group are represented in the commission. Secondly is on the size of the commission. The danger is that some groups would appear to be isolated.

4.3 Regional and Continental Frameworks of EMBs
The OAU/AU Declaration on the Principles Governing Democratic Elections in Africa (2002) provides for the holding of free and fair elections. It states that elections should be conducted by “impartial, all-inclusive competent accountable electoral institutions staffed by well-trained personnel and equipped with adequate logistics”. The emphasis which is put here is simply “independence” of the EMBs. In order to achieve independence of EMBs in Africa, the regional standards were set in 2003. The Independent Electoral Commission of South Africa in collaboration with the African Union Commission and the African Association of Electoral Authorities convened the conference on Elections, Democracy and Governance in Africa from 7th to 10th of April, 2003. One of the agenda was with regard to
independent EMBs. The following principles were adhered by member states of Africa:

- The independence of EMBs should be secured constitutionally, and their budget should be voted directly by the legislative bodies responsible for allocation of budgets.
- The selection and appointment procedures for commissioners should be determined by parliament and should be transparent, inclusive and sensitive to gender equality and the representation of diverse groups.
- EMBs must independently appoint their secretariat.
- EMBs should conduct themselves with integrity, independence, transparency and impartiality.
- EMBs should have formal structure in various sub-regional bodies and within the African Union through which they can interface with political principals.
- The African Union in consultation with EMBs should work towards the adoption of common standard norms for the management of elections in Africa.
- Each election management body should structure a process that allows for public scrutiny of all processes and ensures accountability to the broader body politic.

The above principles focus on two core issues. These include: an inclusive appointment process of commissioners of EMBs by all stakeholders. This is very important as it instils not only a sense of ownership of an EMB by all stakeholders but also their trust in its integrity. The other area of concern is the constitutional security of the independence of an EMB. In a broader sense, this means also the security of tenure of the commissioners that is protected by the constitution, a budget that is deliberated by the legislature and accountability of the EMBs to the public for their actions (Makulilo
From the conference it can be summarized that, the minimum attributes of independence of EMBs should include: fiscal autonomy, durable tenure of office by commissioners that is protected by the constitution, autonomous structure that is free from the government of the day or any political party, impartiality, an inclusive appointment procedure of the members of the body after consultation with various stakeholders, professional competence of its staff, transparency in decision making processes, and capacity to make and enforce decisions by the body (Makulilo 2009). Yet, Article 17 (1) of the African Charter on Democracy, Elections and Governance which came into force in February 2012 insists that state parties establish and strengthen independent and impartial national electoral bodies responsible for the management of elections.

Like its counterpart, the African Union, SADC believes in free and fair elections. In order to realise this, SADC Principles and Guidelines Governing Democratic Elections provides that the EMBs should be competent to assure free and fair elections. However, for accountability purposes, SADC proposes that disputes arising in the course of elections be settled according to the law of the land.

4.4 EMBs in Selected Countries

4.4.1 Electoral Commission of the Republic of South Africa
The Electoral Commission of the Republic of South Africa provides a unique model in Africa. Its establishment, powers and functions are defined in the Constitution of the Republic of South Africa of 1996 and the Electoral Commission Act No. 51 of 1996. The appointment procedures of the commissioners and the composition of the
commission itself are made inclusive. On the other hand, tenure of commissioners is firmly protected, and the budget is deliberated by the Parliament through government budget. Moreover, the role of court in settling disputes arising from elections is well guaranteed.

(a) Appointment of Commissioners
The Commission consists of five members and one of whom must be a judge. The Constitution Article 193 [1,4(c),5(a), 5(b)ii and 6] and Section 6 of the Electoral Commission Act set down a well elaborate procedure for the appointment of commissioners. The process starts by creating a prospective pool of commissioners by a special panel composed of the President of Constitutional Court as chairperson, a representative of the Human Rights Commission, a representative of the Commission on Gender Equality and the Public Protector. The panel creates a pool of not less than eight (8) candidates based on competence, citizenship and non-partisan affiliation of a high political affiliation. The panel submits the list of prospective commissioners to the Committee of the National Assembly. This Committee is composed of proportional members of all political parties represented in that Assembly. The involvement of civil society in the recommendation process may be provided as per section 59(1a). The Committee submits the list of prospective candidates to the whole members of the National Assembly for approval. The approval is made by majority vote. Finally the list of approved candidates is submitted to the president for appointment.

(b) Tenure of Commissioners
Article 194 (1, 2, and 3) of the Constitution and Section 7 of the Electoral Act provide for the security of tenure of commissioners. The term of office of a member of the Commission is seven (7) years and may be extended upon the recommendations made by
the National Assembly. A commissioner may be removed from office only on the ground of misconduct, incapacity or incompetence and after a finding to that effect by a committee of the National Assembly upon the recommendation of the Electoral Court. The adoption by a majority of the members of the National assembly of a resolution, calling for that commissioner’s removal from office will lead to the dismissal of a member by the President.

(c) Commission Finance
Sections 13 and 14 of the Electoral Commission Act provide that the Commission will get its money from the government budget every financial year. It may also receive money from any other sources for the purposes of running its functions. The commission is required to prepare a report after the end of each financial year for auditing purposes before new money is issued. The commission may also provide the president with such information regarding its expenditures.

(d) Legal Independence
The Constitution of South Africa and Section 3 of the Election Commission act recognise that the commission is an independent institution and that it shall be impartial and exercise its powers and perform its functions without fear, favour or prejudice.

(e) Role of the Court in resolving disputes arising from elections
Section 18 of the Election Act recognises the existence of the Electoral Court with the Status of the Supreme Court. The Court consists of five (5) members: a chairperson who is a judge of Appellate Division of the Supreme Court, two other judges of the Supreme Court and two other members who are South African citizens. The court is responsible to hear and determine an
appeal against any decision of the Commission only in so far as such decision relates to the interpretation of any law or any other matter for which an appeal is provided by the law.

(f) Disclosure of conflicting interests
Section 9 of the Act provides further for the Code of Conducts of Commissioners and Section 10 of the Act requires a member of the commission to disclose his or her conflict of interest in any meeting. If one does not do that, and later on it is discovered that he or she has a conflict of interest regarding any decision of the Commission then such decisions will be reviewed and varied or set aside by the commission.

4.4.2 The IEBC of Kenya
Article 248 (2) (c) of the Constitution of Kenya and the Independent Electoral and Boundaries Commission Act, No. 9 of 2011 provide for the establishment, powers, structure and functions of the Independent Electoral and Boundaries Commission. The appointment procedures of the commissioners and the composition of the commission itself are made inclusive. On the other hand, the tenure of commissioners is firmly protected, and the budget is deliberated by the Parliament through government budget. Moreover, the role of court in settling disputes arising from elections is well guaranteed.

(a) Appointment of Commissioners
The Commission consists of a chairperson and eight other members appointed in accordance with Article 250(4) of the Constitution and the provisions of the IEBC Act. Section 6 (1) of the Act provides that the chairperson of the Commission shall be a person who is qualified to hold the office of judge of the Supreme Court under the Constitution. Moreover, a person is
qualified for appointment as a member of the Commission if such person— (a) is a citizen of Kenya; (b) holds a degree from a recognized university; (c) has proven relevant experience in any of the following fields— (i) electoral matters; (ii) management; (iii) finance; (iv) governance; (v) public administration; (vi) law; and (d) meets the requirements of Chapter Six of the Constitution.

