



THE UNITED REPUBLIC OF TANZANIA

THE CONSTITUTIONAL REVIEW ACT

CHAPTER 83 OF THE LAWS (PRINCIPAL LEGISLATION)

REVISED EDITION OF 2012

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THE CONSTITUTIONAL REVIEW ACT
[PRINCIPAL LEGISLATION]

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SCHEDULES

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of 2011

- “Commission” means the Commission established for purposes of coordination and collection of public opinions on constitutional review;
- “Constituent Assembly” means the Constituent Assembly of the United Republic established under section 22;
- “constitution” means the fundamental law, written or unwritten, that establishes the character of a state by defining the basic principles to which a society shall conform, distribution of powers and functions among pillars of the state, by describing the organization of the executive, legislature and judiciary, their regulation, distribution, and the limitation of different state organs, and by prescribing the extent and manner of the exercise of its sovereign powers;
- “constitutional review” means the process of collecting public opinions and the conduct of *fora* for the purposes of enactment of provisions for the new Constitution of the United Republic;
- “*fora*” means open and free public meetings, assemblies, gatherings or discussions organized by the Commission for purposes of collection of public opinions on the Draft Constitution;
- “Minister” means the Minister in the Government of the United Republic responsible for constitutional affairs;
- “President” means the President of the United Republic of Tanzania;
- “proposed Constitution” means an enactment of the Constituent Assembly which is the subject of the referendum;
- “public opinions” means ideas, views, information, opinions, proposals or recommendations collected from the general public for purposes of the enactment of the new Constitution of the United Republic;

- “referendum” means a public vote or poll cast in accordance with the provisions of this Act for purpose of validation of the proposed Constitution;
- “Secretary” means the Secretary referred to under section 13;
- Cap. 2 “the Constitution” means the Constitution of the United Republic of Tanzania, 1977.

PART II OBJECTIVES

Objectives
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- 4.-(1) The objectives of this Act shall be to:
- (a) provide for the establishment of the Commission for purposes of coordination and collection of public opinions;
 - (b) prescribe the oath and affirmation and provide for the manner under which members of the Commission and the Secretariat shall take oath or affirmation;
 - (c) make provision for terms of reference of the Commission;
 - (d) provide for the establishment of the Secretariat of the Commission to be headed by the Secretary;
 - (e) provide for a mechanism by which the public shall widely and freely participate in expressing and transmitting public opinions on matters relating to the constitution;
 - (f) provide for a mechanism by which the Commission shall prepare and submit a report;
 - (g) provide for the functions and powers of the Commission;
 - (h) provide for the manner in which the Commission shall collect information from public and private institutions, civil societies

- and religious organizations, political parties and any other organisation that the Commission may consider appropriate;
- (i) provide for a mechanism for procuring technical information by the Commission from consultants;
 - (j) provide for a mechanism for consensus building in national issues during constitutional review process;
 - (k) provide for a mechanism for scrutiny of a Draft Constitution Bill;
 - (l) put in place a legal mechanism for the President to convene a Constituent Assembly;
 - (m) provide for election of the Chairman and the Vice-Chairman of the Constituent Assembly and appointment of the Clerks and Staff;
 - (n) provide for a mechanism for the conduct of the referendum; and
 - (o) provide for the manner in which the new constitution shall be promulgated.
- (2) The process of coordination, collection of public opinions, conduct of *fora*, debate in the Constituent Assembly and participation in the referendum is reserved to the citizens of Tanzania only.

PART III

ESTABLISHMENT OF A COMMISSION

Establishment
of Commission

5. The President shall, upon consultation and in agreement with the President of Zanzibar and after considering any information or prevailing social, political and economic circumstances within the United Republic, by order published in the *Gazette*, establish the Commission.

Appointment
of members of
Commission

6.-(1) The President shall, in consultation and agreement with the President of Zanzibar, appoint the Chairman, Vice-Chairman and other members of the Commission.

Act No.
2 of 2012
s.2

(2) Subject to subsection (3), the composition of the Commission shall have regard to the principle of equal members from either part of the United Republic.

