

The Electoral Framework and Preparations for the Elections

The Electoral Framework

The electoral framework of Zanzibar is comprehensive and many elements are satisfactory, although there are areas that could be strengthened with a view to enhancing the quality of the democratic process in the islands.

The Zanzibar Electoral Commission (ZEC) co-operates with the National Electoral Commission (NEC) of the United Republic of Tanzania, and under the Constitution of the Union, the NEC is required to consult with ZEC on various matters. ZEC has autonomy over the elections for the Zanzibar Presidency, House of Representatives and local councils. The relationship of NEC and ZEC comes into view in the organisation of registration, and the supervision and conduct of the elections in Zanzibar for the Union Presidency and National Assembly. For these electoral events NEC utilises the personnel and other resources of ZEC and the constituency boundaries and electoral registers devised by the Zanzibari authorities.

The Constitution

The ZEC is established by the Constitution of Zanzibar and its members are appointed by the President of Zanzibar in her/his sole discretion. The Commissioners can be removed by the President only for inability to discharge their functions of office or for misbehaviour, and pursuant to a stipulated procedure set out in the Constitution. Commissioners are appointed for a period of five years.

The Constitution guarantees the independence of the Commission, by its provision in section 119, sub-section 12. This states that “in the exercise of its functions under this Constitution, the Electoral Commission shall not be subject to the order or directions of any persons, department of Government or view of a political party.”

The courts are prevented from inquiring into the question of whether the Zanzibar Electoral Commission has validly performed any function vested in it by the Constitution. The ZEC is constitutionally bound to consult from time to time with NEC. Section 34, sub-section 7 prevents the courts from inquiring into the validity of the election of a candidate once she/he is declared duly elected as President.

Electoral Legislation

The Election Act of 1984 was extensively amended in August 2000 to strengthen the Commission’s ability to organise free and fair multiparty elections. The amendments gave the Commission the overall power to supervise the general conduct of all presidential, House of Representatives and local authority elections in Zanzibar, and the promotion and regulation of voter education. The amendments have vested considerable administrative

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powers in 'shehas' (who are officers appointed under the provisions of section 15 of the Regional Administration Authority Act of 1998) in respect of the registration of voters and the voting process. Their role could impact significantly on the impartiality or otherwise of the organisation of elections in Zanzibar. Other provisions of the amended Act strengthened the powers of the Commission over the appointment of election staff and clarified many aspects of the voting procedures.

The amendments did not deal with certain provisions of the principal Election Act of 1984, which had been the subject of strong criticism after the elections of 1995. One issue which was singled out for change was the discontinuance of the practice of placing on the counterfoil of the ballot paper the number of the voter in the copy of the register (section 68(3)(c)(iii)). Another was the need to provide each agent of candidates and political parties with authenticated copies of the Statement of the Result.

The absence of official English texts of the Constitution and some other legal instruments served as a constraint to our understanding of the proper interpretation and application of those instruments.

Constituency Delimitation

Section 120 of the Zanzibar Constitution empowers the Electoral Commission to divide Zanzibar into such number of constituencies, having such boundaries and names, as may be prescribed by order made by them, being no less than 40 nor more than 55. The guidelines to be followed in formulating and reviewing the constituency boundaries are set out in sub-section 3, which provides for regard to be paid to:

- density of population and the need to ensure adequate representation of urban and sparsely populated areas;
- population trends;
- means of communication; and
- geographical features,

and for this purpose the number of inhabitants shall be ascertained by reference to the latest census.

There is no requirement on the ZEC to consult with the political parties or to give notice of carrying out a review, but notice of any changes is published in the Gazette. Under section 119(12)(13) ZEC is not subject to the order or directions of any person, Department of the Government or view of a political party and no court shall have jurisdiction to inquire into the question whether ZEC has validly performed any function.

The constituencies for the Union National Assembly elections are coterminous with those for the Zanzibar House of Representatives elections. It follows that changes made by the Zanzibar Electoral Commission affect the number and boundaries of the constituencies for the Union elections. This means that any changes to the constituencies in Zanzibar have to be made in conformity with the Union Constitution and would fall within the jurisdiction of the NEC.

For these particular elections ZEC merged two constituencies within the Stone Town area of Zanzibar town into one, both of which were held by members of CUF.

An additional constituency was created out of one constituency, currently held by a member of the CCM. Further, the boundaries of other constituencies were amended, but the Group was unable to obtain precise details of these changes. The Director of Elections advised that there were no maps available to show the detail of these changes and that the changes had been made to reflect the imbalances in size of the electorates for these areas.

The Vice-Chairman of the NEC told us that ZEC had submitted the proposed changes to them with justification. The NEC had raised no objection.

