

## ACKNOWLEDGEMENTS

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The findings in this report are based on information gathered mostly from the 3<sup>rd</sup> of August, 2010 to the 5<sup>th</sup> of November, 2010 with the majority of the information contained within the report having been gathered on the day of the General Elections in the United Republic of Tanzania, on the 31<sup>st</sup> of October, 2010.

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We specifically thank the National Electoral Commission (NEC) of Tanzania, which not only granted the TLS official observer status, but also provided all the relevant background material, and legal documents for the observers. We thank the NEC for their cooperation and assistance throughout TLS's Observation Mission.

We also wish to further extend our appreciation to the Tanzania Elections Monitoring Committee (TEMCO), which deployed four (4) election monitoring and observation experts to four (4) training centers across the country to conduct zonal training for all the TLS observers on the practical modalities for observing elections. In this regards, a special thanks to Dr. Bana and Professor Mushi for assisting with the drafting of the training modules and the TLS data-collection instrument.

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into matters, which further justice and the rule of law in Tanzania. We thank them for the inspiration and their participation in the exercise, and pray that they continue to lend support to the Law Society in furtherance of this and other causes.

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## EXECUTIVE SUMMARY

The Tanganyika Law Society ("TLS") is the Bar association of Tanzania Mainland, founded in 1954 by an Act of Parliament and governed by the Tanganyika Law Society Act, Chapter 307, of the Revised Laws. The TLS was granted official observer status on 30<sup>th</sup> August, 2010 by the National Electoral Commission of Tanzania ("NEC"). Pursuant to the mandate provided, the TLS deployed an Observation Mission, comprised of 190 observers, during the General Elections held on 31<sup>st</sup> October, 2010.

The TLS observers were deployed on Friday, 29<sup>th</sup> October, 2010 to ten (10) regions across the country, namely: Tanga, Arusha, Mwanza, Dodoma, Dar es Salaam, Tabora, Mbeya, Moshi, Mtwara and Mara. All observers were equipped with data collection instruments as well as laws and guidelines for the electoral process.

The TLS's objectives in the observation of the elections were guided by its Vision of "a society where justice and the rule of law are upheld". In line with this Vision, it is the TLS's view that elections – when held freely and fairly – will be a clear indication that the will of the people is being respected.

It is the TLS's view that the National Electoral Commission's (NEC) performance in this year's elections was professional and that the results declared are credible. The TLS also determined that the elections were held in a free and fair manner. But having observed thus, the TLS finds it prudent to make certain recommendations to further enhance democracy and the rule of law within Tanzania.

The recommendations proposed by the TLS are to ensure freeness and fairness in the election process but also to ensure that the will of the people is respected. Therefore, all recommendations are intended to enhance voter participation and education; increase efficacy of the voting process; highlight the areas where legal reform is necessary; and enhance the multi-party system and political sphere within the current system.

## CHAPTER ONE

### INTRODUCTION

#### **Background**

Elections were scheduled to take place in the United Republic of Tanzania ("Tanzania") on 31<sup>st</sup> of October, 2010 for all levels - Presidential, Parliamentary and Councilors. Elections were also held simultaneously in Zanzibar.

On 30<sup>th</sup> of August, 2010, the National Electoral Commission of Tanzania granted the TLS official observer status. Pursuant to the mandate provided, the TLS deployed an Observation Mission, comprised of 190 observers, to ten regions across Tanzania on Election Day, set for 31<sup>st</sup> of October, 2010.

The TLS Observation Mission was led by the Election Observation Committee, constituted by the TLS Governing Council and Chaired by the TLS President, Mr. Felix George Kibodya. The Committee was comprised of members of the Council and Chairpersons of TLS standing committees. The observers were comprised of TLS members and were supported by a select group of law graduates currently studying at the Law School of Tanzania.

Schedule "A" contains a full list of all members of the TLS Observation Mission.

#### **Terms of Reference & Methodology**

The TLS's objectives in the observation of the elections were guided by its Vision of "a society where justice and the rule of law are upheld". In line with this Vision, it is the TLS's view that elections – when held freely and fairly – will be a clear indication that the will of the people is being respected, and reflected in all levels of public governance.

Given the mandate of the TLS and its members, the TLS focused its efforts for the Observation Mission on the Election Day, as well as Post Election matters. The goal of the observation was to observe whether the General Elections were conducted in a fair and free manner.

The criterion used by the TLS was the universally accepted standard of freedom and fairness in a democratic election process, namely that for an election process to be free, citizens must have the right and opportunity to choose. There must be freedom of assembly, association, movement, and speech, for candidates, parties, voters, media, observers and others. The political environment should be free of intimidation.

For an election to be fair there must have been honest balloting and counting, administered without fraud or manipulation by impartial election authorities. Political parties and individuals must have reasonable opportunities to stand for election, and there must be prompt and just resolution of election-related disputes and grievances, before and after Election Day. Fairness also requires a “level playing field”; specifically, there can be no misuse of public resources for campaigns, and all parties and candidates must have an adequate chance of communicating with the voters and winning their support, including reasonably equitable access to media during the process.

The TLS Observation Mission acted in accordance with the principles of impartiality and independence. As a Law Society, the TLS is a key stakeholder in the justice sector, and carries a critical voice in public matters particularly on the broader concept of justice. It is for this reason that the TLS decided to participate in this important civic and democratic exercise to observe whether the election protocols were followed in line with international best practices, as well as local laws.

Specifically, TLS observers assessed the voting process starting with voters’ awareness, transparency, the voting process itself, ballot box safety, vote counting and tallying of results as well as media reports. All of this was done by assessing the efficacy of applicable legislation and guidelines on the elections.

An assessment of all of these would, therefore, form the basis for determining whether the elections were fair, free and thus lending legitimacy to the results.

All observers were equipped with Data Collection Instruments as well as laws and guidelines for the electoral process. A copy of the Data Collection Instrument is attached to this report as Schedule “B”.

## **Activities**

After being granted Official Observer status, the TLS began to involve itself in activities relating to the General Election, including the following:

- i. Holding two key roundtable discussions on elections and democracy, which attracted participation from the Chairperson of the National Electoral Commission, the Registrar for Political Parties, politicians, journalists, academics, lawyers and other stakeholders;
- ii. Placing courtesy calls on key stakeholders;
- iii. Monitoring media reports;
- iv. Gathering and analyzing messages from the TLS SMS Hotline;
- v. Training of all observers;
- vi. Observing elections on polling day; and
- vii. Monitoring the post-election results and political environment.

Two weeks before the General Elections, namely on October 17, 2010, the President of TLS released the TLS's Manifesto to the media and other stakeholders. It is this manifesto that explains the focus of the TLS's participation in the 2010 General Elections.

The TLS Manifesto is attached to this report as Schedule "C".

TLS conducted all of its activities in accordance with the laws of the United Republic of Tanzania, and in particular 'The Guidelines for Local Monitors and International Observers' as set out by the National Electoral Commission ("NEC"). The TLS Observers all conducted themselves in a manner that complied with local and international standards of conduct.

All TLS Observers underwent training for this Mission. Four (4) full-day training seminars were held concurrently in four (4) different regions for the TLS Observers on Saturday, 24<sup>th</sup> October, 2010 and facilitated by trainers from the Tanzania Elections Monitoring Committee (TEMCO) on the practical modalities for observing elections.

The TLS Observers were deployed on Friday, 29<sup>th</sup> October, 2010 to ten (10) regions across the country, namely: Tanga, Arusha, Mwanza, Dodoma, Dar Es Salaam, Tabora, Mbeya, Moshi, Mtwara and Mara.

On the basis of preliminary investigations, the TLS released its Interim Report on the 5<sup>th</sup> of November, 2010 to the NEC, the media and other stakeholders.

## **CHAPTER TWO**

### **POLITICAL BACKGROUND**

On December 9<sup>th</sup>, 1961, Tanganyika (now Mainland Tanzania) became an independent state under the popular political party, the Tanganyika African National Union (TANU). One year later it became a Republic headed by a President. In Zanzibar the Sultanate was overthrown on January 12<sup>th</sup>, 1964 and the Afro-Shirazi Party (ASP) came into power. In April of the same year the two independent states merged to form the United Republic of Tanzania. On February 5<sup>th</sup> 1977, TANU and ASP merged to form Chama Cha Mapinduzi (CCM), which has been the ruling party ever since.

In 1985 President Nyerere retired from the presidency and Mr. Ali Hassan Mwinyi was elected the second phase President of the United Republic of Tanzania. He served two terms of five years each until 1995.

In 1995, Tanzania held its first multi-party election and CCM won the elections with its candidate Mr. Benjamin William Mkapa, who was sworn in as the third Government President of the United Republic of Tanzania on November 23, 1995. In the year 2000 President Mkapa was re-elected for the second term. Thereafter, in December 2005, Mr. Jakaya Mrisho Kikwete was nominated by his party and elected the fourth phase President of Tanzania for a five-year term.

The political (governance) structure of Tanzania is divided into three separate entities: the Executive, Legislature and Judiciary. The president is the head of state and government. The President and Members of the National Assembly are elected by direct popular vote for a five year term. The last election was held in 2005 and CCM scored 80.23% and 88.34% for the Presidential and National Assembly elections respectively.

During the 2010 election period, there was vigorous campaigning by opposition parties, especially such parties as Chama cha Demokrasia na Maendeleo (CHADEMA) and the Civic United Front (CUF). Before the declaration of the final results by the NEC, Dr. Wilibrod Slaa, the Presidential candidate for CHADEMA, contested the results of the Presidential Election and asked for NEC to call a re-run. However, the results were announced on November 5, 2010 declaring President Kikwete the winner of the Presidential Election for a second term.

## **CHAPTER THREE**

### **THE ELECTION ADMINISTRATION**

The National Electoral Commission (NEC) of Tanzania is established by Article 74 of the Constitution and its functions are enumerated in The National Elections Act, sections 3 – 8. The NEC is comprised of the following individuals:

- i. a Chairman who shall be a judge of the High Court or the Court of Appeal of Tanzania;
- ii. a Vice Chairman who is a judge of or a person qualified to be appointed a judge of the High Court or the Court of Appeal of Tanzania;
- iii. a member appointed from amongst the members of the Tanganyika Law Society; and
- iv. four other members who are persons in possession of either adequate experience in the conduct or supervision of Parliamentary elections or

such other qualifications as the President considers necessary for or pre-requisite to, the effective discharge of the functions of the Commission.

The NEC is established to function as an independent body, responsible for the overall supervision of the general conduct of all Parliamentary and Presidential elections in the United Republic of Tanzania. The Chairman and the Commissioners are appointed by the President of the United Republic of Tanzania without oversight, or being sanctioned by, the Parliament as is usually the case with developed democracies.

The NEC also has responsibility over the elections at the Presidential, Parliamentary and Constituency level; demarcation of constituencies; educating all voters throughout the country regarding election issues /campaigns; voter registration and the conduct of the elections; management of the Permanent National Voters Register ("PNVR"); and other functions.

The Director of Elections, on the recommendations of NEC, oversees the running of the election processes. He is assisted by Returning Officers in the districts, cities, municipalities and towns. Under section 7 of the National Elections Act, this role is assigned to every City Director, Municipal Director, Town Director and District Executive Director by virtue of their office.

In 2002, there was an amendment in the Constitution of the United Republic of Tanzania which requires the NEC to establish the PNVR. The PNVR was used for the first time in the 2005 elections and updated twice for the 2010 elections, in 2007/2008 and 2009/2010. It appears that after the final registration, 19, 685, 239 individuals were registered on the voters list for mainland Tanzania.

The NEC distributed the PNVR to all constituencies the week prior to the General Election, and provided all political parties with a soft copy.

The NEC provided all local and international observers with all background materials as well as the local Code of Conduct, to which all TLS Observers adhered.

## **CHAPTER FOUR**

### **THE LEGAL FRAMEWORK**

Elections in Tanzania are governed by the provisions of the Constitution of the United Republic, which is the basic law of the land, complemented mainly by Acts

of Parliament. In addition there are Guidelines, regulations and other instruments issued by the NEC.

Zanzibar, as a distinct component of the Union has its own separate election laws for non-Union elective positions, such as the Members of the Zanzibar House of Representatives. The supervisory organ in Zanzibar is the Zanzibar Electoral Commission (“ZEC”).

Given that the TLS did not deploy any Observers to Zanzibar, this report will focus only on the matters and laws relating to Mainland Tanzania.