The appointment of commissioners is done by a selection panel on purely competitive mode. The panel consists of seven people. The president nominates two people (one man and one woman); the Prime Minister nominates two people (one man and one woman); one person nominated by the Judicial Service Commission; one person nominated by the Kenya Anti-Corruption Advisory Board; and one person nominated by the Association of Professional Societies of East Africa. These nominees should be approved by the National Assembly. Once this is done, the names are sent to the President who finally though ceremonially appoints the entire panel. The members of the panel take oath. The panel invites applications from the members of the public and shortlists them. This is followed by an interview conducted in public. The panel selects three persons qualified to be appointed as chairperson and thirteen persons qualified to be appointed as members of the Commission and forward these names to the President for nomination of one person for appointment as the chairperson and eight persons for appointment as members. Thus, Article 250 (2) of the Constitution provides that the chairperson and each member of a commission shall be— (a) identified and recommended for appointment in a manner prescribed by national legislation; (b) approved by the National Assembly; and (c) appointed by the President.
(b) Tenure of Commissioners

Article 250 (6) of the Constitution and Section 7 (1) of the IEBC Act state that a member of a commission shall hold office—(a) unless *ex officio*, shall be appointed for a single term of six years and is not eligible for re-appointment; and subsection (2) further provides that the members of the Commission shall serve on a full-time basis. Article 251 (1) of the Constitution and the IEBC Act state that a member of the Commission may be removed from office only for—(a) serious violation of this Constitution or any other law, (b) gross misconduct, whether in the performance of the member’s or office holder’s functions or otherwise; (c) physical or mental incapacity to perform the functions of office; (d) incompetence; or (e) bankruptcy. The law requires that a person desiring the removal of a member of a commission on any ground specified in clause (1) may present a petition to the National Assembly setting out the alleged facts constituting that ground. The National Assembly shall consider the petition and, if it is satisfied it discloses a ground and shall send the petition to the President. On receiving a petition, the President—(a) may suspend the member or office holder pending the outcome of the complaint; and (b) shall appoint a tribunal to investigate the matter. The tribunal shall consist of—(a) a person who holds or has held office as a judge of a superior court, who shall be the chairperson; (b) at least two persons who are qualified to be appointed as High Court judges; and (c) one other member who is qualified to assess the facts in respect of the particular ground for removal. The tribunal shall investigate the matter expeditiously, report on the facts and make a binding recommendation to the President, who shall act in accordance with the recommendation within thirty days.
(c) Commission Finance
Article 249 (3) of the Constitution provides that the Parliament shall allocate adequate funds to enable the commission to perform its functions and the budget of the commission shall be a separate vote. Moreover, Article 250(7) states that the remuneration and benefits payable to or in respect of a Commissioner or the holder of an independent office shall be a charge on the Consolidated Fund. And that such remuneration and benefits payable to, or in respect of, a commissioner shall not be varied to the disadvantage of that commissioner.

(d) Legal Independence
Article 249 (1) of the Constitution states that the commissions and the holders of independent offices—(a) are subject only to this Constitution and the law; and (b) are independent and not subject to direction or control by any person or authority.

(e) Role of the Court in resolving disputes arising from elections
The Court of law is the final authority that can determine disputes arising from elections. The High Court is responsible for other levels of elections such as senator, governor and Member of Parliament. However, the Supreme Court deals with the disputes arising from the presidential elections. In general, the Court of law is the final authority in the dispensation of justice.

(f) Disclosure of conflicting interests
The IEBC Act (Second Schedule) requires a member of the commission to disclose his or her conflict of interest in any meeting. If one does not do that, and later on it is discovered that he or she has a conflict of interest regarding any decision of
the Commission then such decisions will be reviewed and varied or set aside by the commission.
5. SECTION FIVE: EMBs IN TANZANIA

5.1 Colonial Experience
Elections during colonialism were managed by the Elections Commissioner located within the colonial administration. He was responsible for the demarcations of constituencies and conducting Elections. Colonial Elections up to 1960 were based on limited suffrage and race. Voters had to meet criteria based on education and income and each had to vote for three candidates a European, an Asian and an African (black) in a three member constituency. In the September 1958 election when 5 constituencies were at stake and the February 1959 when a further 5 constituencies were being contested. In the main nationalist party, Tanganyika African National Union (TANU) leaders were split on the issue of racially based elections.. Some members called for a boycott of the elections. Nyerere and others in the leadership decided to participate but at the same time mobilize White and Asian candidates who would contest on the ticket of TANU. The strategy worked and TANU had 28 out of 30 seats, the other two were won by the African National Congress (Nohlen et.al 1999)

Apart from the divisive issue of race TANU had to face others challenges from the United Tanganyika Party (UTP) a party led by traditional Chiefs and which received colonial support and also Muslim mobilization by All Muslim National Union of Tanganyika (AMNUT). That party campaigned for a delay of Independence so as to bridge the gap in the level of education between Christiana and Muslims (Illife 1979: 551-52). The nationalist party was able to calm moderate Muslims by promising to deal with the disparity after independence. As it would happen though these challenges reappeared after independence and would influence the declaration of single party rule.
5.2 Single Party Era

There were two union electoral bodies which were established during the era of single party state. The first worked from 1965 to 1990 and the second was established in 1990 and worked until in 1992 at the entry of multiparty politics. The first body had five commissioners under the Chairmanship of the Speaker of the National Assembly (NA) and the Clerk of the NA was the Director of Elections. Senior government officials in the Regions and the Districts were appointed Returning Officers (ROs) (Chaligha 2010: 399).

The second electoral body which was established in 1990, on the eve of multiparty politics was an attempt to strengthen the EMB by making it a bit more independent and efficient arbiter in light of the increased electoral competition within the ruling party and in light of louder voices demanding multiparty politics. In 1990 amendments to the 1985 Elections Act no.1 the Speaker of the NA ceased to be the Chairman of the Electoral Commission. Its Chairman had to be a Judge of the High Court or Court of Appeal. The number of Commissioners was raised from five to seven. The Clerk of the NA however remained the Director of Elections. All members of the commission were appointed by the President using his discretion. According to Chaligha the Independence of Electoral Commission under the single party system was undermined by the contradictions in the Constitution which accommodated the doctrine of party supremacy (Chaligha 2010: 400).

It is important to reiterate the type of electoral politics which existed at that time. There were some limitations to people who wanted to participate in electoral politics. The single party screened candidates and only those who supported the party were allowed to participate. The number of indirectly elected members of the NA
was also significant. In the 1985 General Elections when President Mwinyi was first elected, the number of constituencies was increased from 106 to 119 but the National Assembly had 274 members the difference was 155, those non constituency members were either indirectly voted for by elected members from lists of party affiliated organizations or were appointed by the President.

One change introduced in 1990 which had some significance was giving the EMB some authority to deal with election complaints. Election petitions were handled by a panel constituted by the chairman of the commission. He was assisted by a Judge of the Zanzibar High Court and another member of the commission appointed by the Chairman (Chaligha 2010: 400). While the EMB established lasted for only two years, there are those who have argued that NEC which was established after the entry of multiparty politics in 1992 was in reality a continuation of the EMB established in 1990.

5.3 Multiparty Democracy

NEC started working in 1993 following the multiparty constitutional amendments of 1992. Constitutionally sovereignty in Tanzania lies with the Union government and so it would have been expected that NEC is the supreme EMB in Tanzania. We therefore examine NEC both in terms of what it is doing and what it is expected to do so as to fulfill its Union mandate.

5.3.1 NEC: Legal and Institutional Frameworks

The legal framework of NEC can be found in section 74 of the Constitution of the United Republic of Tanzania of 1977 and the Elections Act No. 1 of 1985. Both instruments have been amended several times to allow for a patch work of reforms in electoral laws and regulations. The Constitution on this was amended in 1995.
The Elections Act 1985 No.1 was amended in 1992, 2000 and 2005. The most recent amendments were accented to by the President on the 30th June 2010. At the same time the 1979 local government Election Act was amended in 1994 to give NEC the mandate to manage Local government (Councilor) elections on the Mainland.