Qualifications for Registration

Every Zanzibari and every citizen of the United Republic of Tanzania having 15 years' residence in Zanzibar who has attained the age of 18 years is entitled to be registered and to vote in the Zanzibar presidential elections, unless disqualified by any law. However, to qualify to register and to vote in Zanzibar House of Representatives and local elections such a qualified citizen must also be ordinarily resident within the constituency for five consecutive years immediately preceding the registration for the election.

A citizen of the United Republic of Tanzania who has attained the age of 18 years is, unless disqualified by any law, entitled to be registered in respect of their normal place of residence and to vote at elections for the Union President and the Union National Assembly.

A person who has not been resident at her/his present abode for five years is entitled to be registered in her/his previous constituency. The Election Act of 1984 prohibits a person from being registered in more than one constituency or in more than one polling district in a constituency. It also makes special provision for members of the military, police force and persons in the service of Special Departments and their spouses.

Voter Registration

Voter registration was carried out at registration centres during the period 8 to 21 August 2000. The Zanzibar Electoral Commission appointed a Registration Officer for each constituency to implement the registration process. The amendment Act of 2000 introduced the role of the shehas in this process. The Regional Commissioners appoint the shehas; it is widely believed that the shehas must demonstrate loyalty to the ruling party.

The Group was not present during the registration period, but there seemed to be widespread agreement that this process was flawed. All parties expressed this view, which was shared to some extent by the Zanzibar Electoral Commission itself and by TEMCO – a local election-monitoring group. Allegations were made that a significant number of people from the mainland had been moved to various constituencies and that padding was suspected in the more evenly balanced constituencies. There are many instances where the total number of voters on the provisional voters' list exceeded the estimated number of electors by more than 30 per cent – in one case by 66 per cent.

The role played by the shehas in this process caused much concern to the opposition parties. Her/his duty was to verify the identity of each applicant for

registration. Many people were refused registration by reason of the shehas declaring that “they did not know this person”. A particular concern of the Group related to the right of a Zanzibari not being qualified to vote for the Zanzibar constituency elections being refused registration, thus depriving her/him of the right to vote in the Union elections as well as in the elections for the President of Zanzibar.

Complaints had also been made regarding excessive interference by the police in the process. Although it was reported that initially there was a shortage of materials at some registration centres at the commencement of the process this did not prevent citizens from obtaining their registration certificates, but some were initially issued with receipts.

The provisional list of voters was displayed for public inspection on Saturday, 7 October for three days only. This did not afford adequate opportunity for the public to check whether or not their names were included or that their entries were accurately shown. To lodge an objection an individual was required to deposit TSh20,000, which few could afford to do. The provisional voters’ list was not issued to the political parties, which could have assisted in tidying up the many errors contained in the published list. The election law does not specify a date or period for display of the provisional voters’ list. In the case of an objection, 14 days’ notice has to be given to a person to attend an inquiry and a further 20 days to lodge an appeal. The date on which the provisional voters’ list was displayed did not allow sufficient time for this procedure to be followed.

The register contains the voter’s number, name, area of residence, gender and registration certificate number. There were 451,881 voters registered in the 50 constituencies, as compared with 348,934 registered voters in 1995. ZEC stated that the actual numbers registered for these elections represented 99.3 per cent of the projected figure.

There were many complaints that the voters’ list did not contain the names of persons who had been issued with a registration certificate, that it contained duplicated entries and the names of deceased persons and, vitally important, that many people had been allocated to the wrong polling centres. The Director of Elections himself expressed dissatisfaction with the Provisional Voters’ List, saying that many entries had escaped computer entry and that there were many errors in the input of the data. But he was confident that the omissions and errors would be rectified after consultation with the Register. We were to observe on polling day that many voters came to the polling station but found that their names had been omitted from the voters’ list.

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Voter Education

The Zanzibar Electoral Commission was constrained by lack of resources in undertaking voter education, a duty which had been given to ZEC by the amendment Act of 2000. Some voter education activities were undertaken. For instance, in many places sample ballot papers (see *Annex VIII*) were displayed on public buildings and this enabled parties and voters to familiarise themselves with the content and design of the ballot papers and where to place their mark on the ballot paper. However, we were to observe on polling

day that many voters needed assistance in marking their ballot paper. All round there was not enough voter education: more needs to be done before the next elections.

Administration

The Election Act of 1984 made provision for the Director of Elections, who is appointed by the President from among the names of civil servants, to be the Chief Executive of the Zanzibar Electoral Commission. The amendment Act of 2000 conferred on the ZEC the duty to appoint for every constituency a Returning Officer for the purpose of conducting these elections. The District Administrative Officers were invited to apply for the post and were appointed as the Returning Officers for the constituencies falling within their administrative area. Each Returning Officer appointed a deputy and for each constituency an Assistant Returning Officer.

