PRELIMINARY STATEMENT

A peaceful and generally orderly election day; key stages of the electoral process lacked transparency

Dar es Salaam, 2 November 2010

Following an invitation from the Government of the United Republic of Tanzania and the signing of Memoranda of Understanding with the Government, the National Electoral Commission (NEC) and the Zanzibar Electoral Commission (ZEC), a European Union Election Observation Mission (EU EOM) was deployed to observe the 31 October 2010 general elections. The EU EOM is headed by Mr. David Martin, Member of European Parliament (MEP), and includes a Core Team of six analysts based in Dar es Salaam and Zanzibar who arrived in the country on 29 September. A group of 22 Long Term Observers (LTOs) joined the Mission on 7 October and were deployed to cover all the 26 regions of the country. They were reinforced by a group of 42 Short Term Observers (STOs) who arrived in Tanzania on 25 October. A group of 26 Local Short Term Observers (LSTOs) joined the Mission on election day. The Mission's mandate was to observe the electoral process, including the legal framework, the administration of the elections, the political environment, election campaigning, electoral preparations, complaints and appeals, together with the voting, counting and aggregation procedures.

The Mission assessed the electoral process against the Tanzanian and Zanzibari Constitutions and laws, as well as international and regional principles for democratic elections. The EU EOM is independent in its findings and conclusions and adheres to the Declaration of Principles for International Election Observation, commemorated at the United Nations in October 2005, including its Code of Conduct for International Election Observers. The EU EOM was also joined by a six-member delegation from the European Parliament, led by Mariya Nedelcheva, Member of the European Parliament, who endorses the views expressed in this statement. On election day, the Mission deployed 102 observers from all 27 EU member states, as well as Canada, Norway and Switzerland, who visited 549 polling stations throughout the country to observe voting and counting. The EU EOM will remain in the country to observe the aggregation process, announcement of results and post-election developments. This statement is preliminary; the EU EOM will not draw final conclusions until the completion of the process including the announcement of results and the swearing-in of elected candidates. A final report will be published between two and three months after the completion of the electoral process.

Summary

- The fourth general electoral process since the implementation of the multi-party system in the country has so far been held in a peaceful and generally orderly environment. Several improvements to the Union electoral process, like new regulations to control party finances and a code of conduct for political parties, contributed to increase transparency, which was,

however, tainted by the procedures in the electoral decision-making and aggregation processes that left out observers and political parties' agents. In Zanzibar, the acceptance of the election results by the competing parties and the will of each one to engage in practical talks to form a working cabinet will be paramount to the success of the government of national unity (GNU) approved by the Zanzibaris last July.

- Election day unfolded in a calm manner and, overall, the EU EOM observers rated the process as either 'good' or 'satisfactory' in 95 percent of the polling stations observed in the mainland and in Zanzibar. In general, polling station procedures were applied evenly across the country, despite some shortcomings like election materials missing, including ballot papers, electoral forms and voter lists, and were operational within an hour of the established opening time.

- Overall, the NEC and ZEC administered the elections in a professional manner and largely guaranteed the universal suffrage, notwithstanding the logistical challenges and the number of simultaneous elections. The EU EOM observers assessed the performance of the election administration at local level to be generally efficient, organized and well prepared. The ZEC generally conducted the elections in a professional manner and was on track with election preparations.

- The voter register for the elections in the mainland was inclusive on the basis of projections of the National Bureau of Statistics, with around 19.1 million registered voters out of 20.5 million eligible citizens (96 percent). However, the projections of the underage population since the last census in 2002 have been disputed by the opposition parties raising concerns about the quality and the accuracy of the voters' register.

- In Zanzibar, 452,064 citizens were registered and 44,406 did not qualify to register as a voter for the Zanzibari elections, voting only for the Union presidential elections. The EU EOM perceived an imbalance in the requirements for voter registration between the mainland and Zanzibar where, comparatively, citizens had to comply with stricter conditions such as proof of residency, payment of procedural costs and discretionary authority of the *shehas*.

- Candidates campaigned intensively on the mainland under a generally free and peaceful environment despite some localized cases of violence. The islands of Zanzibar replicated the experience of last July's referendum with a remarkably peaceful campaign environment which contrasted with the history of troubled and often violent electoral periods. In the mainland, the *Chama Cha Mapinduzi* (CCM) enjoyed the advantages of the incumbency and also what seemed a broad financial base allowing it to carry out campaigns with an overwhelming visibility compared to other parties. Overall, the lack of sufficient financial resources undermined the campaigning capacity of the parties. The situation was worsened by an extremely long campaign period.

- The requirement that candidates must be members of and proposed by a political party to stand for the general elections is not in conformity with international principles. This requirement restricts the effective right and opportunity to stand for elections of individuals who aim to contest as independent candidates and, consequently, limits the voter's choice of candidates. The remaining requirements were reasonable and non-discriminatory.