It has been argued by some actors in support of NEC that the independence and autonomy of NEC is enshrined in sections 11 and 12 of Article 74 of the Constitution of the United Republic of Tanzania of 1977. Section 11 of the Constitution states that NEC shall not be obliged to neither follow orders from any official of government nor listen to any opinion of any political party in the process of implementing its tasks. Section 12 states that no Court of justice has jurisdiction to investigate any action of NEC in the process of implementing its tasks. While NEC sees this as a way of protecting it against litigation which might paralyze the election, opposition parties, civil society organizations and some academicians see it as curtailing the rights of voters and candidates (Makulilo 2009: 442).

5.3.2 NEC: Mandate and Functions
The NEC is the only institution with constitutional mandate to manage the Union elections. Article 74(1) of the constitution of the United Republic of Tanzania (URT) 1977 and Section 4(1) of the Elections Act, No.1 of 1985 establish the NEC. It has the following specific functions:

- To supervise and coordinate the Registration of voters in the Election of the President and Members of Parliament of the United Republic of Tanzania;
- To supervise and co-ordinate the conduct of the Presidential and parliamentary Election;
• To review the boundaries and demarcate the United republic into various constituencies;
• To co-ordinate the Registration of voters for Election of Councilors in Mainland Tanzania;
• To declare MPs and Councilors for women special seats;
• To provide Voter education and supervise institutions and persons who conduct such education; and
• To perform any other function in accordance with the law enacted by the Parliament.

5.3.3 NEC: Structure and Composition

In organization terms, the structure of NEC is fluid. The chairperson and vice-chairpersons are not full-time employees. At the national level, NEC has a director who is also the Secretary to the commission. The personnel of the directorate, sections and units are permanent employees of the commission. At the field level, the structure is temporal and exists only during the election season. It is staffed by the Regional Election Co-coordinators (RECs) or Liaison Officers, Returning Officers (ROs) and Assistant Returning Officers (AROs). These are not permanent employees of the commission. Sections 7 (1 and 2) of the Elections Act, No. 1 of 1985 requires NEC to appoint City Director, Municipal Director, Town Director and District Executive Directors to be returning officers for the purposes of conducting elections in constituencies. In the 2000 amendments to the Election Act of 1985 Local Council Executive Directors were appointed ROs by virtue of their position. It did not however prevent NEC from appointing other persons if there is a problem with the council executives (Chaligha 2010: 401).

The president appoints commissioners for a term of five years which can be renewed as he wishes. The Commission has seven members. The chairperson and the vice – chairperson of the NEC must be
either a judge of the High Court or of the Court of Appeal. Other five members are appointed as follows: one from amongst the members of the Tanganyika Law society, and the remaining four from experienced people in the conduct of election. The President has powers to remove a commissioner without being questioned. Article 74 (5) of the Constitution states that the President can remove a commissioner from his/her position on reason of incompetence, or ill health or losing the qualification of being a commissioner. The President would have to state a reason for removal but effectively his/her decision cannot be questioned.

5.3.4 NEC: Mode of Funding

The NEC has no reliable, adequate, and timely sources of funds in running its business. Normally, it prepares its budget and submits it to the office of the Prime Minister. Hence, its funds constitute only part of the entire budget of the office of the Prime Minister. Also, NEC depends on donor money which sometimes does not come timely. In any case, the funding issue has been a subject of debate since NEC was founded in 1993.

5.4 Summary of Views for Reforms

5.4.1 The Government

From the Kisanga Report, the government maintained the need to continue with the current composition of the NEC on the ground that in order for the Commission to be fair its commissioners should be the people with professionalism and a reputable status in the society of which their appointment does not consider the partisan bases. On the appointment of NEC commissioners, the government insisted that the president should retain the power to appoint the commissioners. This is due to the fact that the president has constitutional powers to make such appointments (Extracted from Kisanga Presidential Committee, 1999).
5.4.2 Presidential Commission Reports

- **Nyalali Commission (1992)**
  This commission proposed that the Chairmen and the members of the Electoral Commissions should be appointed by the Parliament concerned. But, they should not be appointed from among Members of the Parliament. The directors of Elections, who shall be the Secretaries of the Commissions should be appointed by the parliament on the recommendation of the Civil Service Commission concerned. The Nyalali Commission, however, maintained that Electoral Commission should be independent of Parliament in discharging its functions.

- **Kisanga Committee (1999)**
  On the selection of the NEC commissioners, this committee proposed for the involvement of the parliament in the process of appointing the commissioners by the president. Also the political parties should not be involved in this process so as to protect the commission from endless political conflicts.

5.4.3 Election Observers

- Commonwealth (2010) recommends that the president should share the power of appointing the NEC commissioners with the Parliament. Also they went further to call for the need of having a fixed term non-renewable tenure for the commissioners so as to ensure independence of the commission.

- The EAC (2010) calls for revisiting the process of appointing the commissioners so as to avoid any misinterpretation based on impartiality.
European Union (2010) contends that, the fact that election commissioners both in the Mainland and Zanzibar are presidential appointees and other electoral officials at lower levels are civil servants raised concerns among stakeholders and in some cases led to doubts about the impartiality of the electoral administration.

TEMCO has consistently raised concerns on the current organization of the NEC. In summary, its concerns are on the commission’s Human Resources, and Financial Resources, and commented on the appointment of the NEC commissioners by the president as the issue which raises scepticism on the independence of the commission. Also it questioned the dependence of the commission on government finance by arguing that NEC has no special vote in the government budget hence it depends entirely on the government. This state of affairs jeopardises the independence of NEC. Lastly, TEMCO has commented on the utilization of senior government officers as NEC support during the process of elections as the other area which rises doubts concerns on the independence of the commission (TEMCO 1997; 2001; 2006; 2011).

5.4.4 Views from the People
The Kisanga Committee report (1998) contains the views of the people on the mode for getting the commissioners of the NEC. Out of 45318, of those who offered their views 39408 (86 per cent) favoured the current system of which the president appoints the commissioners. Moreover, 5675 (12.52 per cent) proposed for the mode in which the political parties are involved in appointing the commissioners. Also, 70 (0.15 per cent) proposed for the need to have the selection panel for the commissioners. Furthermore, the remaining 165 (0.36 per cent) vowed for the parliament approval of commissioners the selection.
5.4.5 Scholarly Works

5.4.6 NEC
The NEC has been consistently calling for the reforms in its operation. The calls have been on a number of issues which are the following; the need for National Election Commission Act,
permanent staffs who are hired and controlled by the commission, and Fiscal Autonomy (NEC 1997; 1998; 2001; 2006; 2011). Moreover, in its views to the Constitution Review Commission, the Chairman of NEC, Justice Damian Lubuva proposed that the commissioners of NEC should be proposed by different groups in the society. Thereafter their names should be taken to the president for the selection. This is based on the ground that, such practice will enhance the freedom of NEC from the government (Mwananchi, 19/1/2013).

5.4.7 Consultancy Reports
Jorgen Ellkit, Mark D. Bomani, and Chris Peter (1998) commenting on the system in which NEC commissioners are selected, they proposed for the creation of the Screening Board which would invite names of possible candidates. After screening, then the names are submitted to the president for the selection and appointment.

5.4.8 Views from Political Parties
- CCM in its constitution views submitted to the Constitutional Review Commission it proposes for a system in which a president shares the powers, of appointing the NEC commissioners, with the parliament (CCM, 2013).