(3) In appointing members of the Commission, the President shall have regard to:

- (a) experience relevant to constitutional review or professional qualifications on constitutional matters, law, public administration, economic, finance and social science;
- (b) geographical and the population diversity of the United Republic of Tanzania; and
- (c) age, gender and representation of various social groups.

(4) Without prejudice to subsection (3), a person shall not qualify for appointment as a member of the Commission unless that person is of high integrity and impeccable behavior.

(5) Notwithstanding subsection (3), a person shall not qualify for appointment as a member of the Commission if that person is:

- (a) a member of security organs;
- (b) a person who has been convicted of, or is the subject of proceedings in the court of law for an offence involving dishonesty or moral turpitude; or
- (c) a non-citizen of Tanzania.

(6) For the purposes of subsections (1), (2) and (3), the President shall invite fully registered political parties, religious organisations, civil societies, associations, institutions and any other group of persons under whatever name having common interest to submit to the President a lists of names of persons for appointment as members:

Provided that the lists shall, for every name proposed, indicate the age, gender, experience, qualifications and a place of abode of such person.

(7) Subsection (6) shall not be construed as precluding the President from appointing as members person outside the lists of names submitted to him as provided for in subsection (6).

Composition
of Commission

7.-(1) The Commission shall consist of:

- (a) a Chairman;
- (b) a Vice-Chairman; and
- (c) not more than thirty and not less than twenty other members.

(2) Appointment of the Chairman and the Vice Chairman shall be made on the basis of the principle that where the Chairman hails from one part of the United Republic, the Vice Chairman shall be a person who hails from the other part of the United Republic.

(3) Members of the Commission shall be appointed through an order published in the *Gazette*.

Terms of
Reference

8.-(1) Terms of reference for the Commission shall be as provided for under Sections 9 and 17 of this Act.

(2) Without prejudice to subsection (1), the Commission may consider any other matter as it may find necessary during the performance of its functions.

(3) The Commission shall complete the performance of its functions within eighteen months from the date of commencing business.

(4) Where the Commission is unable to complete performance of its functions during the period referred to in subsection (3), the President may, in agreement with the President of Zanzibar, extend for not more than two months during a period which the Commission shall complete and submit the report.

Functions of
Commission

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394 of 2011

9.-(1) The functions of the Commission shall be to:

- (a) co-ordinate and collect public opinions;
- (b) examine and analyse the consistency and compatibility of the constitutional provisions in relation to the sovereignty of the people, political systems, democracy, rule of law and good governance;
- (c) make recommendations on each term of reference; and
- (d) prepare and submit a report.

(2) In the implementation of the provisions of subsection (1), the Commission shall adhere to national values and ethos and shall, in that respect safeguard and promote the following matters:

- (a) the existence of the United Republic;
- (b) the existence of the Executive, Legislature and the Judiciary;
- (c) the republican nature of governance;
- (d) the existence of Revolutionary Government of Zanzibar;
- (e) national unity, cohesion and peace;
- (f) periodic democratic elections based on universal suffrage;
- (g) the promotion and protection of human rights;
- (h) human dignity, equality before the law and due process of law; and
- (i) existence of a secular nature of the United Republic that does not inclined to any religion and that respect freedom of worship.

(3) For the purpose of subsection (2), and for any other matter of national importance, the Commission shall afford the people an opportunity to freely express their opinions with a view to further enrich those matters.

Independence
of Commission
G.N.No.
394 of 2011

10. The Commission shall enjoy such independence and autonomy as may be necessary for the performance of its functions and exercise of its powers under this Act and shall not be interfered by any person or authority.

Oath and
affirmation by
members and
the Secretary of
the
Commission

11. Every member of the Commission and the Secretary and Deputy Secretary shall, before taking assignment, subscribe to an oath or affirmation administered by the President as prescribed in the First Schedule to this Act.

Cessation of
membership

12.-(1) A person shall cease to be a member of the Commission upon the occurrence of any of the following events:

Act No.2
of 2012
s.3(a)

- (a) death;
- (b) resignation;
- (c) inability by reason of illness;
- (d) removal for breach of the Code of Conduct;
- (e) conviction for an offence which carries a custodial sentence of not less than one month; and
- (f) if that person loses qualifications for appointment.