- The ruling party benefited from an historical control of the administrative structure that was sometimes indistinct from the well organized CCM party structure. In that context, the large number of election-related key positions directly or indirectly appointed by the Union president, who was also a candidate for reelection, raised concerns about the independence of state organs towards the incumbent party.

- In general, the legal framework both for the Union and Zanzibar provided a reasonable basis for the conduct of democratic elections in line with international and regional principles ratified and agreed to by the United Republic of Tanzania. However, some provisions raised concerns regarding conformity with international principles, namely the voting rights of prisoners, and the absence of a timely and effective remedy in face of the impossibility of challenging the presidential elections results as well as decisions of the National Electoral Commission (NEC).

- Freedom of speech in the media was generally respected. However, a leading newspaper in Swahili, *Mwananchi*, was threatened with closure and deregistration accused of allegedly offering a negative coverage of the administration and of tarnishing the government's image. As the situation stands now, the EU EOM considers such threats against the media as an attempt to limit the freedom of expression. Generally, both the state-owned and private media offered a broad coverage of the electoral process despite some bias reporting in favor of the ruling party.

- The EU EOM welcomes the increase in the number of reserved seats for women in both the National Assembly and the House of Representatives. The level of representation of women in future legislative houses and councils will indicate whether quotas and female candidacies are effectively changing the current situation of gender inequality in the Tanzanian political scene. Overall, women were underrepresented among electoral authorities and there were no female presidential candidates, although they were majority among polling station staff.

- The EU EOM observers reported that in some parts of the country, especially in rural areas, the outreach of voter education activities was limited. In general throughout the country, voter education was mainly conducted by political parties during rallies. However, the opportunity for voters to make a free and informed choice was in general not compromised by the limited outreach of the voter education programs.

BACKGROUND

On 31 October 2010, the United Republic of Tanzania held its fourth general elections since the abolition of the one-party system. The multiparty democracy was introduced in 1992 and the first elections under the new system in 1995. Elections were held simultaneously for the Union and Zanzibar. A total of 20,146,119, of which 19,694,055 in the mainland and 452,064 in Zanzibar, were eligible to elect the president of the Union and the president of Zanzibar, the 239 directly elected members of the National Assembly in the mainland and 50 for the House of Representatives in the islands, besides thousands of representatives for the local councils. The incumbent president of the United Republic of Tanzania, Jakaya Kikwete, belongs to the Chama Cha Mapinduzi (CCM), which has been ruling the country since independence in 1961.[1] CCM has always won comfortable majorities both in the Union and Zanzibar

[1] Tanganyka became independent in 1961 and Zanzibar in 1963. Tanganyka united with Zanzibar on 26 April 1964.

elections. However, Zanzibar's popular opposition has resulted in contentious elections since 1995, all won by the ruling party despite claims of voting irregularities and widespread violence.

The electoral environment in 2010 was different from past elections. The general situation in the country, both in the mainland and in Zanzibar, has been peaceful and orderly, with only localized incidents reported during the electoral campaign that started on 20 August in the mainland. The strong control of state organs by the ruling party inherited from the country's past as a one-party state was a concern regarding the use of such structures to influence voters at grassroots level. However, new regulations to control party finances, the presence of a code of conduct for political parties and the overall calm campaign environment were encouraging elements for the conduct of peaceful elections. The election expenses act offered an opportunity to increase transparency and curtail corruption and malpractices, despite the difficulties to implement its provisions.

The Constitution defines the United Republic of Tanzania as a democratic, secular and socialist state, which adheres to multi-party democracy. The same principle applies to the Revolutionary Government of Zanzibar since it is an integral part of the Republic. It enjoys a semi-autonomous status with its own Constitution pledging to uphold the rule of law, human rights, peace and justice. A dual principle of power is in place with two parallel sets of institutions vested with legislative, executive and judicial powers, one applicable for mainland Tanzania and one for Zanzibar. It is a widely shared perception that the separation of state and the incumbent party is blurred, giving the CCM significant institutional advantages.

The tenth amendment to the Constitution of Zanzibar, introducing a power sharing government formula between the CCM and the Civic United Front (CUF), significantly changed the political landscape on the islands. Pre-election tension, that has been a common feature in past elections, was not observed this time around. From now on, the attention will focus on the maintenance of the peaceful environment and on the implementation of the agreement for the formation of a government of national unity (GNU). The referendum was organized by the Zanzibar Electoral Commission (ZEC) in a peaceful atmosphere. The result showed 66.4% support for the reconciliation process and the formation of a GNU after the 2010 general elections. The acceptance of the election results by the competing parties and the will of each one to engage in practical talks to form a working cabinet will be paramount to the success of the GNU.

