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SCHEDULE

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CHAPTER 440

THE REFERENDUM ACT

An Act to provide for legal and institutional framework for the conduct of referendum with a view of making decision by the people on the proposed Constitution, and for other related matters.

[3rd October, 2014]

[GN. No. 374 of 2014]

Act No.
11 of 2013

PART I

PRELIMINARY PROVISIONS

- | | |
|----------------|--|
| Short title | 1. This Act may be cited as the Referendum Act. |
| Application | 2. This Act shall apply to Mainland Tanzania and Tanzania Zanzibar in relation to a referendum for approval of the proposed Constitution. |
| Interpretation | 3. In this Act, unless the context requires otherwise-
“agent” means a person duly appointed by a referendum committee and registered by the Commission to act both as a counting agent and a polling agent for the purposes of this Act;
“Attorney General” means the Attorney General of the United Republic or as the case may be the Attorney General of Zanzibar;
“Commission” means the National Electoral Commission and the Zanzibar Electoral Commission;
“Constitution” means the Constitution of the United Republic of Tanzania, 1977;
“constituency” means a constituency for purposes of elections of the member of the National Assembly or the House of Representative; |

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11 of 1984

“deputy referendum officer” means the person appointed under section 7(2);

“deputy referendum returning officer” means the person appointed under section 7(1);

“Director” has a meaning ascribed to it under the National Elections Act and the Zanzibar Elections Acts;

“High Court” means the High Court of Tanzania and the High Court of Zanzibar and their respective registries shall be construed accordingly;

“Minister” means the Minister responsible for electoral affairs;

“polling station” means a room or place designated and equipped for the casting of vote by a voter at a referendum;

“President” means the President of the United Republic;

“proposed Constitution” means an enactment of the Constituent Assembly which is the subject of the referendum;

“referendum” means a public vote or a poll cast in accordance with the provisions of this Act for purposes of attaining people’s decision on the proposed constitution;

“referendum campaign period” means the period specified as such by the President pursuant to section 4;

“referendum committee” means the committee established under section 12;

“referendum coordinator” mean a person appointed under section 8(1);

“referendum officer” means a person appointed under section 7(2) for the purpose of conducting the referendum at a polling station;

“referendum period” means a referendum period specified by the President pursuant to section 4;

“referendum returning officer” means a person appointed under section 7(1);

“voter’s card” means a card issued to a voter by the Commission as an evidence of the person’s registration in the register of voters; and

“voter” means a person qualified to vote at an election in accordance with the law governing election for Presidential or a Member of the Parliament or House of Representatives.

PART II

CONDUCT OF REFERENDUM

Power to initiate referendum

4.-(1) The President in consultation with the President of Zanzibar shall, within fourteen days from the date of receiving the proposed Constitution, by Order published in the *Gazette*, direct the Commission to conduct a referendum on the proposed Constitution.

(2) An Order for a referendum shall be in the Form set out in the Schedule to this Act, and shall-

- (a) specify the proposed Constitution to be determined;
- (b) specify the period within which the referendum campaign shall be conducted; and
- (c) specify the period within which a referendum shall be held.

(3) For purposes of subsection (2), the Commission shall, within seven days after the publication of the proposed Constitution, frame and publish in the *Gazette* the question to be determined by the referendum.

(4) The question to be asked 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 in the manner which requires the voter to answer “YES” or “NO”.

Notice of holding referendum

5.-(1) The Commission shall, within fourteen days after publication of the referendum question in the *Gazette*, specify-

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

(2) Every referendum returning officer shall, within twenty one days from publication of the notice by the Commission, notify the public in his respective constituency about the procedure for the conduct of the referendum.

(3) For purposes of sensitisation and public awareness on the referendum for the proposed Constitution, the Commission shall provide civic education on the proposed Constitution for the period of sixty days from the date of publication of the proposed Constitution in the *Gazette*.

(4) Without prejudice to subsection (3), the Commission may allow civil societies and non-governmental organisations which are interested in carrying out civic education or awareness programme on the proposed Constitution to carry out civic education or awareness programme for a period of not more than sixty days prior to the voting date.

(5) A civil society or non-governmental organisation which has been allowed to carry out civic education or awareness programme on the proposed Constitution shall notify the Commission of the date, place and time within which it shall carry out civic education or awareness programme.

(6) Where the Commission refused a civil society or non-governmental organisation to carry out civic education or awareness programme, the Commission shall state the reasons thereof.