## **Constitutional Provisions**

The Constitution of the United Republic of 1977 (currently as amended up to the Fifteenth Constitutional Amendment of 2005) lays down the primary rubrics that govern elections of the President and Vice President of the United Republic, as well as the Union Members of Parliament. Rights and issues addressed by the Constitution on the electoral process include the minimum voting age of 18 years, freedom of expression and association, the right to be elected a Member of Parliament or councilor, the procedure for the election of women to special seats in the National Assembly, the establishment of voting constituencies, the appointment, composition, powers and functions of the National Election Commission and the management of the electoral process.

On the other hand the Zanzibar Constitution of 1984 (last amended in 2010 by the Tenth Constitutional Amendment) is the basic legal instrument governing non-Union elections in Zanzibar. For avoidance of doubt, there are two concurrent Constitutional regimes for Zanzibar which cater for Union and local elections respectively.

## **Legislative Framework**

Specific pieces of legislation governing the detailed process of elections are as follows:

- a) Elections of the Union President as well as Members of the Union National Assembly (called ‘Bunge’ in Kiswahili) are governed by the National Elections Act, Cap 343, as amended up to June 20, 2010.
- b) Procedures of civic elections on the Mainland for the councilors of district councils, town councils, municipal and city councils are found in the Local Authorities (Elections) Act, Cap 292, as amended up to June 20, 2010. Before the General Elections were held, the Director of Elections published the Local Authorities (Councilors’ Elections)

Regulations, 2010 in Government Notice No. 280, dated 13<sup>th</sup> August, 2010 to supplement the legal requirements for the elections of the councilors on the Mainland. Zanzibar has its own legal framework for the election of Members of the House of Representatives and other local non-Union elective posts, that is to say, the Zanzibar Elections Act, 1984 as amended from time to time.

- c) Limitations on expenditure by or on behalf of political parties for election campaigns are prescribed in the Elections Expenses Act, 2010 and complemented by regulations and directives made by the Registrar of Political Parties who fixes the actual expenditure limits for each political party.
- d) The basic qualifications to contest the elections or to field election candidates include nominations by the political parties that have been registered under the Political Parties Act, 1992 as amended by the Political Parties (Amendment) Acts of 1996 and 2006. The Political Parties Act is Union law, applying to both the Mainland and Zanzibar for Union elective posts.
- e) Guidelines are issued from time to time by the NEC to deal with the details not addressed by the law.

### **Registration of Voters**

General elections are held after every five years, but in order to cast a vote at any election for the Presidential, Parliamentary or local council, citizens must first be registered for that purpose. A Permanent National Voters register (PNVR) was created in 2004 and is updated from time to time by the NEC.

After the 2005 General Elections, the NEC updated the PNVR two times in 2007/2008 and 2009/2010. Voters are ordinarily notified to confirm or update their status when they change their residence and when an election or by-election is imminent. After the last updates of the PNVR, the final registration figure stood at 19,685,239 for Tanzania Mainland.

### **Election Constituencies, Wards and Polling Stations**

The National Electoral Commission from time to time reviews the constituency boundaries and demarcates the United Republic into various areas for the purposes of elections. The number of constituencies and wards was revised this year through Government Notice No 271 of 2010 to 381 and 3337 respectively, and the polling sites in the completed general elections were 51,732.

## **Nomination of Candidates**

The election process begins with the nomination of the candidates who are sponsored by political parties, which have obtained permanent registration under the Political Parties Act. According to the electoral laws, each political party sponsoring candidates for Presidential or Parliamentary elections must formally submit the names of their respective candidates to the National Electoral Commission.

For the Presidential Elections, there must be at least two hundred nominators from at least ten regions, including two or more from Zanzibar. A minimum of twenty five nominators are required for a Parliamentary election, while ten or more are required for councilor elections. The nominators must be registered voters for the purposes of the intended elections. The NEC determines the 'nomination day' for the filing of the nominations of Presidential and Parliamentary elections.

Similar provisions apply for the nomination of candidates for the election of the councilors to the districts, town councils, municipal councils and city councils.

## **Political Election Campaigns**

The National Electoral Commission fixes the period and deadline for how and when election campaigns are carried out.

Election campaigns in Tanzania end on the day immediately preceding the Election Day.

## **Main Legal Issues on Election Day**

General elections are normally held once every five years at three simultaneous and concurrent levels, that is to say, for the posts of President and Vice President, the Members of Parliament, and the councilors of local authorities. Separate ballot facilities are arranged for the three levels at each polling station. The requirements below are a combined summary to reflect the provisions of the National Elections Act and the Elections (Local Authorities) Act.

### a) Who Can Vote, Where, and Who Cannot Vote

- i. Every Tanzanian resident citizen aged 18 years and above can vote in presidential, parliamentary and local council elections provided he/she has a valid *voter's card* issued for the polling station where he/she is supposed to vote.

- ii. Foreign residents cannot register to vote, including refugees, accredited diplomatic staff or citizens of the East African Community who reside in Tanzania or who are employed as resident staff of EAC organs in Tanzania.
- iii. A lost or defaced voter's card can be replaced on application to the Registration Officer/Assistant at any convenient time on production of satisfactory proof of the loss of a voter's card.
- iv. A Tanzania citizen is disqualified to vote when his/her name is deleted from the voters' Register; he/she becomes insane; is under a sentence of death, or under a jail sentence of six months or more; is under a declaration of allegiance to another country, or is disqualified under any law in force relating to offences connected with any election.
- v. Change of place of voting is only permissible where the intending voter has obtained a fresh voting registration card from the new polling centre where the voter wishes to vote, after surrendering the card issued for voting at the previous place.
- vi. Proof of lawful registration includes an appropriate entry of the *voter's card* in the PNVR, and the relevant portion of the Register is available at each polling station/district/constituency. Before the voter receives a ballot at the polling point, the card will be checked against the Voters' Register.
- vii. Objections can be made for the omission or inclusion of an intending voter within the time prescribed by the Registration Officer upon payment of a security deposit in the sum determined by the NEC, with copy of the objection to the person against whom the objection is made.
- viii. Voting will take place at the stations/places already designated by the NEC (see GN No 271 of 2010 for the full list of the 189 Presidential/Parliamentary constituencies and 3337 civic wards; voting will take place at some fifty two thousand locations).

b) Presidential and Vice Presidential Candidates

Before the nomination day, each registered political party, which intends to field a Presidential candidate from its own party must submit the name and particulars of its Presidential candidate alongside the Vice-Presidential running mate, who will be endorsed by at least 200 registered voters from ten or more regions of the United Republic, including two regions in Zanzibar.

The names of the Presidential and Vice Presidential candidates must be submitted not later than four o'clock on the nomination day appointed by the Commission with the prescribed money deposit. The names if approved will be announced and be cited on the ballot papers with all other contending candidates.

The running mate of the Presidential candidate is automatically elected Vice President if the candidate is elected President.

c) Parliamentary Candidates

A citizen may run as a candidate for a seat in Parliament who has been validly nominated by a political party for the polling district where he/she is contesting an elective seat.

The nomination is done on the prescribed form endorsed by 25 nominators or more from a registered political party with a refundable money deposit, and a certificate may be issued to the candidate by the Returning Officer.

Objections to nominations or withdrawals are decided by the Returning Officer. Objections may also originate from the Director of Elections, the Registrar of political Parties, or the Attorney General.

d) Candidates for Local Councils

In order to qualify for nomination for local councilor, a candidate for the post of councilor of local authority must be a citizen, validly nominated by, and a member of a political party with full registration under the Political Parties Act, be ordinarily resident in the area of the local authority, and not disqualified for nomination for other reasons as prescribed by the law.

e) Polling Stations

The provisions governing polling stations include the following:

- i. The voting may only be conducted at the appointed polling stations and is supervised by the Returning officer and his/her appointed polling assistants for the polling stations, one of whom shall be presiding officer for each station;
- ii. Each polling station shall be provided with sufficient polling booths where the voters can record their votes from a position screened from observation by any persons in the voting hall. ( Polling agents of political

parties, the presiding officer and other officers or authorized people may be in the hall);

- iii. Outside each polling station the Returning officer of the constituency shall put up a conspicuous notice showing in alphabetical order the surnames and the full names of all candidates with a recent passport size photograph with the logo of the sponsoring political party;
- iv. Both inside and outside each polling station notices shall be posted containing instructions on the voting procedure for voting;
- v. Copies of the voting register containing the names of the voters who may vote at that polling station;
- vi. Each political party may appoint its polling agent for each polling station to safeguard the interests of its candidate at the polling station. The name of the agent must be notified in writing to the Returning officer not later than seven days before Election Day;
- vii. Every ballot box shall be constructed in a manner that allows voters to insert, but not to withdraw any ballot papers;
- viii. Before the voting starts the presiding officer of each polling station shall show the empty ballot box to persons present so that they may verify that it is empty, and then the box will be sealed in a manner preventing its opening without breaking the seal; and
- ix. Each polling agent shall be invited to attend the opening of the voting.

f) Persons allowed to be Present at Polling Stations

The following individuals are authorized in law to be present at the polling stations:

- i. the presiding officer, who may question the presence of any voter or person;
- ii. the polling assistant;
- iii. polling agents;
- iv. voters;
- v. persons assisting incapacitated voter;
- vi. candidates;
- vii. observers authorized in writing by the Electoral Commission and by the presiding officer;
- viii. members and officers of Electoral Commission;
- ix. the Regional Elections Coordinator;

- x. the Returning Officer and Assistant Returning Officer; and
- xi. Police officers and other persons responsible for security at a polling station

g) Procedure for Voting

Before the start of the voting, at each polling station each polling agent shall be required by the presiding officer to submit in the prescribed manner any complaint received, or any statement of his/her satisfaction on the voting arrangements in the polling station.

Every voter shall present himself/herself to satisfy the presiding officer of the polling station that he/she is entitled and qualified to vote at that station by producing his/her voting card. Voters with disabilities may ask for assistance from a person of their choice, other than the presiding officer, polling assistants or polling agents.

Voters shall be given a ballot paper after producing to the presiding officer a valid voter's card or identity for that polling station, and after verifying that their respective names are recorded in the Voters' Register at the station, and after that ballot paper is perforated and stamped with an official mark; the number of the voter in the Register shall be marked on the counterfoil to show that a ballot has been received by the voter.

In the presence of the polling agent the presiding officer may on request explain to the illiterate voter the procedure for voting.

Where any voter has any complaint on the conduct of voting in the polling station or polling district where he/she is registered, such voter may submit a complaint in the prescribed form to the presiding officer before or immediately after voting but before leaving the polling station. The complaint shall be recorded in the presence of the polling agent if the complaint concerns the conduct of the presiding officer.

h) End of Voting and Time Extension

Where polling is interrupted by a riot or open violence, the presiding officer shall adjourn the proceedings to the following day and shall immediately inform the Returning Officer of the adjournment.

Where at the hour of closing the voting at a polling station there are voters present who have not voted, the poll shall be kept open until they vote.

Furthermore, after the voting is completed at the polling station, the polling agents shall be given the final opportunity to state on the prescribed form whether or not they are satisfied or whether they have any complaint, and any complaint reported shall be addressed 'in the best possible manner'.

i) Persons Who May Attend Counting of Votes at Polling Station

The following individuals are authorized by law to attend at the counting of votes at the polling stations:

- i. The presiding officer;
- ii. a polling assistant;
- iii. polling agents or alternate polling agent;
- iv. candidates;
- v. observers authorized in writing by the National Electoral Commission;
- vi. the Director of Elections;
- vii. member of Electoral Commission;
- viii. the Regional Elections Coordinator;
- ix. the Returning Officer, Assistant Returning Officer, Regional Election Coordinator;
- x. Police officers and other persons responsible for security where counting is conducted

### **Procedure of Counting Votes & Counting Process**

Votes of both Parliamentary and Presidential as well as councilor elections cast at a particular polling station shall be counted at that polling station, save and except where for security reasons, or on account of inadequate counting space, the counting of votes cast at neighboring polling stations in a polling district may be conducted at one single place, but the votes of each station shall be counted separately as if the counting were done at their respective polling stations.

Every polling agent appointed by a political party shall be the counting agent of the candidate who appointed him/her.

Counting of votes cast at every polling station shall be carried out continuously, and at the conclusion of each stage the candidates or their polling agents shall be required to record a statement in the prescribed form whether they are satisfied or whether they have any complaint in relation to the counting of the votes cast.

Every statement recorded and submitted by the presiding officer to the Returning Officer shall be confirmed by the signatures of polling agent, presiding officer and polling assistant.