LEGAL AND ELECTORAL FRAMEWORK

The Union's presidential, National Assembly and councils' elections are governed by the amended 1977 Constitution of the United Republic of Tanzania and other legal documents that comprise laws and regulations issued by the National Electoral Commission (NEC).[2] The amendments contributed to the harmonization of the Tanzanian electoral legislation with the international principles for the conduct of democratic elections, and to a higher degree of transparency of the funding of political parties and the disclosure of financial sources for their campaigns through the introduction of the Election Expenses Act. These amendments and new legislation entered into force only last June and July and did not provide

[2] Namely, the amended 1985 Elections Act, the amended 1979 Local Authorities (Elections) Act , the amended 1992 Political Parties Act, the 2010 Election Expenses Act, the Elections (presidential and parliamentary elections) Regulations, the Local Authorities (Councilors' Elections) Regulations, Guidelines for Local and International Observers and the Code of Ethics for the presidential, parliamentary and councilors' elections.

the opportunity for political parties to be fully familiar with the new legislation and amendments. The elections for the Zanzibar president, the House of Representatives and Councils are governed by the amended 1984 Constitution of Zanzibar, the amended Election Act and ZEC regulations.[3]

In general, the legal framework both for the Union and Zanzibar provides a reasonable basis for the conduct of democratic elections in line with international and regional principles ratified and agreed to by the United Republic of Tanzania.[4] The Constitution and the election-related legislation ensure the protection of political rights of Tanzanians and guarantee genuine elections through the respect of freedoms of association, assembly, movement and of expression. The right to vote and to be elected in periodic elections through universal suffrage is also entrenched in the constitution as well as the right to access justice and legal remedies. However, there are a number of provisions that raise concerns regarding conformity with international principles, namely the limitation of the right to stand that excludes independent candidates, the voting rights of prisoners, and the absence of a timely and effective remedy in face of the impossibility of challenging the presidential elections results as well as decisions of the National Electoral Commission (NEC).

The number of constituencies was reviewed by the NEC and was increased from 232 to 239 single-seat constituencies, of which 189 are in the mainland and 50 in Zanzibar. The Union president and the National Assembly are elected for a five-year term through the "first-past-the-post" system. Presidential office is limited to two terms. For the National Assembly elections, each constituency elects its representative while every ward, in the mainland elects a councilor. Tanzania has also a system of proportional representation for the 102 reserved seats for women in the National Assembly. Besides the 239 directly elected members and the 102 reserved seats for women, 10 other members are appointed by the president of the Union, 5 are members of the Zanzibar House of Representatives and 2 *ex-oficio*[5] appointed also by the president, for a total of 358 members.

Similarly to mainland Tanzania, the Zanzibar president is elected through direct popular vote. The House of Representatives (HoR), with a total of 81 members, elects 50 seats directly through the "first-past-the-post system" for a five year term. Another remaining 11 seats are filled by presidential appointees, including two from the opposition party and the Zanzibar Attorney General. The tenth amendment to the Constitution of Zanzibar introduces a new provision for women's quota, raising their reserved seats from 30 to 40 per cent, which are distributed proportionally among parties that obtain more than 10 per cent of the directly elected seats. In addition to these three concurrent polls, Zanzibaris vote for the president of Tanzania as well as for the National Assembly.

Zanzibar, with a population share of three per cent of the republic, is overrepresented in the National Assembly. The islands are represented in the National Assembly by 55 members, the equivalent of 15.3 per cent of the total number of its members. Out of the 55 members who are elected from Zanzibar, 50 are directly elected in single mandate constituencies, and five appointed by the Zanzibar House of

[3] Guidelines for the Code of Ethics for Political Parties, Code of Conduct for State-owned Media on the Coverage of the Election Campaign of Political Parties Candidates, and Guidelines for Local and International Observers.
[4] The 1966 International Covenant on Civil and Political Rights (ICCPR), the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the 1966 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the 2006 Convention on the Rights of Persons with Disabilities (CRPD) and the 1952 Convention of the Political Rights of Women (CPRW), the 2002 African Union Declaration of Principles Governing Democratic Elections in Africa, the 2004 Southern African Development Community (SADC) Principles and Guidelines Governing Democratic Elections.
[5] The attorney-general and the speaker of the National Assembly if not elected among the members.

Representatives, three from the ruling party and two from the opposition. The presidential candidates run alone, without a vice-presidential candidate. After elections and for the formation of the Government of National Unity there will be two vice-presidents attached to the presidency. The first vice-president will come from the opposition, the second from the most voted party. The president and vice-presidents must be Zanzibaris by birth.

ELECTION ADMINISTRATION

The National Electoral Commission (NEC) was established in 1993 under Article 74(1) of the Constitution and is an autonomous government institution, composed of seven members appointed by the president for a five-year mandate. The NEC has the power to issue regulations, directions and notices governing various aspects of the election process. The NEC's Director of Elections, appointed by the president from among senior civil servants recommended by the Commission, is also the Secretary to the Commission and Chief Executive.

