

**TEMCO**  
**OBSERVER'S GUIDE ON THE REFERENDUM ACT, 2013**

**A referendum Act, 2013** is the law enacted to guide the whole process of conduct of the referendum and other related issues. Referendum is conducted as means of involving citizens of the United Republic of Tanzania to make decision on the proposed constitution, a decision of accepting or denying the proposed constitution.

**About the Referendum Act, 2013:** The referendum Act is divided in six parts and one schedule. Part I is about preliminary provisions; Part II in on the conduct of referendum; Part III is on the referendum Committees; Part IV is about Voting in Referendum; Part V is on general provisions and Part VI is on the consequential amendments.

**Purpose of the Observer's Guide:** This Guide is meant to provide key legal aspects to consider and observe in monitoring registration of voters and the conduct of referendum. The guide has provided for how the referendum is conducted in terms of voting, equipments of voting and officers involved in the referendum process. Further, this guide has also provided for the conduct of civic education. All these legal and institutional aspects are to guide the observer in ensuring that all processes and conducts are adhered with accordance to the law.

## LEGAL ISSUES TO BE MONITORED BY THE OBSERVER IN REFERENDUM

### PART A: QUESTION OF REFERENDUM

A question to be determined by the referendum has to be framed and published in the Gazette.

#### Features of the Question:-

- This question requires to be a question where a voter will approve or disapprove the proposed constitution specifically, in other words, a question has to be framed to the boundaries of **“YES” AND “NO”**.
- The question has to be in **KISWAHILI LANGUAGE**.
- The question has to be **foldable, numbered or in a combination of number and letter**.
- The question has to be printed in font.

After the publication of the Question the commission has a duty to specify:-

- The period for sensitization and public awareness (voter's education), the day of the referendum and the polling time of the referendum.

## REFERENDUM OFFICERS

It is as well significant for observers to know officers who have been established and recognized by the Referendum Act, together with their responsibilities in the CONDUCT OF REFERENDUM.

1. **Referendum returning officer;** - This is an officer who will be available in every constituency.
2. **Deputy Referendum Returning office:** - This officer shall be available where deemed necessary, meaning that it is not a must that there should be one. i.e. If a station has only a referendum returning officer, then it is not against the procedure. (The assistant is a not a mandatory requirement but where there is a necessity of having one only).
3. **The referendum officers and deputy referendum officers presiding the polling station:-** These are appointed with the Referendum returning officer with consultation with the commission
4. **Referendum committee agents**
5. **Police officers and their security officers**
6. **Observes**
7. **Members of press**
8. **Regional referendum coordinator:-** The commission may, during the referendum appoint a person by his name or office in respect of every region, who will be responsible to coordinate information, availability of material resources and other relevant affairs.
9. The commission also has been given powers and may appoint any other office or staff necessary to assist in the conduct of referendum.

## PART B: VOTING, POLLING AREAS AND STATIONS

This part covers all key legal aspects to consider and observe during the referendum in terms of right of voting, equipments, postponement of voting, communication during voting, admission in voting areas and features of ballot boxes.

## RIGHT TO VOTE

1. Every person registered or whose name is entered under the Register of voters established under the National Elections Act and Zanzibar Elections Act, is entitled to vote.
2. A person shall not be allowed to vote only when that person is prohibited from voting by any written law that he is not entitled to vote in the referendum.
3. In voting every voter is required to produce voter's card in order to be given a ballot paper. This serves as a proof of identity.
4. If one has lost an identity card but however, the details of his registration are available in voters register, then the referendum officer shall allow that person to vote after filling a declaration form prescribed by the commission.

## VOTING AT THE REFERENDUM

1. Voting is by secret ballot and every person shall not cast more than one vote.
2. Voting has to be done in the area where a person has been registered AND on the day specified.

However, this provision has reservations for; -

- Patients in hospitals
  - Persons admitted at homes for aged and similar institutions
  - Persons leading nomadic life on account of vagaries of weather
  - Physical disabled persons and expectant mothers
  - Persons away for social and economic duties
  - These people may be allocated a different day for voting provided that they have been registered in voters register.
3. Officers deployed by the commissioner, meaning the Referendum Returning officer, Referendum Officer, Police officer, Polling agent or any other staff working on behalf of the commission, may be allowed to vote in another polling station. But there is a condition: Director or any person authorized on behalf of the Director by a certificate under his hand certify and authorize the voter to vote.