(2) For the purpose of better discharge of the functions of the Commission, there shall be a code of conduct prescribed for in the Second Schedule to this Act.

(3) A member of the Commission or the Secretariat who breaches the provisions of the Code of Conduct shall be disqualified from continuing to be a member.

(4) Where a question of removal of a member for breach of Code of Conduct arises, the President shall appoint a Committee composed of:

- (a) a Judge of the Court of Appeal who shall be the Chairman;

- (b) a Commissioner of the Commission for Human Rights and Good Governance;
- (c) a Commissioner of the Public Leaders Ethics Secretariat;
- (d) an advocate of the High Court for Zanzibar recommended by the Zanzibar Law Society; and
- (e) an advocate of the High Court recommended by the Tanganyika Law Society,

who shall inquire into the matter and make recommendations to the President, and where the Committee recommends that the removal of the member should not be made, the question of removal of that member shall abate.

(5) The Committee shall regulate its own procedure for the conduct of business.

Secretariat
Act No.
2 of 2012
s.3(b)

13.-(1) There shall be a Secretariat to the Commission which shall be headed by the Secretary with assistance of the Deputy Secretary.

(2) The Secretary and Deputy Secretary shall be appointed by the President upon agreement with the President of Zanzibar on the basis of the principle that where the Secretary hails from one part of the United Republic, the Deputy Secretary shall be a person who hails from the other part of the United Republic.

(3) A person shall qualify to be appointed as a Secretary if that person is a public servant and profess law profession and has served as such for a period of not less than ten years and is of good conduct and character.

(4) The Secretary and the Deputy Secretary shall be responsible to the Commission and shall perform such functions and discharge duties of the Secretariat.

(5) Other members of the Secretariat shall be appointed by the Minister upon agreement with the Minister responsible for constitutional affairs of the Revolutionary Government of Zanzibar.

(6) The Secretariat shall have such number of public officers as may be necessary for better performance and the exercise of powers of the Commission.

(7) The Commission shall be a disciplinary authority in respect of members of the Secretariat.

Expenses of
Commission

14.-(1) The expenses of the constitutional review incurred by the Commission in accordance with this Act shall be charged on and issued out of the Consolidated Fund of the United Republic.

(2) Members of the Commission and the Secretariat shall be remunerated subject to the relevant laws and regulations.

Immunity of
members of
Commission
and Secretariat

15. A member of the Commission or the Secretariat shall not be liable personally to a civil or a criminal action for or in respect of any matter or thing done or omitted to be done in good faith as a member of the Commission or the Secretariat in the performance of the functions of, and in the exercise of powers of, the Commission under this Act.

Accounts
and
Audits

16.-(1) The Secretary shall cause to be kept proper books of accounts and shall, within and not later than three calendar months after the end of each financial year, cause to be prepared a statement of income and expenditure during the financial year.

(2) The accounts relating to the operations of the Commission on the last day of the financial year shall be submitted for audit by the Controller and Auditor General in accordance with the Public Audit Act, the Public Procurement Act and the Public Finance Act.

Caps 418, 410
and 348

PART IV
PROCEDURE OF THE COMMISSION

Mode of
operation

G.N.No.
394 of 2011

Act No.
2 of 2012
s.3(c)

17.-(1) The Commission shall perform its functions in accordance with this Act and the terms of reference.

(2) For the purposes of implementation of subsection (1), the Commission shall:

- (a) articulate and conduct awareness programmes on the objectives and functions of the Commission;
- (b) hold such number of meetings or assemblies in such places and at such times as it shall determine;
- (c) examine and analyse divergent public opinions separately; and
- (d) prepare and submit a report in accordance with the terms of reference.

(3) The Commission may ask any person who is willing to appear before it for discussion, orally or by production of document, on any constitutional matter which the Commission considers relevant to the constitutional review process.