Responsibilities
of Commission

6.—(1) Save as otherwise provided for under this Act, the Commission shall be responsible for—

- (a) supervision of the general conduct of a referendum; and
- (b) promotion and regulation of voters' education for the referendum.

(2) The Commission shall organise and supervise the conduct of poll during the referendum.

(3) During the conduct of a referendum, the Commission shall not be subject to the direction or control of any person or authority.

Referendum
returning officer

7.-(1) The Commission shall upon consultation with the Commission appoint a referendum returning officer for each constituency and may appoint such deputy referendum returning officers for the constituency as it may consider necessary.

(2) The referendum returning officer shall upon consultation with the Commission, appoint referendum officers and deputy referendum officers to preside at a polling station.

(3) The Commission shall issue guidelines providing for the appointment of referendum returning officers and management of objections against such appointments.

(4) The guidelines issued under subsection (3) shall be binding upon the referendum returning officers.

(5) A deputy referendum returning officer shall, subject to the general direction and control of the referendum returning officer, have all the powers and may perform all the duties of the referendum returning officer under this Act.

(6) A deputy referendum officer may, upon the direction and control of the referendum officer, perform any act which the referendum officer is required or authorised to perform under this Act; except that such officer shall not have power to order the arrest of any person or the exclusion or removal of any person from a polling station.

(7) Every appointment of a referendum returning officer and a referendum deputy returning officer under this section shall be published in such manner as the Commission may deem necessary.

(8) An officer appointed under this Act shall, before assuming office, take an oath or affirmation in the manner to be prescribed by the Commission and be partial in performing his duties.

Appointment of
other officers

8.-(1) The Commission may, during a referendum, appoint by office or by name in respect of every region, a regional referendum coordinator to coordinate information, the availability of material resources and other matters necessary for the efficient conduct of referendum in constituencies within the Region.

(2) The Commission may appoint such other staff as it deems necessary to assist in the conduct of the referendum and such staff may, subject to the general or specific directions of the Commission, exercise any or all of the duties and powers conferred or imposed upon the Commission under this Act or any other written law.

Right to vote at
referendum
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11 of 1984

9.—(1) The register of voters established under the National Elections Act and the Zanzibar Elections Act shall be the register of voters for purposes of the referendum.

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

(3) A referendum officer shall require a person applying for a ballot paper to produce the voter's card issued by the Commission as a sufficient proof of identity of that person claiming to be entitled to vote.

(4) Where a person is a registered voter and his particulars are available in the voters' register but has lost the voter's card, the referendum officer shall, before allowing that person to vote, require that person to fill a declaration form prescribed by the Commission.

Polling areas and
polling stations

10.—(1) The Commission shall—

- (a) divide each constituency in which the referendum is to be held into polling areas or declare any particular constituency to be a single polling area;
- (b) assign to each polling area distinctive number or letter or a combination of both number and letter;
- (c) appoint the polling station or stations for each polling area; and
- (d) publish in the *Gazette* a notice specifying—
 - (i) the polling area for each constituency; and
 - (ii) the distinctive number, letter or their combination, assigned to each polling area.

(2) In determining the boundaries of the polling areas the Commission shall have regards to-

- (a) the existing polling stations in a given constituency;
- (b) geographical considerations;
- (c) population; and
- (d) any other factors affecting communication between various places within the polling area.

Use of public facilities

11.-(1) The Commission may, free of charge, use any public facility as a polling station.

(2) The Commission may, when need arises use private facilities after obtaining consent of the private owner.

PART III

THE REFERENDUM COMMITTEES

Establishment of referendum committees

12.-(1) There is established two referendum committees at the National level and two referendum committees at the constituency level.

(2) The referendum committees established under subsection (1) shall be composed of groups of persons, associations, civil society organisation or organisations intending to support or oppose the referendum question during the referendum period.

Registration of referendum committees

13.-(1) A referendum committee shall, within twenty one days prior to the referendum campaign period, apply to the Commission for registration for purposes of conducting referendum campaign.

(2) Every referendum committee that intends to apply for registration shall, before applying, appoint a leader.

(3) The leader appointed under subsection (2) shall be responsible for-

- (a) all the affairs of the registered referendum committee;
- (b) appointment of agents of the referendum committee; and

- (c) provision of the sample signatures of the agents to-
 - (i) the Commission, where the referendum committee is at the national level; and
 - (ii) the referendum returning officer, where the referendum committee is at the constituency level.

(4) An application under this section shall be accompanied by information and statements showing that the applicant adequately represents those campaigning for or against a referendum question.