The Zanzibar Electoral Commission (ZEC), an autonomous department, appointed in 2007 in accordance with the Election Act n.11 of 1984, comprises seven members with a five-year mandate. The president of Zanzibar appoints all its members, which include two members on recommendation of the House of Representatives, two others on the recommendation of the opposition leader in the House of Representatives, one from among the judges of the High Court, and one as the president sees fit. The power of the ZECs Chief Executive is vested in the Secretariat, namely in the Director of Elections. The Commission's mandate includes the overall supervision of the conduct of elections and has legal powers to introduce by-laws and issue regulations.

For the lower levels of the election administration, the NEC and ZEC appoint a number of regional election officers from among regional or district executive officials. The fact that election commissioners are presidential appointees and other electoral officials at lower levels are civil servants raised concerns by stakeholders, and in some cases distrust, in the electoral administration. Despite the logistical challenges due to the size of the country and the high number of registered voters, both electoral commissions managed efficiently the preparations for the election day and largely guaranteed the universal suffrage. The EU EOM observers assessed the performance of the election administration at local level to be generally efficient, organized and well prepared. The ZEC generally conducted the elections in a professional manner and was on track with election preparations as the operational election plan was similar to what was successfully put in place for the referendum last July.

However, in spite of the NEC receiving significant technical assistance from the United Nations Development Program (UNDP), funded by the international community, including the European Union, it did not always use it to its own advantage. Fundamental areas such as effective communication within the different levels of the electoral commission and public information which could enhance transparency - namely the registration of voters and transmission of results - were not effectively conveyed to stakeholders thus creating unnecessary mistrust in the process. The transparency of the transmission of results process was also compromised by the fact that the political party representatives did not always have access to the aggregation of results at district level. The NEC also showed a poor degree of transparency by not authorizing the EU EOM to attend the meetings at national level of the Ethics Committee where electoral complaints were discussed. Also, the EU EOM and TEMCO observers in Kilimanjaro were not allowed to attend a regional meeting between electoral officials and political

parties. There was no interest demonstrated by the NEC in having observers present for the distribution of materials, meetings with political parties or training of officials.

Transmission of Results

The NEC established a new method for the transmission of results for the 2010 general elections. After counting and posting the result forms outside the polling stations, presiding officers transported the result forms to the ward level and handed them over to the assistant returning officer. After collecting the results from all the polling stations in the ward, the assistant returning officer transported the result forms to the district electoral office handing them over to the respective returning officer who was in charge of aggregating the results of his/her constituency. The district electoral offices were equipped with laptops and scanners and two data entry clerks. Results from polling stations were entered twice in the system using a "double blind entry" and aggregated to generate the constituency results summary.

For the Zanzibar elections, the same system was implemented although the presiding officers transported the results directly from the polling stations to the district electoral office. The results forms were handed over to the returning officer in charge of aggregating the results of his/her constituency. Domestic and International observers as well as political party agents followed the aggregation of results on district level. At the ZEC validation of results center, the denial of access to political party agents and international and domestic observers not only raised doubts about the transparency of the process but also contradicted the assurances of previously agreed access given in the Memorandum of Understanding between the European Union and ZEC.

VOTER REGISTRATION

There were no unreasonable requirements to register as a voter. Any Tanzanian citizen 18 years old or above had the right to be included in the voter register. Tanzania has a Permanent National Voter Register (PNVR). Two updates took place after the 2005 elections. In total, there were 20,146,119 registered voters, 19,694,055 in the mainland and 452,064 in Zanzibar. Out of these 452,064 voters in Zanzibar, 44,406 did not qualify to register as a voter for the Zanzibari elections, voting only for the Union presidential elections in Zanzibari polling stations. According to a projection of the National Bureau of Statistics, the population over 18 years old, eligible to register as voters, was 20,507,186. The number of registered voters in the mainland corresponded to a capture of 96 percent of the total number of eligible voters. The NEC acknowledged that this number was indeed unrealistic and that there were a number of ineligible voters found in the register. However, since there is no reliable national civil register, and the majority of citizens do not have any identification document, many citizens registered as a voter just to obtain an identification card. Thus, the voter register may reflect an inflated number of voters although it does not seem to be a deliberate attempt by any political party to take advantage of it but rather a consequence of social conditions. The EU EOM perceived an imbalance in the requirements for voter registration between the mainland and Zanzibar, where citizens have to comply with stricter conditions such as proof of residency, payment of procedural costs and discretionary authority of the *shehas*.

