

**CURBING ELECTORAL EXPENSES MALPRACTICES IN
TANZANIA: AN ASSESSMENT OF ELECTION EXPENSES
ACT OF 2010**

By

Karen Mrango

**A Dissertation Submitted in Partial Fulfilment of the Requirement for Award of
the Degree of Masters of Constitutional and Administrative Law of Mzumbe
University**

2016

CERTIFICATION

We, the undersigned, certify that we have read and here by recommend for acceptance by the Mzumbe University a dissertation Entitled **Curbing Electoral Expenses Malpractices in Tanzania: An Assessment of Election Expenses Act of 2010** in partial fulfillment of the requirements for award of the degree of Masters of Laws in Constitution and Administrative Law of Mzumbe University.

Major Supervisor

Internal Examiner

Accepted for the Board of Faculty of Law

DEAN-FACULTY OF LAW

**DECLARATION
AND
COPYRIGHT**

I, **Karen Mrango**, do hereby declare that this dissertation entitled **Curbing Electoral expenses malpractices in Tanzania: An assessment of election expenses act of 2010** is my original work and the sources are acknowledged by citation and bibliography; and this work has not been presented or submitted to any other university or Institution for a degree or any similar award.

Signature: _____

Date _____

©

No part of this work may be reproduced or transmitted in any form or mechanism including photocopying, recording or by any information storage, retrieval system without prior permission in writing from the author or Faculty of Law, Mzumbe University in that behalf.

ACKNOWLEDGMENT

I am very grateful to the Almighty God for His love and protection throughout my study period at the University of Mzumbe Morogoro.

My sincere gratitude should go to individuals in various institutions and departments who were involved in this study from the proposal level to through data collection and subsequently to the final stage of this work. It is difficult to mention them all but I would like to acknowledge their immense contributions during the research.

First and foremost, a lot of thanks to my supervisor, Deogratias Mapendo, for his concern, support, supervision, guidance and relentless encouragement during preparation and final accomplishment of this dissertation in the form in which it appears now. I am very grateful for his enormous help and advice.

Lastly but not least, I thank all those who Prayers, encouragement and insights directed and enriched this manuscript, particularly, my lovely Mother and Father, my young sister and my friend Catherine Mapima.

DEDICATION

This piece of work is solely dedicated to my wonderful and loving Parents.

LIST OF ACRONYMS

AG	Attorney General
CBO	Community Based Organisation
CCM	Chama Cha Mapinduzi
CHADEMA	Chama cha Democrasianamaendeleo
CUF	Civic United Front
EEA	Election Expenses act
EISA	Electoral Institute for the Sustainability of Democracy in Africa
LHRC	Legal and Human Rights Centre
NCCR	National Convention for construction and reform mageuzi
NEC	National Electoral Commission
NGO	Non Governmental Organization
ORPP	Office of Registrar of Political Parties
PCCB	Prevention and Combating of Corruption Bureau

ABSTRACT

The purpose of this research was to assess the Election Expenses Act 2010 on how it curbs election expenses malpractices. In order to assess this researcher categorized the research paper into five chapters.

This research paper was conducted in Dar es Salaam because relevant offices regarding Election Expenses Act, 2010 are situated in Dar es Salaam. The objectives of this research were to examine the laws on electoral expenses and the extent to which they have succeeded to solve the election financing problem during elections, to determine the extent to which the electoral expenses laws and practices can curb election expenses malpractices in Tanzania and to determine which changes should be made to election expenses act 2010 to make the law more effective.

The research used both primary and secondary methods of data collection from twenty two respondents. The use of these two methods was for the purposes of more information.

The result of the study shows that the Election Expenses Act 2010 is ineffective to curb election expenses malpractices. The reasons for the above conclusion is the lack of political willingness of the government, non-compliance of the law by the candidates and political parties, financial constrains to the ORPP so as to implement the law, overlapping of functions between NEC and ORPP, lack of clarity of the law, lack of manpower and tools to implement the law and lack of civic education. These circumstances have made the election expenses act 2010 not to function according to the objective and aim behind its establishment.

The study recommends for amendment of the law to provide clear definitions, increase the penalties, the disclosure of party finances should be mandatory and published so as the public could see, more civic education should be provided, the ORPP should be establish sub-offices all over the country due to the magnitude of their work.

TABLE OF CONTENTS

CERTIFICATION	i
DEAN-FACULTY OF LAW	i
DECLARATION AND COPYRIGHT	ii
ACKNOWLEDGMENT	iii
DEDICATION	iv
LIST OF ACRONYMS	v
ABSTRACT	vi
TABLE OF CONTENTS	vii
LIST OF STATUTES	xi
LIST OF CASES	xii
CHAPTER ONE	1
GENERAL INTRODUCTION	1
1.0 Introduction	1
1.1 Background of study	2
1.2 Statement of Problem	7
1.3 Research Questions	9
1.4 Objectives of Research	9
1.4.1 General Objective	9
1.4.2 Specific objectives	9
1.5 Significance of the Study	9
1.6 Literature Review	10
1.7 Research Methodology	21
1.7.1 Research Design	21
1.7.2 Field Research	21
1.7.3 Scope of the study	22
1.7.4 Study Area	22
1.7.5 Sampling	22

1.7.5.1 Sample Size	22
1.7.5.2 Sampling Techniques	23
1.7.6 Methods of Data Collection	24
1.7.6.1 Primary methods of Data collection	24
1.7.6.1.1 Interviews	24
1.7.6.1.2 Questionnaires	25
1.7.6.2 Secondary source of data collection	25
1.7.6.2.1 Documentary review	25
1.7.7 Methods of Data Analysis	25
1.7.7.1 Quantitative Data Analysis.....	25
1.7.7.2 Qualitative Data Analysis.....	26
1.8 Limitations to the study.....	26
CHAPTER TWO.....	27
THE CONCEPTUAL FRAME WORK OF ELECTION EXPENSESAND	
MALPRACTICES IN TANZANIA.....	27
2.0 Concept of Election Expenses	27
2.1 Election Expenses Malpractices	27
2.2 Funding of Election	28
2.2.1 Public Funding	28
2.2.2 Indirect Public Funding	29
2.2.3 Private funding	30
2.3 Political corruption	30
2.4 The National Election Commission (NEC).....	32
2.5 Registrar of Political Parties	33
2.6 Reporting and Public Disclosure of Party Finance	34
2.7 Prohibited Sources of Funds.....	35
2.8 Conclusion.....	37

CHAPTER THREE	38
LEGAL AND INSTITUTIONAL FRAMEWORK GOVERNING ELECTION EXPENSES IN TANZANIA AND LESSONS FROM SELECTED COUNTRIES	38
3.0 Introduction	38
3.1 The Election Expenses Act.....	38
3.2 Prohibited Practices	42
3.3 Critical Evaluation of the Election Expenses Act	43
3.4 Electoral Code of Conduct for 2015 General Election.....	47
3.5 Election Expenses Management Bodies institutions.....	49
3.6 Legal and institutional framework governing election expenses in selected countries	50
3.6.1 Election Expenses Laws of South Africa	51
3.6.1.1 The Effects of Public Funding in South Africa	51
3.6.1.2 Private Funding in South Africa.....	52
3.7 Election Expenses Laws of United Kingdom.....	52
3.7.1 Disclosure of donations and expenditure	53
3.7.2 Lessons to Tanzania	54
3.8 Conclusion.....	55
CHAPTER FOUR	56
PRESENTATION OF DATA, ANALYSIS AND DISCUSSION OF FINDINGS	56
4.0 Introduction	56
4.1 General information on Respondents	56
4.1.1 Educational background of the respondents.....	56
4.1.2 Work Experiences of the Respondents.....	56
4.2 Understanding of the Election Expenses Act 2010.	57
4.3 Election phases of which are challenged by expenses malpractices	58

4.4 Whether the current Election Expenses Act, 2010 in Tanzania is effective in curbing the electoral expenses malpractices?.....	58
4.5 If the election expenses act is fully implemented can it eliminate the election expenses malpractices?.....	65
4.6 What are causatives of election expenses malpractices despite having in place Election Expenses Act of 2010?.....	69
4.7 Whether the election expenses act contributes to the strengthening of free and fair elections by creating equal playing field to all political parties?	72
4.8 Conclusion.....	74
CHAPTER FIVE.....	76
CONCLUSIONS AND RECOMMENDATIONS	76
5.0 Conclusions	76
5.1 Recommendations	77
REFERENCES	82
APPENDICES	87

LIST OF STATUTES

PRINCIPAL LEGISLATION

- The Constitution of United Republic of Tanzania [Cap 2 R: E 1977].
- The Interpretations of Laws Act [Cap 1 R: E 2010].
- The Electoral Laws (Miscellaneous Amendment) Act, No 3 of 2005.
- The Election Expenses Act No 6 of 2010.
- The National Election Act [Cap 343 R:E 2010].
- The Political Parties Act [Cap 258 R: 2002].
- The Prevention and Combating of Corruption Act No 11 of 2007.
- The Written Laws (Miscellaneous Amendment) Act, no. 6 of 1995.

SUBSIDIARY LEGISLATION

- The Government Notice No. 246 and 247.
- The Election Expenses Regulations 2010.

FOREIGN LEGISLATION

- The Public Funding of Represented Political Parties Act, 1997.
- Representation of the People Act, 1983.
- Political Parties Elections and Referendums Act 2000.

CODE

- Electoral Code of Conduct for 2010 General Election.
- Electoral Code of Conduct for 2015 General Election.

LIST OF CASES

Attorney General and 2 Others v. Aman Walid Kabourou (1996) TLR 156.

Legal and Human Rights Centre (LHRC) and Others v. Attorney General Miscellaneous Civil Case No 77 of 2006, High Court of Tanzania at Dar Es Salaam Registry (Unreported).

Mabere Nyauch Marando v The Attorney General, Civil Case No. 168 of 1993, High Court of Tanzania at Dar Es Salaam (Unreported).

Rev. Christopher Mtikila v The Attorney General, Civil Appeal No 28 of 1995, Court of Appeal at Dar Es Salaam (Unreported).

CHAPTER ONE

GENERAL INTRODUCTION

1.0 Introduction

Elections financing in equally progressing and advanced democratic states is a critical issue particularly how funds, properties and resources are organized, collected and disbursed. However financing elections in Africa is more challenging because of poverty levels in these developing economies. Even so, the ruling parties have benefited in terms of funding mobilization.

Agreeing with the above view Biezen and Kopecky argued that, In African parties that have access of election funds are those that won election. Those parties which have won the general election have power and authority to access resources since they are in command of the state. This opportunity is used to facilitate their political party and increase the sphere of influence. Therefore this advantage is over the opposition parties which their access to funds it's under the mercy of incumbent party¹.

It should be born in mind that in new African democracies, the funding structure of parties is definitely biased in favour of the incumbent parties either because of the regulations inherent in public funding of political parties and elections or because of the absence of separation between the state and the party in power. In this context, the way parties finance their activities has come under increasing scrutiny in the last decade.²

¹Biezen, I., and Kopecky, P. (2007), The State and the Parties: Public Funding, Public Regulation and Rent-Seeking in Contemporary Democracies, Party Politics: London Sage Publications.

²Fambom, S. (2003). "Public Funding of Political Parties in Africa", Paper submitted at the Africa Conference on Election, Democracy and Governance, Pretoria, South Africa (Unpublished).

Tanzania has had a number of elections since her independence in 1961. In the elections that were held during the single party era, the main electoral concern was lack of free competition as the party engulfed the electoral processes.³Hence the problem of mobilizing and spending money in elections was not so critical during the single party era (1965-1990). Even corruption scandals were minimal. Moreover, candidates did not have to bother looking for funds to finance their campaigns. The party funded the entire electoral processes. Indeed, election regulations did not allow individual candidates to mobilize and use resources available to them for the purpose of bettering their chances of getting elected.⁴

Tanzania held its first multiparty local government elections in 1994 following the re-introduction of multiparty politics in 1992 and ever since corruption has been an issue. Despite of the introduction of some anti-corruption measures in the country, there is yet no any glimpse of hopes for a breakthrough. Even with the introduction of Election Expenses Act of 2010, there are still a million miles away before corruption can be effectively dealt with. The main implementation challenge to anti-corruption initiatives is the fact that the war against corruption in Tanzania is led by the commanders who are conscience objectors.⁵

1.1 Background of study

The adoption of economic liberalization measures from the mid-1980s and subsequently the re-introduction of multiparty competitive politics from 1992, electoral corruption has become more conspicuous to the extent of threatening the

³Babeiya, E. (2011). Electoral Corruption and the Politics of Elections Financing in Tanzania. The Dar es Salaam University College of Education University of Dar es Salaam. Dar Es Salaam, Dar Es Salaam University Press.

⁴Kiondo, A. S. Z. (1994). Economic Power and Electoral Politics in Tanzania. Dar es Salaam, Dar Es Salaam University Press.

⁵Babeiya, E. (2011). Electoral Corruption and the Politics of Elections Financing in Tanzania. The Dar es Salaam University College of Education University of Dar es Salaam. Dar Es Salaam, Dar Es Salaam University Press.

integrity and legitimacy of the electoral processes and political institutions including political parties and the government in Tanzania.

On 29th May 1992, President Mwinyi acquiesced to the political party's bill paving the way for the registration of new political parties. Briefly the Political Parties Act, 1992 provides for the establishment of the office of the Registrar of Political Parties in the office of prime minister; forms of registration of political parties; disciplining of political parties and other regulations⁶. In 2000 The Elections Act, 1985 was amended by the Electoral Law (Miscellaneous Amendment) Act, No.4 of 2000 and included the amendment of provisions of section 98(2) and 98(3). However the Election Act came to be latter known as The National Elections Act (2002) and it incorporated all amendments up to 2001. Hence the above provisions changed to sections 119(2) and 119(3).⁷

These new provisions of sections 199(2) and 199(3) legalized the offering by the candidate in election campaigns of anything done in good faith as an act of hospitality to be provided to the electorate. These provisions were first practiced in 2000 general elections and the elections were marred by corrupt loopholes in the said law to influence the electorate to vote in their favour and the trends repeated in the 2005 elections⁸.

These provisions were famously known as “takrima” provisions. They were offensive and encouraged corruption in the electoral process because they violate the right against discrimination, the right to equality before the law and the right of the citizens of Tanzania to participate in fair and free elections. These are constitutionally

⁶Nyirabu, M. (2002). “The Multiparty Reform Process in Tanzania”, *The Dominance of Ruling Party Journal* (Vol 7(2):pp. 99-112)

⁷ Ibid

⁸ Ibid

guarded principles which provide rights aiming at promoting integrity, transparency, good governance and democracy⁹.

The above unconstitutional provisions were seen to be problematic in elections which included multiple political parties of 1995, 2000 and 2005 which rose a lot of complaints from different stakeholders including political parties and contestants that there is unequal level playground within different political parties regarding funding of election expenses. Therefore due to unequal playground in the political parties constitutional values are at stake under Article 21 and 21(1) of the United Republic Constitution of 1977¹⁰.

There is ample evidence to support this observation. The 1995 Kigoma by-election is the case in point. In this incident, the ruling party Chama Cha Mapinduzi (CCM) used corruption to solicit votes. This is well illustrated in the Court of Appeal of Tanzania's decision in *Attorney General and two others v. Aman Walid Kabourou 1995*¹¹ The Court of Appeal decided that the maintenance work of the Kigoma-Ujiji road during the election campaign constituted noncompliance with the prohibition against electoral bribery, and was executed with the corrupt motive of influencing voters to vote for the CCM candidate and accordingly affected the results of the election. Other successful grounds in that case were several election offences and illegal practices committed by very senior members of the government including the president.¹² Eventually the ruling party candidate lost the parliamentary seat.

⁹Legal and Human Rights Centre (LHRC) and Others v. Attorney General Miscellaneous Civil Case No 77 of 2006, High Court of Tanzania at Dar Es Salaam Registry (Unreported).

¹⁰Nyirabu, M. (2002). "The Multiparty Reform Process in Tanzania", *The Dominance of Ruling Party Journal* (Vol 7(2):pp. 99-112)

¹¹ Court of Appeal Tanzania, Civil Appeals no.32 and 42 of 1994, TLR [1996]

¹²Rachel, R. E. (2008). "Emerging Judicial Power in Transitional Democracies", Malawi, Tanzania and Uganda, Published by ProQuest Michigan, ISBN 0549521704, 9780549521709, pp. 345-406

Additional wealthy contestants financed their campaigns without being regulated and rendered political atmosphere to be unequal and unjust. This situation has led to the pre conceived notion that wealthy election aspirants to have higher chances of being elected than their counterparts. Due to these demands, there was a need for the government to enact a law that will regulate election expenses¹³.

The aim for enacting the law was to regulate and control election funding during campaigns and elections. Therefore in 2006 President Jakaya Kikwete gave directions to different electoral stakeholders to look into the matter after the High Court decision in Civil Case No 77 of 2005 regarding “Takrima” law. As a result of these circumstances the Government saw a need to strengthen democracy by putting in place a law to be called Election Expenses law to create suitable political environment to all political parties¹⁴.

Therefore the law has put in place mechanism to regulate funding during nomination process, election campaigns and elections. The rationale for that is to control the use of funds and prohibited practices in elections. It also makes provisions for allocation, management and accountability of funds. Moreover, it provides for consequential and related matters¹⁵.