(5) An application for registration shall be signed by the leader of the referendum committee and shall-

- (a) set out-
 - (i) the full name of the committee;
 - (ii) the full name, address, telephone number of the leader of the committee;
 - (iii) the name, address and telephone number and title of each officer of the committee;
 - (iv) the address and telephone number of the office of the committee to which communication may be addressed; and
 - (v) the name, address and telephone number of the agents;
- (b) disclose its sources of funds;
- (c) indicate the areas in which the committee intends to support or oppose the referendum question; and
- (d) be accompanied by a statement signed by the leader that the agent has accepted the appointment as an agent.

(6) On receipt of an application for registration of a referendum committee, the Commission or, as the case may be, the referendum returning officer shall, within seven days after determination of the application, register or refuse to register the applicant and in case of a refusal, state reasons thereof.

- (7) A referendum committee shall not be registered where-
 - (a) the name of the committee resembles the name of a previously registered referendum committee that the committee is likely to be confused with that previously registered committee; or
 - (b) the Commission or as the case may be, the referendum returning officer is not satisfied that the applicant adequately represents the person he is campaigning for a particular outcome.
- (8) The registration of a referendum committee shall be valid for the referendum campaign period.

Register of agents **14.** The Commission shall maintain a register of the agents of registered referendum committees in which shall be recorded the name, address and telephone number of the agents of each such committee.

Appointment of agents at polling area **15.**—(1) The leaders of all referendum committees shall appoint not more than two agents to be present where polling is taking place at each polling area.

(2) Every person appointed as an agent pursuant to this section shall be appointed in writing and be issued with an identity card prior to engagement in any referendum activities and shall take such oath of office as the Commission may specify.

Referendum question campaign **16.**—(1) A referendum committee supporting or opposing the referendum question may carry out campaigns to support or oppose the referendum question for a period of thirty days during the referendum period.

(2) A referendum committee shall not commence a campaign under subsection (1) unless the Commission announces the date on which the campaign will commence.

(3) All campaigns referred to in subsection (1) shall cease twenty-four hours before the start of polling.

(4) The announcement for commencement of referendum campaign shall be in the form prescribed by the Commission.

Referendum
campaign
expenses

17.—(1) A referendum committee shall conduct and fund its own referendum campaign.

(2) A referendum committee shall disclose the sources of its funds to the Commission.

(3) The disclosure of funds under this section shall be confidential and shall not be divulged except where such information is the subject of complaint lodged by any person, Director or investigation initiated by the Director or where it is the subject of proceedings in the court of law.

(4) For the purpose of implementation of this section, the Minister in consultation with the Minister responsible for elections affairs in Zanzibar shall, by order in the *Gazette*, prescribe the maximum amount of referendum expenses depending on the difference in the size of constituency.

(5) The Commission shall prescribe the procedure for disclosure of the sources of the funds by the referendum committee and the audit of the expenses incurred by the referendum campaign.

PART IV

VOTING AT A REFERENDUM

Voting at
referendum

18.—(1) Voting at a referendum shall be by secret ballot and held in accordance with the provisions of this Act.

(2) Except for persons prescribed under section 37, a person shall not vote in an area other than that which he is registered as a voter.

(3) A person shall not cast more than one vote at a referendum.

(4) Notwithstanding any provision of this Act, where a registered voter is employed as a referendum returning officer, referendum officer, police officer, polling agent or any other officer working for or on behalf of the Commission at a polling station other than the polling station he was registered, the Director or a person authorised in that behalf by the Director may, by a certificate under his hand, authorise the voter to

vote in such constituency, and that polling station shall, for purposes of this Act, be deemed to be the polling station allocated to such voter.

Equipment of
polling stations

19.—(1) The referendum returning officer shall provide to each referendum officer with such number of ballot boxes and ballot papers to the extent of the needs of polling station for the effective carrying out of the provisions of this Act.

(2) Every ballot box shall be constructed-

- (a) with an aperture which is large enough to receive a ballot paper but which is no larger;
- (b) so as to be capable of being sealed so that ballot papers cannot be taken out of the box so long as the seal is unbroken; and
- (c) so that it bears serial numbers of the polling stations which shall be displayed conspicuously at every polling station.

(3) The returning officer shall provide each polling station with-

- (a) materials to enable voters to mark their ballot papers where marking is necessary;
- (b) instruments for stamping the official mark on ballot papers;
- (c) a seal of the Commission suitable for that purpose;
- (d) a bottle or container with indelible ink suitable for that purposes;
- (e) a copy of the register of voters or such part thereof as contains the names of the voters entitled to vote at that polling station;
- (f) a sufficient number of polling booths to enable voters to mark their votes secretly; and
- (g) any other equipment authorised by the Commission for the conduct of voting at the polling station.