(4) In the performance of its functions under this Act, the Commission shall examine and analyse the ideas, views, information, opinions, proposals and recommendations collected and examined in the past, including:

- (a) a summary of the public opinions on areas of convergence and divergence for both parts of the United Republic;
- (b) all documents reflecting the ideas, views and opinions of the general public under the White Paper No. 1 of 1962 on the Establishment of the Republic of Tanganyika, Arusha Declaration of 1967, the Presidential Commission on the Establishment of Democratic One-Party System, the 1983

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- National Executive Committee of CCM Proposed Amendments to the Constitution of the United Republic of Tanzania, 1977 and the Constitution of Zanzibar, 1979, the Presidential Commission on Single Party or Multi-Party System in Tanzania, 1991 and the Committee for the collection of views on the Constitution (the White Paper, No. 1 of 1998);
- (c) the Independence Constitution of Tanganyika, 1961;
 - (d) the Constitution of the Republic of Tanganyika, 1962;
 - (e) the Articles of Union of the Republic of Tanganyika and the Peoples' Republic of Zanzibar;
 - (f) the Interim Constitution of the United Republic of Tanzania, 1965;
 - (g) the Constitution of the United Republic of Tanzania, 1977;
 - (h) the following Zanzibar Presidential Decrees:
 - (i) The Constitutional Government and the Rule of Law Decree, 1964;
 - (ii) Equality, Reconciliation and Unity of the Zanzibar People Decree, 1964;
 - (iii) The Existing Laws Decree, 1964;
 - (iv) Confiscation of Immovable Property Decree, 1964;
 - (v) The Legislative Powers Decree, 1964;
 - (vi) The Cabinet Decree, 1964;
 - (i) the Constitution of Zanzibar, 1979;
 - (j) the Constitution of Zanzibar 1984;
 - (k) the Joint Finance Commission Report and the Shellukindo Report on Challenges of the Union;

- (l) the Wangwe Report on the Fast Tracking of the East African Federation;
 - (m) analytical and academic studies undertaken by the Commission; and
 - (n) any other relevant documents as the Commission may consider necessary.
- (5) The Commission may:
- (a) for Mainland Tanzania, require the District Commissioner, a Director of Local Government Authority, the Ward Executive Officer or a Mtaa or Village Executive Officer to cause to be convened meetings of residents of a township, ward or hamlet or village, as the case may be; and
 - (b) for Tanzania Zanzibar, require the District Commissioner, Municipal Director, Clerk to the Town or District Council or a Sheha to cause to be convened meetings of residents of a township or various Shehias, for the purpose of collecting public opinions on constitutional matters as specified in the terms of reference.
- (6) In order to facilitate effective discharge of its functions, the Commission may form committees and assign to any of such committees general or specific matter to deliberate upon.
- (7) The Commission may co-opt any person or engage any consultant as may be necessary for the proper performance of its functions.
- (8) In the performance of its functions, the Commission shall devise uniform methodologies, except where circumstances require otherwise, that would be applicable in each part of the United Republic in the collection and analysis of public opinions, the conduct of *fora* and writing of the report.
- (9) Any person who intends to conduct public

awareness programme on the constitutional review and so recognized by the Commission shall, in the case of:

- (a) an individual, notify the Commission in writing or in that behalf, a District Commissioner, a Director of Local Government Authority or the Municipal Director or the Clerk to the Town or District Council; or
- (b) an organization, civil society, association, institution or a group of persons under whatever name having common interest, be required to-
 - (i) issue notice to the Commission in writing or in that behalf, District Commissioner, a Director of Local Government Authority or the Municipal Director or the Clerk to the Town or District Council in writing;
 - (ii) register under the relevant laws of Mainland Tanzania or Tanzania Zanzibar,

and that person, organisation, society, association, institution or group of persons shall disclose to the Commission, or in that behalf, the District Commissioner, the Director of Local Government Authority or the Municipal Director or the Clerk to the Town or District Council, as the case may be, sources of funds that would be expended for awareness programme.

(10) The notice referred to under subsection (9) shall specify time, date, place, venue and the nature of the subject matter of the awareness programme.

(11) For the purpose of this section, an organisation, society, association, institution or group of persons having common interest may convene meetings in order to afford opportunity for their members to make their opinions on the Proposed Constitution and forward such opinions to the Commission.

(12) Any organisation, society, association, institution or group of persons having common interest and which intend to conduct a public meeting, rally or assembly for purposes of this section shall notify the relevant authority in accordance with law governing such meetings, rallies or assemblies.

Constitutional
fora

Act No.
2 of 2012
s.3(d)

18.(1) There shall be *fora* for constitutional review.