The counting process requires the following:

- i. ascertaining the number of people who have voted, the number of unused ballot papers, and spoilt papers;

- ii. inspecting seals on ballot boxes to see whether they are tampered with;
- iii. unsealing the seal, and open the ballot box;
- iv. the presiding officer will manually take out and count aloud each ballot paper and record the total in the presence of the persons allowed to attend the voting;
- v. a recount may be made on request by a candidate, or where there is an equality of votes between candidates;
- vi. The presiding officer shall display copy of results of voting at a conspicuous place, and give a copy to every polling agent;
- vii. the presiding officer shall lock up and seal all ballot papers, and shall transmit to the Returning officer the ballot box together with the report of the results at the polling station; and
- viii. a separate report shall be prepared for Presidential, Parliamentary and councilor results, for which the presiding officer shall require the polling agents to sign, or else the presiding officer shall require the candidate or his agent to give reasons in writing for refusing, and if no explanation is given the candidate shall be estopped from raising any complaint regarding the voting or counting procedure in that particular station.

### **Final Totaling of Votes for President, Parliament and Councils**

The Returning Officer shall supervise the computation/aggregation of all Parliamentary and Presidential and councilor votes in the *exclusive* presence of the following:

- i. Assistant Returning Officer
- ii. Regional Election Coordinator
- iii. A member of Commission
- iv. Director of Elections or electoral office
- v. The candidates
- vi. A counting agent
- vii. A police officer or person responsible for security at place of counting
- viii. An observer authorized in writing by Commission

### **Announcing/Publication of Results**

The Returning Officer shall declare elected the winning candidate after counting, with notification to the candidate and send a report to the NEC, including complaints raised at each stage and measures taken thereon.

The NEC shall publish results of voting in the *Gazette* in respect of each constituency/local authority ward.

## CHAPTER FIVE

### ELECTION DAY

#### **Election/Voting: Its Constitutional Basis**

Article 8 (1) (a) of the Constitution of the United Republic of Tanzania states as follows:

sovereignty resides in the people and it is from the people that the Government through this Constitution shall derive all its power and authority

It is the Constitution therefore that sets the basis that those in power get authority and legitimacy from the people they are leading. According to the Tanzanian Constitution this sovereignty and legitimacy is transmitted from the people to the leaders by the people themselves via a democratic process of election. Citizens of Tanzania have the mandate to vote under the Constitution. Article 5(1) of the Constitution provides as follows:

Every citizen of the United Republic who has attained the age of eighteen years is entitled to vote in any election held in Tanzania. This right shall be exercised in accordance with the subarticle (2), and of the other provisions of this Constitution and the law for the time being in force in Tanzania in relation to public elections.

It is under the above Articles of the Constitution that the laws on elections were passed establishing the NEC as the entity responsible for setting the election day in order to fulfill the above objective.

#### **The Law on Election/Voting Day**

Section 46(1) of the National Elections Act provides as follows;

where candidates are nominated for election other than a by- election in a constituency, the Commission shall, by notice published in the Gazette appoint a day not less than sixty days and not more than ninety days after the day on which they have been nominated to stand as candidates for election in the constituency "

Article 38 of the Constitution provides for election of the President by all qualifying citizens and section 56 of the Local Authorities (Elections) Act provides for appointment of a polling day for councilors/local government leaders.

## **The Election Day for 2010 General Elections**

The 31<sup>st</sup> of October 2010 was appointed by the National Electoral Commission to be the Election Day for the General Elections in Tanzania for the year 2010.

### **Opening of the Polling Stations**

As required by law, the polling stations opened at, or close to, 7:00 am, and where there were delays, these delays were not substantial. Minor incidents of limited space for the polling stations and in the layout of the polling centers, particularly at the beginning of the poll, were reported.

The TLS recommends that steps be taken to avoid a recurrence of such incidents in the future. The observers noted that the opening procedures at all stations were observed and were applied consistently and in line with the stated regulations from the NEC.

The parties' agents were allowed to inspect the transparent ballot boxes to see whether they were empty and there was not a single complaint that boxes had any materials inside before the voting started.

### **Voters' Lists**

The TLS observers found that the voters' roll or list for each polling station was visibly displayed outside or near the polling station in question for eight days prior to the polling day. In some cases, due to the large number of polling stations crowded together in a small space in a polling centre, the polling lists displayed were ambiguous as to which polling station they referred to. In some cases like at Wazo Engineering in Kawe Constituency, Kinondoni District the lists of voters had been torn off and voters were searching for their names from lists spread on the ground.

The TLS observers found that on many occasions, voters were claiming that their names did not appear on the voters' roll despite the fact that they had registered and could produce voters' registration cards.

In some instances, voters found that they were relocated to other polling stations. However, it appears that this situation was easily rectified by election officials who redirected these persons to the correct polling station.

Some members of the team encountered situations where serial numbers of registration cards were different from numbers in the voters' register. In the latter scenario, voters were permitted to vote but had to fill in a particular form.

The TLS observers also noted that some voters came to the polling station with his/her voter's registration card only to find his or her name was neither on the displayed list nor in the voters' records with NEC officials at the station. In such instances voting was denied in such instances, there were recorded incidents where repeated attempts to get assistance from the NEC hotlines proved futile.

### **The Voting Process**

The TLS observers visited 10 regions in the whole of Tanzania Mainland. The TLS observers noted that the atmosphere on the day of the General Elections was generally peaceful and orderly, with voters waiting patiently, despite long queues in the morning.

Throughout the day, the observers observed the voting station staff behaving in a consistent and professional manner and demonstrating a good awareness of the codes and practices expected of them. There was no evidence of significant irregularities that might suggest either unintentional or intentional fraudulent voting practices.

Having said that, there were a number of technical deficiencies which were observed on more than one occasion, including:

- a) Some people could not locate their names on the voters' lists posted outside the voting stations and that the provided NEC Hotline number did not provide the expected support. Furthermore, reports from Temeke constituency showed that some of the NEC officials were not familiar with how to operate some of the equipment, which may have alleviated the problem had they known how to. It is possible that this situation was the same in other parts of the country.
- b) The PNVN was published only one week prior to the elections, giving voters only one week to ensure that their names were on the list. The TLS observers noted that the majority of voters did not - or could not - utilize the one week to ensure that their names were on the list.
- c) Observers noted that many voters came to cast their votes but were informed that they were registered in other constituencies, thereby preventing them from voting or creating substantial delays in the voting.

- d) It was also observed that in certain polling stations some voters were not well versed with the methods of voting. Some were also not clear on the time for the opening of the voting stations.
- e) There were some incidents of the slow pace in handling the voters.
- f) There were incidents of faulty ballot papers in at least seven (7) constituencies, which did not partake in the elections.
- g) There was delay in counting and declaration of the results (particularly for the Parliamentary and Presidential elections), which in certain cases resulted in skirmishes at the tallying stations. The TLS observed at least three incidents<sup>1</sup> where exited voters were involved in skirmishes that led to the police using force, tear gas and other means to disperse crowds.
- h) Some voters did not know how to vote. Specifically, they did not know what to do with the ballot papers. Some of those who asked were told to put a mark "v" in the box on the extreme right of the ballot paper; those who did not ask marked anywhere in the ballot paper sometimes on the photograph of the candidate or on the symbol of the party of his or her choice. It was also observed that some voters did not vote at all, evinced by unmarked, folded ballot papers. In general, these votes accounted for most of the spoilt votes.

## Voting Stations

The voting centers were laid out in a way that facilitated the flow of voters and maintained the secrecy of the ballot generally, with minimal exceptions, and as a result satisfied the TLS that there were no outstanding deficiencies in terms of the polling centers.

It was, however, noted that in some polling station voting booths were facing the queues of the voters waiting to vote and a voter would go to vote while all other voters waiting in the line were facing the voter's back. This could have perhaps removed the degree of secrecy (or privacy) on the part of the voting stations where the set up was as described above.

The other issue was the materials from which the voting booths were made of. The structures were made of light cardboard, which were capable of being blown away by a light wind and in many instances they had to be tied down by some means to some other permanent structure. The TLS observation team noted that all polling centers were allocated a manageable number of voters.

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<sup>1</sup> In the following constituencies: Temeke, Ubungo and Mwanza.

## **Voter Turnout**

There were queues outside the polling stations on the voting day from the first instance of voting, but voters were orderly and patient. From early morning, a high voter turnout was seen but the influx declined towards noon and by 1:00 pm most stations had very few, if any, voters. This was the general observed trend and by closure of voting at 4:00 pm, all polling stations had no more voters coming to vote.

The official voter turnout for the presidential elections was declared by the NEC chairman on the 5<sup>th</sup> of November, 2010 to be 42.84%. This is a drop by 29.44% compared to the presidential voter turnout in the 2005 general election, which was 72.28% of the registered electorate. This is not an impressive development.

There were recorded incidents of even fewer voters – for instance, at polling station no. 24434-9, Wazo Engineering in Kawe constituency, Kinondoni District 425 voters had been registered to vote but only 145 appeared to vote, which is only 29% of the registered voters.

## **Election Officers, Party Agents and Security Personnel**

The TLS observers noted with satisfaction the helpful, courteous and professional manner of the majority of the election officers. In almost all cases, the staff demonstrated a good knowledge of procedures and regulations pertaining to the elections. Despite instances of procedural irregularities, which were the exception rather than the norm, the team was very impressed by the conduct of the election officers.

Party agents were permitted to be present and cross check all procedures. In most cases, the party agents were vigilant in monitoring proceedings, were not impeded and did not attempt to obstruct the normal flow of the voting process. However, the TLS observers did note that only some of the political parties had representatives at the polling stations.

Observers noticed that disabled and illiterate voters were kindly attended to by the NEC officers.

The team observed police presence at every polling centre visited. By and large, the police presence was not at all intimidating and police were generally helpful in facilitating a peaceful flow of voters throughout the day. The only exception is that in few instances the police were seen frequenting the voting stations with their vehicles or motor bikes while fully armed. This might have been taken by some voters to be some sort of intimidation.

## Observers

The Tanzania electoral authorities were transparent and opened their doors to external and local observers. The NEC put in place a smooth accreditation process. There were many international and local observer missions, including the African Union, the Southern African Development Community (SADC), European Union and East African Community only to mention a few.

The local observers included the TLS, TEMCO, and a civil society alliance, which included the LHRC and many others.

The NEC handed out the observation rules to all observers, setting out guidelines and regulations on how to undertake the observation. According to the NEC Guidelines for Local and International Observers, 2010 the international observers are supposed to submit their report within 30 days from the date of declarations of elections results and the local observers within 90 days.

Invitation and accreditation of the observers is a gesture by the NEC to show that the electoral process in Tanzania is a competent and legitimate process. However, there was one incident involving the TLS Observers at polling station no. 00007638 (Mbezi Mshikamano Primary School) where observers were denied access to the polling station for some time, despite cooperating with election officers<sup>2</sup>.

## Counting

The National Elections Act (s.70A) and the Local Authority (Elections) Act (s. 70A) stipulate that the votes for presidential, parliamentary and local government elections are counted at every polling station at which they are cast, excepting when circumstances such as inadequate security do not allow.

Where the TLS observers were present at the count, the presiding officer strictly followed the prescribed procedures in the presence of the present party agents and observers. The team observed the counting of votes at various polling stations; the counting started immediately after closure of the stations at 1600 hours. TLS team members noted that the counting was carried out according to procedure and that there were no complaints on counting and counting procedures. No fraud or fraudulent signs or acts were spotted at any polling station where TLS had observers.

The TLS observers noted that the NEC had provided a lantern lamp to every polling station in case of a power outage. In some instances election officers were assisted by party agents who had to use their cell phones to get some light in order to count votes.

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<sup>2</sup> There were similar recorded incidents in Temeke and Ilala Districts.

There was good cooperation between electoral officials and party agents during the counting and verification processes, and the security forces did not interfere – nor was there reason to - with the process at any given time in the election.

## **CHAPTER SIX**

### **POST-ELECTION PERIOD**

#### **Counting of Votes**

As stated above in this report, the votes for President, Member of Parliament and Councilor cast at a polling station shall be counted at that polling station, excepting when circumstances such as inadequate security do not allow.

Section 71(1) of the National Elections Act states that the presiding officer for each polling station, assisted by the polling assistants, shall as soon as practicable after the closing of the poll, proceed continuously with the counting of votes in accordance with the methods and the procedures provided until the counting is completed.