- CHADEMA, in its constitutional views, calls for the NEC members to be from the political parties, civil society organizations, Lawyers Association, Religious Organisations, and Judicial Service Commission. These commissioners should be approved by the parliament (CHADEMA, 2013).

- CUF contended that, the NEC commissioners should be proposed to the president by various sources which are; Political Parties, civil society organizations, the Registrar of political parties, Religious Organisation, Attorney General
Office, Disabled, Women, Youth, and Elderly. The president will then make a selection, basing on the proposed names, and thereafter the selected list from the president should be taken to the parliament for the approval (CUF, 2013).

5.4.9 Views from CSOs

➢ Jukwaa la Katiba (2013) proposed that the commissioners and the director of the NEC should be shortlisted by political parties; there after they should be selected and approved by the parliament. The president’s role should only be to announce the members of the commission.

➢ Mtandao wa Misikiti Tanzania (Network of Tanzania Mosques) proposes that the parliament should be the body with the power to appoint the NEC and not the president. This is from its views submitted to the Constitutional Review Commission.

5.5 Analysis of EMBs

5.5.1 Evaluating arguments for NEC’s independence

The question as to whether NEC is independent or otherwise has divided academics, politicians, government and practitioners. The areas of contestation are four and involve: the appointment procedures of the commissioners, mode of finance, tenure of commissioners, and the role of the judiciary in handling electoral disputes. Those who argue that NEC is independent (mainly the government, the ruling party, NEC itself, and some academics) normally cite Article 74 (7 and 11) of the Union Constitution which provides that NEC is an independent department and that it has no any obligation to follow any order or directives from any person or government department or opinion from any political party. Moreover they cite Article 41(7) which states “No court is allowed to inquire into the election of a presidential candidate who is declared by the electoral commission (NEC) to have been duly elected” and Article
74(12) which puts that no any court is allowed to inquire into any matter done by the NEC in discharging its duties.

From the above argument, three things stand out. First is that, the constitution seems to identify four enemies that can undermine the independence of EMBs, namely: the court, any person, government department\(^3\), and any political party. A critical examination shows that, of all the enemies, the court is impliedly considered the worst and it has therefore been constitutionally restricted to inquire anything about the NEC. The spirit behind Articles 41(7) and 74(12) of the constitution of the URT 1977 is to exclude deliberately the jurisdiction of the High Court of Tanzania to inquire into any matter regarding the results of the president to have been elected and declared by NEC the winner as well as to inquire the manner in which NEC conducts its business. Although the High Court has all along been circumventing exclusive clauses like these under the ‘Inherent Jurisdiction’ ground, these provisions have yet to be tested in the court. But it has to be noted that independence does not mean hegemony and lack of accountability. To restrict the court from inquiring into election matters especially that of the president means to deny aggrieved parties of their democratic right to query the conduct of a public institution. This is contrary to the role of the judiciary as provided by the URT Constitution 1977, Article 107A that states ‘the judiciary is the final authority in rule adjudication’. Similarly this is contrary to the African Union Commission and the

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\(^3\) The Prime Minister’s Office through which NEC gets its resources may as well influence NEC’s decisions. The budget may sometimes be inadequate and released untimely. This can undermine the capacity of NEC to handle its responsibilities as specified by the law by forcing it to negotiate with the incumbents to favour them. See also the report of the Tanzania Election Monitoring Committee (TEMCO) 1997, p137-138. In this report TEMCO cites an interview of the Chairman of the NEC (Justice Makame) with the Daily News of 10 October, 1995 in which he tacitly admitted the commission’s lack of independence especially in employing its own staff and lack of independent finance.
African Association of Electoral Authorities 2003\(^4\) which put that the judiciary should be recognized as the final forum of settling disputes arising from the management and results of election.

The other enemy is ‘any person’. The phrase ‘any person’ may tempt one to believe that even the president who is the appointing authority of the Commissioners is also subject to this provision. However it is doubtful if this is the correct position bearing in mind that the Commissioners are singly appointed by and are accountable to the president who may remove them from office for any reason as stated under Article 74(5) of the URT constitution 1977. The president who is also the chairperson of the ruling party (CCM) and the direct and formal interested party in the outcome of an election may misuse this wide discretional powers to influence the decisions of NEC on his/her favour.

The last outlined enemy is a ‘political party’. In its broadest meaning, political party is an organization of people whose aim is to capture state power through contesting in elections. It should be noted that any political party has its own leadership that is not distinctive from the party itself. The president (the chairperson of the ruling party) and who singly appoints the Commissioners of NEC whose tenure is at his/her pleasure may have either direct or indirect influence over NEC to favour his/her party. It can generally be learnt therefore that, the constitutional clauses which purport to declare NEC as an independent department do not offer and protect such independence in a practical sense\(^5\). There is a big loop-hole


\(^5\) This position is also shared by the Tanzania Election Monitoring Committee (TEMCO). In its reports of the General Elections of 1997 p.137 and of 2001 p.19-20, TEMCO states very categorically that while the Constitution of the URT 1977 Articles 74(7), (11), (12) and the Elections Act section 4(2) ideally purport to
for the appointing authority to influence NEC whenever he/she wishes for his/her own advantage.

Related to the above, NEC relies on senior government officers at the regional, district and constituency levels as Returning Officers in conducting elections. These officers are employees of the Local Governments and they are tightly under the influence of the Regional and District Commissioners who are also cadres of the ruling Party (CCM). TEMCO has clearly shown that in all the previous elections of 1995, 2000, 2005 and 2010, the influence of the Regional and District Commissioners over the public servants was systemic and maximum. For example, TEMCO (1997:194-5; 2001:87; 2006:75-6) shows how the Regional Commissioners mobilized heads of government departments to work in favour of the ruling party. As the head of all government activities in the region, all returning officers and their assistants are his/her subordinates. This suggests that the civil servants who manage elections are perceived as partial. Even more critical to the impartiality of NEC is the appointment of Local government executives as Returning Officers (ROs) and AROs. Although these swear to non-partisanship and impartiality they are seen as interested people whose continued appointments depend on the incumbent party continued stay in power. (CUF, NCCR-Mageuzi 2012). These agents have been a weak link for NEC, which they could not sanction. On the government side some ROs in constituencies where the opposition won have been penalized. In the 2010 the RO for Arusha Urban Constituency, where the opposition was strong and later won, was transferred from Arusha without consultation with NEC which had to appoint a new RO. (Arusha Times 25th September 2010). That person was accord an independent status to NEC, practically, however, the NEC does not pass the basic tests of an independent institution. These include the appointment procedures of the commissioners, lack of independent finance, lack of security of tenure of office by commissioners, and the utilization of senior government personnel at the regional, district and constituency levels.
sacked from his job after the Elections. The problem of this nature was noted in the Ileje by-elections of 1994 (NEC 1998).

Second, the constitution is silent on the safeguarding mechanisms that protect the independence of NEC. Third, these provisions do not question the accountability of the NEC apart from insulating it from interference. In contrast there are those who question the independence of NEC (mainly the opposition parties, some civil societies and academics). The next section examines the arguments raised against the independence of NEC.