(2) The *fora* for constitutional review shall provide public opinions on the Draft Constitution through meetings organized by the Commission.

(3) The *fora* for constitutional review shall be formed on ad hoc basis by the Commission based on geographical diversity of the United Republic and shall involve and bring together representatives of various groups of people within the communities.

(4) The *fora* referred to in subsection (1) and in other provisions of this Act shall exclusively be for the citizens of Tanzania.

(5) For the purpose of this section, before the Commission completes making the report, it shall publish the Draft Constitution in the *Gazette*, and other local newspapers in order to afford opportunity to the public to further enrich the provisions of the Draft Constitution through discussions in the *fora* for constitution review.

(6) For the purpose of this section, the Commission may allow organizations, associations or groups of persons to convene meetings in order to afford opportunity to its members to air their views on the Draft Constitution and forward such views to the Commission.

Report of
Commission

G.N.No.
394 of 2011

19.(1) On the basis of the examination and analysis undertaken pursuant to sections 17 and 18, the Commission shall prepare a report containing:

(a) a summary of public opinions on each term of reference;

- (b) recommendations of the Commission on each terms of reference;
 - (c) reports by consultants engaged by the Commission;
 - (d) a Draft Constitution; and
 - (e) any other relevant information.
- (2) The Draft Constitution shall form an annex to the report of the Commission.

Submission and publication of the report

20.-(1) The Commission shall, after the completion of making a report, submit such report to the President and the President of Zanzibar.

(2) The President shall, within thirty days after receiving the report, publish the Draft Constitution in the *Gazette* and other local newspapers with a statement that the Draft Constitution shall be presented to the Constituent Assembly for enactment of the proposed Constitution.

(3) The President shall, upon consultation and agreement with the President of Zanzibar, direct the Chairman of the Commission to present the Draft Constitution to the Constituent Assembly.

(4) For the purpose of subsection (3), the Chairman and members of the Commission may give clarifications which may be required during the debate by the Constituent Assembly.

Offences and penalties

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394 of 2011
Act No.
2 of 2012
s.4

21.-(1) A person who intentionally obstructs, hinders, prevents or by conduct or omission incites-

- (a) a member of the Commission or Secretariat from performing the functions or exercising the powers of the Commission;
 - (b) a person or group of persons from giving public opinions to the Commission,
- commits an offence.

(2) Any person who-

- (a) carries on an activity of coordinating and collecting public opinions contrary to this Act;

- (b) impersonates to be a member of the Commission or the Secretariat; or
 - (c) conducts awareness programme on constitutional review contrary to this Act,
- commits an offence.

(3) Any person who is convicted of an offence under this Act shall be liable to a fine of not less than two million shillings but not exceeding five million shillings or to imprisonment for a term of not less than one years but not exceeding three years or to both.

(4) Any measure undertaken under the provisions of this section shall not abate by reason that this Act is spent and has no legal effect.

PART V

CONVENING OF A CONSTITUENT ASSEMBLY

Convening the
Constituent
Assembly
G.N.No.
394 of 2011

22.-(1) There shall be a Constituent Assembly consisting of the following members:

- (a) all members of the National Assembly of the United Republic;
- (b) all members of the House of Representatives of Zanzibar;
- (c) one hundred and sixty six members drawn from the following:
 - (i) Non-Governmental Organisations;
 - (ii) Faith Based Organisations;
 - (iii) all fully registered political parties;
 - (iv) institutions of higher learning;
 - (v) groups of people with special needs;
 - (vi) Workers Association;
 - (vii) an association representing farmers;
 - (viii) an association representing pastoralists; and
 - (ix) any other group of persons under whatever name having common interest.

(2) For the purpose of paragraph (c) of subsection (1), the total number of members of the Constituent Assembly hailing from Tanzania Zanzibar shall not be less than one third of the total number of members referred to in paragraph (c).

(3) The President shall publish the names of members of the Constituent Assembly in the proclamation published in the *Gazette*.

(4) The President upon agreement with the President of Zanzibar shall, after twenty one days following publication of the Draft Constitution in terms of section 20 (2), by proclamation published in the *Gazette*, convene the Constituent Assembly on a date specified in the proclamation.