The Election Expenses Act was first applied in the 2010 general elections with the objective of curing financial related problems, in particular the excessive use of money in previous elections. It is unfortunate that this objective may have not fully been achieved. There are a number of reasons in holding this view. First and foremost, the application of Election Expense Act during the 2010 general elections was marked by apparent discrepancies between the law and practice. These

¹³The Parliament of United Republic of Tanzania, Parliamentary Hansard Report of Parliamentary session held at Dodoma on 11/February /2010.

¹⁴Court of Appeal Tanzania, Civil Appeals no.32 and 42 of 1994, TLR [1996]

¹⁵The Parliament of United Republic of Tanzania, Parliamentary Hansard Report of Parliamentary session held at Dodoma on 11/February /2010.

discrepancies can be traced back from the Act's legislative process. The Election Expenses bill was sent to the parliament under the certificate of urgency on 27 February 2010¹⁶ and passed into law just in few days. As a result, there was no ample time for the legislators to debate the law thoroughly. Similarly, the Election Expenses bill lacked adequate public consultation. These problems had adverse consequences in the implementation of the law.

Apart from the Election Expenses Act's (EEA) legislative process, both the Act and its Regulations came in force on 9th July 2010,¹⁷ only three months before the 2010 general elections. The question is whether a period of three months was sufficient time for a stakeholder that is voters, political parties and candidates to understand well their obligations and liabilities. From practical point of view, three months' period was not sufficient time. Political Parties were busy campaigning therefore no due regard was given to the dictates of the new law.

A survey conducted by Tanzania Election Monitoring Committee, (TEMCO) revealed that only 31% of stakeholders read the EEA before the 2010 general elections, 18.2% had never heard about the law and 39.5% heard about the law but had not read it. Thus at least 57.7 % stakeholders had never read the EEA and its Regulations leave alone those who were not ready to participate in the survey. One of the reasons advanced by the survey findings was that the time between effective date and election date was too short to enable stakeholders to read the Act and understand it. The other reason was that, the government and in particular the responsible ministry and National Electoral Commission of Tanzania, NEC did not publicize as much as possible the EEA, its regulations and Orders as to enable members of public to understand the law¹⁸.

¹⁶The Parliament of United Republic of Tanzania, Parliamentary Hansard Report of Parliamentary session held at Dodoma on 11/February /2010.

¹⁷ Government notice No. 246 and 247.

¹⁸TEMCO report, (2011). "How the Election Expenses Act was Received by Stakeholders", pp. 53.

The PCCB's officers were coupled with relegation and irregular transfer while trying to enforce EEA in Kilimanjaro after arrest of Betty Machangu. The latter was accused of bribing members of her political party during nomination processes.¹⁹ Similarly, PCCB's credibility was put to question after being accused of bias by favouring the ruling party, CCM. Moreover it was accused of being working maliciously, unethically and impartially in executing its duties²⁰. It is interesting to find that PCCB was not well prepared to conduct monitoring and prosecution of defaulters.

The evaluation of the Election Expenses Act on the eve of the 2010 general elections has revealed that, it did not meet its objectives as expected. This is because it was rushed and stakeholders did not have enough time to discuss and familiarize with it. The Act broadly is not defining key terms. It contains repetitions and inconsistencies in some areas and leaves much to be desired.²¹ Though the problem was observed in 2010 general election similar problems have occurred in 2015 general election therefore there is a need for proposed study.

1.2 Statement of Problem

Since Tanzania got its independence there were no laws to govern election expenses until 2010 when the EEA was enacted. Political Party and aspirant candidates were the ones who covered the electoral expenses. Thus the mode of raising and financing elections depended entirely on the financial position of the political aspirant and the political party. Hence problem of mobilisation and spending of money during elections is critical to Africa and Tanzania in particular²². Most sources of money are

¹⁹Makulilo, A. B., Raphael, C. (2010, July 27). "The October 2010 General Elections in Tanzania".*The daily News* pp. 6

²⁰TEMCO Newsletter,(2010). "Enforcement of the Election Expenses Act", Issue 1, p p.16.

²¹Helen B. Kiunsi(2010). "Money and politics in Tanzania: An Evaluation of the Election Expenses Act in the 2010 general elections", The Faculty of Law, The Open University of Tanzania Law Journal.

²²Tanzania Election Monitoring Committee Interim Report, (2010). Reported by a monthly magazine, SautiyaDemocrasia ISSN 0856-7735 NO. 117 of November 2010 Titled "FedhaNyingiZilitumikaKatikaUchaguzi".

not known and corruption has therefore remained a central feature of Tanzania's elections. Realizing this problem, the government has for many years instituted various mechanisms to address this vice.

In some cases such mechanisms have been regarded as promoting corruption than preventing it as was the case with the "Takrima" law which was declared unconstitutional by the High Court in 2006²³. To fill this legal vacuum, the government enacted the Election Expenses Act in 2010 with the aim of managing money in politics. The law was used during the 2010 general elections and the continued by-elections and the general election of 2015.

It is argued that this law is ineffective in several aspects as it failed to manage money in politics. As such the 2010 general elections and the by elections conducted thereafter were marred with more corruption incidences and election expenses malpractices these incidents include the arrest of Betty Machangu. The latter was accused of bribing members of her political party during nomination processes²⁴ and *Attorney General and two others v. Aman Walid Kabourou 1995*²⁵

The Court of Appeal decided that the maintenance work of the Kigoma-Ujiji road during the election campaign constituted noncompliance with the prohibition against electoral bribery, and was executed with the corrupt motive of influencing voters to vote for the CCM candidate and accordingly affected the results of the election. Other successful grounds in that case were several election offences and illegal practices committed by very senior members of the government including the president. This work intends to assess whether the Election Expenses Act of 2010 is effective in curbing election expenses malpractices.

²³Legal and Human Rights Centre (LHRC) and Others v. Attorney General Miscellaneous Civil Case No 77 of 2006, High Court of Tanzania at Dar Es Salaam Registry (Unreported).

²⁴TEMCO Newsletter, (2010). "Enforcement of the Election Expenses Act", Issue 1, pp.16

²⁵Court of Appeal Tanzania, Civil Appeals no.32 and 42 of 1994, TLR [1996].

1.3 Research Questions

- i) Whether the Election Expenses Act 2010 is effective in curbing the electoral expenses malpractices.
- ii) Whether the Election Expenses Act, 2010 is fully implemented?
- iii) What are the causatives of election expenses malpractices despite having in place Election Expenses Act of 2010?
- iv) Whether the Election Expenses Act, 2010 provides for free and fair election by providing equal level playing field to all political parties?

1.4 Objectives of Research

1.4.1 General Objective

The general objective of this study is to assess whether the Election Expenses Act 2010 is effective in curbing of election expenses malpractices.

1.4.2 Specific objectives

In order to assess curbing of electoral expenses malpractices in Tanzania by election expenses act 2010 the effectiveness of electoral expense laws in Tanzania, the study has the following specific objectives:-

- i) To examine the extent to which the Election Expenses Act 2010 is effective in solving the election financing problem during elections.
- ii) To examine implementation challenges of Election Expenses Act, 2010

1.5 Significance of the Study

This research purpose was to critically assess election expenses law of Tanzania 2010. Therefore the research intends to expose the strengths and weaknesses of the election expense law. To show way forward in rectifying the problems and controversies of the law. The research will show lessons to be learnt by Tanzania from other jurisdiction.

Additionally, this research is beneficial to lawmakers in order to make the necessary amendments to improve problems of election expenses malpractices in elections. Additionally, the law makers will have a view as to how the stakeholders perceive the law.

In addition to that this research is beneficial to political parties because it will expose areas that need rectification for equal political playground. And those marginalized political parties will know where to voice their opinion and concern

As well this research will benefit the members of public by exposing the extreme amounts of monies spent in election and therefore voice their concern to the government.

Lastly the students of Mzumbe and other universities will benefit because the research will be a source of learning and reference material.

1.6 Literature Review

Most of the literatures reviewed in this study discuss the aspects of elections and election malpractices and money in politics. They discuss the problems of elections expenses act in Tanzania and its implementation problems. These literatures are crucial in this study as they put to light causes of election expenses malpractices in Tanzania and show the need to have them rectified.

LHRC report (2010)²⁶ show that in 2003 initiative was shown by the Southern African Development Community came to the consensus to introduce monitoring laws that address the issue of corruption in election expenses. The *African Union Convention on the Prevention and Combating of Corruption of 2003* demanded all African countries are required to embrace and accept the adoption of laws to monitor the spending during elections throughout Africa. This is because corruption in

²⁶Legal and Human Rights Centre Tanzania, “Human Rights Report 2010 Incorporating Specific Part on Zanzibar Legal and Human Rights Centre”, ISBN: 978-9987-432-84-4.

elections is immoral behavior which negates their right to vote and be voted for and distorting political structure. In Tanzania the president assented to the *Election Expenses Act, 2010* to curb political corruption during elections.

Furthermore, the office of the Registrar of Political Parties is mandated by the *Election Expenses Act, 2010* to regulate finances in the election *after* its introduction for the first time. The law has been faced with a lot of challenges such as the enforcement mechanism of the *Election Expenses Act, 2010* and Zanzibar is a challenge. Offences that are often committed under the *Election Expenses Act, 2010* are linked to bribery and corruption. These two offences are under the mandate of PCCB. Nevertheless, matters relating to corruption are not part of the Union matters. This means that PCCB cannot operate in Zanzibar since its jurisdiction is only in Tanzania Mainland. Hence, since registrar of political party does not have tools to control corruption and trace money in politics it has to use police to enforce the law in Zanzibar.

The report nonetheless did not address how citizens' constitutional right to participate in the governance of their country was denied by overspending of candidates during the 2010 general election.

TEMCO report (2010)²⁷ according to TEMCO they observed that the general elections of 2010 were the first to use the new law on election expenses. The aim to which it was enacted was to police the enormous amounts of monies during elections. The report showed that the campaign done by CCM were clearly elaborative and expensive in 2010 than any preceding elections. By observation one would conclude that campaigns were very expensive and some candidates spent fortunes. Those parties which were not well financed pulled out of the race or did not seem to be campaigning at all.

²⁷Tanzania Election Monitoring Committee (TEMCO); "An Interim Report on Performance of Tanzania's 2010 General Election", Pp. 1-14.

TEMCO deployed field observers to different areas. These field observers stated that Regional and District commissioners used state owned vehicles to facilitate presidential election. There were several instances in which the presidential candidate in power made decisions or reversing previous government's decision at a campaign meeting. Promises for what the candidate will do to the people if returned to power are fine; but using current position to make and unmake a decision to gain votes is improper because other candidates cannot do the same.

This report is useful as it points out the existing problem in election financing. Nevertheless, the report did not show the solutions to the existing problem. This research will cover that gap.

KIUNSI (2010)²⁸ the author evaluated the election expense act and observed that on the eve of the 2010 general elections has revealed that, the election expense act it did not meet its objectives as expected. This is because it was rushed and stakeholders did not have enough time to discuss and familiarize with it. The Act broadly is not defining key terms. It contains repetitions and inconsistencies in some areas and leaves much to be desired. Moreover, some of penalties provided are not serious enough to deter the offenders not to commit or repeat the same prohibited conducts. Similarly, the EEA's implementation has not been adhered to. Thus, as it now stands, EEA failed to manage finance and corruptions in the 2010 general elections.

The author further suggested that the law is not understood by many and that the law should be amended to provide clear definitions and clarifications of all words which are ambiguous, including excessive use of funds and how it is related to corruptions. The disclosure for elections funds should be made public and be done from all sources including Tanzanians so as to enhance transparency in election processes.

²⁸Helen B. Kiunsi(2010). "Money and politics in Tanzania: An Evaluation of the Election Expenses Act in the 2010 general elections", The Faculty of Law, The Open University of Tanzania Law Journal.

Author adds that clear demarcation should be set to end implementation of political parties' manifestos. Serious penalties should be imposed in offences of excessive use of money and in lack of impartiality to public media. In doing so money will not be used as a sole determinant factor in elections and therefore whoever qualifies will be elected, hence level playing field will be provided to all. However the author did show problems in the election expenses law.

BABEIYA (2011)²⁹ the author identified the areas that simplify implementation of election expenses laws. He further stated that, in the highly developed countries the citizens have awareness in political matters and are in a position to put forth pressure to the government and politicians to adhere to election expenses laws. The voters in developed countries therefore have significant role in restricting and curbing corruption during elections. In developing countries like Tanzanian the citizens are not aware of their civic rights especially in curbing election expenses, one would say those in rural areas have little role in curbing election expenses. This may be seen by the citizens from rural areas as bad law because during elections is when they harvest from the political aspirants and the law will be seen as depriving people from getting money, clothes and food from self-centered politicians³⁰.

The author further subscribe that, despite the progressive outcome that is related to liberal politics in Tanzania and how the government became open minded by opening up the political arena for political parties to compete and safeguarding citizens' rights and democracy, still there are some negative that affect the citizens democratic rights. One of the flaws is corruption which seriously affects Tanzania's electoral process. This problem has been seen in both ruling and opposition parties, however the reported incidents greatly are directed to the ruling party whose candidates are

²⁹Babeiya, E. (2011). Electoral Corruption and the Politics of Elections Financing in Tanzania. The Dar es Salaam University College of Education University of Dar es Salaam. Dar Es Salaam, Dar Es Salaam University Press.

³⁰Ibid.

accused of encouraging election expenses malpractices during party nomination and election campaigns. Additionally, it is the ruling party that benefits from public office support. Hence the effort taken to curb the problem is not working as it should and they are increasing yearly. Due to the existing problem government saw it was important to introduce the law that would curb election expenses malpractices. This law came to be known as Election Expenses Act³¹.

Nevertheless, this law is somehow weak for it does not provide for any financial relief to young parties that are very financially weak and which do not have representation in the parliament. Realistically, the election expenses law would be seen to be working if it would have provided remedy to ongoing uproar on imbalanced playing field between political parties as shown by financial resources they receive from government and donors. In countries with stringiest control over money in politics the public financing of political parties is not seen as optional³².

In discussing the electoral expense law in Tanzania. The author has made reference in newer democratic regimes in Eastern and Central Europe, in these states public funding is the only option in order to achieve equal playing field to all political parties and only way to assure the public and political parties of actual and operative multiparty democracy. This way parties are guaranteed with equality and no hassle to look for other sources of funds such as donations. In Tanzanian the situation is different in which currently four (4) political parties out of 24 registered political parties receive monthly subsidies. This necessitates the government to find a different measure that can ensure weak political parties an avenue publish and promote their party manifestos to the electorate³³.

³¹Babeiya, E. (2011). Electoral Corruption and the Politics of Elections Financing in Tanzania. The Dar es Salaam University College of Education University of Dar es Salaam, Dar Es Salaam, Dar Es Salaam University Press.

³²Ibid.

³³Ibid.

The introduction of Election Expenses Act in Tanzania was gleefully welcomed with the hope and anticipation that it eradicates corruption and other election expenses malpractices by monitoring and controlling the misappropriation of money to beseech voters for votes, but this hope is far from being realized. There are a lot of incidents that suggest the problem still continues during electoral processes. Hence it is not a shocker that the aim to which the election expenses act was enacted for was not realized during 2010 general elections which would be farfetched to term these elections as free and fair.³⁴

The authors work is useful to this research as it pin points the anomalies of the election expense law but has failed to address the other part of the problem of overspending and based his research on corrupt practices during elections³⁵.

Longopa and Njowoka (2011)³⁶ they analyses the election expenses legal regime of Tanzania by focusing on the significance of accountability by political parties and electoral candidates with regard to raising and spending of finances before, during and after the elections. Hitherto, they are of the views that they have been witnessing high expenditures in election campaigns in Tanzania especially during by elections. Thus their analysis ventured on the need to examine the mode of raising, spending and regulation of finances of the political parties to ensure that principles of free and fair election are not compromised.

They further state that without adequate mechanisms to control and regulate political finances, democracy will be jeopardized. Free and fair elections are only rhetoric in

³⁴Babeiya, E. (2011). Electoral Corruption and the Politics of Elections Financing in Tanzania.The Dar es Salaam University College of Education University of Dar es Salaam. Dar Es Salaam, Dar Es Salaam University Press.

³⁵Ibid.

³⁶Evaristo, L., Henry, N (2011). "Undermined Democracy in Tanzania: An Examination of Political Financing Legal Regime", The Law Reform Journal (V.3, pp. 80-81).

absence of fair playground to all political parties and candidates contesting in democratic elections. They commend the government for setting a legal framework with regard to control and regulation of political finance before and after the enactment of Election Expenses Act, 2010. This is to complement efforts so far made in the fight against all forms of political corruption in Tanzania.

They maintain that despite the good intension the election Expenses may have still contains provisions which have been criticized and very controversial. According to these authors the provisions which need analysis include sections on disclosure of funds and the roles and powers of the registrar of political parties. Their contention was that the act places the registrar deeply on matters of election, usurping the powers of the electoral commission and the judiciary of Tanzania.

These assertions are very crucial needed to be addressed by this research. Another weakness of the law that they observed is relating to foreign funding which appears to pull back the efforts of furthering democratization in Tanzania. It is on account of this point that the author argues that democracy seems to be undermined in Tanzania. However the authors did not address the issue of overspending on how it jeopardizes democracy and the recommendation to rectify areas of weaknesses of the law. Therefore the current study intends to focus on those areas that have not been addressed.

