

# Chapter 2

## The Legal and Administrative Framework

### Relevant Constitutional Provisions

The transition from a one-party to a multi-party system usually requires amendments to the Constitution, in order to provide for the formation and registration of political parties, and for the relevant election laws. In the case of the United Republic of Tanzania, Section 3 of the Constitution was amended in 1992 to proclaim the Republic as a democratic and socialist State with a multi-party system.

The Constitution also sets the framework for the administration of elections by providing for the establishment, composition and functions of the National Electoral Commission (NEC) of Tanzania whose members are to be appointed by the President.

The members of the NEC shall be:

- a Judge of the High Court or Judge of the Court of Appeal, who shall be the Chairman;
- a Vice-Chairman; and
- other members specified by the legislation enacted by Parliament (that is, the Elections Act, 1985 as amended).

In accordance with the convention established over the years in many aspects of the public appointments regime in Tanzania at the national level, when the President appoints as Chairman, a person from one part of the Union, the Constitution requires that the Vice-Chairman must be from the other part of the Union. Normally, a Commissioner holds office for five years and may be removed by the President only for inability to discharge the functions of office, whether arising from infirmity of body or mind, or from any other cause, or misbehaviour, or disqualification.

The functions of the NEC are:

- to supervise and co-ordinate the registration of voters in the election of the President and Members of Parliament of the United Republic;
- to supervise and co-ordinate the holding of presidential and parliamentary elections;
- to survey the boundaries and divide the United Republic into various constituencies for the purposes of parliamentary elections;
- to supervise and co-ordinate the registration of voters and the holding of the election of local councillors; and
- to discharge any other duties and functions in accordance with the Elections Act.

The NEC has been set up as an independent department. Its chief executive officer is the Director of Elections, appointed by the President under the Elections Act. In carrying out its functions, the NEC must not be subject to the orders of any person, department of government or to the opinions of any political party, although in the demarcation of parliamentary constituencies, the NEC is required to seek the prior approval of the President.

Zanzibar has a separate electoral commission, the Zanzibar Electoral Commission (ZEC), and under the terms of the Constitution, the NEC is required to consult with the ZEC on various matters. The ZEC retains autonomy over the elections for the Zanzibar Presidency, House of Representatives and local councils. Whilst the NEC is responsible for the registration, supervision and conduct of the elections for the Union Presidency and Parliament on the mainland and in Zanzibar, it utilises the personnel of the ZEC, the constituency boundaries and the electoral registers devised by the Zanzibari Government in the administration of Union polls in Zanzibar.

The reconstituted National Assembly (the Union Parliament) has a total of 274 members. Of these, 232 are directly elected from 182 constituencies on the mainland and 50 constituencies in Zanzibar. A further five members of the Zanzibar House of Representatives, are elected by that House to sit in the National Assembly, making the total Zanzibar representation 55 out of 274. The Attorney-General of the Republic is an *ex officio* member of the National Assembly. The final 36 seats are reserved for women and are allocated to parties on the basis of the ratios of the directly elected members of each party present in the parliament.

#### **Elections Act 1985 (Amended)**

The basic scheme of the Elections Act follows a well-known Commonwealth format. As specified by the Constitution, Section 4 of the Elections Act sets out the criteria for the appointment of the remaining five members of the NEC as follows:

- a member appointed from among the members of the Tanganyika Law Society; and
- four other members who are persons possessing either adequate experience in the conduct or supervision of parliamentary elections or such other qualifications as the President considers necessary for, or prerequisite to, the effective discharge of the functions of the NEC.

The Director of Elections is a senior civil servant of the United Republic appointed by the President on the recommendation of the NEC. The Act confers on the NEC the power to appoint Returning Officers and Assistant Returning Officers for constituencies. The NEC may also appoint a Regional Co-ordinator to co-ordinate information material and resources in each region for the efficient conduct of elections in constituencies in these regions.

A Returning Officer may appoint, subject to the directions of the Director of Elections, any staff required to conduct an election in any constituency.