Chairman and
Vice Chairman
of
Constituent
Assembly

23.-(1) There shall be a Chairman and the Vice-Chairman of the Constituent Assembly who shall be elected by the members of the Constituent Assembly on the first day of its meeting and in the manner prescribed in the Standing Orders of the Constituent Assembly.

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394 of 2011

(2) The Chairman and the Vice Chairman of the Constituent Assembly shall be elected from amongst members of the Constituent Assembly based on the principle that where the Chairman hails from one part of the United Republic, then the Vice Chairman shall be a person who hails from the other part of the United Republic.

(3) The election of the Chairman and the Vice Chairman shall be conducted by secret ballots and the winner shall be elected by simple majority of votes cast.

(4) Before assuming office, the Chairman and the Vice Chairman shall subscribe to an oath or affirmation specified in the Forth Schedule, as the case may be, administered by the Clerk of the Constituent Assembly.

(5) A member of the Constituent Assembly shall not assume office until that member has taken oath or affirmation specified in the Fourth Schedule before the

Chairman or the Vice Chairman of the Constituent Assembly.

(6) For the purposes of this section, members of the Constituent Assembly shall have power to develop and adopt the Standing Orders of the Constituent Assembly before subscribing to oath or affirmation, as the case may be.

Clerk and Staff
of Constituent
Assembly
G.N.No.
394 of 2011

24.-(1) Immediately after the proclamation of the Constituent Assembly by the President and subject to subsection (2), reigning Clerks of the National Assembly and the House of Representatives shall, by operation of this Act, become the Clerk and the Deputy Clerk of the Constituent Assembly and vice versa.

(2) Assumption of the offices of the Clerk or Deputy Clerk of the Constituent Assembly shall be on the basis that, where the Chairman of the Constituent Assembly is elected from one part of the United Republic, the Clerk shall be a person from the other part of the United Republic.

(3) The Clerk and the Deputy Clerk of the Constituent Assembly shall discharge their duties in accordance with the Standing Orders of the Constituent Assembly.

(4) The Clerk of the Constituent Assembly shall, upon consultation with the Deputy Clerk nominate staff from the National Assembly and the House of Representatives of such number as may be appropriate for the effective performance of the functions and the exercise of the powers of the Constituent Assembly.

(5) The Clerk and Deputy Clerk of the Constituent Assembly shall, before assuming office, subscribe to an oath or affirmation before the President as set out in the Third Schedule to this Act.

Powers of
Constituent
Assembly

25.-(1) The Constituent Assembly shall have and exercise powers to make provisions for the New Constitution of the United Republic of Tanzania and to make consequential and transitional provisions to the enactment of such Constitution and to make such other provisions as the Constituent Assembly may find necessary.

(2) The powers of the Constituent Assembly to make provisions for the proposed Constitution shall be exercised by a Draft Constitution tabled by the Chairman of the Commission and passed by the Constituent Assembly.

Provisions
relating to
Constituent
Assembly

26.-(1) The Constituent Assembly may develop Standing Orders of the Constituent Assembly for the conduct of business in the Constituent Assembly.

(2) The provisions of the proposed Constitution shall require passing by the Constituent Assembly on the basis of support of two third majority of the total number of the members hailing from Mainland Tanzania and two third majority of the total number of members hailing from Tanzania Zanzibar.

Acts of
Constituent
Assembly
Cap. 1

27.-(1) Subject to the provisions of any Act of the Constituent Assembly, the Interpretation of Laws Act shall apply to the interpretation of an Act of the Constituent Assembly and references in that or in any other law to any Act shall, except where the context otherwise requires, include reference to an Act of the Constituent Assembly.

(2) There shall be freedom of opinion in the debates and procedure of the Constituent Assembly as may be prescribed in the Standing Orders of the Constituent Assembly.

Abatement of powers of Constituent Assembly

28.-(1) After the enactment of the proposed Constitution, consequential and transition provisions, the Constituent Assembly shall stand dissolved and powers to enact provisions for the proposed Constitution, consequential and transition provisions shall abate.

(2) Dissolution of, and abatement of powers of the Constituent Assembly shall not be construed as derogating powers of the President to reconstitute the Constituent Assembly for enactment of provisions amending the proposed Constitution.