FEIKERT,³⁷ shared on the issue of transparency of election financing. However, Feikert goes further and analyses campaign financing legal regime in the United Kingdom. He states that, in UK the law that deals with election campaign finance is embodied in the Representation of the People act, 1983(RPA) and the Political Parties Elections and Referendums Act, 2000 (PPERA). The UK modality of control lies on

³⁷ Law Library of congress, Campaign Financing: UK (Rpt. No. 2000-09042). Accessed on The Law Library of Congress: <http://www.loc.gov/law/congress> retrieved on 4th September, 2015

how the political aspirant spends the money rather than monitoring and limiting other sources of funds like donations.

He further points out three categories of regulated spending during the general election. These categories include expenses that a political party sustained in promoting a party and its manifesto, monitoring expenses incurred by registered third parties to promote parties and political aspirants, and election costs on promoting an individual candidate. He adds that, on the issue of election expenses in UK party contenders have limited spending ceiling that they cannot go beyond and the laws also forbid individual election financing to surpass what is prescribed by the laws.

Regarding the funding of political parties, he asserts that limit is not set on how much a particular candidate is to get on donations or a political party may receive. Nevertheless, laws do control and monitor who can donate and the extent to which they can contribute to expenditure of political parties during campaign³⁸. Purpose of law is controlling and monitoring donations to political parties through openness, since the required standard is to publicly publish political parties' finances. There are donors that the law permits to receive donations even if the limit has been exceeded by prescribed limits³⁹.

Further, he analyses issues relating to spending limits and found that the current laws of UK provide election expenses begin when the parliament has been dissolved⁴⁰. This is because political candidate aspiration begins at that time. However the materials, things and services bought prior to dissolving of parliament and these items are used later in the candidate's election campaign count towards the candidate expenditure limits. The candidates use a lot of funds before dissolution of parliament

³⁸Law Library of congress, Campaign Financing: UK (Rpt. No. 2000-09042). Accessed on The Law Library of Congress: <http://www.loc.gov/law/congress> retrieved on 4th September, 2015

³⁹ Section 54 of Political Parties Election Referendums Act, 2000

⁴⁰ Section 188 of Representation of the People Act, 1983

as this is a loophole since the law is silent regulation of this type of expenditure, and because it is not regulated the accounts cannot be publicly published.

On the other hand, the election management body has identified claims from the candidates that commencing time for spending limits on election expenses has been very close to the election date. Consequently, an important phase during campaign will not be regulated by the new controls. This actually makes election expense limitations useless. Subsequently the authors' work is useful in this research as it will be used as a lesson from developed countries as their democratic situation is more matured than ours.

Kilimwiko(2015)⁴¹ started by quoting the following,

Money is a more immediately controllable instrument of influence than guns in the hands of the ordinary policeman or soldiers. "Money not only talks politics, it whispers conspiratorially and, at the extreme, sometimes shouts so loud that no other messages are heard. "Money whether from private wealth or from public funds subject to authoritative disbursement in patronage, or public contracts, is a universally effective instrument for hiring supporters..."

The author projected that by all accounts that 2015 elections seems like it will be extremely expensive election like never before seen in Tanzania. The paradox is that the government has put in place Election Expenses Act, of 2010, with intension of regulate money in politics. But every projection shows that there is no serious intension on the part of the government to implement the law. He continues to state that, Political Parties Act, of 1992, made provision for the public funding of political parties. Until 1995 all registered parties were entitled to public funding. However, in

⁴¹Kilimwiko, L. (2015). Tanzania's Election Expenses Act a non-starter.<http://www.ippmedia.com/?83822>The Guardian Newspaper on Sunday accessed on 30th August 2015.

1996, public funding was restricted to parties with representation in parliament. In 2000 public funding ceased wholly on the ground that the state could not afford⁴².

The Election Expenses Act, of 2010 requires that all donation from individuals over one million shillings should be disclosed to the Registrar of Political Parties within 30 days of receipt. Moreover, parties are required to disclose funds received from outside the country. The Registrar has powers to investigate parties' books, papers and documents of political parties and individual candidates.

The presidential candidates according to the law are to declare donor funds and other sources funds to the party secretary while parliamentary and councillors candidates are to declare the same to the district party secretary. Lastly these political parties are mandated to present their sources of funds and accounts to the RPP within 30 days after the nomination.

It should be noted that the prime minister is the responsible person to set expense limits to be spent by political parties and it was affected by him on 18/08/ 2015 and the order was gazetted in the government gazette. The order showed the extent to which the candidates and their respective political parties can spend.⁴³.

The author further identified a grey area of the law to him is on the disclosure of funds to the public. Since the law's intension is to control money in politics and one mechanism of controlling it is through transparency why should there be confidentiality when such funds are contested or its particulars are subjected to court

⁴²Kilimwiko, L. (2015). Tanzania's Election Expenses Act a non-starter. <http://www.ippmedia.com/?83822>The Guardian Newspaper on Sunday accessed on 30th August 2015

⁴³Ibid.

procedure. This whole part is absurd this shows that the government is not willing to enforce the law⁴⁴.

The effect of not enforcing the law is that large some of monies can be injected in the elections by politicians without being scrutinized. This is a serious concern because the interest of few rich donors will be of utmost importance rather than interest of the majority. In India election observers record daily transactions of the candidate since they open a different account for election funds. The EMBs are vested with power to intercept the illegal transactions which are not accounted for. Therefore this should act a lesson to Tanzania how other countries restrict money in politics.

The author is of the view that, it is uncertain for incumbent president, parliamentarian or councillors to be re-elected. Those in power have more advantage to be recognized after their five years' service than those contesting for the first time. The party nominations in Tanzania were marred with corrupt and illegal activities and risks are known. Therefore the author argued for implementation of the law by the political parties and the government.

These implementation decisions should not be left only to the government, political parties and candidates but also to the Judiciary. Pakistan has demonstrated how judiciary was the pioneer of democratic revival. This happened when the government was not willing to address political corruption cases. One example is when the court came with the decision to oust the prime minister after he failed to indict the president on corruption charges.

This article is useful as it analyses the election expense act in relation to how Pakistan judiciary took charge where the executives failed. Moreover, the article addressed

⁴⁴Kilimwiko, L. (2015). Tanzania's Election Expenses Act a non-starter.<http://www.ippmedia.com/?83822>The Guardian Newspaper on Sunday accessed on 30th August 2015

problems with the act and how the government seems not to be willing to implement the law. However, he did not discuss on the strength of the law and how overspending has any relation to corruption.

1.7 Research Methodology

This research is partly a library research and partly a field research. The library research is undertaken in the Mzumbe University library, Dar es Salaam University and the Open University of Tanzania to review empirical literatures and reports. The field research is undertaken for the purpose of collecting primary data from ORPP offices, NEC officials, PCCB officers, Political Parties and NGO's concerning the insight and assessment of the respondents on the theme of this study.

1.7.1 Research Design

The researcher will employ cross-sectional survey⁴⁵ design whereby data will be collected through interviews, observations and administration of questionnaires to different respondents.

1.7.2 Field Research

The researcher will cover several institutions such as government ministries, National Electoral Commission, High court and Court of Appeal of Tanzania, Tanzania Centre for Democracy, Legal and Human Right Centre and Tanzania Election Monitoring Committee. Since 2015 was a general election year observation technique was employed in courts on how cases were dealt with and political aspirants spending.

⁴⁵Lavrakas, P.J. Encyclopaedia of Survey Research Methods at <http://srmo.sagepub.com/view/encyclopedia-of-survey-research-methods/n120mxl>

1.7.3 Scope of the study

This study was basically focusing on the election expense act of 2010 in Tanzania. It was confined to Mainland Tanzania.⁴⁶ Although the United Republic of Tanzania includes Zanzibar; Zanzibar was not covered in this study. There were several reasons for this demarcation these being time and budgetary constraints. Additionally, researcher has taken liberty to study other countries such as South Africa and United Kingdom since they have an advanced mode of monitoring money in politics and in the course of reading the researcher was more attracted to the said country approach than others.

1.7.4 Study Area

The study will be conducted in Dar Es Salaam city because most of the offices intended to be visited by the research are located in the city mentioned.

1.7.5 Sampling

A process used in statistical analysis in which a predetermined number of observations will be taken from a larger population. The methodology used to sample from a larger population depended on the type of analysis being performed, but included simple random sampling, systematic sampling and observational sampling. The sample should be a representation of the general population⁴⁷.

1.7.5.1 Sample Size

A sample is a specimen or part of the population which is drawn to show that the rest is alike⁴⁸. The information obtained from the sample is used as a representative of the entire population⁴⁹, note that there is no sample size which is best over others. Any sample size can be acceptable depending on the nature of the study, its objective,

⁴⁶Section 2 of The Election Expenses Act, 2010 retrieved on 20th January, 2016

⁴⁷<http://www.investopedia.com/terms/s/sampling.asp#ixzz3xfDiG1Zi> accessed on 10/11/2015

⁴⁸Leedy, P. D. (1980). *Practical Research: Planning and Design*, 2nd Ed. New York: Macmillian Publishers.

⁴⁹Best, J., Kahn, J.V. (1998). *Research in Education*, 8th Ed. Boston: Allyn and Bacon publishers.

research design, data collection method as well as the nature of the population available for the research problem⁵⁰ Sampling reduces cost of the study, helps in time management and simplifies logistical issues of the research process. The study was to cover all the offices with relation to elections in Tanzania but due to limitation of time and budgetary constraints a sample was taken to represent all the same. Therefore, in carrying out this research both purposive and random sampling methods will be used.

Under the two methods of both purposive and random sampling total of 22 respondents were selected for the purpose of providing information necessary for this study. The number of respondents is chosen because it will produce significant results to this study. These respondents are from the ORPP, NEC, PCCB, Political Parties, LHRC, UNDP, Advocates and NGO's. Another consideration taken in choosing this number of respondents is limited duration of time in conducting the study, budgetary constraints and nature of the study itself.

1.7.5.2 Sampling Techniques

The sampling technique used in the collection of data was purposive sampling. This was specifically for the legal professionals, NEC, ORPP, NGOs, and Political parties and random sampling was also used specifically by choosing the persons to be interviewed and the choice was made out of their knowledge on the research study conducted by the researcher. These techniques are used because we need to have the specific criteria of who have such knowledge on the election expenses act 2010 and how the law curbs election expenses malpractices.

⁵⁰Kothari, C.R. (2004). Research Methodology-Methods and Techniques, 2nd Ed, New Delhi, New Age International Publisher.

1.7.6 Methods of Data Collection

This study was expected to collect both primary and secondary data. The secondary method of data collection was used together with primary method of data collection because where no sufficient information was given during primary method then researcher supplemented with secondary method. Primary data is one which involves the researcher himself or herself from field for the purpose of answering a research question or issue; and secondary data involves the data that has been already collected by someone else, usually found in documents⁵¹. The researcher employed three methods of primary data collection; interview, questionnaire and documentary review.

1.7.6.1 Primary methods of Data collection

1.7.6.1.1 Interviews

Interview is a set of questions structured to collect information through oral or verbal communications between the researcher and respondents. The method is advantageous as it provides a room for an interviewer to clarify questions which are not clear to respondents as well as requesting interviewee to expand answers which are particularly important⁵². This tool was used in this study to collect primary data from the Advocate from LHRC and Independent advocates who did not have time to fill the questionnaires. They contributed significantly on the question whether Election Expenses Act, 2010 is effective in curbing election expenses malpractices. Thus the guide used to direct the conversation between interviewer and interviewee are similar questions used in the questionnaire see Appendix i.

⁵¹Kothari, C.R. (2004). Research Methodology-Methods and Techniques, 2nd Ed, New Delhi, New Age International Publisher.

⁵²Kothari, C.R. (2004). Research Methodology-Methods and Techniques, 2nd Ed, New Delhi, New Age International Publisher.

1.7.6.1.2 Questionnaires

Questionnaires were used to collect data from the respondents. The instrument is considered suitable due to the nature of information required and the amount of information needed along with the time to be used moreover some officials will be too busy to have interviews. The questions in this instrument were closed see Appendix i. Benefits of using questionnaire are to create a stress free environment for the respondents and that questionnaire has the advantage of removing ambiguity and exerts less pressure on respondents. Since the questionnaires did not include names and any personal particulars that would identify them, therefore respondents were free to share information due to sensitivity of the subject when collecting data. The questionnaires were supplied to Lawyers, citizens, NEC officials, ORPP officials, PCCB officials, Political Parties and NGOs and the members of political parties who possess sufficient knowledge in the topic.

1.7.6.2 Secondary source of data collection

1.7.6.2.1 Documentary review

A review of primary and secondary sources of data which is relevant to election expenses law was made. In primary sources of data, documentary review was made in respect of documents which were not for public consumption. For the secondary source of data published and unpublished materials relevant to the study such as manuals, textbooks and research papers were used.

1.7.7 Methods of Data Analysis

1.7.7.1 Quantitative Data Analysis

The collected quantitative data from the primary and secondary methods of data collection instruments were categorized and analyzed according to research specific objectives and research questions so that frequencies and percentages of responses could be easily interpreted and analyzed.

1.7.7.2 Qualitative Data Analysis

The qualitative data was organized according to themes identified from research objectives and questions and analyzed using content analysis.

1.8 Limitations to the study

Limitations are matters and occurrences that arise in a study which are out of the researcher's control. They limit the extensity to which a study can go, and sometimes affect the end result and conclusions that can be drawn. Every study, no matter how well it is conducted and constructed, has limitations. This is one of the reasons why we do not use the words "prove" and "disprove" with respect to research findings. It is always possible that future research may cast doubt on the validity of any hypothesis or conclusion from a study. The study might have access to only certain people in an organization, certain documents, and certain data. These are limitations. Subsequent studies may overcome these limitations.⁵³

⁵³Wiersma, W. (2000). Research methods in education: An introduction. Boston, Massachusetts
Published by Allyn and Bacon pp. 211

CHAPTER TWO
THE CONCEPTUAL FRAME WORK OF ELECTION EXPENSES AND
MALPRACTICES IN TANZANIA

2.0 Concept of Election Expenses

Election expenses law came into force 2010 where it was used in the 2010 general election. The term election expenses defined by the law to mean expenditure incurred during election phases. These election phases include nomination, campaign and intra party elections of the candidates and for the general election a particular political party. All these processes require money to be facilitated. In terms of a candidate a political party can finance and with relation to the general election the government do finance. During party nomination and the general election resources are used to influence the voters to vote for a specific party or a particular candidate. These expenses comprises of food, drinks, accommodation and transportation which a candidate bare to facilitate his winning chance⁵⁴.

2.1 Election Expenses Malpractices

These are prohibited practices which include unfair conducts⁵⁵, unconscionable funding⁵⁶, and conveyance of voters⁵⁷ and disqualification of candidates⁵⁸. In summary a party that intimidate, gives money and any other forms of enticement to solicit a candidate to vote for a specific candidate and to sell or destroy voter registration card. Additionally, bribing voters from voting, force and lure voters by receiving monies and other forms of incentives to people, whether directly or indirectly, encouraging political aspirants forfeit their candidature or enlisting support from public officialshas committed corrupt practices. However these acts shall extend

⁵⁴Section 7(1) and (2) of The Election Expenses Act, 2010

⁵⁵Section 21 of The Election Expenses Act, 2010

⁵⁶Section 22 of The Election Expenses Act, 2010

⁵⁷Section 23 of The Election Expenses Act, 2010

⁵⁸Section 24 of The Election Expenses Act, 2010

and have the same effect to a person who, by pronouncement or conduct, has shown an intension to participate in the nomination process.⁵⁹

2.2 Funding of Election

This refers to the process of raising funds and spending that political parties and candidates do in the process of election nomination, campaigns and Election Day itself.⁶⁰ One could categorize funding election into three main kinds; Public Funding, Indirect public funding and private funding.

2.2.1 Public Funding

Public funding refers to funds or resources provided by the State or Government to political parties and or candidates. Many countries in the world are providing funding to political parties so as to create equal play ground to all political parties and avoid monopoly of party politics. By its name is called public fund and since its public all political parties and candidates must have equal accessibility to those funds and the law should state so. Public funds give to political parties should be under serious scrutiny to avoid mismanagement by a particular political party or candidates. The law should encourage democratic system in order to embrace multi party and free and fair election⁶¹

There are two categories of public funding; these are direct and indirect public funding. Direct public funding is provided to the political party in terms of subsidies. The allocation of funds takes into account votes and seats won.

As stated before, Tanzania election process has a tendency towards marginalizing young political parties so as to form a parliament that is suitable for easy decision making. The prejudice towards weak political parties is detrimental if the public

⁵⁹Section 25 of The Election Expenses Act, 2010

⁶⁰Coate, S. (2004). "Pareto-Improving campaign finance policy". American Economic Review (Volume 94, pp. 628-655(28)). Pittsburg Pennsylvania American Economic Association Press

⁶¹Section 25 of The Election Expenses Act, 2010

funds are continuously given to the political parties that have parliamentary representation. Additionally, those parties that have parliamentary seats are wealthy and have unquestionable support. In this environment weak parties have minimal chance of winning in the competition.