Before the votes are counted, the presiding officer and polling assistant in the presence of counting agents or persons authorized to be in the counting room, shall ascertain and record the number of all the persons who voted at the polling station; count and record all unused ballot papers and seal them in a special envelope; and inspect each seal to ascertain whether or not they have been tampered with (S. 73(1) of Cap 343).

It was generally observed that the counting process began immediately after the end of voting time. In fact, and as stated above, many of the stations did not have any voters lined up in queue since the majority of voters had turned up in the morning.

Members of the TLS Observation Team observed the whole process of ballot counting at polling stations and in many occasions, they felt obligated to give advice on the proper method and procedure to follow, as per section 73(4) of the National Elections Act, to provide the needed clarity and to instill confidence in the process. Generally, the TLS Observation Team was satisfied that the counting process was conducted in a manner that promoted transparency and accuracy, and that the final results declared at the polling stations were consistent with the final results posted outside the polling stations at the end of the count.

However, it was noted that in some instances, the presiding officers and polling assistants were not fully conversant with the methods and procedure of counting the votes. As a result, there were incidents where each presiding officer, after consultation with the party agents, decided to use his/her own method.

There were primarily three methods employed by the presiding officers:

i) The first method saw the presiding officer open the ballot box, unfold each ballot paper, display each ballot paper one by one to party agents, announce aloud the candidate for which the vote has been cast and require the agents and polling assistant to record the same their note books/papers. Finally, he/she would request each agent to tally the votes and read back the numbers they had recorded. Although this method promoted transparency in the process, it created unnecessary delay when agents could not come up with the same figure, thereby forcing them to repeat the exercise until consensus was reached.

ii) The Second method saw the presiding officer open up the ballot box, unfolded each ballot paper, display each ballot one by one to party agents, announce aloud the candidate in whose favour the vote was cast and hand over the vote to the party agent according for which the vote was cast. Finally, election officers counted aloud the votes and recorded the aggregate.

iii) The last method employed saw the presiding officer open the ballot box, unfold each ballot paper, displayed it to party agents, announce aloud the candidate for which the vote had been cast and place the ballot paper in separate lots according to the candidate for which they were cast. Finally the ballot papers were counted aloud and the aggregates for each candidate were recorded.

In all of these three procedures, spoilt and disputed votes were recorded separately and finally placed in their respective special envelopes. Spoilt and disputed ballots were subject to intense discussion to ensure that all party agents agreed with the decision eventually taken. Final results for each station were finally announced to party candidates between 20:00 hrs and midnight on Election Day. The Presiding Officers gave each agent copies of the results forms for Councilor, Parliamentary and Presidential votes. Other copies were posted outside the polling stations for the public to see.

At all stations observed, only three to four party agents were present at a given time. The parties most represented were CCM, CHADEMA, CUF and NCCR Mageuzi. The party agents were vigilant in monitoring proceedings, were not impeded and did not attempt to obstruct the normal flow of the voting process. There was good cooperation between the electoral officials and party agents during the counting and verification process, and the security forces did not interfere in the counting process.

Overall, despite instances of delay in counting the ballot papers, which were caused by choosing a poor method of counting and a plethora of forms to be filled (section 79A of Cap 343), the TLS Observation team was impressed by the conduct of the polling staff/election officials. The team also noted the balanced gender representation amongst the election officials which is a credit to the NEC.

The observations made by the TLS Observers do not at all reveal serious anomalies in vote counting at polling stations.

## **Transmission of Ballot Boxes**

The counting of votes, in most centres observed, ended before midnight. Thereafter the ballot boxes and results forms from all polling stations were transmitted under escort by the presiding officers to the ward Returning Officers or Assistant returning officers at specified centres in each ward.

The TLS Observers observed that in certain areas Tanzania People's Defense Force (TPDF) vehicles were used to transport the ballot boxes, results forms and election officers. This exercise continued throughout the night of the Election Day and the following day. The Returning or assistant returning officers, who were mostly Ward Executive Officers (WEO), received the boxes and results papers at specified centres. The TLS Observation Team was informed that prior to the Election Day, all participating political parties and candidates were informed about the place and time when the addition of votes for all polling stations within the ward would be undertaken at the designated centres.

TLS retained its observers in certain selected areas to observe how the tallying of votes took place at the ward level. The TLS Observers noted that while the designated centres received all ballot boxes and result forms from the polling stations, the tallying for parliamentary and presidential votes was required to take place at a designated constituency centres as per section 80(3) of the National Elections Act.

Therefore, once the returning officer or assistant returning officers for the specific ward had received all the ballot boxes and result forms, he/she was required to retain boxes for councilor's election and transmit parliamentary and presidential ballot boxes to the constituency centre. These boxes were transported under the escort by election officers and handed over to the Constituency Returning Officers (ROs) or their assistants.

## **Tallying of Votes at Ward Level**

In all wards observed, the computation of the tally for all the votes cast in the ward and the votes cast in favour of each candidate for councilor's election started around 9:00 am on the 1<sup>st</sup> of November, 2010. Although the party candidates and/or their agents were required to be present to witness the tallying, in many centres only candidates and/or agents of two or three of the bigger political parties were present. These were mainly CCM, CHADEMA, CUF and NCCR Mageuzi.

The tallying exercise was done against the results forms received from the polling stations. The TLS Observers observed that there was no specified method or procedure prescribed to tally the results. Consequently, before the tallying started,

the Returning Officer or Assistant Returning Officer had to consult party candidates or agents present to determine how the process should be conducted.

As naturally expected, the type of method used, dictated the speed with which one could arrive at the final results. Where the method chosen was poor, then the announcement of results was delayed, thereby creating suspicion by the voters who were expectantly waiting to hear the announcement of the votes tally.

One of the TLS observers reported that a matrix method was used to add the figures in one of the centres in Dar es Salaam, where there was protest from supporters of a political party to have the results announced immediately. This method worked very well and within an hour the results for Councilor were announced. Immediately after the results in that ward were announced, he proceeded to the nearest ward where he found that both the Returning Officer and the party agents were putting their heads together to decide how the tallying should be conducted. The Observer observed that the Returning Officer appeared to be very tired and proposed that the same method be used that was employed in the previous ward – after brief discussion, this method was unanimously accepted. Within an hour the results were ready, except that one of the candidates who had expected to win refused to sign the results forms after having found that he was not the winner.

The TLS Observation team observed that in many centres where there was a delay in announcing the results, crowds of angry youth and impatient voters protested vigorously, thereby forcing the Police to fire teargas canisters to disperse them. This seemed to occur in the areas where the election competition was especially stiff<sup>3</sup>. The TLS observers saw that these incidents mostly occurred where a party candidate had already received an official result, based on the tally from the polling station and knew whether they had won or not. In most cases, the crowds gathered where an opposition party candidate was rumoured to have won and so the crowds would come to witness the announcement by the Returning Officer. So in these instances, delays in announcing the results were regarded as attempts by the returning officers to tamper with the elections. It was not uncommon to hear people on the streets or at the tallying centres saying in Kiswahili “*wanataka kuchakachua matokeo ndio maana wanachelewesha kutangaza mshindi*”.<sup>4</sup>

After the tallying of the results and the final outcome of the ballot ascertained by the Returning Officers, the results forms were signed by candidates or their agents and the Returning Officer or Assistant Returning Officer, as the case may have been. However, some candidates or agents refused to sign the forms, a decision which showed that they did not accept the election results nor wished to concede defeat. The TLS Observers did not know specific reasons why these candidates

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<sup>3</sup> Mwanza, Ubungo, Arusha, Moshi.

<sup>4</sup> Translation: “They want to deliberately tamper with the votes, hence delaying to announce the results”.

refused to sign the forms. Notwithstanding this, the Returning Officers or Assistant Returning Officers had the authority to declare the results of the poll by reading aloud the certified votes recorded for the various candidates and did so, thus confirming the candidate with the majority of votes.

TLS Observers did not witness any incidents of fraud, cheating or inaccuracy in the addition of votes to warrant such refusal at the ward level. The process of tallying was done in a transparent manner with participation of all candidates or agents available.

### **Tallying of Votes at Constituency Level**

In all constituencies, the constituency Returning Officers or Assistant Returning Officers were responsible for receiving the ballot boxes and result forms for parliamentary and presidential votes. The time of receipt varied according to the geographical location of the various wards, effectiveness of the election officers at the wards in transmitting the ballot boxes to the constituency, and availability of the means of transport to transmit the boxes. In certain constituencies the ballot boxes and results forms were received on the morning of the 1<sup>st</sup> of November, 2010 while others were received later that day or the following day.

Declaration of results for parliamentary elections varied greatly. As was the case for tallying in the wards, the majority of people who talked to the TLS Observers complained of the inordinate delays in the announcement of the results at the constituency level, and placed the blame on the NEC for poor preparations or attempts to tamper with votes (*kuchakachua*).

The TLS team observed that the blame imposed on the NEC officials was caused by many factors, including technology and software employed for the tallying of the votes. The use of data processing systems under the Result Management System (RMS) in constituencies created an unnecessary delay, thereby causing spurts of violence. In one of the tallying centres at Loyola Secondary School, where tallying for the Ubungo constituency was taking place, the Director of Elections, Mr. Rajabu Kiravu was summoned to the centre to ensure that the tallying was conducted fairly, transparently and speedily to ensure that the results were announced with as little added delay as possible – this was because a huge crowd had started to become unruly and to demand the results of the tally.

It is the TLS's view that the problems that occurred at the tallying centres indicated manifestations of inadequacies on the part of the NEC officials in organizing and managing the elections. It appeared that the system used for adding figures and verification was not put through sufficient trial before it was employed.

## **Announcement of Results for Parliamentary Election**

For the parliamentary elections, immediately after the result had been ascertained, the Returning Officer is required to declare the candidate with the majority of the votes to have been elected as a Member of Parliament. According to reports from the TLS Observers, in all constituencies, the results were declared in accordance with the provisions of the electoral laws. After the election results had been ascertained, the Returning Officers immediately declared the candidates who scored the majority votes as the elected candidate. The winning candidates were awarded "Certificates of Election".

In some constituencies, the declaration of results was made in the presence of observers and journalists. In other cases, the defeated candidates, and counting agents of defeated political parties, had left before the official declaration of results. The copies of election results were issued to candidates or their agents who were present during the tallying process. Copies of the same forms were also displayed on the notice boards of constituencies. The forms were signed by the Returning Officers, the party candidates or their agents. However, some candidates and party agents refused to sign the forms, a decision which showed that they did not accept the election results nor did they concede defeat<sup>5</sup>.

After this process the Returning Officer was required to prepare and submit an online report of the partial results of the election for Presidency from his/her respective constituency. The NEC, after verifying the election results from a constituency, declares the results of such constituency. There were no reports from TLS Observers which suggested that regulations governing the tallying of votes were not complied with.

## **Declaration of Presidential Votes by NEC**

Starting from the 2<sup>nd</sup> of November, 2010, the NEC started to announce results for the constituencies in the manner in which they were received. After all the results were received, the NEC announced the 2010 presidential election results, five days after Election Day on the 5<sup>th</sup> of November, 2010.

According to the NEC there were 20,137,303 registered voters, but the turn-out was very low. Only 8,626,283 citizens actually voted, amounting to only 42.84% of eligible voters.

The candidate for CCM, Jakaya Mrisho Kikwete, secured a total of 61.17% of the votes. This percentage was much lower than the massive landslide victory, which had been garnered during the 2005 General Elections. In 2005, the CCM

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<sup>5</sup> This was famously observed in the Parliamentary contests in Arusha Municipality, Arusha and Nyamagana, Mwanza.

candidate and his political party had secured a victory of 80.23% and 88.34% for the presidential and National Assembly elections respectively.

In 2010, it was noticeable that the opposition parties staged a critical challenge to the ruling CCM. The strongest opposition party was CHADEMA, whose Presidential candidate, Dr. Wilbroad Slaa, managed to secure a total of 2,271,941 votes (26.34%) compared to 668,756 (5.88%) in 2005. The candidate for the Civic United Front (CUF), Professor Ibrahim Lipumba, registered a decline in the number of votes he secured by securing a total of 695,667 votes (8.06%) compared to 1,327,125 (11.68%), which he had secured in the 2005 General Election.

The final results of the Presidential election are contained in Schedule "E", which is attached to this report.