The opposition parties had little confidence in the management of the elections at this level. They expressed the view that the District Administrative Officers, who are government appointees, did not act in an impartial and independent manner.

Nomination of Candidates

Four political parties contested the Union presidential elections:

- CCM candidate – Benjamin Mkapa
- CUF candidate – Ibrahim Lipumba
- TLP candidate – Augustine Mrema
- UDP candidate – John Cheyo.

Nominations for the Union presidential elections were received by the NEC. Twelve political parties contested the Union parliamentary elections for the 50 seats in Zanzibar. In Unguja there were 162 candidates representing the following 12 parties:

• Chama Cha Mapinduzi (CCM)	29
• Civic United Front (CUF)	28
• Tanzania Democratic Alliance Party (TADEA)	20
• Union for Multi-Party Democracy of Tanzania (UPDP)	19
• Tanzania Labour Party (TLP)	18
• Popular National Party (PONA)	15
• Union of Multi-Party Democracy of Tanzania (UMD)	10
• National Convention for Reconstruction and Reform (NCCR-Mageuzi)	8
• Chama Cha Demokrasia na Maendeleo (CHADEMA)	6
• United Democratic Party (UDP)	6
• National Reconstruction Alliance (NRA)	2
• CGADF	1

The number of candidates for the minor parties on Pemba is unknown to the Group, but both CCM and CUF fielded candidates in all 21 constituencies.

Nominations for the Union National Assembly elections were received by the Returning Officer for each constituency. The CUF candidate for the Makunduchi constituency for the Union National Assembly election was disqualified on the grounds that the Returning Officer discovered that one of the supporters to the nomination was not qualified to nominate a candidate. Representatives of the minor parties had advised that this was not discovered until 10 days after the close of objection period. CUF challenged the disqualification without success. Three other Union candidates in this constituency were disqualified leaving just one candidate to oppose the CCM candidate Mr Mohamed Seif Khatib, the Finance Minister.

In the Zanzibar presidential election the CCM candidate was Mr Amani Abeid Amani Karume. The CUF presidential candidate, as in 1995, was Mr Seif Sharif Hamad. The nomination of a third prospective candidate – Ms Naila Jiddawi of NCCR-Mageuzi – was declared invalid by ZEC following an objection by the CUF candidate – Seif Sharif Hamad – that Ms Jiddawi was still a bona fide member of CUF and therefore could not contest any election on a different party ticket.

On appeal, the Zanzibar High Court ruled that the decisions of ZEC were not reversible by any court and refused to hear her application. Ms Jiddawi then appealed to the Union Court of Appeal which, only a few days before polling day and after the ballot papers had been printed, overruled the Zanzibar High Court and ordered that Ms Jiddawi's appeal against ZEC's decision be heard.

The Group was informed by Ms Jiddawi that she had returned her membership card, thus terminating her membership of CUF. This had taken place well in advance of the submission of her nomination. In terminating her membership of CUF she automatically ceased to be a member of the Zanzibar House of Representatives. The Government was aware of the situation.

Of the 158 candidates contesting the 50 seats in the Zanzibar House of Representatives elections, the CCM had 50, CUF 49 and eight other parties nominated between them the remaining 59 candidates.

The nomination of the CUF candidate for the Kitope constituency had been disallowed on the grounds that the candidate was illiterate. Representatives of the minor parties expressed the view that it was unlikely that CUF – “with all the intellectuals in their leadership” – would put up a candidate who was illiterate. The rejection of the CUF candidate resulted in Khamis Salim Ali being elected for the Kitope constituency without a contest. Mr Ali was seeking re-election as a Member of Parliament for this constituency.

At the local elections in Zanzibar CCM put forward 141 candidates, CUF 130, CHADEMA 4, UDP 2, NCCR-Mageuzi 12, TLP 3, PONA 1 and the UPDP 11, totalling 304 candidates representing eight parties.

An amendment in December 1994 to the Constitution of the Union of Tanzania prohibited an independent candidate from seeking election in the presidential, parliamentary and local elections. The Election Act of 1984, as amended by the Amendment Act of 2000, now provides that only political parties duly registered are entitled to nominate candidates at these elections. This is an issue which the Court of Appeal in the Union of Tanzania has ruled unlawful, but it remains in place.

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Political Parties

We noted with concern that there appeared to be no mechanism for communication and consultation either between the political parties or between the parties and ZEC. These are especially important in circumstances of political polarisation, as in Zanzibar. We hope that the parties will themselves see the necessity of reviving inter-party consultation.