In Tanzania the Government has responsibility to fund political parties according to law⁶² but these public funds are directed towards party operating costs and not for election purposes⁶³. Additionally, the political parties that are entitled to public fund are the ones that have parliamentary seats rather than the number of votes won in the elections⁶⁴

2.2.2 Indirect Public Funding

Indirect public funding are resources equal to money value given to political party by the Government. Since they are not direct monetary value have less scrutiny than the direct public funding.⁶⁵

There are several forms of Indirect public funding such as media access, interest-free loans for paying registration fees, free printing and distribution of ballot papers in multiple ballot systems where parties are responsible for providing their own ballots, subsidized offices to be used by political parties, public transportation for candidates⁶⁶.

Indirect public funding also includes government buildings, schools, sports grounds for meetings and rallies, Special taxation grace for political parties such as not paying VAT, donations are not supposed to be taxed that motivate donors to contribute,

⁶²Section 16(1) and (2) of The Political Parties Act [Cap 258 R:E 2002]

⁶³Section 18 (1) (a)-(d) of The Political Parties Act [Cap 258 R:E 2002]

⁶⁴Section 16 (3)(b) of The Political Parties Act [Cap 258 R:E 2002]

⁶⁵The ACE Encyclopedia. "Parties and Candidates 2013" © ACE Electoral Knowledge Network pp. 20.

⁶⁶Ibid.

subsidized postal services to publish and transferring of information items such as leaflets to voters and subsidized telephone communication⁶⁷.

In Tanzania the law provides equal play ground to usages of national broadcasting networks. The right to the candidate for the office of the president in election to utilize the government broadcasting services and television during election campaigns is clearly enshrined in the law⁶⁸. Although the law provides for that right, it has been established that, the distribution of coverage in public media for political parties was not even or equal. Research done on September 2010 revealed that⁶⁹.

2.2.3 Private funding

The political parties act provides sources of funding for registered political parties which includes; membership fees, voluntary contributions, the proceeds of any investment, project or undertaking in which the party has an interest, subvention from the Government, donations, bequests and grants from any other source⁷⁰

2.3 Political corruption

Political corruption in a democracy is a form of unjustifiable exclusion or disempowerment, marked by normative duplicity on the part of the corrupt. Corruption is marked not only by exclusion as there are many modes of exclusion but also by covertness and secrecy, even as inclusive norms are affirmed in public.⁷¹

Since 1995 when Tanzania held its first multiparty general elections following the reintroduction of plural politics in the country in 1992, there have been many

⁶⁷The ACE Encyclopedia. "Parties and Candidates 2013" © ACE Electoral Knowledge Network pp. 20

⁶⁸Section 28 (1) of Election Expenses Act, 2010 and section 53 (1) and (2) of the National Election Act [Cap 343 R: E 2010].

⁶⁹Synovete, Tanzania Media Election coverage 2010 Monthly Monitoring Report (October).

⁷⁰Section 13 of The Political Parties Act [Cap 258 R: E 2002]

⁷¹Mark E. W, M.E. (2005). "Democracy against Corruption, Conference on the Quality of Government 17th -19th November 2005: Quality of Government Institute, University of Göteborg (Unpublished).

incidents of corruption. Corruption has been in many forms for example Tanzania's ruling party, Chama Cha Mapinduzi (CCM) has had a double talk over this scourge as apart from chanting anti-corruption slogans has been on the other hand embracing it. Supporting evidence was the introduction of the Traditional Hospitality Act, popularly known as *takrima* before 2000 general elections. Takrima was introduced by the ruling party with the view that it was different from corruption. In the views of the party leadership, it was simply meant to ensure that those competing for political posts could extend a vote of thanks to their supporters.⁷²

Traditional Hospitality was however outlawed on April 25th 2006 by the high court of Tanzania after three Non-Governmental Organizations, namely; the Legal and Human Rights Centre, (LHRC), Lawyers' Environmental Action Team (LEAT) and the National Organization for Legal Assistance (NOLA) had filed a case challenging sections 119 (2) and (3) and 130 (b) and (c) of the National Election Act which blessed corruption⁷³.

Another political corruption is Incumbency corruption this is shown by 2006 TEMCO report for 2005 general elections shows that the ruling party had the advantage of incumbency in 2005 general elections. One of the cited examples is that immediately after Kikwete was nominated as CCM's presidential candidate, public institutions started to send and print in papers congratulatory messages to Kikwete for his nomination. However these institutions did not do the same to candidates from the opposition. The then president of United Republic of Tanzania Benjamin Mkapa was also reported to campaign for CCM candidates and held internal meetings which were

⁷²Warioba, J. (2011). Legalizing Corruption: The Historic Takrima Case. Tanzania Corruption Tracker System.[http://: www.corruptiontracker.or.tz/](http://www.corruptiontracker.or.tz/), accessed January 3rd 2016.

⁷³Ibid.

attended by CCM leaders, candidates in the region and government officials in the respective regions.⁷⁴

Similarly, TEMCO's interim report on performance of Tanzania's 2010 general elections highlights various incidents of incumbency advantage to include; Regional and District Commissioners placing state resources (Vehicles) in campaign processions of the presidential candidate defending his position, the presidential candidate in power addressing public meetings outside the legal campaign time (beyond 6.00pm), a practice which was then imitated by other presidential candidates (especially that of CHADEMA), cases of making a decision or reversing a government decision previously made in campaign meetings – which violated the code of ethics.⁷⁵

2.4 The National Election Commission (NEC)

The national electoral commission is established under article 74(1) of the constitution of the United Republic of Tanzania⁷⁶ NEC has mandate and responsibility to perform electoral functions under the constitution of the United Republic of Tanzania, 1977 and other legislation.

NEC is coupled with several functions among many is to implement the Election Expenses Act as it is vested with the responsibility to conduct election matters. In performing its duties it has to work side by side with other organs such as registrar of political parties.

⁷⁴Tanzania Election Monitoring Committee (TEMCO).“The 2005 Elections in Tanzania”, Report of The Tanzania Election Monitoring Committee. Published by TEMCO pp. 1-16.

⁷⁵Tanzania Election Monitoring Committee (TEMCO)“An Interim Report on Performance of Tanzania's 2010 General Election”, Published by TEMCO pp. 1-14.

⁷⁶Article 74(4) of the Constitution of the United Republic of Tanzania[Cap 2 R: E 1977].

According to the election expenses regulations 2010⁷⁷ the District Administrative Secretary and ward executive officer are designated as authorized officers of Member of Parliament and the office of councillor. These officers are also designated by the elections Act to be the Returning officers for the purpose of elections.

2.5 Registrar of Political Parties

Registrar of Political Parties is the office entitled for the registration of political parties and the registrar is appointed by the President⁷⁸ Additionally registrar of political parties is also responsible for the supervision and administration of election expenses.⁷⁹ And it is among the electoral management bodies.

The office of registrar of political parties is encumbered with several problems implementation problems were marked by incidents of conflicting powers of institutions. For example, NEC and the registrar of political parties had conflict in implementing their mandates. This happened when the registrar allowed political parties and candidate to campaign beyond 6.00 in the evening contrary to the law.⁸⁰ Soon after the announcement of this direction, the NEC chairman announced a conflicting announcement that campaigns must be conducted from 8 P.M to 6 P.M in the evening and not beyond such time as the registrar of political parties had directed.⁸¹

In another incident, the registrar of political parties extended ten days as for aspiring candidates for parliamentary and councillorship to submit their duly completed election expenses declaration forms to the office of registrar.⁸² This happened when CHADEMA and NCCR Mageuzi appealed to the registrar that they did not receive

⁷⁷GN No 246 of 2010, Regulation 13(1) and (2) of The Election Expenses Regulations, 2010

⁷⁸Section 4 (1) and (3) of the political parties [Cap 258 R: E 2002]

⁷⁹Section 4 of the Election Expenses Act, 2010.

⁸⁰Electoral Code of Conduct for 2010 General Election.

⁸¹TEMCO Newsletter, "The Enforcement of the Expense Act", Issue No.2 October 2010 p. 4

⁸²Ibid.

disclosure forms on time.⁸³ In extending time, the registrar said he was satisfied himself with the seriousness of the concerns and reservations raised hence the decision to extend the earlier deadline. Legally speaking, the registrar acted ultra vires as the EEA and its Regulations are silent on what should be done in extension of time in relation to disclosure forms.

Other serious implementation problems are on the workforce that there are no enough employees in the office of registrar of political parties. There are no zonal offices therefore to make follow up is next to impossible.

2.6 Reporting and Public Disclosure of Party Finance

Very often, political parties and or candidates are required to report their income and or expenditure to the Electoral Management Body or other authority, or to have their accounts audited by the electoral authorities. This is the case that accounts are then often disclosed to the public after auditing. In reporting and disclosure regulations, there is a need to strike a balance between the wish by outsiders to know (transparency) and the wish by donors and recipients to maintain their private sphere (privacy). There is a bigger need to respect privacy in countries where the risk of harassment against donors to specific parties is greater. In societies with a low level of public trust in political parties, there is usually a higher demand for transparency and consequently more public disclosure of finances⁸⁴

Reporting and public disclosure can serve many purposes ranging from assisting the election authorities to ensure that money is not accepted from illegal sources; to being an empowerment of voters in deciding which party or candidate they want to vote for.

⁸³TEMCO Newsletter, the Enforcement of the Expenses Act, Issue No.2 October 2010, p 6

⁸⁴Transparency International &The Carter Center (2007). The Crisis Project: Money in Politics, Everyone's Concern. http://www.archive.transparency.org/regional_pages/americas/crisisretrivedon 27 January 2016

The main dividing line in reporting and disclosure regulations is whether or not the information gathered is made available to the public.

In cases where the information is made public, it is often argued that voters have the right to know where the political parties and candidates got their money from, to be able to make an informed choice on Election Day. If the reporting information is made available to the public it can.⁸⁵

2.7 Prohibited Sources of Funds

Apart from receiving money from public funding schemes, political parties can receive their funds from membership dues, private (or sometimes corporate) donations, or income from properties or businesses. Too much reliance upon public funds is claimed to reduce the linkage between political parties and their members, and turn them into organs of the state rather than voluntary organisations. Most countries in the world therefore accept, and sometimes even encourage, political parties to seek funds from other sources. All sources of funds are, however, associated with specific risks that may endanger the successful operation of a democracy. Therefore, donations from dubious sources are often prohibited or limited altogether. Grass-roots funding and membership dues are probably the only two sources of funds that are always allowed.⁸⁶

Funds coming from foreign governments, individuals, corporations, or (in some cases) exiled communities are strictly prohibited. If a political party relies heavily on funding from foreign sources – especially if it is a fund from foreign government – there is a risk that the national sovereignty could be threatened and that political decisions will be made by a particular foreign country and domestic needs of a

⁸⁵Transparency International &The Carter Center (2007). The Crinis Project: Money in Politics, Everyone's Concern. http://www.archive.transparency.org/regional_pages/americas/crinisretrived on 27 January 2016

⁸⁶Keith, E., Samuel, I. (2006). Party Funding and Campaign Financing in International Perspective (Columbia-London Law Series): London Bloomsbury Publishing.

country will not be regarded so as to please a foreign donor. Many object to anyone who does not have voting rights in the country still being able to influence politics⁸⁷.

Donations from government contractors are prohibited in many cases. The risk is that elected representatives would feel compelled to reward government contracts to those who have contributed to his or her campaign, or demand donations in exchange for contracts. Corporate donations from national, multi-national, and foreign companies are often prohibited on the grounds that they may corrupt politics by leading the donors to expect favours from elected politicians. It is mainly the fact that corporations can donate very large sums of money that has proven problematic⁸⁸.

Donations from State entities (that are not part of public funding schemes involving all political parties) are prohibited on the grounds that donations from State entities would compromise the neutrality and impartiality of the State administration. Trade union donations are prohibited where there is a feeling that the trade union organisations should be kept separate from the political parties.

Funds from illegal sources like organized crime, gambling, and the drug trade are banned in many countries and unacceptable in all, regardless of legal provisions, again on the grounds that the donors might expect favours from elected politicians. Religious groups are sometimes prohibited from donating funds to political parties following an argument that organized religion is a domain that should be kept separate from politics.

Prohibitions may be difficult to enforce since they demand that authorities keep a close eye on all funds – including cash, which is notoriously difficult to trace – that

⁸⁷Keith, E., Samuel, I. (2006). Party Funding and Campaign Financing in International Perspective (Columbia-London Law Series): London Bloomsbury Publishing

⁸⁸Ibid.

come into political party accounts and pockets. The administration of prohibition laws is difficult and consumes both time and resources. Many argue, however, that the importance of the protection it gives democratic politics is important enough to invest resources, while others seek other ways of regulating or monitoring party income. If prohibitions seem like a line that is hard to draw, introductions of limits on donations can help curb the potentially distorting effect of donations but still give political parties a wider range of acceptable sources of funds.

2.8 Conclusion

Conclusively, this chapter is about conceptual framework which defined and stated relations between concepts used in this study.

CHAPTER THREE

LEGAL AND INSTITUTIONAL FRAMEWORK GOVERNING ELECTION EXPENSES IN TANZANIA AND LESSONS FROM SELECTED COUNTRIES

3.0 Introduction

This chapter explores the institutional and legal framework governing election expenses in Tanzania by evaluating whether it has succeeded to curb election expenses malpractices. This will be achieved by assessing whether the practice during election is compatible to the law in place. Also, to find out solution to the problems of election expenses malpractices if at all they are there.

3.1 The Election Expenses Act

Election expenses law in Tanzania became effective 2010 and was used in the General elections of October 2010 and it was again used in October elections of 2015. Therefore it is no longer new phenomenon in Tanzania. This law came about after malpractices were observed in elections in Tanzania. Thus the system of controlling party funding was depicted by so many weaknesses including lack of transparency of funding from private sources, ineffectiveness of the office of the registrar of political parties to monitor party mobilization of funds, corruption, and overspending, illegal practices during nomination and campaign⁸⁹.

The new law therefore came with a lot of changes and mechanisms to control elections expense mal-practices to make provisions for the funding of nomination process, election campaigns and elections with a view to controlling the use of funds and prohibited practices in the nomination process, election campaigns and elections; to make provisions for allocation, management and accountability of funds and to

⁸⁹Tendwa, B.J. (2010). "Election Expenses Act", Paper Presented at The workshop held on 16th March 2010 at Markham Hotel Mayfair Plaza (unpublished).

provide for consequential and related matters⁹⁰. While the general purpose of the Act is to limit expenses during election campaigns, the same law restricts access to information regarding expenses to be incurred by political parties and their candidates⁹¹.

Also the law provides tight requirement for acquiring and spending election contributions some of requirements are that all party nominees report to their party the amount of funds they intend to spend in their election campaigns within seven days of their nomination.⁹² The parties are required to make the reports available to the Registrar of Political Parties (a government organ accountable to the Prime Minister's office and responsible for the management of all matters pertaining to political parties registered in Tanzania) within 30 days of the end the nomination process. It gives the minister responsible for political parties the discretion to put a cap on election expenses; violation of such a cap by a political party or a candidate is an offense.⁹³

Additionally requires that the source of all individual donations to political parties exceeding TZS500,000 (about US\$367) and donations from organizations exceeding TZS1 million (about US\$734) be disclosed to the Registrar of Political Parties within 30 day of receipt. It requires that all candidates receive donations for election expenses only through their party.

Moreover all donations received by a political party be deposited in a special bank account and that all election expenses be paid out of that account. It prohibits accepting funds from foreign sources, including individuals, governments, and non-

⁹⁰Tendwa, B.J. (2010). "Election Expenses Act", Paper Presented at The workshop held on 16th March 2010 at Markham Hotel Mayfair Plaza (unpublished).

⁹¹Marko, G. (2010). "New Election Law Restricts Access to Information, Media Institute of Southern Africa Report", Published in Cooperation with SMU Dedman School of Law, Dallas Texas pp. 103-104

⁹² Section 9(1) of The Election Expenses Act, 2010

⁹³ Section 10(3) of The Election Expenses Act, 2010

governmental organizations; and it requires that political parties stop receiving contributions no later than 90 days prior to Election Day.⁹⁴

The law has given Registrar of political parties' functions to supervise and administrate election expenses. The powers to investigate and examine and at any given time enter into any premises in which books, papers and documents of a political party or candidate relevant to the subject matter of investigation or examination are kept. Again registrar of political parties has been vested with powers to demand information and where such report is demanded shall be furnished within reasonable time as registrar may determine.⁹⁵ Election Expenses to be incurred by each political party and subject to limitations a candidate may use his own funds during election campaigns as may be necessary or required for the purpose of election campaigns.⁹⁶

Disclosure of funds before election campaigns is a requirement under this law. That a candidate shall be required to disclose at least seven days before the nomination day and for that matter a presidential candidate should submit forms of disclosure of funds to a secretary general of political party and for a post of a member of parliament, similar forms have to be submitted to a district party secretary. These forms shall contain in detail the amount of funds which the candidate has in his possession and expect to receive and intends to use as election expenses.⁹⁷ Some of the information to be provided in the disclosure form includes amount of money, other type of funds which can be cashed or converted into money value or money

⁹⁴Karashani, B. (2009 January 4), A Review of the Proposed Election Expenses Act, 2009, THISDAY, available at http://www.thisday.co.tz/frontend/functions/print_article.php?l=10524 retrieved on 15th December 2015.