## **CHAPTER SEVEN**

### **CONCLUSIONS AND RECOMMENDATIONS**

We commend the National Electoral Commission and the citizens of Tanzania for engaging in an overall peaceful and transparent election. The position of the TLS Observation Mission is that the General Election held on the 31<sup>st</sup> of October, 2010 met the criteria for fair and free elections, in that the hallmarks of a democratic election were met and upheld by the government. Voters were not intimidated or coerced into voting, all political parties were able to engage in campaigning prior to the elections, and the actual elections were conducted in an open and transparent manner.

While there were concerns prior to the General Election of vote-rigging or the current government engaging in conduct that would cause the results to be suspect, the TLS Observation Team did not observe this to be true. While there were issues concerning the practical logistical concerns on Election Day, the General Election itself was conducted in a fair and free manner.

Having noted this, the TLS Observers noted several logistical problems on Election Day that prevented some people from voting, while others were discontent with the manner in which results were announced. There were issues with the voting machines, while some voters were registered in the wrong constituency according to the PNVR. Furthermore, there were lengthy delays and long queues in some constituencies, causing voter discontent. However, it was generally observed that these problems or issues did not appear to be deliberate omissions by the NEC but oversights and shortcomings, which would require substantial improvement in time for the 2015 General Election.

A notable success for the TLS Observation team was the manner in which people with disabilities were assisted in their right to vote. Almost all of the TLS Observers noted that people with disabilities were accommodated and provided with the necessary assistance in order to cast their vote. However, it was not practicable for the TLS Observation team to observe – with a degree of accuracy – the numbers or treatment provided to women and youth, although it was observed that both groups did turn out to vote but that the numbers were very low.

A strong position developed as a result of the Observation Mission is the need to overhaul the Constitution of the United Republic of Tanzania. In the same vein, we found it prudent to review the laws touching on elections to examine the extent to

which the 2010 General Elections were conducted in accordance with best practices.

As mentioned before, the Constitution of the United Republic of Tanzania, supported by the laws of the land, prescribes the rights and duties of all players including the government. It is through the laws that order is maintained in a society and from whence a society can build confidence in its government and citizens. Therefore, after review of the current laws in place, combined with the observations of the TLS Observation Mission, the TLS makes the following recommendations:

### **1. Candidates with No Party Allegiance**

The Constitution at present does not allow candidates to run for an elective post, whether as President, or Member of Parliament, or even as councilor of the local authority without sponsorship from a registered political party. The right to take part in one's government either directly or through freely chosen representatives is a right clearly enumerated by Article 21 of the Universal Declaration of Human Rights is enshrined in our Constitution by the Eighth Constitutional Amendment Act, 1992 of the Constitution of the United Republic of Tanzania. However, the provisions in the Constitution limit this right only to candidates affiliated with political parties for all elected positions.

The June unanimous decision of the Court of Appeal in *Christopher Mtikila's* case reaffirmed the prohibition of contestants who have no party affiliation. It is the view of the TLS that the citizens of the United Republic of Tanzania should be consulted on this issue - as they were during the Nyalali Commission that resulted in the re-introduction of a multiparty democracy. The absence of such consultation has sparked a vocal dissenting voice in the society, which questions the reluctance to review this provision and understands such reluctance to be fear on the part of the ruling party.

The TLS recommends that the Government initiate a consultative review of the Constitution to ensure that the views of the citizens are adequately captured to ensure that the nation's constitutive document keeps pace with the current needs of the people as well as with the international standards and best practices.

### **2. Polling/Counting Agents**

The Election laws provide for the presence of representatives of all political parties at all the polling/counting sites (numbering over 52,000). However, there have been complaints about the feasibility of doing so - it is neither practicable nor

affordable to engage (and pay) representatives to effectively monitor 52,000 sites on the Election Day and subsequently until the final count is completed and the results announced. There are complaints at some quarters that there is no level playing field between the ruling party and opposition parties because the opposition parties lack sufficient financial resources due to historical reasons and perhaps a fear by some potential donors to have to register their party support with the NEC before donating funds.

It is generally agreed that there is a price to democracy but one must ensure that there is somehow a level playing field to ensure adequate representation by the parties at the various stations. Where this is not possible, the NEC should ensure that it has in place the necessary safeguards to instill sufficient confidence in the parties and the voters about the electoral process.

### **3. Challenging Results of Presidential Votes**

There is no legal remedy in the event that one would wish to challenge the outcome of the Presidential election. Article 41(7) of the Constitution of the United Republic bars any proceeding to challenge the election of the President once the Commission has declared the results subsequent to the counting of the votes.

It is the view of the TLS that there seems to be no rational basis for this section to stand particularly since it allows room for abuse and the provisions for impeachment don't offer the necessary safeguards to remedy such abuse and certainly doesn't serve as a disincentive. Furthermore, the fear that the seat of the presidency would remain vacant for an undetermined period of time is unfounded because a specific procedure and timeframe can be provided for within the Constitution; moreover, the office of the presidency would remain filled by the incumbent until a Court decision is handed down.

Denying the right to contest the Presidential elections only serves to stifle democracy and the people's confidence.

### **Educate Voters**

As empowered, and required by the law, the NEC should make a greater effort to educate voters in advance of the elections, not only about polling day, but on all other matters touching on the general elections, including how the elections will be administered.

Voter education was one of the main concerns that arose on Election Day for the TLS Observers. Voters were unsure how to vote, or about the process of how the tallying process would be conducted.

It is the position of the TLS that had the voters been better informed on the electoral processes, the widespread notion of ballot tampering or “kuchakachua”, a Kiswahili adage now closely associated with the 2010 elections, would not have been as prevalent and would not have resulted in the observed and widely reported skirmishes.

#### **4. Appointments of the NEC Officials**

Under the National Elections Act, the President appoints all the seven members of the Commission.

The widespread feeling is that the appointments do not appear politically impartial or neutral, and that satisfactory vetting of the appointees is not guaranteed.

The TLS proposes that a different appointing authority should make the appointments, or prior nominations should be made transparently by a competent ‘nominating committee’ answerable to the people through an accountable organ, such as the National Assembly (Bunge).

To avoid the perception of bias, and to increase the credibility of the NEC appointments, the Government should review and revise the modality currently being used for these appointments. This process will enhance the legitimacy of the NEC appointments, as well as serve to enhance the credibility of the organization in the eyes of the public.

#### **5. Investigate Low Voter Turnout**

The TLS Observers observed that the voter turnout in the 2010 General Election was overwhelmingly lower than in previous years, and in some voting stations, there was a record of as low as only 29%, which shows high voter apathy and perhaps a lack of confidence in the democratic processes in Tanzania.

The TLS recommends that the NEC investigate the low voter turnout, publically disseminate its findings, and develop a plan for increasing voter participation in the 2015 General Election to include wide-spread sensitization and awareness raising.

#### **6. PNVR**

As noted above, the PNVR was developed prior to the 2005 elections to create a permanent voter registration system. However, it was observed by TLS Observers that the PNVR is not yet fully complete and is laden with issues, including missing names of voter, improper names of voters, and inconsistencies in voter constituency information. All of these issues served to either prevent voters from casting their vote, or delay the voting process, hence frustrating voters.

The PNVR should be reviewed in greater detail, and the process of changing information contained within the PNVR should be extended so that all citizens are given a wider window of opportunity to update their information with the NEC.

The TLS recommends that the PNVR be updated on a continuous basis over the course of the next five years so that the PNVR is complete for the 2015 elections. Furthermore, the NEC should allow voters more than one week to correct mistakes contained in the PNVR - the list should be issued months in advance of the 2015 election so that all voters are given ample time to verify the information within. The timeframe of one week has proved grossly inadequate and has significantly contributed to the unusually low voter turnout.

## **7. Polling Day Logistics**

The NEC should devise appropriate strategies before the Election Day for the efficient conduct of elections and to supervise all election activities including the availability and distribution of election materials, well designed instructions (which should be known by all election officers), and forms for vote tallying processes at the ward levels. Training should be conducted to presiding officers, polling assistants and all returning officers who conduct the counting and tallying process about the legal framework and processes involved in the election exercise.

It is the position of the TLS that the lack of knowledge by the NEC officials may have contributed to the delay in the counting and tallying of the results. It is well known that one of the tests for free and fair election and election credibility is timely announcement of results. Therefore, it is imperative that the NEC look on this issue critically.

But to be fair, the TLS Observers did note the limitations imposed on the NEC officials caused by financial resources, the technology and the software, and the methodology employed in tallying votes. The TLS recommends that more efficient software and technology be used so as to avoid delays in the future, and to make the process more efficient.

The areas where the votes were counted were not always sufficient. In fact, many of the TLS Observers noted that even the lighting/power supply was an issue when tallying the votes. Adequate lighting is necessary for each election officer in each voting or counting station because it was observed that the counting transcends the daytime to night time.

Furthermore, voter lists at polling stations should be posted in a location free from potential damage (by people, weather etc).

It was also noted by TLS Observers that the emergency/hotline to contact the NEC on Election Day was not operational or available at all times. The NEC should ensure that in the 2015 General Elections, the hotline is fully operational.

Lastly, in some constituencies, elections were suspended to the 14<sup>th</sup> of November, 2010 because on Election Day the necessary materials for elections were not available. It is imperative that the NEC see to it that all the materials necessary for voting are at the polling station at least one day before the Election Day and should put the necessary measures in place to ensure that such issues can be overcome should they arise.

## **8. Officers and Other NEC Staff**

In order to conduct elections successfully, adequate arrangements and preparations are required in terms of human and financial resources. Election officers should be required to possess a minimum level of education to ensure that they are adequately able to administer the elections. Election officers should not only be competent enough to handle the intricacies of the elections but also have demonstrated unquestionable credibility and impartiality.

The TLS understands that the NEC does not have permanent employees at the constituency level downwards. These election officials, therefore, are recruited and engaged on a temporary basis. At the constituency level, the principal election officials are the Returning Officers and Assistant Returning Officers. According to Section 7(1) of the National Elections Act, and Section 9 (1) of the Local Authorities (Elections) Act, Directors of Councils have been designated Returning Officers. They are: (i) City Directors; (ii) Municipal Directors; (iii) Town Directors; and (iv) District Executive Directors. Although the use of public servants as Returning Officers work well with the NEC since these officials are often familiar with the procedures, reliable and well disciplined, there is a general perception that these officers are biased in favour of the ruling CCM party and are therefore, partial. In fact, the tenure of office of these officers is controlled by the executives who are also often electoral candidates. Naturally, there might be a perception that such officers would wish to appease the electoral candidates for fear of losing their jobs. In some areas, rumors had it that Returning Officers were instructing their subordinates to ensure that the ruling party wins the election.

In the legal fraternity we have a natural law principle which says that "justice should not only be done but it should manifestly and undoubtedly be seen to be done". It is therefore, desirable that the appropriate measures be sought and taken to appoint people who are perceived to be neutral and impartial to voters.

## **9. Transport of Ballot Boxes**

Adequate means of transport for ballot boxes and election officials after polling should be well arranged in advance. In many of the polling centres, although vote counting was completed by 21:00hrs, boxes were not timely collected – often

time, collection was after midnight and in other stations, the following morning. In many cases, the election officers had to spend the whole night guarding the boxes. Similarly, at the ward levels, the transport of ballot boxes was delayed to the constituency tallying centres. These delays clearly disenfranchised the voters and sparked the skirmishes described in this report.

The TLS recommends that adequate transport be planned for and supplied by the NEC to build the needed confidence and integrity into the electoral process.

### **10. Tallying of Votes**

It was observed that some of the delays in the presidential and parliamentary votes tally were due to the fact that these were not counted at the ward level. It is the view of the TLS that the NEC should attempt to build the capacity at the ward level in order for the tallying of parliamentary and presidential votes to be conducted at this level.

This is intended to simplify the overall tallying process at the constituency level. The TLS is of the opinion that once all the ballot boxes have been received at the ward centres, the tallying of the councilor's votes should begin immediately and the results should be announced once the tally is complete. Once a councilor has been announced, the exercise should continue for parliamentary and then for presidential votes.

Alternatively, there can be three separate rooms for the counting and tallying processes that is for councilor, parliamentary and presidential votes. Political parties participating in the election could have three agents representing their respective parties at the counting/tallying processes. Once the results are compiled the agents should be provided with copies of the final results. Then, results forms and ballot boxes for parliamentary and presidential votes should be transmitted to the tallying centre at the constituency level where a final compilation will be done in the presence of the candidates or their agents, with the winner announced at the constituency. Finally, the returning officers should transmit the results for the presidential race to the NEC for declaration.

The TLS is of the view that the NEC is capable of devising methods to ensure timely announcement of all results within two days after the Election Day and should strive to do so for the 2015 General Election.