The Zanzibar Elections Act establishes a permanent voters' register for the presidential, House of

Representatives and council elections to be complied by ZEC. The registration was conducted in two waves as required by law in order to allow for newly qualified voters to register, including those who turned 18 before Election Day. It also required that a person must have permanent residency and have lived in a particular constituency for a continuous period of 36 months before election day to be eligible to register. The 2005 Registration of Zanzibari Resident Act introduced the prerequisite of an identification card (ID) in order to obtain or renew the voter card. This requirement did not apply to previous elections. A special application is required and the procedure costs the equivalent of US$20.00. The determination of the status of Zanzibaris is a complex matter and became a contested issue during the registration of voters. ZEC suspended voter registration in Pemba in August 2009 due to controversies and clashes over the issuing of the Zanzibar ID. A number of residents was not able to present a birth certificate or could not afford to obtain a Zanzibar ID. Eventually, the registration resumed after CUF called off a boycott and started actively compiling lists of voters. Political parties and civil society organizations, such as the Zanzibar Commission on Human Rights and Good Governance (ZCHRGG), the Zanzibar Legal Services Centre (ZLSC) and the Global Network of Religions for Children monitored the process.

ZEC's final Voter Register totals 407,658 voters. The number of registered voters is 20 per cent lower compared to the 2005 election. The official explanation was the deletion of double entries and removal of non-Zanzibar voters. A total of 10,180 uncollected voter cards were returned to ZEC headquarters. The owners were expected to collect their cards before 31 October and were required to explain the reasons for the late pick-up of the card. Copies of Zanzibari voters' registers were made available to political parties for inspection ahead of the poll; in the mainland, however, the NEC was late in giving the voters' list to the political parties, which was promised by mid-September but not shared until mid-October.

CANDIDATE REGISTRATION

Eighteen political parties were registered and contested the presidential, National Assembly and council elections. For the Union elections, the day for submitting nomination papers was 19 August until 16:00 hours. A total of nine political parties submitted their papers to contest the presidential elections. However, two of the candidates were rejected by the NEC for not meeting the requirements for eligibility. Although the electoral law provides that decisions of the NEC are "final and conclusive," one potential candidate appealed the decision to the High Court in Dar es Salaam. The case, however, was dismissed. For the National Assembly elections, a total of 1,036 candidates were accepted as well as around 7,924 candidates for the 2,600 councillorships elections. Seven registered presidential candidates, all male, competed for the Zanzibar ballot. Similarly to the mainland, all candidates must be proposed by a duly registered party. The final date to submit nomination papers was 3 September. A further 140 candidates from 12 political parties ran for the House of Representatives, and 379 competed for 141 wards.

The requirement that candidates must be members of and proposed by a political party to stand for the general elections is not in conformity with international principles. This requirement restricts the effective right and opportunity to stand for elections of individuals who aim to stand as independent

candidates and, consequently, limits the voter's choice of candidates.[6] Nevertheless, the remaining requirements were reasonable and non-discriminatory.

CAMPAIGN ENVIRONMENT

The campaign period started immediately after the end of the candidates' registration and lasted for more than two months. Candidates campaigned intensively on the mainland under a generally free and peaceful environment despite some localized cases of violence during the last weeks before the elections. The islands of Zanzibar replicated the experience of last July's referendum with a remarkably peaceful campaign environment which contrasted with the history of troubled and often violent electoral periods.

In the mainland, CCM enjoyed the advantages of the incumbency and also what seemed a broad financial base allowing it to carry out campaigns with an overwhelming visibility compared to other parties. Measured by the amount of publicity in public places, CCM seemed to have been the only political organisation able to finance expensive campaign advertisement in outdoors, newspapers, radio and TV. CCM was also the only party that registered candidates in all constituencies for the National Assembly elections, and the only one to have party agents in all polling stations. The ruling party also benefited from an historical control of the administrative structure that was sometimes indistinct from the well organized CCM party structure. In that context, the large number of election-related key positions directly or indirectly appointed by the Union president, who was also a candidate for reelection,[7] raised concerns about the independence of state organs towards the incumbent party.

Overall, the lack of sufficient financial resources undermined the campaigning capacity of the parties. The situation was worsened by an extremely long campaign period. Some political opposition parties received public funding for their activities in proportion to the number of seats in the National Assembly of the Union and the House of Representatives of Zanzibar. However, the actual amounts distributed on the basis of this formula were, according to the political parties, insufficient to finance a campaign for five simultaneous elections, and tended to favor those parties already represented in the two legislative institutions. Consequently, small parties could not finance a national campaign and had to reduce the number of constituencies where they presented candidates, limiting *de facto* their capacity to stand. The limited or non-existent financial support from their respective parties or from the NEC also limited the opposition's capacity to recruit agents to cover all constituencies where they had presented candidates.

In Zanzibar, the changes to the Constitution and the approval of a document establishing a Government of National Unity, a power sharing agreement between the two leading political forces in the islands, CCM and CUF, was a creative reconciliation approach to overcome political exclusion and achieve stability. The EU EOM will closely follow the first stages of the implementation of the GNU.