5.5.2 Evaluating arguments against NEC's independence

5.5.2.1 Appointment Procedures of Commissioners

The constitutional of Tanzania provides for the unilateral character of the appointment and dismissal of the members of NEC by the President of the United Republic. However the president is also the chairperson of the ruling party (CCM). More often than not, the same president is a contestant in an election. It is therefore doubtful whether the president can be non-partisan in the appointment procedures and so do the appointed commissioners in discharging their duties. In supporting this argument, the case of Judge Mark Bomani is commonly cited. In 1995, one of the NEC commissioners, Hon. Mark Bomani resigned and sought presidential nomination through CCM. It is instructive to note that CCM requires an active membership of at least five years for one to qualify for such nomination. Thus this case has left many questions until today. Was he a party member by 1993 when he took the oath for office? Does the oath one take before assuming the office as a commissioner really makes one a non-party member? His acceptance for nomination by the party could suggest that he was still a party member when he was serving as a commissioner (TEMCO 1997).
Article 74(14 & 15) of the constitution of the United Republic of Tanzania 1977 however, strictly prohibits persons concerned with the conduct of elections to join any political party.

One of the landmark cases on independence of NEC was that of the High Court of Tanzania, Dar es Salaam, Civil Case No. 168 of 1993, Mabere Nyahucho Marando and Edwin Mtei v. Attorney General. In this case the petitioners were of the opinion that the president being a leader of political party in Tanzania has no right to monopolize the exercise of creating an electoral commission. The court ruled that the mere fact that members of the Commission are appointed by the president who is a leader of a political party does not, ipso facto follow that the Commission can not act independently. Chaligha (1997: 58-59) shares this court decision and is of the opinion that independence and impartiality of NEC would depend on the credibility of individual commissioners.

Similar position is retaliated by Mwaikusa (2001:61) who goes further to argue that the president has many appointees. He/she appoints the Chief Justice, Judges of the Court of Appeal and High Court of Tanzania. However there has never been any registered claim on the decisions of the Court of Appeal and the High Court to have favoured the government. This position is too simplistic. The author overlooks the basic tests of independence and simply concentrates on the appointing authority as the common factor of independence to all presidential appointments. The distinction of independence between the court and NEC is very clear. First, the appointment of judges is done by the president after consultation with the Chief Justice for the judges of the Court of Appeal as per Article 118(3) of the URT constitution 1977 and with the Judicial Service Commission for the judges of the High Court as per Article 109(1) of the constitution. Second the tenure of the judges is firmly
protected and secured by the constitution. Judges are not responsible to the president after their appointment. They cannot be removed from the office at the pleasure of the president. Their removal requires investigation by an independent commission of judges from the Commonwealth countries as per Article 110A (2) of the constitution. Moreover, the opinion of such commission is binding to the president. Thirdly, the remuneration of the judges of the Court of Appeal and of the High Court is constitutionally guaranteed on the Consolidated Fund of the Government of the United Republic of Tanzania as per Article 142(5) of the constitution. It should be noted that NEC does not enjoy these advantages as compared to the judges. Moreover in terms of mandate, NEC is limited to election which determines who is to form the government. In contrast, the judges deal with a wider mandate as one of the pillars of the government. The High Court and the Court of Appeal are concerned with administration of justice of all matters ranging from civil to criminal cases. Thus equating the NEC and the judges is an oversight.

Similarly the decision of the High Court on the question of the independence of NEC needs re-examination under the ‘institution-actor dichotomy’ framework. The central issue of this dichotomy is whether institution can be insulated from the influence of the actor and vice-versa. To the structuralists (rationalists/legalists) institutions can be insulated from the influence of the environment (internal and external actors). The boundary can be drawn between the two by creating laws and regulations. In this manner it is believed that the actors will be able to realize institutional goals. Scott (1992:183) posits that rational system theorists are quite certain that they understand the functions of organizational boundaries: boundaries contribute to organizational rationality. The behavioralists (naturalists) go beyond the structure. They argue that
to administer a social organization according to purely technical criteria of rationality is irrational, because it ignores the nonrational aspects of social conduct. In contrast, the author puts that natural system analysts emphasize that there is more to organizational structure than the prescribed rules, the job descriptions, and the associated regularities in the behaviour of participants. Individual participants are never merely 'hired hands' but bring along their heads and hearts: they enter the organization with individually shaped ideas, expectations, and agendas, and they bring with them differing values, interests, and abilities⁶.

If the decision of the court is subjected to the ‘institution-actor dichotomy’ framework two things stand out. First is that, the court based its decision on the structuralist perspective. That means, commissioners and the commission are separable and that the actions and behaviour of the commissioners may have nothing to do with the manner in which the commission as an institution performs its functions. The decision also assumes that the appointing authority may have no interests and influence in the manner the commissioners work. It should also be understood that the commissioners and the commission itself are not effectively secured and protected by the constitution. In a football match analogy, this point may easily be brought home. Suppose team ‘X’ plays against team ‘Y’ and the former singly appoints a referee for the game, then two possibilities are likely to happen: either team ‘Y’ is likely to have no confidence with the referee or the referee is likely to favour team ‘X’ bearing in mind that the very same team ‘Y’ has a veto on the tenure and resource of the referee. It is in this way that the independence, impartiality and credibility of the NEC leave a lot to be desired.

⁶ Ibid:54
Second is that the decision of the court did not consider the basic tests of independence but rather concentrated on the appointing authority (who is also a party leader) and the possibility of the commissioners to act partisanly or otherwise. It would be likely that had the court considered the appointment processes of commissioners as well as the safeguarding mechanisms of the independence of the NEC, it would have come up with a different conclusion. Thus treating the appointing authority in isolation from its broader context may be a pitfall. The URT\textsuperscript{7} report (1998:11-12) submits that ‘the president can and ought to be able to distinguish between his state functions and those of his political party...We therefore recommend, however, that for reasons of transparency and appearance of impartiality the President should exercise this power upon the advice of or in consultation with some body’. This government report is crystal clear that transparency and impartiality of the NEC depend on the appointment process which is inclusive. This position is repugnant to that of the High Court of Tanzania.

5.5.2.2 The Role of Judiciary in Elections
The role of judiciary in handling disputes arising from the management and results of elections is restricted. The most cited provision is Article 41(7) of the Union constitution 1977 that states “No court is allowed to inquire into the election of a presidential candidate who is declared by the electoral commission (NEC) to have been duly elected”. This article raises doubt on the credibility of the NEC. What is the rationale of this article? The article presents deliberate double standards and injustice in Tanzania’s electoral system. This is because it allows the court to settle disputes arising from elections for parliamentary results and restrict the same court

\textsuperscript{7} The Government of the United Republic of Tanzania, Ministry of Justice and Constitution Affairs commissioned a study to review the 1995 General Election in Tanzania.
to deal with results of the presidential candidate. To protect the results of a presidential post from the court of law may suggest lack of accountability and bias.

5.5.2.3 **Tenure of Commissioners in office**

The commissioners in Tanzania are appointed for five years. However, the President can remove any commissioner without consulting anybody. Article 74(5) of the constitution states that the president can remove a member of the National Electoral Commission for inability to perform the functions of the office or for misbehaviour. This may likely make the members to be loyal to the president, the factor which may undermine NEC’s independence and impartiality. Chaligha\(^8\) (1997:34) aptly argues:

...to remove any doubts about lack of autonomy caused by this section of the Constitution, it is important for the government to delete this section from the constitution. Once a NEC member has been appointed, the president should not have powers to remove him from office. Either the parliament should be given the authority to investigate his misconduct and if proven to be true, only the parliament should have authority to terminate his membership. Alternatively, the president should appoint a panel of respected Judges of the High Court or the Court of Appeal, to investigate any misconduct by a NEC member, and if proven, the panel should make appropriate recommendations, based on which the president can decide whether to terminate his NEC membership. In this way the NEC will be able to command more respect and autonomy.