⁹⁵Part II of Election Expenses Act, 2010

⁹⁶Section 8 (1)-(2) of Election Expenses Act, 2010

⁹⁷Section 9(1)(a)(b) (i-ii) of Election Expenses Act, 2010

worth; source of money or other type of funds; and any other thing intended to be used during election campaigns.⁹⁸

After nomination day every political party which participates in any election shall within thirty days after the nomination day disclose to the register all funds which it intends to use as election expenses and use for candidates sponsored by such political party as election expenses.⁹⁹ And disclosure of the same by candidates in the absence of other factors is prima facie evidence that the candidate has complied with the requirement for disclosure of funds.¹⁰⁰ The EEA allows for returns of election expenses of gift, loan, advance deposit and donation but the latter are treated as confidential.¹⁰¹

The Act, empowers Minister responsible by order in the Gazette prescribe the maximum amount of election expenses depending on the difference in the size of electoral constituency; categories of candidates; population of people; and communication infrastructure.¹⁰² The Minister may also vary the amount of election expenses to be used by political parties during the election campaigns.¹⁰³

In exceptional circumstances, a political party or candidates spends funds in excess in the prescribed amount, that political party or candidate shall be required to make a report to the Registrar of Political Parties. Such report has to contain reasons for the use of excess funds. Additionally law has made the excess of amount spent which is not prescribed as an offence.¹⁰⁴

⁹⁸ Regulation 7 (2) of the Election Expenses Regulations 2010

⁹⁹ Section 9(2) (a-b) of Election Expenses Act, 2010

¹⁰⁰ Section 9(3) of Election Expenses Act, 2010

¹⁰¹ Regulation 9(3) of the Election Expenses Regulations 2010

¹⁰² Section 10(1)(a) of Election Expenses Act, 2010

¹⁰³ Section 10(1)(b) of Election Expenses Act, 2010

¹⁰⁴ Section 10(2-3) of Election Expenses Act, 2010

Similarly, any donation¹⁰⁵ received by a political party which intends to fund election must be disclosed to the registrar as well as board of trustee of the political party. However, such funds must exceed one million shillings. The EEA imposes restrictions on foreign funds in Tanzania within ninety days in case of general election and thirty days in case for by election.¹⁰⁶

The EEA necessitate the Organisations which donate to a political party or candidate to disclose sources of funds these organisations include any Non-Governmental Organisations, Faith Based Organisations or Community Based Organisations. These Organisations shall not use more than the amount prescribed by the Minister in the regulations. Furthermore within ninety days after the election the organisations are required to furnish to the Registrar of Political Parties information in relation to expenses incurred for the election.¹⁰⁷

3.2 Prohibited Practices

The prohibited practices are stipulated in the law. The law prohibits every person who before or during the election campaigns period directly or indirectly gives any gift, loan or offer so as to induce people to procure the nomination of the giver. Action or expenses will not be termed as malpractice if the expenses spent by the candidate are directed to a good course in the community and these acts should be transacted prior to the nomination process or election campaign.¹⁰⁸ The Prohibition of prohibited practices stipulated by the law shall extend and have the same effect to a person who, by pronouncement or conduct, has shown an intention to participate in the nomination process.¹⁰⁹

¹⁰⁵Section 11(1-7)of Election Expenses Act, 2010

¹⁰⁶Section 12(1), (2), (3) and (4) of Election Expenses Act, 2010

¹⁰⁷Section 13(1-5)of Election Expenses Act, 2010

¹⁰⁸Section 21(1-3)of Election Expenses Act, 2010

¹⁰⁹Section 25of Election Expenses Act, 2010

The law went further to provide offences and penalties that any person who commits an offence under the law which no specific penalty is prescribed shall on conviction be liable to in the case of a political party, to a fine not exceeding shillings three million; in the case of a candidate, to a fine not exceeding shillings one million; in the case of an organization, corporation or institution, to a fine not exceeding shillings five million.¹¹⁰

Regarding offences relating to powers of the registrar any person who obstructs the Registrar or his representative from exercising powers of the Registrar under the law, refuses to produce books, papers and documents as requested by the Registrar, produces false books, documents or false information to the Registrar, makes false statement in any returns or financial report; or destroys any books, papers, documents or thing relating to the subject matters of investigation, examination or inspection, commits an offence and shall be liable on conviction to a fine not exceeding shillings five million.¹¹¹

3.3 Critical Evaluation of the Election Expenses Act

The election expenses law in Tanzania came into force 2010 and was used in the 2010 general election and by-elections according to that time Tanzania was a new participant in the regulation of election expenses. In 2015 general election the same law was used to regulate election expenses. The objective of applying the law was to cure financial related problems in particular the excessive use of money in politics. However there are unfortunate outcomes that suggest the effectiveness of the law may not have been achieved. These two elections were marked by apparent discrepancies between the law and practice.

¹¹⁰Section 26 (a),(b) and (c) of Election Expenses Act, 2010

¹¹¹Section 27 (a),(b),(c),(d) and (e)of Election Expenses Act, 2010

A survey conducted by Tanzania Election Monitoring Committee, (TEMCO) revealed that only 31% of stakeholders read the EEA before the 2010 general elections, 18.2% had never heard about the law and 39.5% heard about the law but had not read it.¹¹² Thus at least 57.7 % stakeholders had never read the EEA and its Regulations leave alone those who were not ready to participate in the survey. One of the reasons advanced by the survey findings was that the time between effective date and election date was too short to enable stake holders to read the Act and understand it.¹¹³ The other reason was that of the omission on the part of government and in particular the responsible ministry and National Electoral Commission of Tanzania, NEC to publicize as much as possible the EEA, its regulations and Order so as to enable members of public to understand the law.

The level of preparedness by institutions of implementation is also important. One may ask, to what extent the implementation institutions such as the Prevention and Combating of Corruption Bureau (PCCB), registrar of political parties, National Electoral Commission of Tanzania (NEC), were prepared to implement the EEA?

The law provides that excess use of money is an offence.¹¹⁴ If one looks in the interpretation sections¹¹⁵ one will find that the offence of excess use of funds is not defined. However, the practice has shown that, the excessive use of money has been linked with corruption for two reasons; first, the law empowers the Attorney General to institute criminal proceedings to a person who commits prohibited practices whether won or lost election is prosecuted according to prevention and combating of corruption Act.¹¹⁶

¹¹²TEMCO report, "How the Election Expenses Act was Received by Stakeholders" 2011 p. 53.

¹¹³TEMCO report, "How the Election Expenses Act was Received by Stakeholders" 2011 p. 54.

¹¹⁴Section 10 (3) of The Election Expenses Act, 2010

¹¹⁵Interpretations of the Laws [Cap 1 R: E 2010] and Section 4 Cap 343 Revised Edition 2010

¹¹⁶Section 24 (7) and (8) of The Election Expenses Act, 2010

Moreover, it is not easy to establish when a candidate or political party used excess funds until when returns are made. This brings difficulty in establishing elements which clearly link the offence of excessive use of money in elections and corruptions. The Election expenses law requires candidate and political parties to disclose fund in a manner provided in regulation by filling form EE1.¹¹⁷ The required information to be filled in this form EE1 includes amount of money, other type of funds which can be cashed or converted into money value or money worth; source of money and other type of funds.

Law is also silent on effective tracking and procedure of disclosing money obtained through electronic means. Additionally, the law allows candidate to use personal funds but it does not specify the circumstances which can be considered as necessary or required personal funds during the campaign.

Election Expenses law openly demands the candidate and political parties to make disclosure of funds before election campaigns.¹¹⁸ Astonishingly, the same law requires expenditure incurred according to the Election Expenses Act not to be published and only should be disclosed when the said information is subjected to instituted case or a complaint instituted by the RPP or the information is subjected to investigation initiated by the RPP¹¹⁹.

Likewise regulation necessitates the disclosure in respect of returns of election expenses of gift, loan, advance deposit and donation to be confidential.¹²⁰ Again, the law needs only disclosure of any amount exceeding one million received by political party for the purpose of election.¹²¹ This means that any amount less than one million

¹¹⁷Regulation 7 of The Election Expenses Regulations 2010.

¹¹⁸Section 9 (1), (2) , (3) ,(4) and section 18of The Election Expenses Act, 2010

¹¹⁹ Section 9(5) of The Election Expenses Act, 2010

¹²⁰Regulation 9(3)The Election Expenses Regulations, 2010.

¹²¹Section 11 (1) of The Election Expenses Act, 2010

is not necessary to be disclosed. What if the money is paid in different installments of less than one million?

Also the law allows political party to receive voluntary donations from any individual or organizations within and outside Tanzania.¹²² Alternatively, regulation entailed disclosure of funds by donations voluntarily made to exclude resident Tanzanians.¹²³ Additionally on the issue of voluntary donations the regulation made vital that only disclosure of the voluntary donation from any person resident in Tanzania who is not a citizen of this country. The law contradicts itself by allowing political parties to receive donations from individual within and outside Tanzania but exclude disclosure of any amount obtained from Tanzanian residents.¹²⁴

The Election Expenses law provides for restriction of money brought in the country ninety days before general election and thirty days before by-election.¹²⁵ This means that any fund received before that period has no any restriction regardless of whether the said money will be used for particular elections. Besides the same law contradicts itself by prohibiting every person who before or during the election campaigns period directly or indirectly give any gift, loan or offer so as to induce people to procure the nomination of the giver.¹²⁶ Nonetheless, the law permits dealings designed to advance the interests of community fund raising, self-help, self-reliance or social welfare projects within the constituency be done before the nomination process or election campaign, and shall not constitute prohibited offence.¹²⁷ This is a grave mistake as the law is silent on which acts are actually self-help, self-reliance or social welfare practice.

¹²²Section 11(4) of The Election Expenses Act, 2010

¹²³Regulation 10 of The Election Expenses Regulations, 2010

¹²⁴Regulation 10(2)(c) of The Election Expenses Regulations, 2010

¹²⁵Section 12 (1) (2) and (3) of The Election Expenses Act, 2010

¹²⁶Section 21 (1) (c) of The Election Expenses Act, 2010

¹²⁷Section 21 (3) of The Election Expenses Act, 2010

The law creates a loophole for mistakes by providing protection from liability of officers or employees of the registrar office or (NEC) or any government official in the cause of performing functions under EEA, if that act is done in good faith.¹²⁸ Here the law is silent in the sense that it has not defined acts done in good faith and as well who determines the good faith.

Institutionally, the level of preparedness by institutions in the implementation of the EEA is also very important. One may ask to what level the implementation institutions such as the PCCB, NEC, ORPP and the Political Parties are prepared and ready to implement EEA.

3.4 Electoral Code of Conduct for 2015 General Election

The NEC, Political parties and the Government are under obligation to pass Electoral Code of Conduct. This is provided under section 124A of the National Election Act, Cap 343. The aim for which electoral code of conduct is passed is to allow and provide for equal opportunity to all contesting political parties during campaigns and allow voters to attend the rallies.

In order to oversee effectively the implementation and adherence of the code of conduct the electoral code of conduct committees are established begging at ward levels, constituency levels and National level and lastly Appeal committees this is given under part V.¹²⁹

However the overall monitoring is done by the NEC by supervising all established committees. In 2015 General Election the NEC in discharging their supervisory power over the committees uncovered the violations of the Electoral Code of Conduct in the following cases. These include use of abusive language during campaign time,

¹²⁸Section 30 of The Election Expenses Act, 2010

¹²⁹Electoral Code of Conduct for General Election 2015

exceeding campaign hours, disregarding campaigning time tables, some political parties conducted rallies without permission, destroying of posters belonging to political opponents, some government officials interfering with some political parties affairs, violence against some political parties and their candidates and some political parties supporters interfering campaign meetings of other political parties¹³⁰

The observed violations of ethics encountered during election led to penalties being imposed to the wrongdoers. These penalties were imposed by the Electoral Code of Conduct Committees. These penalties include warning, directing the candidates/political parties to apologize and suspending candidates from campaigning for specified period¹³¹

Additionally, the Electoral Code of Conduct is signed by all political parties and among other things it provides for the maximum limit of money to be spent and the limit is set by the Prime minister and this is enforced by the Registrar of Political Parties who is the implementer of the Election Expenses Act¹³²

Therefore, during campaign Electoral Code of Conduct Committees can entertain appeals. As stated above these Committees include ward Committees, Constituency Committee and National Committees as well as appeal committee. These committees can hear and rule on complaints of violations of Code of Conduct and impose penalties as stated earlier. Therefore appeals against decisions are heard at the next level. For instance, complaints to the Ward level can be appealed at the Constituency level.

¹³⁰ United Republic of Tanzania National Electoral Commission, the Report of the National Electoral Commission on the 2015 Presidential, Parliamentary and Councilors' Election ISBN 978-9976-9957-1-8, Government Printer, Dar es Salaam.

¹³¹ Ibid.

¹³² Report of the Commonwealth Observer Group, Tanzania General Elections 31/10/2010, Commonwealth Secretariat.

Thus the relationship between EEA and Electoral Code of Conduct is important to address before winding up. Thus both instruments are positive addition to the electoral expenses framework. As the EEA addresses the issue of disclosure of campaign funds and declaration of campaign expenses, provides for prohibited practices such as providing inducements, illicit funding and voter conveyancing.

Also the Electoral Code of Conduct relates to EEA as it monitor the actions of Political Parties, Candidates, the Government and the NEC, additionally, it addresses the issue of Government employees and the need to refrain from political activity and responsibilities of electoral officials with regard to impartiality.

3.5 Election Expenses Management Bodies institutions

In Tanzania National Electoral Commission (NEC) and the Registrar of Political Parties (RPP) are the bodies entrusted with the mandate to implement the Election Expenses Act, 2010 (EEA). NEC gets its mandate from Article 74(1)¹³³ together with other legislations.

Institutionally, The NEC is designed to be an independent institution and the members of the commission are barred from being members of Political Parties. The Elections Act of 1985 governs the conduct and operationalize of the electoral duties. Additionally, the commission is empowered to make regulations which will be used in the direction of performing electoral duties.

The NEC is responsible in the implementation of the EEA in the sense that it the overseer of the Elections in Tanzania, though not mentioned directly as the implementer of EEA impliedly the NEC has to work hand in hand with the RPP.

¹³³ Constitution of the United Republic of Tanzania [Cap 2 R: E 1977]

Thus the RPP is the obligated to register political Parties and also supervising the implementation of the EEA¹³⁴ Thus it is mandated office in regulating and control the problems of overspending and corruption during elections. In implementing all these ORPP requires budget from the government and manpower to work all over the country because the elections are done all over.

The lack of manpower and budgetary constraints can be observed by looking into Election Expenses Regulations 2010, which names the District Administrative Secretary (DAS) and Ward Executive Officer (WEO) as authorized officers to receive forms of disclosure of funds as submitted by candidates for the office of Member of Parliament and the councilor office.

Administratively these officers are employees of the government employee for different purpose in their respective districts and ward. But they are impliedly working for ORPP as adhoc offices during elections and at the same time these officers are designated by the Elections Act to be the Returning officers for the purpose of elections.

3.6 Legal and institutional framework governing election expenses in selected countries

In assessing and evaluating the problems of the laws on electoral expenses in Tanzania one needs to look at other jurisdiction to see if Tanzania can draw lessons from it. A lot of countries have in place the regulations that control money in politics. Thus since the current legal system governing election expenses in Tanzania has a lot of shortfalls we can draw lessons from other countries in order to promote free and fair elections.

¹³⁴ Section 4 of Election Expenses Act, 2010

3.6.1 Election Expenses Laws of South Africa

South Africa like Tanzania provides public funding for political parties and the expenditure of public funds by political parties is carefully regulated and closely monitored.¹³⁵ However in South Africa private funding of political parties is not regulated and public disclosure of funds and expenditures is entirely discretionary.¹³⁶ Public funding in South Africa is regulated by Political parties act¹³⁷

These funds entrusted to Chief Electoral Officer under the watchfully eye of the Independent Electoral Commission. The IEC is expected to keep full financial records and accounts for each financial year. These financial accounts must be submitted to the Auditor-General for auditing and then, within 30 days of the issue of the Auditor-General's report to the Parliament.¹³⁸ These funds are given to those political parties with representation in the parliament. Additionally, in South Africa the allocation of funds must be proportionally to the party members in the parliament.¹³⁹

3.6.1.1 The Effects of Public Funding in South Africa

The purpose to publicly fund political parties was to ensure equal playground for all political parties but the funds are subjected to those parties that have representation in the parliament. Others argue that this objective has helped to consolidate the dominance of the ruling party ANC¹⁴⁰ in the expense of other political parties because they are the ones who have the majority members of parliament. The ANC in South

¹³⁵Fick, G.(1997), South Africa: Public Funding of Represented Political Parties Act retrieve from <http://www.eisa.org.za/WEP/soulaws6.htm> on 23rd march, 2016

¹³⁶ Ibid.

¹³⁷The Public Funding of Represented Political Parties Act, 1997

¹³⁸Section 2(1) and 4(1) of Represented Political Parties Act, 1997.

¹³⁹section 5(2) (a) of Represented Political Parties Act, 1997.

