

TEMCO

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The Enforcement of the Election Expenses Act

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1. Scale and manner of corruption in the nomination process

CCM members protesting, threatening to return their membership cards in Kinondoni District.



Newspaper reports and field observation by TEMCO election observers in constituencies have revealed that the scale of corruption has ballooned this year compared to the situation in the past elections.

Unlike in the past where no candidate was brought to court for inducing voters illegally, this year so far four aspirants for parliamentary seats and one candidate for councillorship have been booked for corruption offences.



Former Minister, Mr. Joseph Mungai (left in Front row) in court for allegations for breaching the Election Expenses Act, 2010, and the Prevention and Combating of Corruption Act 2007

Those who have been booked include Hon. Joseph Mungai who contested the Mufindi North Parliamentary seat

(Guardian, August 12, 2010) and Frederick Mwakalebela who contested the Iringa Urban seat (Tanzania Daima, August 18, 2010).

Others were Ester Mambali who contested parliamentary women special seats via the CCM youth wing (Mwananchi, August 16, 2010), the Chairman of the CCM Youth in Iringa region, Fadhili Ngajiro, who was contesting the Iringa Urban Parliamentary seat (Nipashe August 13, 2010), and Hafsa Bakari Abubakari Othman who was contesting councillorship in Chumbageni Ward in Tanga region (Mwananchi, August 10, 2010).

One reason that explains why this year authorities managed to arraign culprits in courts is the enactment of the Election Expenses Act, 2010. Though the PCCB habitually prosecutes accused persons using provisions of the Prevention and Combating of Corruption Act, 2007, which were also found in the repealed Prevention of Corruption Act 1971, Cap 329 R.E 2002, the Election Expenses legislation which specifically deals with election financing has aroused the zeal among law enforcers to fight electoral corruption (Section 7, Election Expenses Act, 2010). The zeal was furthermore stimulated by President Jakaya Kikwete

when he ordered PCCB to rout corruption in this year's elections (Guardian February 26, 2010).

Factors that account for the increase in scale and magnitude of corruption in the nomination process ironically include the innovation by political parties to introduce mechanisms aimed at reducing bribery in party primaries.

Both CCM and CUF changed their system of conducting party primaries so as to minimize the possibility of bribery. While in the past only party leaders voted in preferential votes of CCM and CUF, this year all party members were allowed to participate in the exercise. In CCM, this system was recommended by the Bilal Committee in 2007 while in CUF it was suggested by the party's General Council in 2009.

Contrary to expectations, the newly introduced system particularly in CCM fuelled rather than curbed corruption, the net result being that vote-selling and vote-buying that characterized primaries over the last decade intensified (The Guardian on Sunday, August 8, 2010). An annual report released by the Dar es Salaam based Legal and Human Rights Centre suggested that the new system which allowed all members to vote in the nomination process was actually a breeding ground for corruption (Mtanzania July 27, 2010).

Instead of inducing, say about 400 party leaders in a constituency, this year corrupt aspirants had to make contact and canvass for votes from all eligible members, sometimes totaling more than 10,000. As an illustration, Kinondoni constituency had more than 14,000 CCM

voters (Tanzania Daima August 2, 2010) and Mbozi East constituency had more than 25,000 CCM voters (Mwananchi August 8, 2010). The distribution of bribery money to a large electorate translates into increased magnitude of corruption.

“
...the new (intra-party) system which allows all members to vote in the nomination process is actually a breeding ground for corruption...” (Legal and Human Rights Centre)

The other factor which helped to widen the scale of corruption is related to the high degree of contestation that characterized this year's nomination process. The perceived weaknesses and fragility of opposition parties made some aspirants to believe that winning preferential votes in the ruling party was equivalent to becoming an elect MP waiting to be endorsed by the general elections. They regarded CCM nominations as de facto general elections. So far, for example, NEC has already declared 21 candidates, all from CCM to have won parliamentary seats in their constituencies due to the failure of opposition parties to field candidates in those constituencies (Uhuru, August 27, 2010).

In Dar es Salaam, for example, 90 aspirants came forward to contest eight parliamentary seats, with 20 contesting in Kawe, 19 in Kigamboni, 13 in Ukonga, 10 in Temeke, 10 in Segerea, 10 in Kinondoni,

Five in Ubungo and three in Ilala (Dar Leo, July 30, 2010). The mere number of aspirants could scare ill-prepared contesters, pushing them to resort to short cuts and illegal means. This may partly explain why people were predisposed to use both overt and covert means, legal and illegal to win party primaries in CCM. In so doing, they ended up getting involved in corruption.

The throat-cutting competition in intra-party nomination was to a certain extent fueled by rewards one gets from being an MP or councilor. As testified by the Presidential candidate for CHADEMA, Dr, Wilbroad Slaa who is also the former Member of Parliament for Karatu, an MP earns up to Sh. 7m/- (approximately, US \$ 5,000) a month, which is one of highest salaries in the country (Mwananchi, August 6, 2010). On the other hand, councilors sit in councils which allocate plots - a scarce commodity in towns and cities. With such privileges, councillorship becomes a very attractive elective post.