Equally, we hope that ZEC – in the spirit of inclusiveness and transparency which needs to inform all modern election management – will in future not only seek to involve the political parties at every stage of the process but also specifically set up a mechanism for regular and close consultation with the parties.

Voting System and Procedure

These elections were conducted under the first-past-the-post electoral system. The election law provides for every person whose name is included in the list of voters to be entitled to exercise their right to vote. A Zanzibari citizen with less than five years residence is entitled to vote in the Zanzibar presidential elections, but not in the Zanzibar House of Representatives or local elections, provided that she/he has registered to vote. A Tanzanian citizen resident in Zanzibar would be entitled to vote at the union elections only provided she/he had registered to vote. The list of voters at the polling station should identify those electors entitled to vote at each particular election. The present format of the list of voters does not accurately reflect this.

The election law provides for all voters to present themselves at the polling station allocated to her/him. It does not make provision for absentee or proxy voting. It does enable voters to seek the assistance of the Presiding Officer or another voter to mark their ballot paper. In the case of a blind or disabled person a declaration is required to be completed by the companion, who may only assist one disabled person.

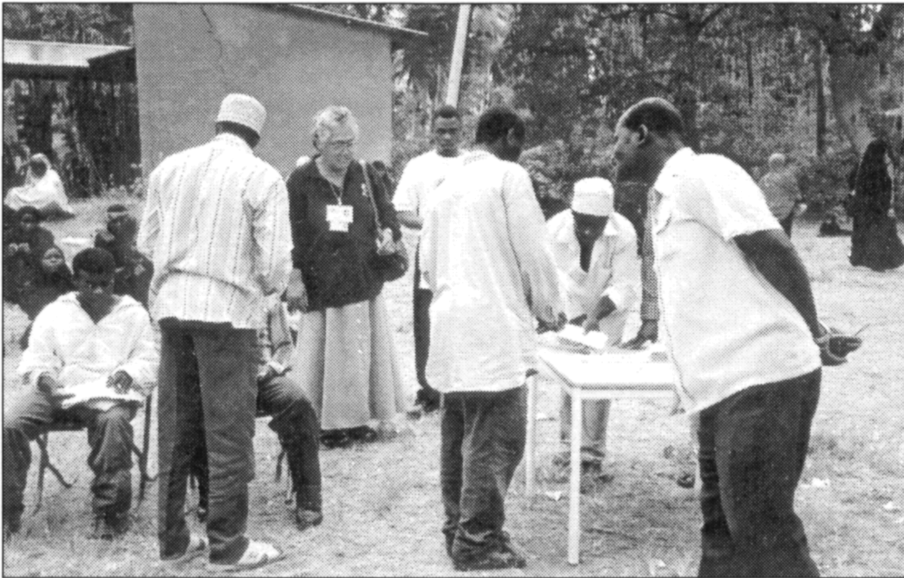
For these elections, over 1,800 polling stations were established with each one containing not more than 400 voters. In most instances, schools and health centres were used as polling stations and their locations were known to the voters.

The timetable in the election law appears to be a little vague. The Electoral Commission can determine:

- (a) when, where and for how long the registration of voters shall take place;
 - (b) when, where and for how long the provisional list of voters should be displayed; and
 - (c) the date for receipt of nomination of candidates,
- without consulting or involving any of the registered political parties, which in a democratic election need to be participants in the process.

Training

The Presiding Officers received training only a few days prior to polling day. On the eve of the poll we were able to witness the assistants receive their instructions and make their oaths. Some did not appear to appreciate the full



ELECTORAL COMMISSION TRAINING . . . in some places the training of election officials continued right up to polling day, as here where Commonwealth Observer Dr Fetuao Alama observes a dry-run of polling day procedures

range of their duties. As we make clear in Chapter 4, the events of polling day underlined weaknesses in the training of officials. Training came much too late.

Distribution of Election Material

The Director of Elections and the representative of the National Electoral Commission advised us that all forms and equipment other than the ballot papers, including ballot boxes and voting screens (which were used for the first time at an election in Zanzibar), had been delivered to the offices of the Returning Officers. Arrangements had been made for these to be delivered to the various polling stations either on the eve of the poll or during the early hours of polling day. The police would accompany the delivery of the materials, including the ballot papers. In cases where they were delivered on the eve of poll the police would provide security at the polling station overnight.

Freestate Products of Bloemfontein, South Africa, printed the ballot papers for all five elections. Arrangements had been made for these to be boxed into sets for delivery direct to the Returning Officer who would be responsible for ensuring that each polling station received the required number of ballot papers for all electors on the voters' list for that station.