¹⁴⁰Booyesen, S., Masterson, G (2009). chapter 11:South Africa in Denis Kadima and Susan Booyesen (Eds) Compendium of Elections in Southern Africa 1989-2009; 20 years of Multiparty Democracy, EISA, Johannesburg, 390-391 retrieved from <http://www.eisa.or.za/EISA/publications/ce2.html> on 22nd January, 2016

Africa is very wealthy since it receives funds from government and private company and party investment¹⁴¹

3.6.1.2 Private Funding in South Africa

In South Africa private funding is not regulated by law and disclosure of funds is discretion of the political party concerned. These private funding includes donations from different people, foreign governments, private sector and organisations. This is a serious oversight of South African election expenses laws since this may become an avenue for dirty money to sponsor political candidate. Additionally, the corrupt tendency of African countries including South Africa of undisclosed funding not only to the management of parties and their affairs, but also to the overall government is a loophole for dirty monies to finance candidates and parties. Hence it is of utmost vital that some form of regulation of private funding in South Africa is institutionalized.¹⁴²

3.7 Election Expenses Laws of United Kingdom

In United Kingdom the election expenses laws to prevent money in politics has been in place since the establishment of Corrupt and Illegal Practices Prevention Act of 1883. In UK election expenses malpractices are incorporated in the Representation of the People Act¹⁴³ and the Political parties Elections and Referendums Act¹⁴⁴ The UK's system of controlling election expenses is centered on regulating party expenses rather than regulating who donates what.¹⁴⁵

¹⁴¹Booyesen, S., Masterson, G (2009). chapter 11:South Africa in Denis Kadima and Susan Booyesen (Eds) Compendium of Elections in Southern Africa 1989-2009; 20 years of Multiparty Democracy, EISA, Johannesburg, 390-391 retrieved from <http://www.eisa.or.za/EISA/publications/ce2.html> on 22nd January, 2016

¹⁴²Ibid.

¹⁴³Representation of the People Act 1983 (RPA) <http://www.legislation.gov.uk/ulpga/2000/41/contents> retrieved on 22nd January 2016

¹⁴⁴Ibid.

¹⁴⁵Ibid.

In United Kingdom donations and limitation of parties expenditures are regulated by the Political Parties Election and Referendum Act (PPERA) which specifically regulates campaign financing with regard to political parties. The objective of UK putting in place the law was to increase transparency in political parties and promoting free and fair elections.

The law which is PERA in strict sense subjects political parties to campaign spending limits one year before general election. Because the general election date is always publicly not known until a few weeks before, to adhere to the requirement of the law, political parties always should keep records of their expenses and donations¹⁴⁶ there are no limits on the amount of donations that political parties may receive. However, there are laws that govern who may be the donor, as well as limits noted above, on spending by political parties on campaign expenditure. The aim of the law is to regulate donations to political parties through transparency, as political parties must make their finances public.¹⁴⁷

3.7.1 Disclosure of donations and expenditure

The donations in United Kingdom are to be reported to the electoral management body and they are supposed to be reported on a quarterly basis and every week during a general election campaign.¹⁴⁸

Soon after general elections in United Kingdom, the political parties are supposed to submit a report that has in detail all party campaign expending incurred to the Electoral Commission¹⁴⁹ the report must contain account of all monies spent and the requirement is to submit the said report 3 months after the election if the parties spent less than \$250,000 in campaign expenditure. For those that spent more than \$

¹⁴⁶Law library of congress. Campaign Financing: UK (Rpt. No 2000-09042) <http://www.loc.gov/law/help/campaign-finance/uk.php#fl> retrieved on 22nd May, 2016

¹⁴⁷ Ibid.

¹⁴⁸ section 62-63 Political Parties elections and Referendums Act 2000

¹⁴⁹ section 72 Political Parties elections and Referendums Act 2000

250,000 the accounts are to be submitted within six months of the election, and include a statement from an independent auditor¹⁵⁰

The law also stipulates time frame for the Candidates. The return report detailing campaign expenses to the Electoral Commission within thirty-five days of the declaration of the election result. Additionally, even \$50 donations to the candidate must be included in the return report.¹⁵¹

This adherence to strict laws UK received international accolade and was recognized as among the top ten cleanest countries in the world from corruption. UK dropped dramatically because of the UK parliamentary expenses scandals. Experts categorized UK as having Effective election financing regulations. It showed effective and active enforcement of laws, with violation of campaign finance laws at a very small scale.¹⁵² Hence corruption in UK appeared to be at a very small scale as well.

3.7.2 Lessons to Tanzania

Tanzania can draw lessons from the above selected countries. The above countries discussion reveals that in most developed countries election financing is of utmost importance to free and fair election and avoidance of election expenses malpractices. Though in South Africa, private funding is totally not regulated but public fund is well regulated. Therefore Tanzania can draw certain lessons from the stringent regulation of public funding in South Africa

The lessons from UK to Tanzania are that, UK legal and regulatory framework on election financing especially on the issues of transparency of political money in election is very strict. In UK there is full disclosure and reporting requirement of all

¹⁵⁰section 84-85Political Parties elections and Referendums Act 2000

¹⁵¹section 71A, 81 & schedule 2ARepresentation of the People Act 1983

¹⁵²Ansolabehere, S (2007). "Shape of Corruption: Lessons from Comparative Campaign Financing Disclosure", Election Law Journal , Massachusetts Vol. 6 pp. 163-182

the funds raised and the way they are used in elections. The reports give the details of the person or organizations who contribute to candidates or political parties. Further, the reports are accessible to the public before the elections so that the public can know who is influencing the elections. In that case the public can have enough time to choose their leader as the report might influence their decision to vote.

Additionally, Tanzania should provide public funding to all political parties because it helps to fund the small and new political parties. And mode of funding should change from the number of representatives in the parliament to those votes casted for a particular political party.

3.8 Conclusion

In order to curb election expenses and mal practices in Tanzania it was of utmost importance to have in place the law regulating election expenses towards achieving free and fair elections. The law should be clear and in whatever form contradicts itself. As we have seen above the law clearly contradicts itself on the same issues that it intends to curb by giving lee way for illegal practices to be committed under its umbrella.

The practice has been seen in election periods reveals the presence of political corruptions and overspending in elections in both 2010 and 2015 general elections. As the late Dr. Mvungi rightly pointed out that the Election Expenses law is a failure because from the experience of 2010 general elections political parties and their candidates exceeded limits of expenses on their own will, and nothing has been done so far to take them accountable.¹⁵³ That being the case the provisions that have been pointed out earlier encourage corruption and over use of funds in election pull back the efforts of heading towards a free and fair election society in Tanzania

¹⁵³Frank, K. (2011, October 11). Election Expenses Act in Spotlight after Igunga. *The citizen*, pp. 6

CHAPTER FOUR

PRESENTATION OF DATA, ANALYSIS AND DISCUSSION OF FINDINGS

4.0 Introduction

This chapter presents the findings, analysis and discussions of the findings that were obtained through questionnaires, interview and informal discussions. The aim was to understand the Election expenses act 2010 by assessing the law and practice in curbing election malpractices and how the legal framework has succeeded in its enforcement. These findings are based on the objectives of the study outlined in the chapter one of this research paper.

4.1 General information on Respondents

The total number of respondents who were involved in this study was 22 composing of government employees from NEC and ORPP, NGOs, and Political parties. Therefore it can be understood that the issue of election expenses malpractice is not strictly for specific groups, persons and educated but it caters for the wide range of citizens.

4.1.1 Educational background of the respondents.

The researcher asked the level of formal education because of the assumption that knowledge is fundamental in understanding the sources and nature of problem the election expense law has as well as devising mechanisms of solving them.

The respondents were grouped into five groups that were diploma, advance diploma, bachelor, masters and PHD. No respondent had a diploma, bachelor degrees were 13, masters were 9 and non-had PHD.

4.1.2 Work Experiences of the Respondents

The researcher asked the level of work experience to the respondents with the assumption that work experience in legal practice will shed light in the understanding

of the laws and its problem. Working experience was categorized into 1 to 5 years, 6 to 10 years and 10 to above. Those respondents from 1 to 5 were 6, from 6 to 10 were 10 and from 10 and above were 6.

4.2 Understanding of the Election Expenses Act 2010.

The researcher posed this question to the respondents in order to know how well the law is understood by the citizens who have the duty to report any malpractices done during elections. Therefore the question posed was divided into four items to assess how well each group understood the law. These items were Organization, citizens, lawyers or advocates, NGOs and CBOs and lastly political parties.

With regard to Organisation most of the respondents stated that their organization understood very well the election expense law. That 11 respondents said their organization is well informed of the law, 7 respondents said their organization did not understand the law and those respondents on average were 4.

With regard to citizens awareness of the law the respondent replied as follows, 17 respondents replied that citizens do not understand the law and those respondents who went of average were 5. The results in this category shows poor education was given to the citizens with regard to the law.

On how well the lawyers are conversant with the law the results are the respondents who said high level of understanding were 9, those who said average were 7 and those who said low were 6. NGOs and CBOs were ranked as follows 7 respondents said very low, 11 respondents said very high and 4 respondents said average.

When respondents were asked how well the political parties understood the election expenses act these were their replies 11 respondents said very low, 3 respondents said average and 3 respondents said very high.

4.3 Election phases of which are challenged by expenses malpractices

Researcher asked respondents in which electoral phase election expenses are highly observed. These phases include Legal framework, electoral calendar implementation, voter registration, electoral campaign, voting day operations, vote count and tabulation, verification/announcement of results and electoral disputes adjudication.

The respondents who said there is high level of malpractice in the legal framework were 13, those who said low were 6 and those who said average were 3. In Electoral calendar those who said high were 10, those who said average were 3 and those who said low were 9. In voter registration those who said high were 9, those who said average were 8 and those who said low were 5. The respondents when asked about electoral campaign those who said high were 13, those who said average were 5 and those who said low were 4.

In voting day operations the respondents when asked about this phase and how election expenses malpractice is a problem they responded as follows those who said high were 13, average were 4 and low were 5. Vote count and tabulation phase those respondents who said high were 14, average were 5 and low were 3. In verification and announcement of results phase those who said high were 14, those who said average were 5 and those respondents who said low were 3. In electoral disputes adjudication phase 4 respondents said high, 6 said average and 12 said low.

4.4 Whether the current Election Expenses Act, 2010 in Tanzania is effective in curbing the electoral expenses malpractices?

The researcher asked this question to the 22 respondents these include Lawyers, citizens, NEC officials, ORPP officials, PCCB officials, Political Parties and NGOs and the members of political parties who possess sufficient knowledge of the topic to find out whether the current election expenses act 2010 is effective in curbing the electoral expenses malpractices. All 22 respondents said that election expenses act

2010 cannot curb the electoral expenses malpractices. In answering this question the 10 respondents explained that in order to have a well implemented law that can curb election expenses malpractices, the law itself should be well framed by these respondents showed that the law should define key terms such as excess use of money as an offence, penalties given are minimal and contradictions.

Additionally, 8 respondents replied that the title of the act itself does not reflect the aim to which the act was enacted therefore it cannot curb election expenses malpractices 4 respondents thought the law has no problem. The Parliamentary Hansard shows that during presentation of this bill in the parliament the then minister for constitution and legal affairs explained clearly that there is a need to put in place law that will monitor and regulate election expenses to the candidates and political parties themselves. Additionally, to put in place equal playing field to all political parties and their candidates as well as eliminating corrupt conducts and excessive use of money during campaign and election time and provide for penalties.¹⁵⁴

Further 8 respondents addressed the issue of applicability of the law by stating that the limitation of the application is a problem as it is only applicable in Tanzania mainland and in Tanzania Zanzibar for Presidential and Parliamentary candidates. The above respondents wanted all elections in Tanzania Zanzibar to be regulated by the election expenses act 2010 since we are unitary government. But the election expenses act provides for the application of the law. In case of Zanzibar the application of the law will be limited to the presidential candidate and candidate for Member of Parliament¹⁵⁵ and not candidate for the house of representative since that is regulated by Zanzibar laws.

¹⁵⁴The Parliament of United Republic of Tanzania, Parliamentary Hansard Report of 18th Parliamentary session held at Dodoma on 11/February /2010.

¹⁵⁵ Section 2 of Election Expenses act , 2010

Another deficiency has been observed by 12 respondents that will render the law to be a failure in curbing election expenses malpractices is the difficult to control the election expenses during party nomination process as the nomination process is done within the political party itself. Therefore if malpractice is done during party nominations then it is difficult to control and monitor the same. The position of the law is that during nomination period the political party and the candidates are under obligation to disclose funds to the secretary general for presidential candidate and to the district party secretary for the case of parliamentarians and councillors.¹⁵⁶ It should be born in mind that the secretary general and the district party secretary are from the political party which the candidates come from. Additionally, the law goes further to require the candidate to disclose to the above persons the amount of funds which is in his possession or expects to receive and intends to use as election expenses.¹⁵⁷

This area creates a loophole for use of excessive funds and committing election expenses malpractices because the first mechanism to monitor and regulate election expenses funds is the political party itself which cannot report itself or its candidates if they commit election expenses malpractices. Another interesting area noted by 02 respondents¹⁵⁸ is in the use of the words “funds candidate expects to receive”, how a candidate would know how much money he or she expects to receive during election because the funds should be disclosed 30 days after nomination.¹⁵⁹ These wordings create escape root of receiving prohibited funds and the information furnished to the registrar shall be confidential.

The above mentioned respondents continued to point deficiency in the act by stating that, Act provides for disclosures of funds by political parties, It is more unlikely that

¹⁵⁶ Section 9(1) of Election Expenses act, 2010

¹⁵⁷ section 9 Election Expenses act, 2010

¹⁵⁸ One Program Officer, department of Election watch Unit from LHRC and another Program Officer, department of Election Outreach Program from Jukwaa la katiba Tanzania.

¹⁵⁹ Section 9(2) of the Election Expenses act, 2010

the office of the registrar of political parties will track and control the amount of money each party or candidate gets and spends, the reason being that the office of registrar of political parties does not have tools to track down money in politics. The registrar of political party is only furnished with forms and a document stating the amount of monies the candidate has in possession, expect to receive or intends to use in election but does not have tools to ascertain the same. When the ORPP asked about whether they have tools to track down money in politics one respondent¹⁶⁰ thought that there was no need to have tools to do so since they are working close with PCCB at election cycle phase because PCCB are equipped with tools to track monies in politics.

But when other 4¹⁶¹ respondents from the ORPP asked the above question they stated that they do lack tools and manpower because they are not equipped with capacity to track down money in politics. The human resource is also minimal compared with the magnitude to which the implementation of the law has to take place. Emphasis was also shown on the part that the Government is not willing to finance the ORPP adequately.

Additionally, the respondents from UNDP¹⁶² pointed out that the aim to which the act was enacted will not be realised because the act empowers the prime minister to specify the amount of money to be spent by parties and candidates in elections. This absurdity is seen as the prime minister though is a government official and representative of the government in the parliament on the other hand is a politician seeking to be re-elected.

¹⁶⁰ Assistant Registrar, Legal department, ORPP

¹⁶¹ 3 legal officers, legal department, ORPP and 1 Chief accountant, finance and accounts department, ORPP

¹⁶²¹⁶² Community Dialogue Analyst, Democratic Empowerment Projects(DEP), UNDP and Political parties analyst, Democratic Governance, UNDP

Furthermore, ORPP is vested with monitoring and regulation of election expenses act, but this office is situated in Dar es Salaam with no regional offices. As we all know elections are conducted all over the country and election expenses malpractices can be conducted anywhere in the country. Therefore the current law will fail to curb election expenses malpractices because the institution mandated to monitor and regulate the law operates only in Dar es Salaam.

Since the ORPP is situated in Dar es Salaam the researcher wanted to know how it curbs election expenses malpractices. The respondents of the office of registrar of political parties in curbing election expenses malpractices it works hand in hand with other institutions like PCCB Act at the election cycle phases and during pre-electoral cycle the ORPP conducts civic education on EEA, monitoring and observing the whole process of election from nomination time, campaign period and election to the candidates and political parties and working closely with NEC and by verifying the forms which the candidates are required to fill the amount spent and the sources of fund. That is how the ORPP curbs election expenses malpractices. They did not explain how they monitor elections in the regions while they do not have staffs in the regions.

Curbing of election expenses is a cross sectional activity the 3 respondents from PCCB¹⁶³ claimed that the law has lacuna that posing difficulties in its implementation as section 21 of Election Expenses Act provides for prohibited practices and section 15 of PCCB Act No. 11/2007 provides for corrupt transactions therefore these sections are not aligned because they are defined differently and in order to curb election expenses malpractices, the election expenses act should be read together with PCCA.

¹⁶³ Public Prosecutor, Investigation department, PCCB, Senior Investigator and Investigator, Legal department, PCCB

The respondents from PCCB went further to state that the PCCB has its own law and regulations and the election expenses act does not dispense direct duties to PCCB and the election expenses act in itself does not create offences. In order for the act to create offences it should be read together with PCCA but subject to this it is not put to mandatory fulfillment of their objectives. Additionally it is difficult to curb election expenses malpractices because of lack of political will from the government.

Moreover, the discussion went on as respondents added that the law is not exhaustive to curb election malpractices because powers established by law are the sources of malpractices. They gave an example of the powers of the minister which has mandate to make and unmake regulations.

Example the ministers make regulation that encourage election expenses malpractices because of the power vested in them as well as powers of the prime minister to set the maximum amount of funds to be spent by candidates and political parties. These regulations and maximum amounts of funds are to be set by law rather than prime minister's discretion.

Further the law is not exhaustive as 1,000,000 Tshs is required to be reported if it is a donation. But the supposed reported 1,000,000 Tshs if given in installments of 999,999Tshs, the position of the law is silent on that. Other respondents came with a different point of view that, it is not easy for the existing law to exhaust all election expenses malpractices as Election Expenses Act exhausted or reduced there malpractices since it is a new law. This law came into force in 2010/07 before the 2010 general elections. Therefore, we should be asking ourselves for how long the law can be still termed as new.