Newspapers reported various methods that were used by candidates to dish out bribes to voters. One of them, was outright distribution of cash by aspirants themselves or by using agents or branch and ward party leaders as was the case in allegations facing the former TFF Secretary General, Frederick Mwakalebela (The Citizen, August 12, 2010). The Guardian reported that some aspirants were using mobile phones technology, such as M-Pesa, to transfer bribery money as was confirmed by the Registrar of Political Parties who received complaints in that respect (Guardian 24, 2010). A group of other contestants offered drinks, food, clothes and mobile phones (Habari Leo, July 29, 2010).

TEMCO observers reported several forms of corruption apart from those mentioned above which were distributed to the citizens. In Urambo and Bagamoyo constituencies some candidates were reported to have offered motor-bikes to the voters so as to ensure that they win elections. Those motor-bikes were as well used to distribute some money to the voters on the eye of preferential voting day. These incidences also prevalent at the councilor-ship level where several allegations from Bagamoyo and Shinyanga urban constituencies were reported by TEMCO observers.

It has been noted that some of the incumbent MPs donated money to the electorate even when the nomination process had started, ostensibly to fulfill promises they gave in the previous elections. Such donations were contrary to the Election Expenses Act which prohibits giving out gifts after the start of the nomination process, which is legally defined as the process by whatever procedure whereby a political party invites persons who wish to be sponsored by any of such political parties to stand as a candidate in the elections (Section 3, Election Expenses Act, 2010).

One example was illustrated by the outgoing MP for Dodoma Urban, Hon. Ephraim Madeje (CCM) who argued that the assistance comprising of T-shirts and shirts which he extended to CCM ten-cell leaders in Ipala ward in the last weeks of July 2010, was part of his promises he made to the electorate two years ago though contestants in other parties had already started picking forms for intra-party nomination (Tanzania Daima, August 1, 2010). The swollen-headedness demonstrated by the incumbents in offering gifts to the electorate in the name of fulfilling electoral promises prompted other

aspirants also to give out gifts and rewards to boost their chances of winning the elections.

The degeneration of party ethics is also to blame for the widespread corruption in the nomination process. Many party members, like the rest of Tanzanians, believe election time is the harvest time in the sense that it is time for the electorate to solicit money from the aspirants of elective posts. There is a feeling that the electorate are actually voting for candidates who subsequently become

millionaires because of the conspicuously handsome paypackage offered to MPs. A monthly wage of up to 7m/- per month seems to entice the electorate to scramble for a part of the wealth of their representatives (Mwananchi, August 6, 2010). Those who participate in the preferential votes benefit the most by either asking for bribes from the candidates or getting allured to receive offers, gifts and personal benefits from candidates. The TEMCO observer in Kibaha urban constituency, where it was alleged that

the outgoing MP was using her retirement benefit as an MP to get re-elected, found citizens chatting and saying that it was their time to share the wealth of an outgoing MP which implies that they were used to the so called harvesting season.

“**...it is our time to share the member of Parliament...” Kibaha citizens were quoted as saying to justify receiving gifts.**

The practice of offering gifts and offers got deeply entrenched in the people's way of life after the amendment of the Election Act of 1985 in 2000 which legitimized giving food, drinks or parting with money for such expenses in elections, labeling it as “traditional hospitality”. The amendment has increased the level of corruption in elections because there was a very thin line between bribe and traditional hospitality, as many candidates who were accused of bribing voters defended themselves that they were simply practicing traditional hospitality popularly known in Kiswahili as “takrima”.

The ritual of offering “Takrima” (which in essence was bribery) became part and parcel of the electoral process until in April 2006 when the High Court of Tanzania nullified section 119(2) and (119(3) which hitherto allowed takrima (Guardian April 25, 2006). The National Assembly consequently amended the law by repealing provisions allowing takrima though many leaders and voters nostalgically still give and receive takrima as if it was still allowed. *Takrima* is usually given during the nomination process and throughout the campaign period. Under such circumstances, where both leaders and party

members consider petty corruption as a normal thing, it becomes extremely difficult to enforce a law that seeks to prevent the same. Another thing which can further illustrate the argument is the number of the reports by the media during the entire nomination process. No day passed without headlines on corruption reports on the media especially the dailies. Some of those reports were released by the PCCB and others were revealed by the media reporters who had somewhat reasonable justifications which included some complaints from the citizens who claimed that they could not sleep

comfortably because candidates kept on knocking on their doors during nights so that they can distribute money to them so as to be voted for, come nomination day. This was reported by TEMCO observers in many constituencies including Simanjiro, Same, Kibaha urban, Newala and Rungwe constituencies.

Also there were so many appeals to the top leadership of the parties by the candidates who lost linking those who won with the use of corruption. For instance, Shy-Rose

Bhanji claimed that she had the evidence linking the candidate who was nominated by CCM to contest for parliamentarian-ship in Kinondoni constituency (Mwananchi, August 20, 2010). Some other contestants like Shamsa Mwangunga who contested in Ubungo constituency (CCM) claimed that she was foul played and that is why she lost.

“

.... We cannot sleep comfortably because candidates keep on knocking on our doors at nights so that they can distribute money to influence us to vote for them....”

Residents in Simanjiro, Rungwe, Same and Newala were quoted as saying.