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\(^8\) He is also a commissioner of the NEC since 1995. It is likely that his recommendation was informed by his interests and experience as a commissioner.
This quotation raises a number of interesting issues regarding the independence of NEC. One is that, who should terminate a commissioner from the NEC and how? The author proposes either the parliament after it has conducted an investigation against a commissioner or a president after receiving appropriate recommendations from a team of investigators (respected judges). The spirit of this recommendation is that commissioners should not work at the pleasure of the president. And therefore either another organ or the president (sharing his powers with an independent organ) may terminate a commissioner. The author is worried of the present arrangements in which the president monopolizes terminating powers alone. The president may terminate a commissioner from office based on ‘any other reason’ which is unstated. This is wide discretion which is not founded on the principle of transparency. Surprisingly the author shies away from raising an issue on who should appoint the commissioners and how. He simply does not see any good reason on why should the president share his/her powers with somebody for the NEC to act independently. The question of appointment has been at debate since the formation of NEC in 1993 to date. The president who is also a chairman of the ruling party and sometimes a contestant appoints all commissioners unilaterally. In Tanzania, most commissioners have been in the office for over ten years. This may raise doubt on their loyalty to the president. It should be noted that no known critics of the government have ever been selected to be commissioners of the NEC.

5.5.2.4 Mode of Funding NEC
The question of funding of NEC and of elections in Tanzania has raised many complaints from NEC itself and many stakeholders. NEC has been consistent through their periodic reports in asking for
fiscal autonomy from the government, but it has not been granted. NEC gets funding generally in an ad hoc way when there are elections or by-elections. In the elections of 1995 and 2000, NEC stated in its reports very clearly that there is a need for the NEC to get its budget not from the Treasury but from its own account. Funds should be released every financial year by the parliament.

The budget of NEC comes from two sources, the government and from the donor community. Both sources are sometimes unreliable because funds can be inadequate or can be delayed. NEC does not have a budget directly voted for by the legislature instead its funds are voted for as part of the Prime Minister's Office (PMO). Each time NEC organizes Elections or a by-election it has to ask the Prime Minister to provide requisite financial as well as other resources. The availability of funds therefore is dependent on the state of funds in the PMO and its priorities as budgeted funds in Tanzania are sometimes not disbursed as budgeted. NEC does not get annual budgeted funds except some funds to pay for the slim secretariat.

Most donor contributions pass through a basket fund where several donors pool their resources together to create an election project.

The 1985 Election Act Article 122 states that cost of elections will be charged on and paid out of the consolidated fund. That would have made the situation the same as for the case of Judges and CAG. In practice that is not the situation for elections (NEC 1997: 62). The experience with the 1995 General Elections illustrate funding problems faced by NEC.

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9 The URT: The report of the National Electoral Commission on the 1995 Presidential and Parliamentary Elections. Pg. 78
10 The URT: The report of the National Electoral Commission on the 2000 Presidential and Parliamentary and Councilors’ Elections. Pg. 85
In February 1995 NEC had come with estimates of Tzs. 25,325,048.481 (app. USD 44,043,563). By March 1995 the treasury had paid only Tzs 1,154,071,777 (app. USD 2,007,082) when there were so many preparations to the elections that needed to be done. Finally the total costs came to Tzs 38,567,396,767 (app. USD 67,073,734). The funds were paid in phases without taking into consideration the elections timetable. Some of the funds were paid after the election, which meant for a considerable time NEC was indebted to many service providers (NEC 1997: 31).

In those elections donors had promised to give Tzs. 8,591,252,962 (app. USD 14,941,310) but they were paying only as the government was paying and so some of funds were paid after the election. Until May, 28th 1996 donors had paid 8,590,417,212 (approx. USD 14,939,856). NEC was emphatic that inadequate and untimely funding was the source of many problems facing electoral management (NEC 1997: 32).

Donor funds were very significant in the 1995 and 2000 Elections. It was observed at that time, that the funds were so significant that donors had nearly a final say in the running of Elections in Tanzania (TEMCO 2000). Under such circumstances donors would call for some reforms in the electoral system. Some of these were beneficial as they improved transparency in the conduct of Elections. In the 1995 Elections for example, donors pressured for the counting of votes to be done at the polling station. This was adopted and since then it has reduced tensions surrounding the transfer of ballot boxes. NEC reports that a senior government official from the PMO tried to stop that decision by attempting to attend a NEC meeting which was to make that decision. He was prevented by NEC to do so (NEC 1997: 62). It would appear also that the improved funding for elections by the government was
partially an attempt to reduce donor influence in the conduct of elections in Tanzania.

In the 2005 Elections the government funded the Elections at 95% and donor funding accounted for only 5%. The total amount of money was Tzs. 62.53 billion (appr. US$62.53 million) of which government gave Tzs.58.7 billion ($58.7 million) and donors gave US$ 3.05 million (Tzs. 3.53 billion). It however needs to be pointed out that donors provided some funds before the elections by funding the PNVR. In the cost of producing the PNVR the government provided Tzs.30 billion ($30 million) while basket fund donors (UNDP, Denmark, The Netherlands, UK, Norway, Canada, Finland, Germany, Sweden, Ireland and Switzerland) gave US$.9.53 million. Italy gave €160,000 and Japan donated Tzs. 400 million ($400,000) (NEC 2006:14-15).

In the 2010 Elections the Government of Tanzania released to NEC all funds budgeted for the conduct of general elections. The approved budget amounted to Tzs. 60.5 billion. (app. $39 mill). The amount is lower in dollar terms than the 2005 Elections but it need to be noted that the elections in 2005 took longer time because it had to be postponed due to the death of a Vice Presidential candidate which called for more funds for NEC including the producing new ballots for the Presidential Election. In the 2010 Elections NEC also received funds from UNDP under the Election Support Programme (ESP). These funds were used for the purchase of election materials, capacity building for NEC officials and for voter education (TEMCO 2011: 88).

Despite improved funding from the government NEC reports have urged the government to change the law so that it can have its own budget voted by the directly by the National Assembly and allocated
through the Treasury. It is also asking for annual budget allocations so as to allow for the continuous updating of the PNVR as well as running by-elections when the need arose. (NEC 2005: 83). That requests have not been granted.

5.5.2.5 NEC and the Union Jurisdiction

As mentioned above NEC is responsible for Union Elections. This Union Election mandate is not problematic on Mainland Tanzania but it is when it comes to Union Elections in Zanzibar. In accordance with Article 74 (13) of the Constitution of the United Republic of Tanzania, 1977 NEC has to consult with ZEC from time to time. As mentioned above this implies that there is no hierarchy when it comes to relationship between NEC and ZEC. That would have not been a problem if NEC was able to adequately fulfill its Union Elections mandate in Zanzibar. At present it is not the case because a good number of people living in Zanzibar cannot vote in Union elections because they cannot be registered in the ZEC electoral register.

Zanzibar places stringent conditions for people to qualify to be Zanzibar voters. To qualify to be a voter in Zanzibar one needs to reside in Zanzibar for five years continuously. In addition to that, the politics of Zanzibar means that there are many potential voters who are purposely prevented from registering as voters. It is has to do with its revolutionary past where people suspected of supporting the opposition are screened out. As a result, we had for example the absurd situation where the total number of voters in 2010 was very significantly less than those who voted in 2005. The number of registered voters for the 2010 elections in Zanzibar was 407,658 while the number for 2005 was 507,677. There had been claims that the people who were refused to register had no Zanzibar ID
cards but the total number of holders of ZAN-ID cards was 562,008 (TEMCO 2011: 143).