**SCHEDULE "A"**

**LIST OF ALL OBSERVERS AND PLACE OF OBSERVATION**

<b>No.</b>	<b>NAME OF MEMBER</b>	<b>PLACE OF OBSERVATION</b>
1	ABDALLAH, ABDUL(DAR)	TANGA
2	ABDALLAH, TAUSI(DAR)	DAR ES SALAAM
3	ALIGAWESA, SYLVESTER(DAR)	DAR ES SALAAM
4	ANDREW, DORIS(DAR)	DAR ES SALAAM
5	ARBOGASTI, AURELIA(DAR)	TABORA
6	ASSEY, CECILIA(DAR)	DAR ES SALAAM
7	BASHAKA, NIYIKIZA J. (DAR)	DODOMA
8	BENDERA, IBRAHIM(DAR)	DAR ES SALAAM
9	BOMANI, BEATRICE W. K. (DAR)	DAR ES SALAAM
10	BRASH, THOMAS(DAR)	DAR ES SALAAM
11	BUJIKU, SAKILA (MWANZA)	MWANZA
12	BUNINI, MASHAKA(DAR)	MOSHI
13	BWENGE, MARCEL(DAR)	ARUSHA
14	CHAKUPEWA, MUHIBA(DAR)	DODOMA

No.	NAME OF MEMBER	PLACE OF OBSERVATION
15	MARYAM USSY YAHYA(DAR)	DAR ES SALAAM
16	CHANA, SIMON(IRINGA)	MBEYA
17	CHARLES, GEORGE(DAR)	TANGA
18	HUSNA YAHAYA(DAR)	DAR ES SALAAM
19	CHINGILILE, ISACK(DAR)	DODOMA
20	CHOMBALA, KANANI(DAR)	MWANZA
21	CHUWA, GOODLUCK(DAR)	DAR ES SALAAM
22	CHUWA, CHERUBIN L. (DAR)	MOSHI
23	DEMELLO, JOAQUINE(DAR)	DAR ES SALAAM
24	GABRIEL, PETER(DAR)	TANGA
25	GALEBA, ZEPHRINE(DAR)	DAR ES SALAAM
26	GHIKAS, FARIJA(DAR)	DAR ES SALAAM
27	HAMIDU, UBAIDI(DAR)	DAR ES SALAAM
28	HAULE, FELIX(DAR)	MWANZA
29	HAULE, LEONARD(DAR)	DAR ES SALAAM
30	ISSA, NATHANIEL(DAR)	DAR ES SALAAM
31	ISSA, SABINA(DAR)	DAR ES SALAAM
32	JEMBE, ASIFIWE(DAR)	DAR ES SALAAM
33	JESSE, JAMES(DAR)	DAR ES SALAAM

No.	NAME OF MEMBER	PLACE OF OBSERVATION
34	JOEL, NDIGWAKO(DAR)	DAR ES SALAAM
35	JONATHAN, FREDERICK(DAR)	DAR ES SALAAM
36	JOSEPHAT, KASILE(DAR)	DAR ES SALAAM
37	KIBODYA, FELIX(DAR)	DAR ES SALAAM
38	KADUMA, IMANI(DAR)	DAR ES SALAAM
39	KAIRO, LUCIA GAMUYA(DAR)	DAR ES SALAAM
40	KALUME, BENJAMIN (DAR)	DAR ES SALAAM
41	KAMSUMBILE, SAID H(DODOMA)	DODOMA
42	KANDONGA, FRED(DAR)	DAR ES SALAAM
43	KATEMI, ERIC(DAR)	DAR ES SALAAM
44	WILLIAM, VINCENT(DAR)	DAR ES SALAAM
45	THOMAS, JUMA(DAR)	MWANZA
46	KAUNDA, REVOCATUS(SHINYAN GA)	MWANZA
47	KERARIO, JOB(DAR)	DAR ES SALAAM
48	KIBATALA, PETER(DAR)	DAR ES SALAAM
49	KIHWELO, PAUL(DAR)	DAR ES SALAAM
50	KIMAKO, ELIZABETH(DAR)	ARUSHA
51	KIMARO, LIVING R. (DAR)	DAR ES SALAAM

No.	NAME OF MEMBER	PLACE OF OBSERVATION
52	LUCIA CHRISANTUS(DAR)	DAR ES SALAAM
53	KINEMO, DAMAS(DAR)	TANGA
54	KINYAKA, HADIJA(DAR)	DAR ES SALAAM
55	KIPOBOTA, CLARENCE(DAR)	DAR ES SALAAM
56	KISISIWE, EDWARD(SHINYANGA)	MWANZA
57	KOMBA, AGATHON(DAR)	DAR ES SALAAM
58	KOMBE, HARVEY(DAR)	DAR ES SALAAM
59	KONEYA, STEPHEN(DAR)	MOSHI
60	KUBINI, ISAKA M.(GEITA)	MWANZA
61	KUGESHA, FRANCIS(DAR)	DAR ES SALAAM
62	KUMWENDA, SAIWELLO(DAR)	MBEYA
63	KUWAYAWAYA, STEPHEN KUWAYAWAYA(DODO MA)	DODOMA
64	KWELUKILWA, FRANCOIS(DAR)	TANGA
65	RABIA RAMADHANI(DAR)	DAR ES SALAAM
66	LEMBOKO, SAM OLE(DAR)	DAR ES SALAAM
67	MUSA MHAGAMA(DAR)	DAR ES SALAAM

No.	NAME OF MEMBER	PLACE OF OBSERVATION
68	LUGOLA, CHARLES(DAR)	TANGA
69	LUGUWA, BARNABAS(DAR)	ARUSHA
70	LUHIGO, ANDREW(DAR)	ARUSHA
71	LUNDU, MARY(DAR)	MOSHI
72	LYIMO, JOSEPH C. (DAR)	DAR ES SALAAM
73	MADULU, STEVENS K. (DAR)	MBEYA
74	MAENDA, BETRAN(DAR)	DAR ES SALAAM
75	MAGENI, ROBERT(SINGIDA)	DODOMA
76	MAGOTI, JOHN(DAR)	MWANZA
77	MAGUMBA, JOSHUA(DAR)	DAR ES SALAAM
78	WILLIAM, JULIANA (DAR)	DAR ES SALAAM
79	MAKENE, EMMANUEL(DAR)	DAR ES SALAAM
80	MALABA, MAGDELENA(IRINGA)	DAR ES SALAAM
81	MALISA, ANTHONY(MOSHI)	MOSHI
82	MANDOPI, KEVIN(TANGA)	TANGA
83	MANGULA, ALI(DAR)	DODOMA
84	MANGULA,	MOSHI

No.	NAME OF MEMBER	PLACE OF OBSERVATION
	OSCAR(DAR)	
85	MAPINDUZI, JOHN(DAR)	DODOMA
86	MAPOGO, JEREMIAH(DAR)	DAR ES SALAAM
87	MARTIN, GEOFREY(DAR)	MBEYA
88	MARWA, EMMANUEL(DAR)	DAR ES SALAAM
89	MASSAE, FRANK K. (DAR)	ARUSHA
90	MASSAWE, THOMAS(DAR)	MOSHI
91	MASULE, SUZANA R. (DAR)	DAR ES SALAAM
92	MATATA, ANDY C. (DAR)	MARA
93	MATUI, MARIA(DAR)	DAR ES SALAAM
94	MAWALLA,ILETH(SUMB AWANGA,RUKWA)	MBEYA
95	AWAKI DANIEL(DAR)	DAR ES SALAAM
96	MBALASILA, JAFARI MOHAMED(DAR)	MTWARA
97	MCHAMI, RONILICK(ARUSHA)	ARUSHA
98	MEILUDIE, ESTHER(DAR)	DAR ES SALAAM
99	MERINYO, NELSON(ARUSHA)	ARUSHA
100	MGARE, FRANCIS(DAR)	DODOMA

<b>No.</b>	<b>NAME OF MEMBER</b>	<b>PLACE OF OBSERVATION</b>
101	MGEMBE, ASHA(DAR)	DAR ES SALAAM
102	MGOVANO, REHEMA(DAR)	ARUSHA
101	MHANGATE, JOHN(DAR)	DAR ES SALAAM
102	MHESA, LAITON(DAR)	DAR ES SALAAM
103	MHINA, GEORGE M. (DAR)	TANGA
104	MICHAEL, REHEMA(DAR)	DAR ES SALAAM
105	MIRUMBE, JOSEPH(DAR)	MARA
106	MIZIMU, PATRICK(DAR)	ARUSHA
107	MKISI, EDSON(DAR)	DAR ES SALAAM
108	MKوبا, ROBERT(DAR)	DAR ES SALAAM
109	MKUDE, CHARLES(DAR)	DAR ES SALAAM
110	MKUMBE, VICTOR(MBEYA)	MBEYA
111	MLEMETA, ELIZABETH(DAR)	DODOMA
112	YAKISOLA, GRACE(SHINYANGA)	MWANZA
113	MNDEME, EDNAH(SHINYANGA)	MARA
114	MNGARA, DONATI P. (DAR)	DAR ES SALAAM
115	MOHAMED, KIKONDO MAULID(DAR)	DODOMA
116	MRANO,	TANGA

No.	NAME OF MEMBER	PLACE OF OBSERVATION
	MARIAM(DAR)	
117	MROSSO, GRACE(DAR)	DODOMA
118	MRUTU, MERCY(DAR)	DAR ES SALAAM
119	MRUTU, SIMON(DAR)	DAR ES SALAAM
120	YAHYA, MARYAM(DAR)	MOSHI
121	MSEMWA, JEROME(DAR)	DAR ES SALAAM
122	MSUYA, NORAH(DAR)	DODOMA
123	MTUGANI, BRIGHTON(DAR)	MWANZA
124	MUGISHA, BRIGHTON(DAR)	ARUSHA
125	MUGOKA, MAGUSU(DAR)	DAR ES SALAAM
126	MUGYABUSO, EVENTIUS(DAR)	MOSHI
127	MULOGO, DELPHINA(DAR)	DAR ES SALAAM
128	MULEBYA, GEORGINA(DAR)	MTWARA
129	MUNISI, ANDREW(DAR)	DAR ES SALAAM
130	MURO, HAPPINESS(DAR)	TANGA
131	MUSHOKORWA, JUSTINIAN(MBEYA)	MBEYA
132	WENCESLAUS, FLORIDA(DAR)	ARUSHA
133	MUTAKYAMIRWA, PHILEMON(DAR)	DAR ES SALAAM

No.	NAME OF MEMBER	PLACE OF OBSERVATION
134	MUTALEMWA, CONSTANTINE(MWANZ A)	MWANZA
135	MVULA, ANJELU(DAR)	DAR ES SALAAM
136	MWAGENI, ANGELA(DAR)	DAR ES SALAAM
137	MWAIKINDA, REUBEN(DAR)	TANGA
138	WABEYA, KUNG'E(DAR)	DAR ES SALAAM
139	MWAKAGAMBA, BENJAMIN(DAR)	DAR ES SALAAM
140	MWAKALASI, LEA(DAR)	DAR ES SALAAM
141	MWAKOLO, SIMON(MBEYA)	MBEYA
142	MWAKALUNDWA, ASAJILE(DAR)	TANGA
143	MWALE, MEDIAN(DAR)	ARUSHA
144	MWALE, SHANOON(DAR)	DAR ES SALAAM
145	MWAMANENGE, ALIKO(DAR)	DAR ES SALAAM
146	MWAPONGO, GODWIN M. (DAR)	DAR ES SALAAM
147	MWASONGWE, NELLY(DAR)	DAR ES SALAAM
148	MWENDA, GLORIA(DAR)	DAR ES SALAAM
149	MWISHEHE, NASRA(DAR)	DAR ES SALAAM
150	NAWERA, ELIAS(DAR)	TANGA