On the whole, the nomination process for the October 2010 general elections was fraught with an unprecedented degree of corruption in terms of both the member of people being corrupted and the amount of money involved. However, according to the analysis of the newspapers reports as well as reports by TEMCO observers,

the general conclusion which could be drawn was that the passing of the Election Expenses Act was a progressive move, but its enforcement has encountered formidable challenges.

Such challenges include inadequate public awareness of the Act, lack of capacities among political parties to enforce the law, inadequate personnel of the PCCB, lack of clarity

of responsibilities between PCCB and the Office of the Registrar of Political Parties and like. Such challenges ought to be thoroughly addressed in future by all the relevant actors, including the government, the PCCB, political parties, the Registrar of Political Parties, the police force, the election management bodies, the media and so forth.

2. Low capacity bogs down parties' efforts to enforce nomination rules



Aziz Aboud in his campaign to seek nomination for the Morogoro Urban Parliamentary Seat

During the intra-party nomination process that officially ended on August 19, 2010 most political parties demonstrated inherent weaknesses in enforcing party rules as well as the country's laws and regulations. Observations by TEMCO observers as well reports from newspapers indicate that almost all parties that conducted primaries either did not have a commitment to enforce the law, were unable to tame corruption or did not have the courage and zeal to compel their aspirants and followers to comply with the legal and ethical requirements.

All daily newspapers, without exception, reported the prevalence of corruption in the CCM nomination process in almost every region on Tanzanian Mainland. For example, from July 18 when the campaign for the CCM preferential votes started throughout to August 1, when the

vote was conducted, all daily newspapers reported corruption complaints involving aspirants.

Mwananchi reported that the CCM campaigns were riddled with corruption with aspirants giving bribes in broad daylight (Mwananchi July 23, 2010). Tanzania Daima reported that the atmosphere in CCM had been polluted following the holding and questioning of CCM preferential votes aspirants by officials of the Prevention and Combating of Corruption Bureau (PCCB) (Tanzania Daima, July 28, 2010). Nipashe reported that PCCB drag net had trapped several aspirants of the preferential votes in Mbeya, Iringa and Dodoma region (Nipashe, July 23, 2010).

The Daily News reported that the PCCB was incessantly carrying out its crusade against graft and foul play as the nation inched towards general elections. (Daily

News, July 30, 2010). The prevalence of corruption incidences led newspapers to come with a verdict that corruption ruled in CCM nomination campaigns (Citizen, July 27, 2010). And in all cases, CCM seemed quite incapable of stopping its members from giving and receiving bribes. The same could also be said for other parties like CHADEMA which went to the extent of suspending the nomination process for women parliamentary special seats because of its failure to thwart corrupt practices (Mwananchi August 11, 2010).

“...Corruption rules in CCM nomination campaigns...” The Citizen July 27, 2010

There are five major factors that seemingly undermined the capacity of political parties to enforce the Election Expenses Act 2010. First, the law was new and political parties had not put in place mechanisms to enforce it. The law was enacted in February and assented to by President Kikwete on April 17, 2010 just one and four months before the commencement of the nomination exercise in CUF and CCM, respectively (The Guardian, April 18, 2010; Mwananchi May 11, 2010; and Nipashe August 19, 2010). Therefore parties could not in such a short period of time build effective systems and mechanisms to enable them enforce the law.

For a party like CCM which nominated candidates in all 239 constituencies, the magnitude and volume of work involved was only second to the general, and local government elections. It is a common knowledge that the size of the staff at the National Electoral Commission is inadequate to supervise the general elections in all regions in the country and that is why it borrows people from the government. This is indicative of the fact that it was an uphill task for CCM or any other party to deploy qualified personnel to supervise procedural

issues as well as ethical practices during preferential voters throughout the country. Secondly, is the failure by party leaders to effect a law which also affected them. Quite a significant number of party leaders who were supposed to supervise the enforcement of the Election Expenses Act and internal party regulations were also contestants in elections, making it difficult for them to police themselves. For example, the CCM Secretary for Planning and Finance who was supposed to supervise observation of financial discipline in the Party, Mr. Amos Makala was also contesting in Mvomero constituency in Morogoro region.

Even before the nomination process began, there were complaints that Mr. Makala was bribing voters by offering cash, even when the PCCB failed to net him. (Mwananchi 18, 2010). Despite the prevalence of such complaints, CCM never dared to reprimand Makala, ostensibly for lack of evidence. Such impunity might have spurred other party leaders to offer bribes knowing the party could hardly get hard evidence to enable it take disciplinary measures against them,

The CCM Deputy Secretary General-Zanzibar, Saleh Ramadhani Ferouz was contesting a Parliamentary seat in Kikwajuni

constituency and so was his counterpart on the Mainland, John Chiligati who was contesting in Manyoni East constituency. Although there is no report linking the two with incidences of corruption, the party would have been in a difficult position if the two were alleged to have indulged in electoral corruption.

The Assistant to the Secretary General of CCM (Yusuph Makamba), Mr Said Mtanda, who was supposed to assist the Secretary General of the party to monitor the implementation of the Act within the party was as well contesting for nomination for parliamentarian-ship in Mchinga constituency (Lindi) and so this made it difficult for the party hierarchy to effectively monitor the implementation of the Act.