[6] ICCPR, United Nations Human Rights Commission, General Comment no. 25 of the International Covenant of Civil and Political Rights, paragraph 15

[7] Including the chairman of the National Electoral Commission (NEC), the registrar of political parties, the chairman and the director of the Prevention and Combating of Corruption Bureau (PCCB), the regional election coordinators and district commissioners who have strong influence and control of the electoral operations. The president's powers also extend to Zanzibar where the Zanzibari president appoints the regional commissioners after consultations with the Union president.

The joint statement made by the Tanzania People's Defense Forces and the police warning those who intended to cause violence that their forces were ready to make sure such events would never happen, raised questions about the neutrality of the security forces.[8] Although interventions by security forces in favor of peaceful and orderly electoral process are common practice in some countries, such an unprecedented statement surprised the opposition candidates and other stakeholders who considered the statement unfortunate at a time when state institutions, and especially security forces, should remain neutral and not get involved in electoral affairs.

MEDIA ENVIRONMENT

Despite a relatively non-eventful campaign, the media ensured the coverage of the main political campaign events throughout the country, although concentrating their coverage on the three main political parties. Both private and state-owned media showed a reasonable level of commitment to promote voter education. However, the limited outreach, especially of the print media around the country, reduced their role in providing all voters with sufficient elements to make an informed choice. The silence period to be observed after 18:00 hours on 30 October was ignored by both the electronic and print media which extended the coverage of candidates and party platforms all the way through election day.[9]

Freedom of speech in the media was generally respected, although a leading newspaper in Swahili, *Mwananchi*, was threatened with closure and deregistration by the Director of the Tanzania Information Services (Maelezo), a government agency. The newspaper was accused of allegedly offering a negative coverage of the administration and of tarnishing the government's image.[10] As the situation stands now, the EU EOM considers such threats against the media as an attempt to limit the freedom of expression as enshrined in Article 18 of the Constitution of the United Republic of Tanzania as well as in the international treaties and principles protecting freedom of expression[11].

The EU EOM media monitoring conducted a qualitative and quantitative analysis of the coverage of five TV channels,[12] five radio stations[13] and seven newspapers[14] since 7 October. The coverage was dedicated almost entirely to three main political parties – CCM, CUF and CHADEMA – and their leaders, while other parties received negligible attention. Interestingly, the state TV channels offered a much more balanced coverage (paid advertisements not included) than the private TV channels (paid advertisements included); the state-owned TV channels gave 28 percent of the time monitored to CCM, another 28 percent to CUF, 16 percent to CHADEMA and 28 percent to other political parties, against the private TV channels 70 percent to CCM, 18 percent to CHADEMA, 8 percent to CUF and 4 percent to

[8] The Inspector General of Police (IGP), Said Mwema, explained that the statement was issued based on such a scenario "but we had no intention whatsoever to threaten any person or group of people."

[9] The state-owned Daily news on the 31 October edition ran a headline on its first page calling for "Vote for CCM, vote for unity." The private ITV reran during its news program several campaign rallies.

[10] The Newspaper Act of 1976 might be applied to ban *Mwananchi* on grounds of publishing "seditious stories that excite dissatisfaction against the government" as provided under Section 31(1) (a). The Act is among the laws that the Law Reform Commission, under the Ministry of Justice and Constitutional Affairs, proposed to repeal because of what it called obsolete content and authoritarian provisions.

[11] International Covenant on Civil and Political Rights, African Charter on Human and People's rights, SADC Principles and Guidelines Governing Democratic Elections

[12] State-owned TBC and TV Zanzibar, Channel 10, Star TV and ITV.

[13] State-owned TBC Radio and TVZ Radio Zanzibar and private Radio Free Africa, Radio One and Zenj Radio Zanzibar.

[14] Daily News (State owned), The Guardian, The Citizen, *Nipashe*, *Mwananachi* , *Matanzania* and the Zanzibar Leo.

others. These percentages indicates the much higher financial base of CCM *vis-à-vis* other parties when taking the paid advertisements included in the monitoring of the private TV channels. In general, the tone of the coverage both by the private and state-owned media was neutral. The public TBC and TV Zanzibar complied with the legal requirements for the equal allocation of free airtime to presidential candidates.[15] In the case of TV Zanzibar, some political parties did not take advantage of this provision or ignored the schedule established by ZEC, and their airtime was irregularly allocated to CCM.

The same balanced treatment was not seen in the monitored print media. The state-owned newspapers (no paid advertisement included) gave 66 percent of the time measured by the EU EOM to CCM, compared with 20 percent to CUF, 8 percent to CHADEMA and 6 percent to other parties. The private newspapers (paid advertisement included) dedicated 55 percent of the political and electoral space monitored by the Mission to CCM, 29 percent to CHADEMA, 10 percent to CUF and 6 percent to others. Ironically, the Guardian and *MTanzania*, both private newspapers, were the leading publications by giving almost 70 percent of its political and electoral coverage to CCM. In the case of *MTanzania*, it not only displayed a clear bias in favor of the ruling party but also gave a persistent negative reporting on CCM's rival, CHADEMA.