No.	NAME OF MEMBER	PLACE OF OBSERVATION
151	NDIBALEMA, DESIDERY(DAR)	MOSHI
152	NDITABURA, JENESTA(DAR)	DAR ES SALAAM
153	NDITI, DONATUS(MOSHI)	MOSHI
154	NGILOI, JOSEPH(DAR)	DAR ES SALAAM
155	NGOCHO, SYLVERY ARUGA(MUSOMA)	MARA
156	NJAU, MENRARD R(MOSHI)	MOSHI
157	NYAMUGARIRA, JUMA(DAR)	DAR ES SALAAM
158	NSHIKU, CECILIA (DAR)	DAR ES SALAAM
159	NSYENGE, INNOCENT(DAR)	DAR ES SALAAM
160	OLENASHA, WILLIAM(DAR)	MOSHI
161	OMARI, ASINA(DAR)	DAR ES SALAAM
162	OMARI, SOPHIA(DAR)	DAR ES SALAAM
163	OTHMAN, MARIAM(DAR)	DAR ES SALAAM
164	PANGALUGOME, FATUMA(DAR)	DAR ES SALAAM
165	PAUL, MGANGA(DAR)	ARUSHA
166	PETER, KENNEDY(DAR)	MTWARA
167	PUNGE, IGNAS(DAR)	DODOMA
168	RAJABU, MUSA(DAR)	ARUSHA
169	ROMA, MUSA(DAR)	DAR ES SALAAM

No.	NAME OF MEMBER	PLACE OF OBSERVATION
170	RUKWANGO, NOVATH(DAR)	DAR ES SALAAM
171	RUMENDE, SAMSON(ARUSHA)	ARUSHA
172	RWEBANGIRA, MAGDALENA(DAR)	MTWARA
173	RWE GASIRA, ABDON(DAR)	DAR ES SALAAM
174	RWE GOSHORA, DOMICIAN(DAR)	DAR ES SALAAM
175	RWE HUMBIZA, MARTIN(DAR)	DAR ES SALAAM
176	RWE KAZA, LADISLAUS(MOROGOR O)	MWANZA
177	RWE ZAULA, KAIJAGE (IRINGA)	MBEYA
178	VEDASTO, AUDAX(DAR)	DAR ES SALAAM
179	SALLA, EMANUEL(SHINYANGA)	MWANZA
180	SAMWEL, FRANK(SHINYANGA)	TABORA
181	SANZE, JOHN W. (DAR)	DODOMA
182	SAYI, AGNES(MWANZA)	MWANZA
183	SAYI, EMMANUEL(MWANZA)	MWANZA
184	SEKA, JOHN(DAR)	DAR ES SALAAM
185	SENGWAJI, BRIDGET(DAR)	DAR ES SALAAM

No.	NAME OF MEMBER	PLACE OF OBSERVATION
186	SHAABANI, OMARY(DAR)	DAR ES SALAAM
187	SHAYO, ANNA T(DAR)	DODOMA
188	SHUMA, NANCY(DAR)	DAR ES SALAAM
189	SIMBAKALIA, DEUSDEDIT(DAR)	DAR ES SALAAM
190	SINA, FRANK (DAR)	ARUSHA
191	URASSA, STEVEN(DAR)	DAR ES SALAAM
192	SIWINGWA, EMILIA(DAR)	DAR ES SALAAM
193	SOKA, ATHANASIA(DAR)	TANGA
194	SWENYA, ARMANDO(MARA)	MARA

**SCHEDULE “B”**

**2010 ELECTION OBSERVER DATA-COLLECTION INSTRUMENT  
TANGANYIKA LAW SOCIETY (TLS)**

*An instrument to guide data collection by TLS Observers on 31<sup>st</sup> October, 2010*

**PART A: PARTICULARS (Observers & Voting Station(s) )**

Name of TLS Observer: .....

Telephone (mobile) of TLS Observer: .....

Region: .....

District: .....

1<sup>st</sup> Station: Ward/Neighbourhood (of the station/centre) .....

Number/Name of station/centre .....

Your Time of Arrival: .....

Your Time of Departure: .....

**Observations from Question: \_\_\_\_\_ to question \_\_\_\_\_ on this form**

2<sup>nd</sup> Station: Ward/Neighbourhood (of the station/centre) .....

Number/Name of station/centre .....

Your Time of Arrival: .....

Your Time of Departure: .....

**Observations from Question: \_\_\_\_\_ to question \_\_\_\_\_ on this form**

3<sup>rd</sup> Station: Ward/Neighbourhood (of the station/centre) .....

Number/Name of station/centre .....

Your Time of Arrival: .....

Your Time of Departure: .....

**Observations from Question: \_\_\_\_\_ to question \_\_\_\_\_ on this form**

**General Instructions:** Please COMPLETE ALL THE QUESTIONS. Place a tick next to a Y/N response, OR, circle your responses. Where required, **please** fill in the necessary details as requested.

*If you manage to visit more than one voting station, please indicate the number of the station as per the order of your observation e.g. 2<sup>nd</sup> Station, next to the question AS WELL AS separate the last question from the previous station and the first question from the current station with a clear line.*

**PART B: VOTING OBSERVATION**

**1. Opening the Voting Station/Centre**

(NB. Official opening time is 7.00am)

(a) On time or late?

1. Was opened on time.
2. Was late in opening (what time did it open? .....

(b) If late, what were the reasons?

(Reasons:.....  
 .....  
 .....)

(c) Any episodes resulting from late opening of the voting station?

(Episodes: .....  
 .....  
 .....)

**2. The Area Surrounding the Voting Station/Centre**

(a) Any indication of campaigning seen?

- 1. Yes, there are indications
- 2. No indications seen

(b) If indications of campaigns/vote canvassing exist, what are they?

(Indications of campaigns seen: .....  
.....  
.....)

(c) Any party identifications/symbols seen?

- 1. Yes, some have been seen
- 2. No, none seen

(d) If party symbols exist, describe them: .....

.....  
.....  
.....

(e) Can anything be seen in the surrounding area, which can terrify voters?

- 1. Yes
- 2. No

(f) If yes, please describe:

.....  
.....

(g) Are there any disturbances/vurugu/ghasia at or near the voting station?

- 1. Yes
- 2. No

(h) If yes, please describe the disturbance and its source: .....

.....  
.....

(i) Final outcome of the disturbances (if they existed)

- 1. No disturbances existed
- 2. Describe final outcome of disturbances: .....
- .....
- .....

**3. Which Persons have been admitted into the Voting Station?**

(Not everybody is allowed to get into the voting station. So **invaders** should be noted and discussed. Those allowed by the law include the following: Msimamizi wa kituo na wasaidizi wake; wapiga kura waliojiandikisha katika kituo husika; wagombea; mawakala wa wagombea (au wa vyama); watu wanaowasaidia wapiga kura wasiojiweza; waangalizi/observers wa uchaguzi wenye vibali; Mkurugenzi wa uchaguzi; mtu kutoka Tuma ya Uchaguzi; Polisi au mtu mwingine anayehusika na usalama)

(a) Have unauthorized persons been allowed into the polling station?

- 1. Yes
- 2. No

(b) If Yes:

- 1. Who are they? .....
- .....
- 2. Why are they there? .....
- .....

**4. Were the necessary officers as described in Ques. 3 above present?**

- (a)
  - 1. Yes
  - 2. No

(b) If not which officer(s) was/were missing? .....

.....  
.....

**5. Presence of materials needed at the station**

(a) Is a list of voters posted at the station?

- 1. Yes
- 2. No

(b) Is it complete or incomplete?

- 1. Complete
- 2. Incomplete
- 3.

(c) If the list of voters is incomplete, state the reason provided:

.....

(d) Adequacy of voting papers

- 1. Adequate
- 2. Inadequate

(d) If inadequate, say what is amiss:

.....

(f) Adequacy of different forms (issues by NEC/ZEC):

- 1. Adequate
- 2. Inadequate

(g) If inadequate, state what is amiss: .....

.....

(h) Presence and use of station stamp. Was a station Stamp available?

- 1. Yes
- 2. No

(i) If Station Stamp is unavailable, state the reason:.....

.....

a. Has each ballot been stamped properly before being issued to voters?

- 1. Yes
- 2. No

- b. If no, did anybody intervene? (i.e. other than you?)
  - 1. Yes. If yes, who? .....
  - 2. No. If no, what did you do? .....

**6. Voting Boxes**

- (a) Are the ballot boxes for Presidential, Parliamentary and Council elections adequately far apart for voters to distinguish them?
  - 1. Yes
  - 2. No
- (b) Are their colours distinctly different?
  - 1. Yes
  - 2. No
- (c) Have they been shown to party agents and observers to note that they are empty before voting starts?
  - i. Yes
  - ii. No

**7. Secret Ballot**

- (a) Does the voting booth adequately secure the voter?
  - 1. Yes
  - 2. No
- (b) If no, explain: .....  
.....  
.....
- (c) Have you observed anything else that contravenes the right of the voter to a secret vote?
  - 1. Yes
  - 2. No
- (d) If yes, explain what you have seen: .....  
.....  
.....

**8. Handling People with Disability or Lost/Defaced Card**

- (a) Were people living with a disability provided with the necessary assistance?
  - 1. They were adequately helped (how?)  
.....

- 2. Yes but there were inadequacies (mention them):

.....  
 .....

- 3. They were not helped at all.

(b) Were those who had lost or defaced their voting cards able to vote after identifying themselves in some other ways?

- 1. There were no such cases
- 2. Yes, all were allowed to vote
- 3. Yes, some were allowed to vote
- 4. None were allowed to vote (explain):

.....

**9. Misuse of Election Funds by Parties / Illegal Voting**

(a) Did you notice large groups of voters arriving at the same time?

- 1. Yes. If so, find out and indicate how their transportation facilitated:

.....  
 .....

- 2. No

(b) Did you observe anything, which might lead you to believe that there was illegal ferrying of voters or "takrima"?

- 1. Yes. If so please indicate:

.....

- 2. No.

(c) Were any illegal (e.g. underage, non-registered) voters caught?

- a. Yes
- b. No

(d) If                    yes,                    describe                    the                    circumstances:

.....  
 .....

**10. Temporary Stoppage of Voting**

(a) Did the voting process experience any temporary stoppage?

- 1. Yes
- 2. No

(b) If yes, describe what caused it and how long it took for voting to resume:

.....

.....

**11. Complaints of Voters**

(a) Did any voter complain about the voting process before leaving the station?

- 1. Yes, some did
- 2. No, none did

(b) If yes, did they write their complains on the prescribed form?

- 2. Yes, they did (how many? .....
- 3. No, they did not

(a) What were the complaints about?

.....

.....

**12. End of Voting**

(a) Were all voters in the voting queue allowed to vote after the official voting time (4.00 pm) ended?

- 1. YES, all were
- 2. YES, some were
- 3. No, none were
- 4. No, only some were

(b) If only some were allowed to vote, explain what happened:

.....

.....

(c) Were voters who came after official closure of the station allowed to vote?

- 1. Yes, all were
- 2. Yes, some were
- 3. No, none were
- 4. No, only some were

(d) If only some were allowed, explain what happened:

.....  
.....

(e) Did any party agent or candidate file complaints in writing about the voting process?

- 1. Yes (how many? .....) )
- 2. No
  - i. If yes, what were the complaints about?

.....

(f) At what time did the last person vote? .....

(g) Did you note any prospective voters leave the polling station without voting and complaining of something/irregularity?

- 1. Yes
- 2. No

If yes, what is the probable reason that some voters left without voting? And what was their complaint if there were any?

.....  
.....  
.....

**Additional Comments/Observations/Notes on Voting Observation:** .....

.....  
.....  
.....

**PART C: VOTE COUNTING AND DECLARATION OF RESULTS**

**13. The Counting Station**

(a) Is it the same place where voting took place?

- 1. Yes

- 2. No  
 If No, explain why: .....

(b) If No also, were stakeholders satisfied with:

(i) Safety of the boxes?

- 1. Yes, all were satisfied
- 2. No, some were dissatisfied (say why .....

(ii) The new venue?

- 1. Yes, all were satisfied
- 2. No, some were dissatisfied (say why .....

**14. Discussion before Counting Starts**

a. Were stakeholders (candidates and party agents) given time to file complaints or make recommendations before counting started (especially where counting took place in a new venue)?

- 1. Yes
- 2. No

b. If Yes, say what the recommendations or complaints related to: .....

c. If No, say if any stakeholder complained after being refused the chance: .....

**15.** Who have been admitted into the counting station? (See Ques. 3 for authorized persons. Any additional persons should be considered to be there illegally) .....

**16. Disagreement on Counting Procedure**

- (a) Were there any disagreements or complaints about the counting procedure?
1. Yes, there were
  2. No, there were none
- (b) If there were disagreement/complaints, what did they relate to? .....
- .....
- .....
- (c) What was the final agreement? .....
- .....
- .....

**17. Spoilt Votes**

- (a) Were there any disagreements or complaints about spoilt votes?
- i. Yes, there were
  - ii. No, there were none
- (b) If yes, what did they relate to? .....
- .....
- .....
- (c) What was the final agreement then? .....
- .....