The vagueness in the interpretation of the Election Expenses Act was another reason for the failure of party leaders to enforce the legislation. The absence of a clear-cut limitation time for incumbent MPs to stop fulfilling previous electoral promises made parties to hesitate taking disciplinary measures against those accused of inducing voters by bribery. For example, former Minister, Dr. Juma Ngasongwa who was contesting a parliamentary seat in Ulanga West constituency admitted to have distributed corrugated iron sheet and cement bags to a number of party offices in Manda Chini, Lugala , and Madubila in his constituency saying he was fulfilling the promises he made earlier (Mtanzania, July 19, 2010).

The Elections Expenses Act, 2010 bars committing of prohibited practices including procuring gifts before election campaigns so as to induce people to procure the nomination of the giver (Section 21(1) (c), Election Expenses Act,

2010). Nevertheless, the same law stipulates that a transaction designed to advance the interests of community fund raising, self-help, self-reliance or social welfare projects within the constituency, shall not be deemed to be prohibited practices provided it is done before the nomination process (Section 21(3), Election Expenses Act, 2010).

The law defines the nomination process as the process by whatever procedure whereby a political party invites persons who wish to be sponsored by any of such political parties to stand as candidate in the elections (Section 2, Election Expenses Act 2010) , meaning anything done after the parties have invited aspirants to stand as candidates amounts to prohibited practices. Dr. Ngasongwa's story was reported one day before aspirants started picking up intra-party nomination forms on July 18, 2010. The story which was written based on reports received before did not say when the former minister distributed corrugated iron sheet.

Also it was reported by the TEMCO observer in Bagamoyo constituency that one contestant from the ruling party had done the same a day before aspirants picked up intra-party nomination forms by distributing jerseys and sports equipment to a football club found within the constituency.

“ ..I distributed corrugated iron sheets and cement bags to party offices in Manda Chini, Lugala , and Madubila in my constituency because it was part of the promises I made earlier as a Member of Parliament....

Fourthly, some top leaders in the party had their sons, wives and relatives running. Such relationship put the leaders for the elective posts in a very precarious situation, especially when their relatives got implicated in corruption scandals. For example, the Secretary General of CCM, Yusuf Makamba had his son, January Makamba (who is also personal assistant to the President and the Chairman of the Party), running for the parliamentary seat in Bumbuli constituency in Tanga region.

A number of complaints about corruption were leveled against January Makamba but the party never reacted on the complaints. One of such allegations that were aired by other aspirants claimed that at one time January Makamba invited CCM leaders from Mgwashi ward and were treated to a traditional hospitality that included food, drinks and cash (Raia Mwema June 2-8, 2010). After it became evident that some of the leading contestants in the CCM preferential polls were alleged to have been involved in corrupt practices, Makamba's reaction was that the party would endorse those who had won the primaries, stressing the principle of respecting people's will, the presence of the complaints notwithstanding.

The Prime Minister, Mizengo Pinda had his daughter Fortuna Pinda running for women parliamentarian special seats (Mwananchi, August 18, 2010). Although she lost, Honorable Pinda stood to be tested whether he would ask the party to strike out her name in case she got involved in corrupt practices.

The Speaker of the National Assembly, Hon. Samuel Sitta who is also a member of the CCM Central Committee had his wife, Margaret Simwanza Sitta running

for parliamentary special seats in Tabora region. When his wife was being held and subsequently questioned by the PCCB he never condemned the alleged corrupt practices, instead he made a statement that contained a warning that he would teach PCCB officials a lesson for having mistreated his wife and tainted her image. (Habari Leo July 31, 2010). Mrs. Sitta's candidature was eventually endorsed by the CCM National Executive Committee in spite of the accusations that were still being investigated by the PCCB.

Lack of known and clear regulations in elections was the other factor that undermined the capacity of parties, especially those in opposition camp, to curb corruption in the nomination process. This was illustrated by the failure by CHADEMA to discipline those who were involved in corrupt practices that partly caused the Central Committee of the party to suspend the selection of candidates for special seats until after the general elections (Habari Leo, August 16, 2010).

Corrupt practices in CHADEMA are believed to have compelled the incumbent Member of Parliament for Tarime, Charles Mwera to quit the party to join CUF. He had earlier been defeated by Mwita Waitara in the party primaries which he alleged were marred by corruption (Habari Leo, August 16, 2010). There were also complaints that CUF failed to contain corruption during the May nomination process for candidates of Members of Parliament and House of Representatives because of slack supervision and absence of strict code of conduct in nominations (June 1, 2010, www.mzalendo.net).

As for the rest of the parties, there was nothing that could qualify to be called competitive nomination processes because

candidates were handpicked by leaders or just walked in, grabbed the forms, returned them dully filled and pronounced as party flag bearers.

Many opposition parties do not have elaborate leadership (let alone offices), who can could supervise party regulations at the level of villages, streets and hamlets (Raia Mwema November 25-Desemba 1, 2009). Going by the country's laws, if a party does not have members in a constituency it cannot sponsor them to run on its ticket (Article 67(1)(b) of the Constitution of the United Republic). Thus many parties have failed to field parliamentary and

councilor candidates for lack of members and credible aspirants. For example, in 2000 CCM sponsored 231 parliamentary candidates (equal to 100 percent of all parliamentary posts under contestation), CUF sponsored 130 (59.7 percent), TLP sponsored 112 candidates (48.5 percent), NCCR Mageuzi sponsored 93 (40.3 percent), CHADEMA sponsored 66 (28.6 percent and UDP sponsored 66 (28.6 percent). (TEMCO 2000). This means that only CCM could undertake nomination processes throughout the country. The rest of parties simply did not have the capacity to field candidates in all regions

3. Legislation fails to take effect in Zanzibar

The enforcement of the Election Expenses Act, No. 6 of 2010 has been proved more difficult in Zanzibar because of the legal constraints regarding laws enacted by the National Assembly as well as the lack of an effective institutional set up.