The radios, the main means of communication in the country, followed along the lines of the newspapers, giving the ruling party CCM a clear advantage in their coverage: 32 percent in state-owned and 47 percent in the private radios (also counting the paid advertisements), against 21 and 10 percent for CUF, 17 and 21 percent for CHADEMA.

HUMAN RIGHTS

The protection of political rights and respect for fundamental freedoms are essential conditions for holding democratic elections. Both the United Republic of Tanzania and the Zanzibar Constitutions guarantee essential civil and political rights as enshrined in a number of internationally binding human rights commitments ratified by Tanzania[16]. The existence of the Human Rights Commission (HRC), and of a number of national and international NGOs, facilitated the effective exercise of these fundamental freedoms.

Freedom of expression, assembly, association and movement were generally respected during the campaign period. Rallies were conducted in a peaceful manner with the support of security forces. However, there were instances of candidates being briefly arrested and detained in remand, cuts of live campaign TV coverage, denials of access to campaign venues by local administrators and forced dispersion of gatherings by the police. The CCM affiliation tended to facilitate access to public services and limit police intervention.

The Human Rights Commission signed a Memorandum of Understanding with the police forces to conduct training on human rights issues. The training was aimed at preventing human rights abuses during arrest and detention. It is regrettable that prisoners in remand, although enjoying the benefit of presumption of innocence, were not able to vote for this round of elections in a breach of their right to vote.

[15] All presidential candidates were entitled to 30 minutes once a week. In some occasions, CCM used the time of other political parties which did not appear at the TV station as in the case of TV Zanzibar.
[16] See Legal and Electoral Framework.

WOMEN PARTICIPATION

In total, 1,036 candidates, among whom 191 were women, competed for the 239 seats of the National Assembly. The EU EOM welcomes the increase in the number of reserved seats for women in the National Assembly from 75 in the last elections to 102. The 30 percent minimum share of seats that will be assigned to women complies with the benchmark recommended by the Southern African Development Community (SADC) declaration on gender and development of 1997. This share may further increase when the final results are announced and other women are elected directly in the constituencies. The reserved seats have empowered women who took an active role in the campaign. However, the EU EOM noted that the three largest political parties - CCM, CUF and CHADEMA (10, 7.7 and 13 percent) – presented the lowest percentages of female candidates among 18 political parties vying for seats in the National Assembly and the House of Representatives. On a positive development, the tenth amendment to the Constitution of Zanzibar introduced a new provision for women's quota, raising their reserved seats from 30 to 40 percent. These reserved seats, distributed proportionally among parties that obtain more than 10 percent of the directly elected seats will certainly contribute to a stronger female representation and defense of women's interests. Moreover, the level of representation of women in future legislative houses and councils will certainly be a good indicator of whether quotas and female candidacies are effectively changing the current situation of gender inequality in the Tanzanian political scene.

VOTER EDUCATION

Voter education is under the mandate of the NEC's Voter Education and Public Information department. The NEC organizes its own activities through their returning officers who sub-contract local groups to pass voter education messages to the public. Additionally, 43 non-governmental organizations funded by the UNDP's Electoral Support Program (ESP) also carried out voter education activities under the supervision of the NEC and ZEC in terms of content and implementation. Voter education activities in the mainland started simultaneously with the first phase of voter registration. A diversity of means such as dances, meetings and contacts with traditional leaders, and flyers was used to convey the messages. The NEC and ZEC also used private and public media, mainly local radios and regional TV stations, to reach out to the voters. The EU EOM observers reported that in some parts of the country, especially in rural areas, the outreach of these activities was limited. In general throughout the country, voter education was mainly conducted by political parties during rallies. There was a modest activity in terms of public posting of information. However, the opportunity for voters to make a free and informed choice was in general not compromised by the limited outreach of the voter education programs.

DOMESTIC ELECTION OBSERVATION

The main domestic observation group is the Tanzania Election Monitor Committee (TEMCO), an umbrella organization of around 152 civil society and community based organizations, funded by UNDP's Election Support Project (ESP) 2010 and the United States Agency for International Development (USAID). TEMCO deployed 223 long term observers (173 in mainland and 50 in Zanzibar) and around 7,000 short term observers on election day. TEMCO was well organized, knowledgeable, adequately funded and active; however, its independence has been challenged by some stakeholders. Other accredited organizations included the Tanganyika Law Society, the Legal and Human Rights Center and the Human Rights Commission. The Tanganyika Law Society deployed around 200 observers on election

day while the Legal and Human Rights Center deployed approximately 1,746 observers throughout the country.