## EQUIPMENTS OF POLLING STATIONS

Every observer should be aware that, According to the ACT, each Referendum returning officer has to provide each polling station with a number of equipments that will ensure efficiency of the conduct of referendum. These equipments are as follows;--

1. Sufficient number of ballot boxes and ballot paper as per needs of a polling station.
2. Materials to enable voters to mark their ballot papers where marking is necessary.
3. Instruments for stamping the official mark on ballot papers.
4. A seal of the commission suitable for that purpose.
5. A bottle or container with indelible ink suitable for that purposes.
6. A copy of register of voters or part containing the names of the voters entitled at that polling station.
7. A sufficient number of polling booths to enable voters to mark their votes secretly.
8. And any other equipment authorized by the commission for the conduct of voting in the polling station.

## FEATURES OF THE BALLOT BOX

As an observer, it is as well important to know features of the Ballot box. A ballot should be constructed;-

1. To Have an Aperture which is large enough to receive a ballot paper but which is no larger than that.
2. So as to be capable of being sealed so that ballot papers cannot be taken out of the box so long as the seal is unbroken.

3. So that it bears serial numbers of the polling stations which shall be displayed conspicuously at every polling station.

## ADMISSION TO POLLING STATIONS

**At the polling stations, the required persons who are to be admitted by the referendum officer in the polling station includes;-**

1. Commissioners or officers of the commission
2. Police officers or any other person responsible for security
3. Persons necessarily assisting blind or incapacitated voters
4. Agents registered by the commission
5. Accredited observers
6. Media representatives
7. A registered voter

Other than persons in the list, no other person may be allowed or admitted in polling station.

## ORDER AT THE POLLING STATION

1. The referendum officer has been given a duty of ensuring order at the polling station.
2. To that effect, the Referendum Officer may order dispersal of any gathering of persons appearing to prevent free entrance or exit from the polling station or persons intimidating or interfering. Upon this order security officers are supposed to act immediately.
3. These powers of the Referendum officer do not end at the area covering polling station only. They go further to cover an area of a radius of 200 meters on the centre of polling station.

4. Where a person causing disruptions refuses to obey instructions, he or she may be immediately removed by order of the RO or police officer and he or she shall not re enter the polling station during the continuance of the poll without the permission of the Referendum officer.

#### POSTPONEMENT AND EXTENSION OF POLLING.

1. The polling proceedings may be postponed with the Referendum officer for reasons of **Interruptions of riots, violence, natural catastrophe, and shortage of equipments or other cause.**
2. However after postponement the proceedings have to resume as soon as it is practicable.
3. The referendum officer may extend hour(s) of polling where polling is interrupted or delayed so as to recover lost time. Also he or she may extend time for any other good cause.
4. The Referendum officer may also have powers to transfer proceedings to another polling station in the same constituency. Thereafter, in consultation with Referendum committees, Referendum officer shall issue notice of the transfer in a manner that; the **notice will be brought to attention of voters.**

#### SEALING OF BALLOT BOXES

1. Immediately before commencing of a poll, the Referendum officer has to show the ballot box or boxes to the agents to ascertain that they are empty.
2. Thereafter close the boxes so that they are not opened without breaking the seal.
3. After being sealed, it should be placed at the polling station that at all times it can be seen by all officers and agents.
4. In a manner where the poll is adjourned or closed at one station and transferring of the ballot box to another station occurs or at any time where the ballot box is not in use, Referendum officer shall close the aperture of the box used to insert ballot papers with an official

seal on it to prevent insertion of ballot papers without breaking the seal.

5. The seal can only be broken in presence of persons who were lawfully present at the polling station where polling is about to resume.

6. The referendum officers shall allow agents at the polling station to inspect the ballot papers and note serial numbers before polling commences.

### **COMMUNICATION TO VOTERS.**

Apart from the Referendum returning officer and Referendum officer, no other person is allowed to communicate to voters who are within the area of polling station for purposes of voting.

This however, doesn't include companion of a blind person or incapacitated voters.

## **PART C: GENERAL VOTING PROCEDURES**

### **ISSUES TO CONSIDER BEFORE DELIVERING BALLOT PAPER TO A VOTER**

An observer should take note that before delivering a ballot paper to the voter, there are a number of issues that the Referendum officer has to ensure.