The Election Expenses Act, 2010 is meant to apply in the case of Mainland Tanzania, in respect of election expenses for candidate for the office of the President of the United Republic, a Member of Parliament and a Councillor while in the case of Zanzibar, in respect of a candidate for an office of the President of the United Republic and for an office of a Member of Parliament, (Section 2, Election Expenses Act, 2010).

The applicability of the law was underscored by the Coordinator of Public Education in the office of the Registrar of Political Parties, Ms. Zakia Stephano, who said those vying to be members of the House of Representatives in Zanzibar would not be

encumbered by the law in the forthcoming general elections (Guardian, July 27, 2010). The Constitution of the United Republic stipulates that a law enacted by the Tanzania Parliament will not take effect in Zanzibar unless it involves Union Matters (Article 64(4), Constitution of the United Republic).

Likewise, a law enacted by Parliament cannot be enforced in Zanzibar unless it has expressly stated that it shall apply both on Tanzania Mainland and Zanzibar or if it amends or repeals an earlier law which applied on both parts of the union.

Nevertheless, the Zanzibar constitution states that no law enacted by Parliament shall be enforced in Zanzibar unless it has been tabled by a minister in the Zanzibar House of Representatives (Article 132(2), Zanzibar Constitution, 1985).

So far the Election Expenses Act, 2010 has not been tabled in the Zanzibar House of Representative which renders its enforcement impossible.

“ ...no law enacted by Parliament shall be enforced in Zanzibar unless it has been tabled by a minister in the Zanzibar House of Representatives ...” Article 132(2), Zanzibar Constitution, 1985

The only salvation for the enforcement of the law is the Court of Appeal decision in the case of Seif Shariff Hamad. v. The Revolutionary Government of Zanzibar, (Appeal No. 171 of 1992(unreported) in which it was held that article 132(2) of the Zanzibar Constitution was not of any legal effect because article 64(5) of the Union Constitution states that in event any law conflicts with the Constitution of the United Republic, then the Tanzanian constitution shall prevail and that the other law, to the extent of the inconsistency shall be void.

The court then recommended that the conflicts related to the union matters should be rectified. Despite that court decision in 1992, article 132(2) of the Zanzibar Constitution has not been amended and, as such, a law enacted by the Union Parliament cannot take effect unless it is tabled in the House of Representatives.

The second problems facing the enforcement of the Election Expenses Act is the absence of an institution charged with monitoring its implementation in Zanzibar.

The law confers to the Registrar of Political Parties with responsibility for supervision and administration of election expenses (Section 4, Election Expenses Act, 2010). Nevertheless most of the offences committed in election expenses are related to bribery and corruption whose provisions are usually enforced by specialized bodies. In the case of Tanzania Mainland such body is the Prevention and Combating of Corruption Bureau (PCCB). Since corruption is not on the list of Union Matters, PCCB is

not a Union institution, and its jurisdiction is confined to Tanzanian Mainland only (Section 2(1), the Prevention and Combating of Corruption Act, 2007).

The Office of the Registrar has acknowledged the failure by PCCB to work in Zanzibar and it has since assigned the police in Zanzibar to undertake the assignment of monitoring incidences of corrupt practices in elections on behalf of the PCCB (The Guardian, July 27, 2010). It is also inconceivable on how the same Police Force which did not involve itself fully with the monitoring of the Act on the mainland could do effective monitoring in Zanzibar. But legally speaking, PCCB cannot delegate its obligations to the police, a complication that has made it difficult to implement the Election Expenses Act in Zanzibar. As a result there have been many cases of corruption in Zanzibar, with some aspirants going out in the middle of the night to dish out money to voters as bribe (Tanzania Daima, July 29, 2010).

Newspapers reported a lot of complaints where some aspirants were distributing between Sh. 10,000/- and 20,000/- to party members to buy their votes (Nipashe, August 12, 2010). As a result the Special Committee of the National Executive Committee in Zanzibar nullified the results of preferential votes in Dimani, Dole and Mtoni in Urban West region and a re-run was ordered (Nipashe August 10, 2010). Nevertheless, not a single candidate has been arraigned in court for corrupt practices in Zanzibar.

4. Parties nominate corruption suspects as candidates



Hon. Margaret Sitta, Minister for Community Development Gender and Children, who is contesting women special seats in Tabora Region

One of the basic principles of rule of law relates to uniformity, consistency and predictability. Using this principle, the enforcement of the Elections Expenses Act leaves a lot to be desired. Political parties, including the ruling CCM, have seemingly failed the test of implementing a common principle in dealing with suspects of corruption in the nomination process.