COMPLAINTS AND APPEALS

The Union and Zanzibar electoral commissions are responsible for the settlement of complaints and appeals at all levels of the electoral administration regarding civil matters. Criminal matters are dealt with by the normal judicial channels. Objections or complaints regarding the nomination of National Assembly and House of Representatives candidates are submitted to the Returning Officer whose decision may be appealed to the electoral commissions. However, the decisions of the NEC and ZEC are considered to be final and may only be appealed to the High Court by way of petition within 30 days of the declaration of results. This provision neither provides a timely remedy for aggrieved parties nor respects the power of judicial review and supervisory jurisdiction of the judiciary over public bodies and over the legality of their decisions. As for the presidential candidates, according to the electoral law, rejected nominees do not have the right to appeal the decisions of the commissions, since such decisions are final and conclusive. Likewise, according to the two constitutions, presidential elections results cannot be challenged, clearly contrary to international principles.[17] The Constitution of Tanzania, however, provides the possibility of judicial review before the courts and the right to "legal remedy against the decision of the court or of the other agency concerned".[18] In the face of this contradiction, a petition was filed at the High Court by the Center for Justice and Democracy challenging the constitutionality of article 41(7)[19] of the Constitution, which limits the jurisdiction of the courts in adjudicating petitions regarding presidential elections.

There was also controversy regarding the students' vote. Around 60,000 students registered at the Tanzanian state universities expected to be in class by the time of the 31 October elections. The government, however, postponed the start of classes until November which meant that many students were not at the university on election day. The NEC warned that it would not allow students to vote in polling stations where they were not registered. The Tanzanian Higher Learning Students Organization, consequently, filed a petition at the High Court seeking a decision to open the universities before November. However, no decision was taken by the court before election day.

Ethics Committees

The enforcement of the Code of Conduct for Political Parties is under the responsibility of the Ethics Committees established at ward, constituency and national levels. The Ethics Committee at national level dealt with seven complaints related to presidential elections while the constituency Ethics Committees dealt with issues regarding the National Assembly elections. A total of 26 complaints were reported throughout the country by the EU EOM observers in the field. These were mainly regarding violations of campaign rules such as disruption of campaign, abusive language used during speeches,

[17] ICCPR, United Nations Human Rights Commission, General Comment no. 25 of the International Covenant on Civil and Political Rights, paragraph 20, states that "there should be an independent scrutiny of the voting and counting process and access to judicial review or other equivalent process so that electors have confidence in the security of the ballot and the counting of votes."

[18] Articles 30 (3) and 13(6.a)

[19] It reads: "When a candidate is declared by the Electoral Commission to have been duly elected in accordance with this Article, then no court of law shall have any jurisdiction to inquire into the election of that candidate."

defamation, tearing down of posters and campaign activities after 18:00 hours. The fact that most election related complaints concerned these types of violations, the political parties and election officials privileged this channel, which seemed to be the most effective, in terms of expediency and efficiency.

POLLING, COUNTING AND AGGREGATION

Election day was peaceful and generally orderly. All observed polling stations were operational within an hour of the established opening time. In 14 percent of observed polling stations some election materials were missing, including ballot papers, electoral forms and voter lists. In general, polling station procedures were applied evenly across the country and voting was conducted in a calm manner with only a few incidents of a minor nature in over 442 observed polling stations during voting. Unfortunately, the secrecy of the vote was compromised in 12 percent of observed polling stations and EU observers reported that in 20 percent of cases the layout of the polling station did not guarantee the secrecy of the vote. In 11 percent of observed polling stations EU observers noted family and or group voting. EU observers also reported a strong presence of women as polling station members and in 48 percent of cases the presiding officer was a woman. Safeguards were in place to protect against double voting: fingers were inked and voters were ticked off the voter list.

Overall, observers rated the process as either 'good' or 'satisfactory' in 95 percent of the polling stations observed, and 'poor' in five percent. Party delegates were present in 99 percent of observed polling stations, with CCM present in 98 percent, CUF in 70 percent and CHADEMA in 68 percent. Smaller political parties had few party delegates. National observers were present in 47 percent of observed polling stations.

Counting was observed in 43 polling stations, 35 in the mainland and 8 in Zanzibar. Overall, observers rated the process as either 'good' or 'satisfactory' in 91 percent of the observations in the mainland and 88 percent of the observation in Zanzibar. The party agents signed a copy of Form 16 (mainland) and Form PS1A (Zanzibar) at every step of the counting process to express their satisfaction or dissatisfaction with the process in 86 percent and 100 percent of cases, respectively, and to receive a copy of the results in 97 percent and 100 percent of cases. This process was made more transparent with public display of results upon completion of counting procedures at 94 percent and 88 percent of observed Polling Stations.

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The EU EOM would like to express its appreciation to the people of Tanzania, the political parties, the National Electoral Commission (NEC), the Zanzibar Electoral Commission (ZEC) and the government of Tanzania, for their cooperation and assistance during the observation period. The EU EOM is also grateful to the Delegation of the European Union to Tanzania, the diplomatic missions in Dar es Salaam and TRANSTEC for their support throughout the Mission.