Expenses of Constituent Assembly

29.-(1) The expenses incurred by the Constituent Assembly in accordance with this Act shall be charged on and issued out of the Consolidated Fund of the United Republic.

(2) Members of the Constituent Assembly, Clerk and Staff shall be remunerated in such manner as the President may, subject to the relevant laws and regulations, determine.

Accounts and Audit

30.-(1) The Clerk shall cause to be kept proper books of accounts and shall, within and not later than three calendar months after the end of each financial year, cause to be prepared a statement for income and expense during the financial year.

(2) The accounts relating to the operations of the Constituent Assembly on the last day of the financial year shall be submitted for audit by the Controller and Auditor General in accordance with the Public Audit Act, the Public Procurement Act and the Public Finance Act.

Caps. 418, 410 and 348

PART VI

VALIDATION OF THE PROPOSED CONSTITUTION

Conduct of referendum

31.-(1) For purposes of validation of the provisions of the proposed Constitution, there shall be a referendum to be organized, conducted and supervised by the National

Electoral Commission in collaboration with the Zanzibar Electoral Commission.

(2) In the implementation of subsection (1), the Zanzibar Electoral Commission shall organise, conduct and supervise the conduct of poll during the referendum and shall submit to the National Electoral Commission referendum results for votes cast in Tanzania Zanzibar for declaration.

Referendum question

32.-(1) The National Electoral Commission in collaboration with the Zanzibar Electoral Commission shall, within seven days of the publication of the proposed Constitution, frame and publish in the *Gazette*, the question to be determined by the referendum.

(2) The question referred to in subsection (1) shall be framed after consultation with the Attorney General of the United Republic and the Attorney General of Zanzibar.

(3) The question to be submitted to the referendum shall require the voter to indicate whether the voter approves or does not approve the proposed Constitution and shall be so framed as to require the voter to answer “Yes” or “No”.

(4) The voting at a referendum shall be by secret ballot.

Notice of holding referendum

33.-(1) The National Electoral Commission in collaboration with the Zanzibar Electoral Commission shall, within fourteen days after publication of the question in the *Gazette*, specify-

- (a) the day on which the referendum is to be held;
- (b) the polling time of the referendum; and
- (c) the period for sensitization and public awareness on the referendum on the proposed Constitution .

(2) For the purposes of sensitization and public awareness on the referendum for the proposed Constitution

the Commission shall, and the political parties and civil societies may provide civic education and advocacy on the proposed Constitution to be conducted not later than thirty days from the publication of the proposed Constitution in the *Gazette*.

(3) The returning officer of every electoral constituency shall, within twenty one days of publication of the notice by the National Electoral Commission, notify the public in their respective constituencies about the procedure for the conduct of the referendum.

Right to vote in
referendum
Cap. 343
Act No.11
of 1984(Z)

34. A person whose name is entered in the register of voters established under the National Elections Act or the Zanzibar Elections Act, 1984 shall, unless that person is prohibited from voting by any other written law, be entitled to vote at the referendum.

Procedure for
conduct of
referendum
Act No.11
of 1984(Z)
Caps. 343
and 292

35. The procedure for conducting the General Elections under the National Elections Act, the Zanzibar Election Act, 1984 and the Local Authorities (Elections) Act shall, with necessary modifications, apply to the conduct of a referendum under this Act.

Referendum
results

36.-(1) The majority of votes given in the referendum shall determine the decision of the votes on such question in the referendum and the referendum results declared by the National Electoral Commission shall be binding on the Government of the United Republic and the Revolutionary Government of Zanzibar.

(2) The referendum results shall be decided on the basis of support by more than fifty per cent of the total number of votes cast in Mainland Tanzania and more than fifty per cent of the total number of votes cast in Tanzania Zanzibar.

(3) Where the votes cast “YES” on a question at a referendum are not more than fifty per cent of the total number of votes cast in either Mainland Tanzania or Tanzania Zanzibar or both in Mainland Tanzania and Tanzania Zanzibar, the National Electoral Commission, upon agreement with the Zanzibar Electoral Commission and by notice published in the *Gazette*, appoint another day within thirty days after the declaration of the results to repeat the poll and referendum procedures shall commence afresh.