That shows the law still has lacunae since the elections expenses environment changes every after 5years. To be exhaustive it needs to change with the current situation. Other respondents came with the view that through implementation of the law the shortfalls of the law are observed. One of the respondent stated that the law is not exhaustive because people are behaving as if there's no act in place and no measures are taken by the state security agencies to those in violation of the law.

Another respondent from UNDP¹⁶⁴ replied that they curb election expenses malpractices by providing training, workshop and seminars to the people and the stakeholders. From the responses one would conclude that though there is law in place but is faced a lot of challenges which renders the same to fail in curbing electoral expenses malpractices. These observations are shared by BABEIYA (2011), KIHUNSI(2012) and LONGOPA and NJOWOKA(2011) who commended the efforts done by the government for putting in place the election expenses act but the law still has criticized and contentious provisions.

These above observations answer research question number one and the specific objective number one and two. Findings and discussion on this question confirms that all respondents found some negatives in the 2010 election expenses act. Despite the presence of the law but the results demonstrate that the law governing election expenses in Tanzania is less effective in curbing election expenses malpractices. The respondents revealed that in order to curb the election expenses malpractices there should be political willingness on the part of the government to increase tools and manpower to the office of ORPP.

¹⁶⁴Political Party Analyst, Democratic Governance, UNDP

On the positive side is that the Tanzanian government saw the importance of the law and put it in place and that the legal framework must be rectified to conform to the objectives for which it was established. I do agree with the respondents observations and BABEIYA (2011), KIHUNSI (2012) and LONGOPA and NJOWOKA (2011) that the law is in effective to curb election expenses malpractices.

4.5 If the election expenses act is fully implemented can it eliminate the election expenses malpractices?

In order to have well implemented law there should be clear mandate set to institutions vested with the implementation of the law. The question asked to the respondents was if the election expenses act, 2010 is fully implemented can it eliminate the election expenses malpractices? Out of 22 respondents 15 respondents said NO and 7 respondents said YES. The respondents from LHRC stated that the law cannot be fully implemented because of placement of the registrar in matters of election which grabs the powers of NEC. Their views were that the powers of registrar of political parties conflicts with powers of NEC in curbing election malpractices, because the registrar may impose restriction to opposition parties in order to favour the ruling party. This is because the ORPP is under direct mandate from the office of Prime Minister while NEC is independent and free from any interference from the government as is stated in the United Republic of Tanzania constitution.

The researcher wanted to know the position of ORPP and NEC on the above issue. The ORPP respondents stated that the placement of Registrar of Political in matters of election expenses do not grab powers from NEC rather during election, ORPP and NEC each has its own power though they work together on matters of election. The NEC¹⁶⁵ who were respondents in these findings stated that 2010 general elections were marred with overlapping of functions since the law was not understood which

¹⁶⁵ Legal officer, Legal department, NEC

led to registrar of political parties the then registrar of political parties to assume powers of NEC. Ever since then there are overlapping of functions.

Moreover, the LHRC respondents had different views as to the duties of the registrar of political parties are not well stated in the election expenses act as they contravene with the duties of other parties as per section 4, 5, 6 of the election expenses act 2010. The RPP duties stated in the above sections are the functions of registrar, the powers to inspect and power to demand information.¹⁶⁶

Additionally the respondents¹⁶⁷ stated that during implementation time the powers of NEC do not overlap the powers of ORPP this is because EEA is not implemented by NEC but EEA. But similar question was posed to the office of ORPP the respondents stated that registrar of political parties and NEC do not perform similar roles but rather they work as partners and not adversaries to make sure there's smooth operation of the law.

The election expenses act has invested implementation powers to the office of ORPP without a doubt, but the above view is not shared by KIHUNSI (2012) who gave examples of areas where there NEC and ORPP saw conflicting powers. That the RPP permitted the political parties and their respective candidates to campaign beyond the set time of 06:00hrs in the evening. This was contrary to the set timetable prepared by NEC and Political parties themselves. After RPP pronounced that, Chairman of NEC published a different announcement by declaring that campaigns begin at 08:00P.M ending at 06:00P.M.

Additionally, ORPP and PCCB have similar functions in election expenses malpractices. This is seen because ORPP is vested with the functions similar to those

¹⁶⁶ Section 4,5 and 6 of Election expenses act, 2010

¹⁶⁷ Legal officers, Legal department, ORPP and Legal officers, Legal department, NEC

of PCCB but it does not have investigative power but PCCB has. After investigation is done the case will be taken to court and the ORPP will sit back as observers since they cannot prosecute nor investigate matters in their own mandate while the case is at court the PCCB report the matter to ORPP for further actions within the ORPP. Thus a single problem is solved with two institutions, thus the offender can be punished twice by court and ORPP.

In the course of informal discussions the question was raised by one of the respondent¹⁶⁸ that what will be the consequence when the court declares one as convict in cases of election malpractices and ORPP declares the same person is clean within their mandate.

Regarding implementation of election expense law the office of registrar of political party is vested with such mandate to implement the election expenses act. That being the case the office of registrar of political parties is a significant office in the whole system of regulating over spending and electoral expenses malpractices in elections.

The 2016 report on observation of general elections observed implementation challenges of the 2010 election expenses act on the observations done in 2010 and 2015 general elections to be the ability and machinery of the ORPP to monitor political parties finances in elections and lack of openness among political aspirants and their respective political parties on the amount of monies used in their different levels of elections.¹⁶⁹ They continued to allege that the ORPP relies solely on the audited accounts of the political parties which do not reflect the actual situation on the playing field.¹⁷⁰

¹⁶⁸ Program Coordinator, Tanzania Civil Society Consortium for Elections Observation.

¹⁶⁹ Legal and Human Right Centre and Tanzania Civil society consortium for Election Observation, Report on the 2015 general elections of united Republic of Tanzania, march 2016, ISBN: 978-9987-740-24-6

¹⁷⁰ Ibid.

Additionally NEC is also a responsible office in the implementation of election expenses act in a way that it is an institution responsible for election matters. Therefore it should work together with the office of registrar of political parties.

Both offices come together during implementation according to law as they use the same personnel to perform each office's functions. The same District Administrative Secretary and ward executive officer act as authorised personnel to receive forms of disclosure of funds as submitted by candidates or parties as well as to act as returning officers for the purpose of election.

During the study the researcher wanted to find out from the respondents whether there are other areas apart from overlapping of functions between NEC and ORPP that renders the law not to be fully implemented. The responses from respondents were that the EEA has implementation problems. These implementation were lack of knowledge on election expenses act¹⁷¹, financial constraints on the part of office of registrar of political parties to implement EEA¹⁷², non-compliance of the section 4 of EEA, Regulation 13(1) and (2) of the Election Expenses Regulations for the compliance of submitting returns of money spent on specified time, lack of manpower to provide civic education of election expenses act to the citizens, lack of enough working facilities for implementing the election expenses laws to curb malpractices, citizens non awareness of prohibited practices and they take them as an electoral culture , lack of manpower compared to the magnitude at which the implementation exercise has to be done¹⁷³.

The findings of this research show that the election expenses act is ineffective because it lacks budget support and political will from the government for fully

¹⁷¹ CCM Youth Chairman for Singida Region and Chadema youth chairman for Dar es salaam region

¹⁷² Five respondents from the ORPP

¹⁷³ Five respondents from the ORPP

implementation. That means the law was enacted without taking into consideration the availability of funds, manpower to bring about the desired results.

Additionally the findings revealed that absence of manpower as stated by respondents is a serious setback in the implementation of the law. Such that the returning officers are employees of the government vested with other administrative functions at the same time they are returning officers and on the other hand they are officers of the office of registrar of Political Parties but they do not cooperate with ORPP because they are not aware of that.

Moreover lack of civic education to the citizens is a disturbing finding because they take election expenses malpractices as election culture and they cannot report them because they don't understand if they are prohibited practices.

These findings were shared by majority of respondents and that the results reflect the objective of this research that election expenses act was established with objective of monitoring, evaluating and controlling money in politics the objective which according to the respondents is far from being realised. The researcher agrees with the majority of the respondents that even though the election expenses act 2010 is fully implemented it cannot curb election expenses malpractices.

4.6 What are causatives of election expenses malpractices despite having in place Election Expenses Act of 2010?

Before answering the above question the researcher asked the respondents if they know different forms of election expenses malpractices. The researcher posed this question to all 22 respondents in order to know how far they understand election expenses malpractices and whether the mentioned malpractices are actually election expenses malpractices.

The 22 respondents mentioned forms of election malpractices as follows: Vote buying , vote rigging , voting irregularities, lack of transparency, multiple voting , illegal possession of ballot boxes , illegal printing of votes cards, campaign financing, bribery in nomination process and during election, misallocation of funds, mismanagement of the funds and lack of full disclosure on the usage of the funds¹⁷⁴ .

Moreover, overspending has been mentioned as form of election expenses malpractices, corruption, transporting voters to the voting centres, providing gifts to voters in order to solicit them to vote for a particular candidate or being voted for, promising favours once a particular candidate has been voted for, misrepresentation of funds in the forms which require financial disclosure as an actual expenses incurred on the ground and donation of equipment by parliamentary candidate to influence voters before elections¹⁷⁵ .

Though not all mentioned forms are election expenses malpractices but the researcher came to the conclusion that the respondents have an understanding of elections and election expenses malpractices.

The 22 respondents also addressed the question of what causes election expenses malpractices despite having in place the election expenses act 2010. The answers were that there is no political will in the part of government and political parties to fully implement the law¹⁷⁶ , election expenses malpractices are seen as harvesting time for the poor who are given items and money to carter for their needs in order to support a certain candidate and the election expenses malpractices seems to be acceptable by the voters since there is no enforcement mechanism and no civic education this results to the voters being bought or surrendering their voting cards¹⁷⁷ .

¹⁷⁴ Assistant Registrar and legal officers from NEC and ORPP

¹⁷⁵ 3 respondents from PCCB one Legal officer, Senior investigator and investigator from PCCB

¹⁷⁶ Respondent from LHRC, AdvMkindi.

¹⁷⁷ Five respondents from the ORPP

Additionally, the definition of election expenses does not cover other means of transferring money through SIM banking such as MPESA, TIGO PESA and AIRTEL MONEY to mention a few¹⁷⁸. It is also a chance for the rich to finance illegal monies in the election campaigns so as to put in power the candidates they desire and the law itself by not exhausting all election expenses malpractices¹⁷⁹. Because the ORPP does not also audit monies transfer electronically. This is a grave mistake.

The issue that law does not exhaust all election expenses malpractices was explained by respondents¹⁸⁰ as another causative of election expenses malpractices, that the law leaves a great deal of freedom to aspiring candidates because soon after dissolving the parliament and before party nominations candidates spend a lot of monies to advance their contesting desire. These funds are not scrutinized to know where they came from and who donors are and whether they are not illegal or laundered money and those in power even use state vehicle. These views are also shared by REDET report¹⁸¹ and LHRC/TACCEO report¹⁸²

Additionally, the respondents added by saying that it is difficult for the existing legal mechanism to control donations such as “Harambee”. The fund raising money is collected openly and through mobile banking and by cash in hand. The actual amount collected maybe 10million and but the organizers may publish that the collected money is 100million. There is no mechanism to prove the validity and legality of collected fund from the Fund raising; this is a loophole for dirty money to be injected to support a certain candidate because there is no mechanism to control and regulating fundraising events organized by political parties or candidates.

¹⁷⁸ Assistant Registrar, Legal Department, The office of Registrar of political parties

¹⁷⁹ Assistant Registrar, Legal Department, The office of Registrar of political parties

¹⁸⁰ Political Parties Analyst, Democratic Governance department, UNDP

¹⁸¹ REDET-lead agency of TEMCO, Tanzania Election monitoring committee, Report on the 2015 Election in Tanzania, May, 2016

¹⁸² LHRC and Tanzania Civil Society Consortium for Election Observation, Report on the 2015 General Elections of the united republic of Tanzania, march, 2016

4.7 Whether the election expenses act contributes to the strengthening of free and fair elections by creating equal playing field to all political parties?

The objectives of enacting election expenses act was to promote free and fair elections by creating equal playing ground to all political parties. The researcher asked this vital question because election expenses malpractices negates the poor and weak political parties of right to choose and be chosen rendering the election not to be free and fair.

The respondents¹⁸³ stated that money has corrosive effect in politics. At the moment in Tanzania election expenses malpractices have become national culture. The respondents further stated that when election expenses malpractices are seen as normal in the society, they hijack the governance systems through those who are elected to serve the people. The danger of allowing persistence of election expenses malpractices to determine the outcome of elections is that the government would be sold to the highest bidder.

This is added by lack of awareness by the people to vote with their conscience, and then it will get to the point where the entire country will be governed by candidates who are dirty rendering the entire country election not free and fair.

In Tanzania it is not unusual for a political aspirant to buy bicycles, motorcycles, soaps, clothes and distribution of foods such as rice during elections to the voters with the aim of influencing the outcome of elections.

These views are shared by BABEIYA(2011) who stated that voters have a vital role in curbing election expenses malpractices during elections but continues by saying the people from the rural areas may pessimistically receive the law in the sense that denies them of regular items provided by politicians which help to carter for their

¹⁸³Chadema youth chairperson Dar es salaam region

needs. Additionally the election expenses malpractices seriously influence politics in the country.

The above author critic equal playing ground for all political parties as it is not realistic because the enacted election expenses act has not provided remedy for regular complains of unequal playing ground among political parties and candidates due to financial resources.

Respondent's views are shared by LONGOPA and NJOWOKA (2011) who pointed out that the state did not put in place suitable mechanism to control and regulate monies in politics therefore with this basic infrastructure missing in implementing of the law democracy will be at stake. Thus free and fair elections will be a farfetched idea in lack of equal playground to all political parties and their respective candidates. Additionally, with a lot of implementation problems and contradictory sections the law will not contribute to free and fair elections.

According to REDET/TEMCO report shows that in 2015 general election there were 46 incidents whereby CCM had used state machineries such as cars in their political rallies. Also TEMCO observers reported complaints from other political parties regarding executive officers of the Government campaigning for CCM in their political rallies. These behaviors are prohibited as they do not connote equal playing ground for all political parties. The same views are shared by LHRC/TACCEO observers who saw state vehicles used in CCM rallies despite the laws prohibiting such incidents. These incidents were shown by Iringa RC Ms Amina Maseza, DC from Wanging'ombe, kisarawe, longido, lindi and Muheza Tanga.

The incidents that there was no equal play ground for all political parties is when the then President Kikwete did not dissolve the cabinet contrary to usual practice, this practice create free and fair ground as the ministers were rallying behind the President

Magufuli example Minister for Home affairs Mathias Chikawe campaigned in Nachingwea Lindi, 2015.

The findings and discussions in this chapter conclude that there are positive and negatives with regard to election expenses act, 2010. That it is commendable on the part of the government to put in place law that regulates and control monies in politics however it was found out that despite the good intentions of the government the deficiency of the law outweigh the positives. These results demonstrate that the legal framework governing election expenses malpractices does not meet the objective for which it was enacted rendering it less effective.

On the strength of the foregoing observations it can be concluded that the legal framework governing election expenses must be designed to align with the objectives for which they were established.

4.8 Conclusion

This chapter has dealt with the assessment of the election expenses act 2010 in curbing election expenses malpractices. It gave the overview picture of the law itself and perception of the respondents. Also it looked at the implementation problems if any. It also revealed how important it is to implement the law and it shows areas of weakness of the law to be amended.

The office of registrar of political parties should be supported financially and technically in order to create capacity for this organ to monitor monies in politics. Should make sure implementation and enforcement is adhered to. The ORPP should work very closely with other stake holders such as police and PCCB since they do not have tools and mechanisms to follow the paper trail.

It is worth to stress that the implementation problems are the causation of non-compliance of political parties and candidates to adhere to the procedural laws, lack of political willingness by the leaders leads to the lack of funds for the office of ORPP.

CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

5.0 Conclusions

The Election Expenses Act was happily welcomed by the political parties and candidates with intension of eliminating election expenses malpractices. But as we have seen above the intended aim to which it was enacted is far from being realized. The continuation of the malpractices such as corruption, bribery and overspending by candidates is an indication the law has failed to meet its objective. The signs are everywhere that this law has failed to alleviate the continuing Tanzania outcry on electoral expenses malpractices. Thus the same problems have been witnessed in the 2010 and 2015 general elections.

In the modern world, the states played a vital role to finance political parties in order to create equal playing field to all parties. Though some states have taken an initiative to finance political parties however that does not release them of their duty to find other sources of funds such as donations. In Tanzania out of 24 registered political parties only 4 receive monthly subsidies. This should be changed because young and starting political parties cannot compete in such kind of environment.

The Act broadly is not defining key terms. It contains repetitions and inconsistencies in some areas and leaves much to be desired. Moreover, some of penalties provided are not serious enough to deter the offenders not to commit or repeat the same prohibited conducts. Similarly, the EEA's implementation has not been adhered to. Thus, as it now stands, EEA failed to manage finance and corruptions in the general elections

5.1 Recommendations

In the election expenses act there are Penalties provided which are not serious enough to deter the offenders not to commit or repeat the same prohibited conducts. Similarly, the Election Expenses Act's implementation has not been adhered to. Thus, as it now stands, EEA failed to manage finance and corruptions in the 2010 general elections. Hence five years have passed since the last general election and at present 2015 general elections were also marred malpractices.