Difference is even more significant if one takes the fact that Zanzibar had a bigger population in 2010 than in 2005. It is means that Zanzibar had more voters when the population was 1 million than when it was 1.2 million. It points out to purposeful and unfair screening out of eligible voters. There have been consistent complaints that many CUF followers were being denied registration (Bakari & Makulilo 2012: 203). It becomes a NEC issue because those who are denied registration fail to vote not only for Zanzibar elections but also for MP candidates for the Union NA because even if they did not justifiably qualify to vote in the Zanzibar Elections they would qualify simply as Tanzania citizens above the age of 18 to vote for union elections. At present those who do not qualify for Zanzibar Election can be registered by NEC but they only vote for the Union President. Mainlanders living in Zanzibar for less than 10 years are therefore not allowed to do vote in Zanzibar elections. They do not vote for Union MPs in Zanzibar either, because those elections are conducted by ZEC.

NEC has been consistently silent about this disenfranchisement just as it has been about election irregularities in Zanzibar. When the 2000 Election in Zanzibar was aborted in 16 constituencies, NEC did not give statement to condemn what happened, although Union Elections were adversely affected. What it did was to take the mandate of running Union Presidential elections in Zanzibar from ZEC from the 2005 Elections but it did not take from it the mandate to run Union National Assembly elections. One can justifiably say in Zanzibar NEC plays the second fiddle to ZEC. The Registrar of political parties sees this as dereliction of duty on the part of NEC (Registrar 2012).
5.5.2.6  **Perceptions of political parties and public on NEC**

From its formation to date, NEC has not enjoyed confidence and trust of some of the key stakeholders in elections, that is, political parties (particularly the opposition parties) and the general public. For example, on 30th October 1995 opposition parties wrote a letter to the chairperson of the NEC expressing their mistrust with the Commission.\(^{11}\) The study by Makulilo (2007:75) still confirms the mistrust of NEC by the opposition parties. A question was posed to leaders of political parties: “How does your party relate with NEC? Do you have trust in NEC? Why /why not?” Out of 10\(^{12}\) sampled leaders from ten parties, 9 of them responded that they do not have trust and confidence. All of them were opposition parties. The most common reasons given were two. One is that, the president who is also the chairperson of the ruling party CCM appoints the members of NEC. He/she is also involved in the election race, thus, he/she is inevitably inclined to become partial and partisan in appointing the commissioners and so do the commissioners in discharging their functions. Second, that NEC treats CCM positively while the opposition is treated negatively. In 2007, opposition parties issued a statement that if there would not be an independent electoral commission and a new constitution in place, they would not participate in the 2010 elections.\(^{13}\) But nothing happened.

Similarly, the general public still question the independence of NEC. In the study by Ngware (2000:68) it was observed that, only 1.6% of the respondents were of the view that the Commission is independent, 36% of the respondents were of the view that the

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\(^{11}\) See the letter from opposition parties to the Chairman of the NEC, copy to the then president Ali Hassan Mwinyi, Registrar of Political parties and the media in TEMCO 1997 p. 329-330

\(^{12}\) These parties were CCM,CUF,CHADEMA, TLP, UMD, NCCR-MAGEUZI, TADEA, JAHAZI-Asilia, NRA, and UPDP. CCM is the ruling party.

\(^{13}\) Majira Paper, Wednesday, August 8, 2007
commission is composed of by members from the ruling party while
the opposition parties were not represented. In the same study, 53% of the respondents needed the re-examination of the integrity of the
chairperson of the commission, his/her tenure of office, and whether
should the president appoint him/her and 33% of the respondents
sympathised with the commission’s financial and management
problems. Thus, both the opposition parties and the general public
have still questioned the Independence of NEC. This has
undermined its independence and legitimacy. It is not surprising
that in all elections, there have been growing claims of unfree and
unfair elections partly due to lack of independence on the part of the
NEC. This position is well captured by Bakari and Mushi (2005:38)
who argue that all major contestants in elections have not consented
on the electoral rules as well as the institutions governing elections.
The authors observed that the 1995 and 2000 election results were
seriously disputed by the contestants not only on the ground that
the defeated refused to concede defeat but rather on the ground that
in the first place there was no and until now there is no consensus
on the rules of the game.

To sum up our analysis, we wish to quote TEMCO’s report. It states
“how could the National Electoral Commission (NEC) delink itself
from CCM given its composition, manner of its appointment,
reliance on CCM government discretionary funding, and even more
compromising, reliance on borrowed government personnel, most of
whom were believed to be (or to have been in the immediate past)
CCM members?” (TEMCO 1997: 193). This statement calls upon for
reforms.
6. SECTION SIX: RECOMMENDATIONS ON THE EMBs

The administration of free and fair elections requires an independent electoral body which is established and protected by law. This independence should be both actual and perceived. Hence at the general level we recommend for an autonomous electoral body. In order to achieve the independence we specifically recommend the followings:

6.1 Appointment and Selection of members of the EMBs

We recommend that the President should continue appointing members of the electoral commission. However, the President should share his/her powers with another board. The Board in question will invite applications of qualified individuals to apply. It will then shortlist potential candidates and finally carry out interviews in public. Those who qualify (their number must exceed that of the required number) are presented to the president for the appointment. That is to say, if 7 members are needed, the board can propose 12. For the purpose of a Chairperson of the Commission, two names can be suggested. The President can finally appoint the required number from the pool of qualified individuals created by the board. The screening board may be composed of the Chief Justice (as Chairperson), President of the Tanganyika Law Society, a representative of the Human Rights Commission, a representative of the Committee of the Vice-Chancellors, and a representative of the Civil Society Organizations. The panel creates a pool of candidates based on competence, citizenship and non-partisan affiliation of a high political affiliation.

6.2 Tenure of office of Commissioners

We recommend that a member of a commission should have a fixed tenure (e.g. 6 or 7 years). And that a commissioner shall be
appointed for a single term and is not eligible for re-appointment. Moreover, the members of the commission should serve on a full-time basis. A member of the commission should only be removed from office only for—(a) serious violation of the Constitution or any other law, (b) gross misconduct, whether in the performance of the member’s or office holder’s functions or otherwise; (c) physical or mental incapacity to perform the functions of office; (d) incompetence; or (e) bankruptcy. The law should require that a person desiring the removal of a member of a commission on any ground specified above (1) present a petition to the President setting out the alleged facts constituting that ground. On receiving a petition, the President—(a) may suspend the member or office holder pending the outcome of the complaint; and (b) shall appoint a tribunal to investigate the matter. The tribunal shall consist of—(a) a person who holds or has held office as a judge of a superior court, who shall be the chairperson; (b) at least two persons who are qualified to be appointed as High Court judges; and (c) one other member who is qualified to assess the facts in respect of the particular ground for removal. The tribunal shall investigate the matter expeditiously, report on the facts and make a binding recommendation to the President, who shall act in accordance with the recommendation within thirty days.

6.3 Structure and Composition of the EMBs

The commission should have its offices countrywide and permanent staff. Moreover, it should have powers to select and employ its secretariat. This will further its independence. This means that the current arrangement of using staff from local government authorities should be abandoned for the same reasons of transparency and fairness. As for composition, we recommend that the current practice to continue. However, the manner of appointing the members of the commissioners should change as we have already suggested.
6.4 Mandate and Functions of EMBs
The electoral body should have the mandate to supervise all elections at national and local levels. This is because the commission will have all the infrastructures necessary to undertake elections at the stated level. Moreover, the commission should supervise all referendums in the United Republic. The following can constitute its functions:

- To supervise and coordinate the Registration of voters in the Election of the President, Members of Parliament, councilors and local elections in the United Republic of Tanzania;
- To supervise and co-ordinate the conduct of the Presidential, parliamentary Election, and local elections.
- To review the boundaries and demarcate the United republic into various constituencies;
- To co-ordinate the Registration of voters for Election of Councilors in Mainland Tanzania;
- To provide Voter education and supervise institutions and persons who conduct such education;
- To supervise and coordinate referendums in the United Republic;
- To perform any other function in accordance with the law enacted by the Parliament.