A study on the newspaper reports indicates that political parties have nominated a number of candidates who were suspected to have been involved in corrupt practices, while other suspects have been axed for reason not commensurate with set party criteria. Instead of using the principle of uniformity, consistency and predictability, the National Executive Committee of CCM has been accused to have failed to apply uniform criteria and instead resorted to seemingly arbitrary decisions largely influenced by party bosses.

To cite a few examples, the National Executive Committee of CCM endorsed the candidature of both Ms. Margaret Simwanza Sitta, the Minister for Community Development, Gender and Children, and Ms. Betty Machangu, the Kasulu District Commissioner to contest for parliamentary

special seats (Daily News, August 16, 2010).

Earlier, it had been reported that the Prevention and Corruption Bureau (PCCB) had arrested and questioned 10 people, including Minister Sitta, on suspicion of bribing party members with cash and mobile phones to solicit votes (Daily News 28/8/2010). She was contesting the parliamentary special seats in Tabora Region through the party's women's wing.

The Daily News quoted the Acting Regional PCCB Commander in Tabora, Mr. Bruno Rwenyagira, in his brief to reporters, as saying that the suspects were arrested at a guest house known as Camise situated in Cheyo A area.

The other suspects nabbed alongside the minister were the Uyui District Youth Secretary, Julius Kilimanjaro, Ipuri Ward CCM Secretary, Lucas Simwanza, Lutende Ward UWT Secretary party's Elizabeth Kondora and the ward's UWT Chairperson, Catherine Sepetu. Yet others were CCM guards, Michael Manyanda, a teacher at Majengo Primary School, Mary Joseph, Uyui CCM District Publicity Secretary, Rashid Abdalla, a guard with CCM, Abdul Kayamba and the minister's driver, Cosmas Urio.

The PCCB official further said that the minister was caught in possession of seven mobile phone handsets, 1,015,000/- cash and 145 empty envelopes (Citizen 28/7/2010). According to Mr. Bruno, the PCCB had been tracking the minister from 10pm on in the guest houses that were used to accommodate delegates to the regional women's congress that was to pick the MPs next day. The PCCB made the arrest at 1.55 am.

After being held for some time, Minister Sitta was later released and allowed to continue with her campaigns. In the vote, the minister came second after Ms. Munde Tambwe. Ms. Tambwe polled 350 votes while Minister Sitta got 337 votes. Other contestants with their votes in brackets were Aziza Alli (227), Rohoda Sangwa (20), Juliana Changarawe (17), Maria Mruma (7) and Lesu Kirila (2). The National Executive of CCM endorsed both Ms. Tambwe and Minister Sitta (Majira, July 30, 2010).

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the minister was caught in possession of seven mobile phone handsets, 1,015,000/- cash and 145 empty envelopes

As for her part, Ms. Betty Machangu (who was contesting Special Seats in Kilimanjaro) and her colleagues were allegedly found in a room calling some party members in turn and gave them cash ranging between 50,000/- and 100,000/- and pairs of khanga. At the point of arrest Ms Machangu was still having 500,000/- in cash, four pairs of kitenge, honey and brochures (Citizen, July 26, 2010).

She went on to win the primary polls where she polled 419 votes as compared to her nearest challenger Ms. Shally Raymond who secured 410 votes. Others who came closer included Ms Elizabeth Minde who got 322 votes, Ms Marry Sempambo (305) and Ms Veronica Shayo (280).

People expected that the suspicion that led to the arrest of DC Machangu and Minister Sitta could warrant their disqualification by CCM. However, that was not the case as both were endorsed to contest their respective seats.

CCM also endorsed the candidature of two former ministers involved in criminal cases pending in courts of law. The two former ministers are Mr. Basil Mramba, who remained charged with misuse of office and Mr. Andrew Chenge who was facing charges of driving offence leading to deaths of two women for reckless driving (Daily News, August 16, 2010, page 1). While Mr. Mramba was the incumbent recontesting for the Parliamentary seat in Rombo constituency in Kilimanjaro region, Mr. Chenge was recontesting for the Parliamentary seat in Bariadi West. The reason given for endorsing Mr. Mramba and Mr. Chenge was article 13(5)(b) of the Constitution of the United Republic which states that a person is

presumed innocent until proved guilty by a court of law, meaning that Mr. Mramba and Mr. Chenge were still innocent because the court had not yet convicted them.

Nevertheless, the same principle was not followed in the case of Frederick Mwakalebela, the former Executive Secretary of the Tanzania Football Federation (TFF) whose candidature was disqualified for alleged violation of the Election Expenses Act, 2010.

Mwakalebela was charged in the Iringa Resident Magistrate court on August 11, 2010 where the PCCB prosecutor, Prisca Mpela alleged that the former TFF boss was engaged in corrupt practices during preferential votes (Citizen August 12, 2010, p.1).

During the CCM primaries Mwakalebela polled 3,897 votes against 2,989 votes garnered by the outgoing Iringa Urban MP, Ms Monica Mbega. The NEC nevertheless endorsed Ms. Mbega as the party flag bearer in Iringa urban constituency.

By the time the NEC of CCM was endorsing the candidates, Mwakalebela, who was charged in absentia, had not been convicted and, therefore, the constitutional presumption of innocence also applied to him as it did to Mr. Mramba and Mr. Chenge.

This is indicative of the fact that CCM was not consistent in the application of the principle of presumption of innocence in endorsing candidates.