There is limited capacity of the office of the Registrar of Political Parties to enforce the EEA in terms of funds, human resource and political willingness, the respondents recommended that the office of the Registrar should deploy assistants in all districts and or constituencies in order to monitor and act on enforcement of the said law during the election.

More advocacy and civic education should be provided to the citizens, under represented and vulnerable individuals especially those living in poverty regarding election expenses act 2010. This is to create more awareness to the citizens regarding the presence of the law and for easy identification election expenses malpractices. Thus election expenses will be reported and dealt with implementing apparatus put in place by the government.

Election is a public affair and the law should save public interest hence it has to be amended to satisfy all the stakeholders. By public interest we mean that the law and legal practices governing election expenses should help the poor and the marginalized people in order to effect change in choosing bonifide candidates in the elections, instead of law serving powerful political parties and their economic interest.

The law does not exhaust all election expenses malpractices because some of malpractices are done by political aspirants before party nominations and during party

nomination. Since the objective of election expenses act 2010 was to curb monies in politics therefore the law should be amended and become a watch dog from the time of aspiration of the candidates and party nomination. Leaving behind party nomination is a grave mistake because there is where election malpractice starts. The election expenses act 2010 only provides for scrutiny of candidates and political party funds during campaign and election periods.

For the law to be successful its implementation should be without a doubt. The election expenses act fails in part of implementation because there is lack of judicial follow up on the money trail and is where there's a lot of mismanagement of funds by responsible personnel. This is because implementation of the election expenses law in Tanzania is highly done by the office of Registrar of political parties whereby the Registrar of Political Parties has full executive powers but does not have any investigative powers. Currently, the RPP has only operational autonomy.

Additionally, the election expenses act should be implemented fully because the rise in political competition coupled with the absence of implementation of the state apparatus such as the ORPP can make elections most expensive activity. For example in 2015 general elections were very expensive as some of political parties candidates donated a lot of monies to religious groups, churches, mosques and to vulnerable groups to advance their political aspirations and this was done before party nominations and after nominations other political party aspirants crossed the floor to opposition parties where even more amount of money was used.

For any enacted law to be good it should be clear, precise and brief. The election expenses act does not define key terms, it is contradictory and it does not have clarity. The election expenses act, 2010 was enacted with the view of limiting excess use of funds in elections among other things. For that reason, the law clearly provides that excess use of money is an offence but in the interpretation part of the law the offence

of excess use of money is not defined. Additionally the EEA requires the candidate and their political parties to receive and disclose funds as required by law Information to be contained in form EE1 includes amount of money, other type of funds which can be cashed or converted in to money value or money worth. Neither the EEA nor its regulations define 'other type of funds'. The same wording is used twice in the election expenses regulation. These words are seen to be used in regulation 7(3)(b) and sub regulation 3(c). If these words were to be interpreted literally they connote different things when they are read together with regulation 7(2) (b) and (c).

Clear demarcation should be set to end implementation of political parties' manifestos. This has been evidenced when a political party aspirant contest to become a member of parliament when in previous government was a minister or contesting for presidential post when he was a previous head of state. This is done by making promises in order to procure votes such as building hospitals, road and salary increments for public servants, buying water vessels for the lake regions and many other promises during election campaigns contrary to section 21(1) (c) of election expenses act.

Serious penalties should be imposed in offences of excessive use of money. If the penalty is compassionate to the offender the purposes for punishing will not be served. These penalties range from two million Tanzanian shillings to three million. These penalties are not proportional to the value of money spent by each category of candidates as set by regulations.

The public media should impartial so as to provide for equal broadcasting time to all political parties and this should be highly emphasized in doing so each political party will get equal airtime. Research done on September 2010 revealed that, on television broadcasting political parties received the following seconds CCM 150,700; CHADEMA 109,300; CUF 5,955; NCCR 29,720; UDP 12,400; TLP 5,085;

NRA 5,841; JAHAZI 6,488; DP 1,560; APPT 2,760; UPDP 1,230; NLD 780; TADEA 4,701.¹⁸⁴ On public radio stations, the findings also shown that the most covered party during the month of September was CHADEMA due to the higher number of seconds that it received. CHADEMA had 58,177; followed by CCM which had 50,855 seconds; and CUF had 39,853 seconds. DP 9,180; UPDP 8,040; NCCR 3,760; TLP 5,580; NRA 4,320; UDP 4,260; DEMOKRASIA MAKINI 4,020; SAU 3,900; APPT 1,320; JAHAZI 1,140; while TADEA, NLD, UMD, CCJ and UPDP received below 1,000 seconds each.¹⁸⁵

The Political Parties Act should be amended to allow disclosure of election expenses. The law should require the candidates and political parties to disclose sources of their funds, names of the donors and address of donors before the elections, as well as the report on how the money was used after the election so as to enhance transparency in election processes as it should be born in mind that represented political parties receive public funds and that election is public affair.

In order to curb political corruption in elections there is a need for an enhanced civic education program. The goal should be to discourage the negative use of money in elections. Eliciting money is quietly losing its place in politics, thanks to civic education. Civic educators should thus highlight cases of illicit money spenders who have lost previous elections.

Transparency and accountability in management of party funds should apply both in terms of expenditure and applicable income. A designated body should be appointed to audit the donation received and expenditure and the same should be publicly reported.

¹⁸⁴This covered public own televisions namely, TBC, Mlimani TV, and TVZ as extracted from Synovete, Tanzania Media Election coverage 2010 Monthly Monitoring Report #5 (October).

¹⁸⁵This covered Tanzania Broadcasting Cooperation TBC and Sautiya Tanzania Zanzibar STZ radios as extracted from Synovete, Tanzania Media Election coverage 2010 Monthly Monitoring Report 5 (October)

The use of state resources by state officials of the ruling party in Tanzania should also be minimized, in doing so; the law must seek to impose restrictions on the use of public resources to promote the interests of political parties in power. The law does not impose any restrictions on the use of public resources by the political party in power.

Enforcement bodies are critical to the successful implementation and functioning of monitoring political party funding system. These enforcement bodies are significant to the implementation of the law because they are given various roles and powers. In South Africa, an independent enforcement body is combined with secondary administrative bodies within the government to implement and monitor monies in politics. This country utilizes an independent electoral commission, while the department responsible for finance distributes public funds, and certain judicial authorities are responsible for adjudicating cases.

Lastly, the success of democracy requires collaborative efforts from the various stakeholders. Similarly, the institutionalization of political parties and the regulation of election financing require participation of all the prominent players. To this end, the Executive, Legislature, Judiciary, the Election Management Bodies, the Civil Society and Political Parties themselves, must join hands and ensure a conducive environment for the development of parties and effective management and enforcement of election funding.

REFERENCES

BOOKS

- Biezen, I., and Kopecky, P. (2007), The State and the Parties: Public Funding, Public Regulation and Rent-Seeking in Contemporary Democracies, Party Politics: London Sage Publications.
- Best, J., Kahn, J.V. (1998).Research in Education, 8th Ed. Boston Massachusetts: Allyn and Bacon Publishers.
- Babeiya, E. (2011).Electoral Corruption and the Politics of Elections Financing in Tanzania.The Dar es Salaam University College of Education University of Dar es Salaam.Dar Es Salaam, Dar Es Salaam University Press.
- Kiondo, A. S. Z. (1994).Economic Power and Electoral Politics in Tanzania. Dar es Salaam, Dar Es Salaam University Press.
- Keith, E., Samuel, I. (2006).Party Funding and Campaign Financing in International Perspective (Columbia-London Law Series): London Bloomsbury Publishing.
- Kothari, C.R. (2004). Research Methodology-Methods and Techniques, 2nd Ed, New Delhi, New Age International
- Leedy, P. D. (1980). Practical Research: Planning and Design, 2ndEd. New York: Macmillian Publishers.
- Wiersma, W. (2000).Research methods in education: An Introduction, Volume 1 7th Ed. Boston, Massachusetts. Published by Allyn and Bacon.

JOURNAL- ARTICLES

- Ansolabehere, S (2007). “Shape of Corruption: Lessons from Comparative Campaign Financing Disclosure”, Election Law Journal, Massachusetts, Vol. 6 pp. 163-182.

- Coate, S. (2004). "Pareto-Improving campaign finance policy". *American Economic Review* (Volume 94, pp. 628-655(28)).Pittsburg Pennsylvania American Economic Association Press.
- Evaristo, L., Henry, N (2011). "Undermined Democracy in Tanzania: An Examination of Political Financing Legal Regime", *The Law Reform Journal* (V.3, pp. 80-81).
- Helen B. Kiunsi(2010). "Money and politics in Tanzania: An Evaluation of the Election Expenses Act in the 2010 general elections", *The Faculty of Law, The Open University of Tanzania Law Journal*.
- Marko, G. (2010). "New Election Law Restricts Access to Information, Media Institute of Southern Africa Report", Published in Cooperation with SMU Dedman School of Law, Dallas Texas pp. 103-104
- Nyirabu, M. (2002). "The Multiparty Reform Process in Tanzania", *The Dominance of Ruling Party Journal* (Vol 7(2):pp. 99-112)
- Rachel, R. E. (2008). "Emerging Judicial Power in Transitional Democracies", Malawi, Tanzania and Uganda, Published by ProQuest Michigan, ISBN 0549521704, 9780549521709, pp. 345-406

MAGAZINE-NEWSPAPERS-NEWSLETTERS

- Frank, K. (2011, October 11). Election Expenses Act in Spotlight after Igunga. *The citizen*, pp. 6
- Makulilo, A. B., Raphael, C. (2010, July 27). The October 2010 General Elections in Tanzania.*The daily News* pp. 6
- Tanzania Election Monitoring Committee Interim Report, (2010). Reported by a monthly magazine, SautiyaDemocrasia ISSN 0856-7735 NO. 117 of November 2010 Titled "FedhaNyingiZilitumikaKatikaUchaguzi "
- TEMCO Newsletter, (2010 September 1). Enforcement of the Election Expenses Act, Issue 1, ISSN: 0856-7743, pp. 1-22.

TEMCO Newsletter, (2010 October). The Enforcement of the Expense Act, Issue No.2 pp. 4-6.

REPORTS

Legal and Human Rights Centre Tanzania, “Human Rights Report 2010 Incorporating Specific Part on Zanzibar Legal and Human Rights Centre”, ISBN: 978-9987-432-84-4.

The Parliament of United Republic of Tanzania, Parliamentary Hansard Report of Parliamentary 18th session held at Dodoma on 11/February /2010.

The Parliament of United Republic of Tanzania, Parliamentary Hansard of Parliamentary session held at Dodoma on 27/January /2010.

REDET-lead agency of TEMCO, Tanzania Election monitoring committee, Report on the 2015 Election in Tanzania, May, 2016.

Report of the Commonwealth Observer Group, Tanzania General Elections 31/10/2010, Commonwealth Secretariat.

Synovete, Tanzania Media Election coverage 2010 Monthly Monitoring Report (October).

Tanzania Election Monitoring Committee (TEMCO); “An Interim Report on Performance of Tanzania’s 2010 General Election”, Pp. 1-14.

Tanzania Election Monitoring Committee (TEMCO). “The 2005 Elections in Tanzania: Report of The Tanzania Election Monitoring Committee”, Published by TEMCO pp. 1-16.

TEMCO report, (2011) “How the Election Expenses Act was Received by Stakeholders” 2011, pp. 53.

The ACE Encyclopedia: Parties and Candidates 2013 © ACE Electoral Knowledge Network.

United Republic of Tanzania National Electoral Commission, “The Report of the National Electoral Commission on the 2015 Presidential, Parliamentary and

Councilors' Election", ISBN 978-9976-9957-1-8, Government Printer, Dar es Salaam.

UNPUBLISHED

Fambom, S. (2003). "Public Funding of Political Parties in Africa", Paper submitted at the Africa Conference on Election, Democracy and Governance, Pretoria, South Africa (Unpublished).

Mark E. W, M.E. (2005). "Democracy against Corruption, Conference on the Quality of Government 17th -19th November 2005: Quality of Government Institute, University of Göteborg (Unpublished).

Tendwa, B.J. (2010). "Election Expenses Act", Paper Presented at The workshop held on 16th March 2010 at Markham Hotel Mayfair Plaza (unpublished).

ELECTRONIC SOURCES

Booyesen, S., Masterson, G (2009). chapter 11:South Africa in Denis Kadima and Susan Booyesen (Eds) Compendium of Elections in Southern Africa 1989-2009; 20 years of Multiparty Democracy, EISA, Johannesburg, 390-391 retrieved from <http://www.eisa.or.za/EISA/publications/ce2.html> on 22nd January, 2016.

Fick, G.(1997). South Africa: Public Funding of Represented Political Parties Act retrieved from <http://www.eisa.org.za/WEP/soulaws6.htm> on 23rd march, 2016.

Karashani, B. (2009 January 4). A Review of the Proposed Election Expenses Act, 2009, THISDAY, available at http://www.thisday.co.tz/frontend/functions/print_article.php?l=10524

Lavrakas, P.J. Encyclopedia of Survey Research Methods at <http://srmo.sagepub.com/view/encyclopedia-of-survey-research-methods/n120mxl>

<http://www.investopedia.com/terms/s/sampling.asp#ixzz3xfDiG1Zi>

Law Library of congress, campaign financing: UK (Rpt. No. 2000-09042). Accessed on The Law Library of Congress: <http://www.loc.gov/law/congress>

Kilimwiko, L. (2015). Tanzania's Election Expenses Act a non-starter. <http://www.ippmedia.com/?83822>. The Guardian Newspaper on Sunday

Transparency International & The Carter Center (2007). The Crisis Project: Money in Politics, Everyone's Concern. http://www.archive.transparency.org/regional_pages/americas/crisis

Warioba, J. (2011). Legalizing Corruption: The Historic Takrima Case. Tanzania Corruption Tracker System <http://www.corruptiontracker.or.tz/>

APPENDICES
MZUMBE UNIVERSITY
MAIN CAMPUS MOROGORO
FACULTY OF LAW
MASTERS IN CONSTITUTIONAL AND ADMINISTRATIVE LAW

QUESTIONNAIRE FOR STAKEHOLDERS

I, a student of Mzumbe University pursuing a master degree of constitutional and administrative law, I purposely select you a stakeholder of Election Expense Laws to fill this Questionnaire with relevant information related to the study I'm conducting, with the title **Electoral Expenses laws in curbing election malpractices in Tanzania: An assessment of Election Expenses Act of 2010**. For the purpose of partial fulfilment of the requirement of awarding a master degree of LAW, Please your comments will be treated as confidential.

A: GENERAL INFORMATION

1. Sex (a) Male [] (b) Female []
2. Organisation..... Department.....
.....
3. Position
4. Working Experience (years)
(a) 1 – 5 [] (b) 6 – 10 [] (c) 10 and above []
5. Level of Education
(a) PhD [] (b) Masters []
(c) Bachelor [] (d) Advance Diploma []
(e) Diploma [] (e) Other (Specify).....

B: TECHNICAL INFORMATION

6. To what extent election expenses Act, 2010 is understood?

Put a tick (✓) to a relevant variable at the right side of the table below:

Key: 1= Not at all Low; 2= Low; 3= Average; 4= High; 5= very high

1.	Your organisation	1	2	3	4	5
2.	Citizens					
3	Lawyers/Advocates					
4	NGOs and CBOs					

7. For each of the following phases of the electoral cycle, please indicate how much of a problem you believe electoral malpractices generally is: Put a tick (✓) to a relevant variable at the right side of the table below

Key: 1= Very low; 2= Low; 3= Average; 4= High; 5= Very high

1.	Legal framework	1	2	3	4	5
2.	Electoral calendar implementation					
3	Voter registration					
4	Electoral campaign					
5.	Voting day operations					
6.	Vote count and tabulation					
7.	Verification/announcement of results					
8.	Electoral disputes adjudication					

8. Are there any implementation problems that your organisation faces while implementing election expenses law 2010?

Yes [] No []

If yes identify them

.....

9. Does the size of the organisation affect the implementation of election expenses law 2010?

Yes No

If yes explain

.....
.....

10. Do you have enough working facilities for implementing the election expenses laws to curb malpractices?

Yes No I don't know

11. Does election expenses act provide for equal playing field to all political parties to ensure free and fair election?

Yes No I don't know

If yes explain

.....
.....

12. If the election expenses act 2010 is fully implemented can it solve election expenses malpractices in Tanzania?

.....
.....

13. What forms of election expenses malpractices do you know?

.....
.....

14. What are your comments and opinions on whether the election expenses act has exhausted all election expenses malpractices?

.....
.....

15. What challenges have your organisation face in curbing election expenses malpractices in 2015 general election?

.....
.....

16. How does the act placement of the registrar on matters of election, usurping the powers of electoral commission and the judiciary of Tanzania?

.....
.....

17. Is there any overlapping of functions in curbing election expenses malpractices?

Yes No I don't know

If yes explain

.....
.....

18. Has election expenses Act 2010 succeeded in solving election expenses malpractices during elections?

Yes No I don't know

If yes explain

.....
.....

If no explain

.....
.....

19. Would you like the election expenses act, 2010 to be amended?

Yes No I don't know

If yes explain

.....
.....

If no explain

.....
.....