**18. Recounting of Votes**

- (a) Did recounting of votes take place?
1. Yes, (how many times? .....
  2. No.
- (b) What caused the recounting? .....
- .....
- .....
- (c) Did the recounting of votes lead to agreement on the results?
1. Yes
  2. No
- (d) If No, what happened then? .....
- .....
- .....

**19. Complaints before Declaration of Results**

(a) Were there any complaints before the declaration of results?

- 1. Yes
- 2. No

a. If Yes, what were the complaints about?

.....  
.....

b. What happened after the complaints were made?

.....  
.....

**20. Posting the Results at the Counting Station**

(a) Were the results posted at the station as required by law?

- 1. Yes, they were
- 2. No, they were not

(b) If No, state what happened and why: .....

.....  
.....

(c) It is appropriate for the observers to witness the sealing of the bundles of the ballots papers and the sealing of the ballot boxes which must next be sent to the relevant aggregating centres. The purpose is to ensure that the results at the polling centre are not interfered with prior to being transmitted from the polling station. Section 79A of the National Elections Act (June 2010 edition) compels the presiding officer to seal separately the ballots for the Presidential, Parliamentary and Councilor elections.

(i) Were the packets for the three ballots sealed?

- YES
- NO

(ii) Were the ballot box or boxes that have been sealed ready for dispatching to the higher/national collecting/counting point?

- YES
- NO

**PART D: POST-ELECTION EPISODES**

**21.** Note and document all significant post-election episodes relating to the observed stations, constituencies or the country in general: .....

.....  
.....

**22. Statement on Freeness and Fairness of the Elections**

*The TLS Elections Observations Committee will review the overall report from the Observation Exercise and make a determination on behalf of the organization on the freeness and fairness of the 2010 General Elections. However, we now ask you to rate the elections based on your observations:*

**I. Were the Elections Free?**

For an election process to be free, citizens must have the right and opportunity to choose. There must be freedom of assembly, association, movement, and speech, for candidates, parties, voters, media, observers and others. The political environment should be free of intimidation. Such freedom is an essential precondition to meaningful elections.

**Yes:** \_\_\_\_\_

**No:** \_\_\_\_\_

**Please explain your response:** .....

.....  
.....  
.....

**II. Were the Elections Fair?**

To be fair, an election must have honest balloting and counting, administered without fraud or manipulation by impartial election authorities. Political parties and individuals must have reasonable opportunities to stand for election, and there must be prompt and just resolution of election-related disputes and grievances, before and after Election Day. Fairness also requires a "level playing field"; specifically, there can be no misuse of public resources for campaigns, and all parties and candidates must have an adequate chance of communicating with the voters and winning their support, including reasonably equitable access to media.

**Yes:** \_\_\_\_\_

**No:** \_\_\_\_\_

**Please explain your response:** .....

**SCHEDULE "C"**

**RESULTS OF THE PRESIDENTIAL ELECTIONS**

<b>President/Running mate</b>	<b>Party</b>	<b>Votes</b>	<b>%Votes</b>
Jakaya Mrisho Kikwete/Dr. Gharib Bilal	CCM	5,276,827	61.17
Dr. Willibrod Peter Slaa/Said Mzee Said	CHADEMA	2,271,941	26.34
Prof.Ibrahim Haruna Lipumba/Juma Duni Haji	CUF	695,667	8.06
Peter Kuga Mziray/Rashid Yusuph Mchenga	APPT Maendeleo	96,933	1.12
Hashim Spunda Rungwe/Omari Ally	NCCR Mageuzi	26,388	0.31
Mutamwega Bhatt Mugwahya/ Abdalla Othman Mgaze	TLP	17,482	0.20
Yahmi Nassoro Dovutwa/ Mohamed Ibrahim Hamad	UPDP	13,176	0.15

*Source: NEC 2010 'Presidential Election Result: 2010 General Election'*

## Schedule “D”

### TANGANYIKA LAW SOCIETY (TLS) ELECTIONS MANIFESTO

#### ENGLISH

#### **General Note regarding this Manifesto**

While General Elections will be held on October 31, 2010, a short period away, the rights of individuals in a democratic society must not be lost. The Tanganyika Law Society (“TLS”) operates with a vision of “a society where justice and the rule of law are upheld”, where free and fair elections must be a prerequisite for a flourishing democracy. In line with this view, elections – when held freely and fairly - are tantamount to a litmus test of public support for current government policies and programmes and are, therefore, reflective of the will of the people. Elections also provide citizens with an opportunity to choose who governs them and how they are governed; therefore, for a democracy to flourish, key institutions of democracy must be strong, accountable and sustainable – this is also a pre-condition for rule of law.

As a law society and a key stakeholder in the justice sector, the TLS voice is a critical one in the legal sector. To this end, the TLS will be observing the upcoming General Elections to assess their fairness, freeness and legitimacy.

The TLS presents this manifesto to the public as a guiding document of the TLS’s purpose and contribution to the General Elections.

#### **The Tanganyika Law Society (TLS)**

The TLS is the Bar Association of Tanzania Mainland, founded in 1955 by an Act of Parliament. The main purpose of the TLS is to:

- maintain and improve the standards of conduct and learning of the legal profession in Tanzania;
- facilitate the acquisition of legal knowledge by members of the legal profession and others;
- assist the Government and the Courts in all matters affecting legislation, administration and practice of the law in Tanzania;
- represent, protect and assist members of the legal profession in Tanzania as regards of practice and otherwise; and
- protect and assist the public in Tanzania in all matters touching, ancillary or incidental to the law.

The TLS works to secure a society where the rule of law and justice are upheld and is also engaged in various public projects focused on bringing access to justice for Tanzanians.

#### **Tanzania – History and Politics**

On 9<sup>th</sup> December, 1961, Tanganyika (now mainland Tanzania) became an independent nation under the Tanganyika African National Union (TANU) and one year later it became a Republic

headed by a President. In Zanzibar the Sultanate was overthrown on January 12<sup>th</sup>, 1964 and the Afro-Shirazi Party (ASP) came into power. In April of the same year the two independent states merged to form the United Republic of Tanzania. On February 5<sup>th</sup> 1977, TANU and ASP merged to form Chama Cha Mapinduzi (CCM) which has been the ruling party ever since.

In 1985 President Nyerere retired from the presidency and Mr. Ali Hassan Mwinyi was elected the President of the United Republic of Tanzania. He served two terms of five years each. In 1995, Tanzania held its first multi-party election and CCM won the elections with its candidate Mr. Benjamin William Mkapa who was sworn in as the third Government President of the United Republic of Tanzania on November 23<sup>rd</sup> 1995. Ten years later in December 2005, Mr. Jakaya Mrisho Kikwete was elected the fourth Government President of Tanzania for a five-year term.

The political (governance) structure of Tanzania is divided into three separate entities: the Executive, Legislature and Judiciary. The president is the head of state and government. The President and Members of the National Assembly are elected by direct popular vote for a five year term. The last election was held in 2005 and the CCM held 84.1% of the seats in the National Assembly.

Fifteen years after the re-birth of multi-party politics in Tanzania and almost a half-century since independence, the Tanzanian political landscape continues to be dominated by the ruling party, Chama Cha Mapinduzi (CCM) on both the Mainland and the Isles. However, more than seventeen, registered political parties exist today although only two political parties are viewed as a credible option to the CCM. These are Chama cha Demokrasia na Maendeleo (CHADEMA) and Civic United Front (CUF).

Media reports and expressed public opinion show a waning public confidence especially in the wake of alleged corruption and political scandals, mired by what appears to be a lack of political will to bring the perpetrators to account. This aggravates voter apathy, which is apparent in the rural towns and villages of Tanzania.

President Kikwete's CCM party has over the years maintained an aura of invincibility but in the run-up to the campaign period, at least one of the presidential candidates, Dr. Willibrod Slaa of CHADEMA, has emerged as a likely front runner. Also in the presidential race is Prof. Ibrahim Lipumba, chair of the Civic United Front (CUF), who is making a fourth bid for the post since the introduction of multi-party elections in Tanzania.

### **Goals of the TLS**

As its mandate, the TLS advocates for a society for justice and the rule of law are upheld. The main concern for the TLS is that the elections should be conducted in a manner, which upholds the rule of law and is in accordance with international best standards.

**It is the TLS' position that the will of the people shall be the basis of the authority of government.**

#### **1. Rule of Law**

The Rule of Law is integral to any functioning democracy. The Rule of Law is based on the notion that laws are supreme, and all citizens are subject to those laws; disputes between citizens and the government are to be determined by the law; and that citizens should enjoy fundamental rights of the person, association and speech.

The TLS works to ensure that ordinary citizens have the protection of the law. When the government, or the elected members of the government, step outside the rule of law, then the TLS will be there, not only to criticize those action, but to hold the government accountable.

## **2. Democracy & Good Governance**

A democratic society is based on free elections, functioning political parties, independent media and active NGOs that can operate freely. People in positions of power should be held politically accountable for their actions. Good governance flows from a truly democratic society in that the institutions which govern must curb abuse of power and corruption and guarantee equality of all persons before the law.

The TLS takes the position that the government of Tanzania should be working to ensure that the values embedded in democracy and good governance are upheld at all times. In a truly working democracy, citizens not only have the ability to exercise power, but they do so because are given the opportunity to voice their opinion and concerns.

It is in this regard that the TLS is working for a society where the government is held accountable for their action, with openness and transparency at all levels.

## **3. Free and fair elections**

One of the main cornerstones of a democracy is the ability of citizens to choose an individual to hold public office. The rule of law means nothing without the ability to exercise one's right to vote. Genuine elections are an expression of active citizenship and the free expression of the free will of the people, which provides the basis for the authority and legitimacy of a sitting government. The rights of citizens to vote and to be elected at periodic, genuine democratic elections are recognized human rights. Therefore, achieving genuine, democratic elections is part of establishing broader processes and institutions of democratic governance.

Elections are the usual mechanism by which modern democracies operate. In any State, the authority of the government can only derive from the will of the people as expressed in genuine, free and fair elections held at regular intervals on the basis of universal, equal and secret suffrage. The TLS will be working to ensure that this takes place in the upcoming General Elections.

## **4. Access to Justice**

Access to justice is not just having a court system in place that citizens can access on their own. It is also about providing citizens, especially those who are not traditionally represented in politics and government, with the ability and tools to access the court system and seek justice on their own behalf. It is also about providing early access to information and services to help people prevent and resolve disputes.

One of the integral pieces of the TLS' mandate is to work to provide further access to justice for those individuals who may not have the knowledge or resources to access the courts or legal advocates. The TLS is working to provide Legal Aid and information to citizens so that all citizens have access to these services.

### **What is election observation and what can you expect from the TLS Observation Activity?**

Election observation usually focuses on civil and political rights and is generally a part of human rights monitoring. The TLS has officially been granted Observer Status for the 2010 General Elections by the National Electoral Commission.

The TLS will participate in the election observation process to assess the electoral process, with a particular emphasis on compliance with regulations, laws and procedures. 200 members of the TLS will be deployed to 10 regions across the country, including: Tanga, Arusha, Mwanza, Dodoma, Dar Es Salaam, Tobora, Mbeya, Kilimanjaro, Mtwara and Mara. The TLS Secretariat will provide overall coordination, quality assurance and training. Observation will be conducted in areas where there has historically been a low turnout of women, youth and other marginalized groups and areas, which are historically known to have post-election conflict.

An observation report will be produced within two weeks of the completion of the observation mission's assignment. The primary audience for the report will be the National Electoral Commission and the office of the Registrar of political parties, before wider dissemination to the general public through the mass media.

To ensure consistency in the observation process, the TLS will hold a training session for its members on election monitoring/observation guidelines and election related regulations received from the National Electoral Commission and the office of the Registrar of political parties. Lessons will be drawn from previous election observation missions, which have been undertaken by the TLS and its members in the country and elsewhere on the African continent.

The main areas of focus during the observation will include:

1. Evaluation of the compliance with laws, rules and regulations by the key players; and
2. Evaluation of the participation of citizens especially women, youth, people living with disabilities and People Living with HIV/AIDS (PLHAs).

Specifically, the observers will be monitoring for voting irregularities, ballot box safety and tampering, vote counting irregularities and tabulation of results.

Given the history of Tanzania and the domination of politics and government by one party, the TLS wants to ensure that all election protocols are followed in the upcoming General Elections, and that all international standards are met.

### **How can you reach the TLS?**

For further information regarding the TLS or its election observation activity, please contact the TLS at:

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