(4) Notwithstanding subsection (3), the National Electoral Commission in agreement with the Zanzibar Electoral Commission may, where circumstances so require, afford:

- (a) sufficient time for sensitization and public awareness on the referendum on the proposed Constitution; or
- (b) necessary time for the President in agreement with the President of Zanzibar to reconvene the Constituent Assembly in order to reconsider provisions of the proposed Constitution.

(5) Where the majority of the votes cast in the referendum is “No”, the Constitution of the United Republic of Tanzania, 1977 shall remain in force.

Dissolution of
Commission

37.-(1) Upon declaration of the results of the referendum by the National Electoral Commission, the President shall, by order published in the *Gazette*, dissolve the Commission.

(2) Dissolution of the Commission by the Order of the President shall entail abatement of powers of the Commission and the Secretariat.

Promulgation
of Constitution

38.-(1) The provisions of the New Constitution shall come into force on the date provided for in the New Constitution.

(2) The President shall promulgate, in such a manner and style as the President may determined the operationalization of the New Constitution.

(3) Consequent upon promulgation of the New Constitution, this Act shall be spent and shall have no legal effect.

(4) In the application of this Act, both the English version and the Kiswahili version are authentic.

—————
FIRST SCHEDULE
—————

(Under section 11)
—————

PART I
OATH/AFFIRMATION OF A MEMBER OF THE COMMISSION

I,.....having been appointed by the President as..... on the day of.....20.....to perform the functions of a member of Commission, do hereby swear/affirm that I will be faithful and impartial to the United Republic of Tanzania and, to the best of my knowledge and ability, discharge the duties and perform the functions devolving upon me by virtue of being a member of the Commission.

So help me God

.....
Member of Commission

PART II
OATH/AFFIRMATION OF A SECRETARY/DEPUTY SECRETARY

I,.....having been appointed by the President as..... on the day of.....20.....to perform the functions of a Secretary/Deputy Secretary, do hereby swear/affirm that I will be faithful and impartial to the United Republic of Tanzania and, to the best of my knowledge and ability, discharge the duties and perform the functions devolving upon me by virtue of being a Secretary/Deputy Secretary.

So help me God

.....
Secretary/Deputy Secretary

—————
SECOND SCHEDULE
—————

(Under section 12(2))

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CODE OF CONDUCT OF MEMBERS OF THE COMMISSION AND THE SECRETARIAT

1. Every member of the Commission/Secretariat shall serve impartially and independently and perform the functions of his office in good faith and without fear, favour or prejudice.

2. A member of the Commission/Secretariat shall not, during tenure of office, be eligible for appointment or nomination to any political office.

3. A member of the Commission or Secretariat shall not-

- (a) by his membership, association, statement, conduct or in any other manner jeopardize the perceived independence of the member or prejudice the credibility, impartiality, independence or integrity of the Commission/Secretariat; or
- (b) make private use of or profit from any confidential information gained as a result of being a member of the Commission/Secretariat.

—————
THIRD SCHEDULE
—————

(Under section 24(5))

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OATH/AFFIRMATION OF CLERK/DEPUTY CLERK

I, having been appointed on the day of 20.. by virtue of operation of law as, and to perform the duties of the Clerk/Deputy Clerk do hereby swear/affirm that I will faithfully, impartially and, to the best of my knowledge and ability, discharge the duties and perform the functions devolving upon me by virtue of being a Clerk/Deputy Clerk of the Constituent Assembly.

So help me God.

.....
Clerk/Deputy Clerk of the Constituent Assembly

FOURTH SCHEDULE

(Under section 23(4),(5))

OATH/AFFIRMATION OF CHAIRPERSON/VICE CHAIRPERSON AND MEMBERS OF THE
CONSTITUENT ASSEMBLY

I,..... having been elected as Chairperson/Vice Chairperson/member of
the Constituent Assembly, do hereby take oath/affirm that I will be faithful and impartial to the
United Republic and, to the best of my knowledge and ability, discharge the duties and perform the
functions devolving upon me by virtue

So help me God.

.....
Chairman/Vice Chairman/member of the Constituent Assembly