Although there is no hard evidence to substantiate this assertion, the scare statements made by the Speaker of the National Assembly and directives made by the PCCB might have influenced the NEC decision in endorsing Mrs. Sitta and Ms. Machangu.

Soon after Minister Sitta's arrest, her husband, who is also Speaker of the National Assembly, and Urambo East MP, Samuel Sitta, accused the Prevention and Combating of Corruption Bureau (PCCB) of malice and unethical conduct (Daily News 31 July 2010).

According to newspaper reports, when addressing a public rally at Matanki Manne grounds in the constituency, Mr. Sitta accused PCCB officials of being "malicious in executing their duties to the extent of victimizing innocent contenders for unknown motives.

“PCCB officials are "malicious in executing their duties to the extent of victimizing innocent contenders for unknown motives.”

The scare could have influenced the PCCB not to send the Minister to court while it did the same to the other members of CCM. In this case, NEC chose to neglect the allegations facing the minister.

But secondly, soon after DC Machangu was arrested and questioned, the PCCB Regional Commander, Alexander Budigila was transferred and demoted (Tanzania Daima, August 1, 2010).

Though the bureau explained the transfer as part of the normal administrative decisions in the institution, few were convinced that it did not have connection with the questioning of the DC.

What is apparent on the face of the way PCCB executed its duties is its immense discretion as to who it should arrest, who it should take to court and who it should not.

In such state of affairs, an assertion that heads of regional PCCB bureaus operate on instructions from headquarters cannot be ruled out.

Another issue that arose from the endorsement of corrupt candidates by parties is the impartiality of parties in the entire nomination process at the constituency level. In some instances, some candidates from within the ruling party were complaining that the party leadership at the constituency level was working in favor of some candidates. In Tarime constituency the TEMCO observer reported that one candidate among CCM contestants by the name of Charles Kangoye complained several times to the party leadership in the constituency that his fellow candidate, Mr Nyambari Nyangwine was bribing citizens but the party took no measures against him.

“...My fellow candidate is bribing citizens but the party has not taken any measure against him...”

The TEMCO observer in Tarime constituency also observed several times Mr. Nyangwine distributing books to several schools in the constituency which was prohibited in the Act. Another remarkable issue is that the CCM leadership within the constituency was in favor of Mr. Nyangwine in that he was declared the winner after election

without the party saying explicitly he won by how many votes and his opponents got how many votes.

There was no transparency at all in the vote counting process and declaration of results. After the results were declared there were appeals and hence the number of votes which each candidate got remained to be a puzzle and the party leadership never posted in public the scores of the candidates.

Another issue is that in some cases the opposition parties in several constituencies did not have an elaborate nomination process, but rather the candidates were determined by the party headquarters. The party hierarchies appointed some contestants, without involving party members. This shows vividly some leaders of these parties were acting partial. For instance, CUF appointed a parliamentary candidate for Bagamoyo constituency without the consent of its members in the constituency. The party headquarters appointed him and sent him there. This event was also reported in several constituencies by the opposition parties such as Muhambwa and Rufiji. (Mwananchi August 8, 2010; Observers' reports from Bagamoyo and Rufiji)

Another aspect that was observed and reported was lack of awareness of the Act by some of the leaders of political parties. Some leaders of the parties were not aware of the Act and did not know their obligations in implementing the new Act. Some leaders of the parties were interviewed and confessed that they had not come across with the Act and never knew what their obligations as per the provisions were.

This was observed in many constituencies as was reported by TEMCO observers. Urambo constituency, Igunga,

Same and Simanjoro would belong to this category, where some party leaders confessed that they had not come across

with the Act, instead they simply heard it on the media.

5. Credibility of PCCB and RPP questioned



Dr. Edward Hoseah, Director General of Prevention and Combating of Corruption Bureau (PCCCB)

The credibility of the Prevention and Combating of Corruption Bureau (PCCB) and Registrar of Political Parties (RPP) during the nomination process attracted severe criticism from both politicians and law enforcement agencies. Starting with the PCCB, while politicians have been disturbed by the uncertainty of the modus operandi of the bureau, law enforcement agencies have censured PCCB for apportioning blames on other institutions without reexamining its own integrity.

The Chairman of CHADEMA, Freeman Mbowe was of the opinion that PCCB targeted specific candidates, saying that apart from hounding CCM candidates it was not interested in investigating aspirants in other parties like CHADEMA, TLP and NCCR-Mageuzi (Daily News of Saturday, July 31). Mbowe who was addressing a public rally in Arusha said some bigwigs were misusing the body to weed out some candidates. Such views had earlier been aired by the NCCR-Mageuzi presidential candidate, Mr. Hashim Rungwe who

argued that the watchdog institution ought to turn its attention on opposition parties too. (Guardian July 28, 2010).

In Tarime constituency (Mara region), a TEMCO observer together with one contestant from CCM phoned PCCB and briefed them about one candidate who was bribing the citizens one day before nomination. The observer and the citizen stayed on the scene of the crime for a long time without PCCB showing up until when the candidate drove off. The PCCB came quite late and this discouraged citizens from reporting to the PCCB as they had impression that the Bureau was not interested in arresting corrupt candidates.

“... some bigwigs are misusing PCCB to weed out some candidates...” said the CHADEMA Chairman, Mr. Freeman Mbowe.