6.5 The Role of Court in Elections
The Court of Law should be the final authority in determining justice pertaining to disputes arising from elections. This means that the court will be able to deliberate on all levels of elections: presidential, parliamentary, councils and local elections. However, in case of the Presidential results the law should be put in place to allow a period of at least one month before the new president can take office. This can allow a smooth transition of power.
6.6  Budget
We recommend that the Electoral Commission should get its money from the government Consolidated Fund. Every financial year the commission should submit its budget to the parliament which will vote to it directly. The commission may also receive money from any other sources for the purposes of running its functions.

6.7  Legal Independence
The Constitution should state that the commission and the holders of offices—(a) are subject only to the Constitution and the law; and (b) are independent and not subject to direction or control by any person or authority. This means that the electoral commission should be established by its own Act of the Parliament.

6.8  The EMB Office in Zanzibar
The electoral body of the United Republic should have its own office in Zanzibar. This will allow facilitating not only its effectiveness but also fairness. This is due to the fact that Zanzibar has its own machinery, procedures and laws governing its elections which might be different from those of the United Republic.

6.9  Age of Candidates in Elective Posts
We have considered the issue of maturity and ability from both Sociological and biological points of views and only to note that age in this sense is associated with responsibilities. Hence, at some point, it is expected that individuals have capacities to handle political responsibilities. We also considered the demographic structure of Tanzanians in which the youth constitutes the majority population. Taking all these together, we recommend that the current minimum age of 40 years for the post of president is still reasonable. This entails that an individual will have acquired the necessary competencies and experience at that age. However, we
think that the maximum age limit for this post be 70 years. We have the opinion that beyond this age, especially in African context, one’s ability deteriorates to effectively discharge the responsibilities of this office. For other posts, we think the minimum age of 21 years is reasonable. The maximum can still be 70 years.

6.10 Independent Candidate

We also recommend that the independent candidate be allowed. However, anyone who contests for a seat through this channel should not be allowed to cross-over to any political party with this seat. Similarly, the one who wishes to go through the party channel, he/she should also not be allowed to cross-over with the seat to the independent candidate status. The independent candidate can be allowed at all levels. For further discussion of the previous cases on this matter, the article by “Makulilo, A. B. 2010 “Join the Party or I cannot elect you”: the Independent Candidate Question in Tanzania” is recommended.
This study is about electoral reforms in Tanzania with regard to the electoral system and the electoral management body. The study has surveyed different models and practices in Africa and beyond in these matters. It has been noted that the current systems are defective to warrant inclusive and free and fair elections. As such, in all the previous general and by-elections since the inception of multiparty politics, stakeholders have always questioned the fairness of the legal and institution frameworks governing elections in Tanzania. The study therefore recommends a comprehensive review of the entire legal and institutional regime governing the electoral systems and election management bodies so as to assure their effective functioning and trust among stakeholders. Specifically, it recommends the followings:

(i) Constitutional changes on the electoral system need to consider long term legitimacy and stability of the political system, notably to place safeguards against possibilities of sectarian governments and those based on sub-national identities. The Presidential election need to be a majority system, the possibility of increasing costs notwithstanding here. Hence, for the presidential post, we recommend that the president to be elected based on the absolute majority votes (i.e. more than 50% of the total valid votes).

(ii) As for the parliamentary elections, we find that under the dominant party system, the plurality system excludes severely other political parties in the National Assembly. This “Winner takes all” system does not consider the votes obtained by the losing party irrespective of a small margin.
We recommend for introduction of a mixed system comprising of the PR system and the Plurality system.

(iii) Women seat are important. The question is how the members are going to be accountable to women and not party leaders. Therefore criteria need to be set so that political parties can ensure an inclusive system of determining the PR lists.

(iv) A system of avoiding costly by-elections for constituency MPs and Councillors need to be put in place. A party of a dead MP could nominate a new candidate and subsequently would be appointed by the EMB. However, if an MP resigns then that MP makes his/her party lose the seat. The party which came second could nominate a candidate to be appointed by the EMB.

(v) We recommend that the President should continue appointing members of the electoral commission. However, the President should share his/her powers with another board. The board in question will invite applications of qualified individuals to apply. It will then shortlist potential candidates and finally carry out interviews in public. Those who qualify (their number must exceed that of the required number) are presented to the president for the appointment.

(vi) We recommend that a member of a commission should have a fixed tenure (e.g. 6 or 7 years). And that a commissioner shall be appointed for a single term and is not eligible for re-appointment. Moreover, the members of the commission should serve on a full-time basis. A member of the commission should only be removed from office for
serious violation of the Constitution or any other law, gross misconduct, physical or mental incapacity to perform the functions of office; incompetence or bankruptcy. The law should require that a person desiring the removal of a member of a commission on any ground specified above (1) present a petition to the President setting out the alleged facts constituting that ground; (2) investigation is done by an independent body whose findings should be binding to the president in deciding the matter.

(vii) The commission should have its offices countrywide and permanent staff. Moreover, it should have powers to select and employ its secretariat. This means that the current arrangement of using staff from local government authorities should be abandoned for the same reasons of transparency and fairness. As for composition at the national level, we recommend that the current practice to continue.

(viii) The electoral body should have the mandate to supervise all elections at national and local levels. This is because the commission will have all the infrastructures necessary to undertake elections at the stated level. Moreover, the commission should supervise all referendums in the United Republic.

(ix) The Court of Law should be the final authority in determining justice pertaining to disputes arising from elections. This means that the court will be able to deliberate on all levels of elections: presidential, parliamentary, councils and local elections. However, in case of the Presidential results the law should be put in place to allow a period of at least one
month before the new president can take office. This can allow a smooth transition of power.

(x) We recommend that the Electoral Commission should get its money from the government Consolidated Fund. Every financial year the commission should submit its budget to the parliament which will vote to it directly. The commission may also receive money from any other sources for the purposes of running its functions.

(xi) The Constitution should state that the commission and the holders of offices—(a) are subject only to the Constitution and the law; and (b) are independent and not subject to direction or control by any person or authority. This means that the electoral commission should be established by its own Act of the Parliament.

(xii) The electoral body of the United Republic should have its own office in Zanzibar. This will allow facilitating not only its effectiveness but also fairness. This is due to the fact that Zanzibar has its own machinery, procedures and laws governing its elections which might be different from those of the United Republic.

(xiii) We have considered the issue of maturity and ability from both Sociological and biological points of views and only to note that age in this sense is associated with responsibilities. Hence, at some point, it is expected that individuals have capacities to handle political responsibilities. We also considered the demographic structure of Tanzanians in which the youth constitutes the majority population. Taking all these together, we recommend that the current
minimum age of 40 years for the post of president is still reasonable. This entails that an individual will have acquired the necessary competencies and experience at that age. However, we think that the maximum age limit for this post be 70 years. We have the opinion that beyond this age, especially in African context, one’s ability deteriorates to effectively discharge the responsibilities of this office. For other posts, we think the minimum age of 21 years is reasonable. The maximum can still be 70 years.

(xiv) We also recommend that the independent candidate be allowed. However, anyone who contests for a seat through this channel should not be allowed to cross-over to any political party with this seat. Similarly, the one who wishes to go through the party channel, he/she should also not be allowed to cross-over with the seat to the independent candidate status. The independent candidate can be allowed at all levels.
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