1. The back of the ballot paper is stamped with the official mark of the commission.

2. The number and name of the voter as stated in the copy register is called out.

3. The name of the voter is marked and the electoral number is retained as proof of delivering a ballot paper.



## RESPONSIBILITIES OF A VOTER UPON RECEIVING A BALLOT PAPER.

### After receiving a ballot paper a voter is required to:-

1. Proceed into polling booth of the polling station and secretly mark the ballot paper
2. Fold it thereafter so as it conceal the vote and Put in The ballot box in presence of RO and in full view of persons lawfully or present.
3. HAVE HIS LITTLE LEFT FINGER OR ANY OTHER PART OF BODY IMMERSED, DIPPED OR MARKED IN INK
4. Leave the Polling station immediately after voting
5. A person who knowingly fails to place a ballot paper issued to him other than a spoilt ballot paper before leaving commits an offence and an officer who deliberately refuses to mark or stamp any ballot paper commits an offence too.

## COUNTING OF VOTES

1. Votes are counted immediately after the completion of the voting exercise and in the presence of the agents.
2. No agent shall be deemed to be a counting agent without authorization of Referendum officer.
3. Authorization has to be 36 hours before the close of the poll, the name and address of the agent and an appointment letter from the registered referendum committee has to be submitted to Referendum officer.
4. Only one agent shall be admitted to the counting of votes.
5. Referendum officer shall admit observers duly approved or accredited, police officers and other agents registered by the commission.

## RECOUNT OF VOTES

1. A registered agent may ask for the recounting of voted where he or she is not satisfied with the counting.
2. A Referendum officer may conduct recount on his or her own initiatives. Recount of votes shall not be more than twice.

## REJECTED BALLOT PAPERS

1. Every rejected ballot paper has to be marked with a word “**REJECTED**”
2. Every ballot paper whose validity is disputed shall be as well marked “**DISPUTED**”

## PROCEDURE ON CLOSE OF POLLING STATION

Immediately after the close of the poll the Referendum officer shall make a statement of the number of;-

- (a) Ballot papers issued to Referendum officer
- (b) Used ballot papers
- (c) Spoilt ballot papers
- (d) Unused ballot papers

AFTER issuance of such, in presence of the agents, the Referendum officer will make separate packets containing;-

- (a) Spoil ballot papers
- (b) Marked copy register
- (c) Counterfoils of the used ballot papers

(d) Statement specified above and thereafter seal each package with official seal of the commission

The following shall also be sealed differently;-

(a) Counted but Disputed votes

(b) Disputed votes

(c) Rejected votes

**In announcing results, the Referendum officer:-**

1. Shall demonstrate to voters, accredited observers and any agents that the ballot box is empty
2. Seal the ballot box with commissions seal
3. Let the agents present affix their won seals if they wish so
4. Deliver the ballot box to RRO an all other items as soon as t is practicable.

### **CONSTITUENCY RESULTS**

After receiving the results of the poll for all polling stations, the REFERENDUM RETURNING OFFICER shall;-

- (a) Examine and resolved rejected and disputed votes.
- (b) Announce total number of valid votes cast for each side of the referendum to persons available.
- (c) Publicly declare to persons present the side with greater number of valid votes.
- (d) Complete a form with all these details , sign, date and give a copy of the form RO Registered Referendum Committees agents and
- (e) Deliver original form to the commission

## **ANNOUNCEMENT AND PUBLICATION OF REFERENDUM RESULTS**

**The commission in receipt of the results of the referendum from all constituencies and within 72 HOURS from the close of the final polling in the referendum.**

- (a) Announce total number of valid votes cast supporting or opposing the referendum question.
- (b) Declare as to whether or not the subject matter of the referendum has been ratified with more than 50 percent of the valid votes cast for Mainland Tanzania and Zanzibar.
- (c) Publish a notice in gazette indicating the results of the referendum in each constituency.
- (d) Publish in gazette a certificate declaring the results of the referendum.

## **PART D: THE REFERENDUM COMMITTEES**

The Act has established referendum committees. These committees are two at the national level and are two at the constituency level.

### **THE COMPOSITION OF THE REFERENDUM COMMITTEES IS AS FOLLOWS;-**

1. Groups of persons, associations, civil society organizations or organizations intending to support or oppose the referendum question during the referendum period.
2. These referendum committees have a duty to apply for registration to conduct campaigns to the commission 21 days before the referendum campaign period and in applying they are supposed to state their representation sides meaning whether campaigning for the referendum or against the referendum. The commission may register or refuse to register the RC upon application. In the refusal, the commission shall state reasons thereof.

3. Every RC intending to apply shall appoint a leader of the RC

4. The leader appointed shall be responsible for all affairs of the registered RC and be responsible for appointment of agents of the RC and provide signatures of such agents to the commission where the RC is at National level and to the RRO where the referendum Committee is at constituency level.

5. THE Referendum campaigns are conducted in thirty days and commences after the commission announces a commencement date.