Another politician who was not impressed by the work of PCCB was the Speaker of the National Assembly and Urambo East MP, Samuel Sitta who accused the body of being malicious and unethical in executing their duties to the extent of victimizing innocent contenders for unknown motives (Daily News, July 31, 2010).

Hon. Sitta made the remarks after his wife, Margaret Sitta, the Minister for Community Development, Gender and Children Minister Margaret Sitta had been arrested and interrogated by the anti-graft body on suspicion of election-related bribery.

TEMCO observers also reported on allegations on the credibility of PCCB from Kibaha Urban constituency where the PCCB were accused of being biased and acting in a partial manner. Some party leaders of CCM and CHADEMA in the constituency claimed that the PCCB did not respond at all or responded rather late when phoned and given information on the involvement of some candidates in bribery practices.

To their disbelief, the same PCCB responded quite promptly when briefed about some other candidates involved in bribery practices. This led the two leaders from CCM (the Youth Secretary known by the name of Candidus) and CHADEMA (the Secretary of the party in the constituency) to conclude that the PCCB were by themselves bought by some big potatoes in the nomination process.

During a course organized in early August 2010 to discuss the role of the police and the PCCB personnel in enforcing the Election Expenses Act, 2010, participants questioned the integrity of

the PCCB in the war against graft when the PCCB boss tried to paint a picture of the most corrupt public organs.

In his presentation, the PCCB Director, Dr. Edward Hoseah had named leading public entities perceived by the people as the most corrupt as the Traffic police (66.4 percent), followed by ordinary police (64.7 percent), the Judiciary (59 percent), health facilities (39 percent) and land tribunal (29 percent) (Nipashe, August 10, 2010).

It was then that the Ilala Regional Police Commander, Duwani Nyanda challenged the PCCB Director, saying there were a lot of complaints that some PCCB officials were receiving bribes yet the PCCB did not feature anywhere in the list of corrupt institutions given by Dr. Hoseah (Guardian, August 10, 2010). The criticism made the PCCB to defend themselves but the point had been made that the body's integrity in the eyes of the public is questionable.

When the PCCB arraigned a former cabinet minister in court, the media became awash with praises for the anti-graft body, urging it to work even harder to book all culprits (Nipashe, July 30, 2010; Mtanzania July 29, 2010, Habari Leo July 27, 2010).

“.....there are a lot of complaints that some PCCB officials were receiving bribes yet the PCCB does not feature anywhere in the list of corrupt institutions.....”
Says the Ilala Regional Police Commander ,
Duwani Nyanda

One commentator on the enforcement of the Election Expenses Act was tempted to pat the PCCB on the back but he later realized that most of the politicians who were arrested, interrogated, briefly detained, including the few who have already been charged in court for corruption were minnows in the corruption stakes (Karl Lyimo, Citizen. August 2, 2010).

The transfer and demotion of the PCCB Commander in Kilimanjaro, Mr. Alexander Budigila, soon after he had arrested the Kasulu District Commissioner, Ms. Betty Machangu raised queries on the integrity of the PCCB (Tanzania Daima, August 1, 2010). The queries centered on whether PCCB regional commanders only move upon receiving directives from headquarters. Put it differently, junior PCCB officials may receive orders not to arrest big fish even when the evidence of their wrong may be aplenty.

It was also reported that during the nomination process a bunch of conmen masqueraded as anti-graft officials, attempted to extort money from innocent people and taking advantage of anxiety gripping CCM aspirants in party primaries. The Bureau was compelled to issue a statement, through its Public Relations Officer, Ms. Doreen Kapwani, asking the people to be cautious of conmen targeting aspirants for CCM leadership whom they regard as their 'easy targets'. The statement said the conmen used phone calls to inform them about non-existent corruption allegations while demanding large sums of money so as to 'withdraw' the allegations (Daily News, August 6, 2010).

The fact that people could masquerade as PCCB officials to extort money from candidates is an indicator that it was possible for PCCB officials to get money

from aspirants who were involved in corrupt practices. That leaves the public suspecting the integrity of the PCCB personnel.

There were also questions about the efficacy of the Registrar of Political Parties (RPP) and his office to monitor the implementation of the Act. The common allegations leveled against the organ were that it had very few personnel and that it lacked offices in several regions to effectively monitor the implementation of the Act.

This is illustrated by the fact that the RPP office has no extension offices in each region in Tanzania but rather has zonal offices which link some regions together. A TEMCO observer in Simanjiro constituency reported that there was no single observer from the office of the RPP who showed up during intra-party nominations in the constituency. Also TEMCO observers in Coastal region found out that the entire region had only seven personnel from the office of the RPP who were very few compared to the actual demand and reported cases on the breach of the provisions in the Act.

An issue of particular concern could be the involvement of the Police Force in monitoring the implementation of the Act. It is interesting to note that in several constituencies which were monitored by TEMCO the Police force stayed away from monitoring the implementation and partly claimed that it lacked necessary tools to monitor the implementation of the new Act. The field reports by TEMCO observers indicate that the Police Force was involved in the late stages after the suspects were arrested by the PCCB. There was no report linking the Police Force on their own initiative arresting some suspects alleged to be involved in bribery practices.

THE TANZANIA ELECTION MONITORING COMMITTEE