Admission to
polling stations

20.—(1) The referendum officer shall regulate the number of voters to be admitted to a polling station at one time, and shall exclude all other persons except—

- (a) commissioners or officers of the Commission;
- (b) police officers or any other person responsible for security;
- (c) persons necessarily assisting blind or incapacitated voters;
- (d) agents registered by the Commission; and
- (e) accredited observers and representatives of the print and electronic media approved or accredited by the Commission.

(2) A person, other than a registered voter, shall not be admitted to a polling station.

Order at polling
stations

21.—(1) It shall be the duty of the referendum officer to keep order at the polling station.

(2) The referendum officer may order the dispersal of any gathering of persons which appears to the officer to be preventing free entrance to, or exit from, the polling station or to be intimidating or interfering with voters, and any such order shall be sufficient authority for a police officer, or any other person authorised by the order, to effect the dispersal.

(3) The power conferred on a referendum officer and a police officer under this section shall not be limited to the area covered by the polling station only but shall also encompass a radius of two hundred meters from the centre of the polling station.

(4) Where a person causes disruption at a polling station, or fails to obey the lawful instructions or orders of the referendum officer, that person may immediately be removed, by order of the referendum officer, or by a police officer, and a person so removed shall not re-enter the polling station during the continuance of the poll without the permission of the referendum officer.

Postponement
and extension of
polling

22.—(1) Notwithstanding the terms of any notice issued under this Act, a referendum officer may postpone polling proceedings at the polling station if they are interrupted by a riot, violence, natural catastrophe, shortage of equipment or other cause, but the proceedings shall resume as soon as practicable.

(2) The powers of a referendum officer shall include the power to transfer the proceedings to another polling station in the same constituency, and in such a case—

- (a) the referendum officer shall, after consultation with the referendum committees, issue a notice of the fact in the manner he thinks sufficient to bring the notice to voters; and
- (b) the polling area for the polling station from which the proceedings are transferred shall, for that purpose be deemed to be part of the polling area of the polling station to which the proceedings are transferred.

(3) A referendum officer may extend the hours of polling at the polling station where polling has been interrupted or for other good cause, and shall, where polling in that polling station is delayed, extend the period of polling to recover any lost time.

Communication
with voters at
polling station

23.—(1) A person other than a returning officer or a referendum officer on duty shall not, except with the authority of the referendum officer, communicate with a voter who is within the area of a polling station for the purpose of voting.

(2) Subsection (1) shall not be construed as preventing the companion of a blind or incapacitated voter from communicating with that voter.

Sealing of ballot
boxes

24.—(1) The referendum officer shall, immediately before the commencement of the poll, show the ballot box or ballot boxes to the agents so as to ascertain that the box or boxes are empty, and thereupon close the box or boxes so that they may not be opened without breaking the seal.

(2) After a ballot box is sealed, the referendum officer shall cause it to be placed in the polling station such that it can at all times be in the view of the officer, the deputy referendum officer and the agents present.

(3) On the adjournment of the poll in a polling station to another day, or on the close of the poll at one station with a view to transferring a ballot box to another station, and at any other time when the ballot box is not in use, the referendum officer shall close the aperture used for the insertion of the ballot papers into the box and place an official seal on it in such a manner as to prevent the insertion of ballot papers without breaking the seal.

(4) After a ballot box has been sealed, the seal shall not be broken or the aperture opened until the seal is broken and opened in the presence of those persons law fully present at the polling station where polling is about to resume.

(5) The referendum officer shall allow agents present at the polling station to inspect the ballot papers provided for use at the polling station and note the serial numbers thereon, before polling commences.

Ballot papers

25.—(1) The Commission shall be responsible for preparing the ballot papers for use at a referendum.

(2) Ballot papers shall—

- (a) contain the question being voted on in *Kiswahili* language;
- (b) be foldable, numbered, or a combination of both letter and number, printed on the front;
- (c) attach a counterfoil with the same number or combination of letter and number printed on it; and
- (d) contain a different and distinct symbol for each answer to the question to be voted on.

(3) The ballot papers for voting in a referendum shall state the question to be answered in form of “YES” or “NO” by the voters.

General voting
procedures

26.—(1) The referendum officer shall, before delivering a ballot paper to a voter, ensure that—

- (a) the back of the ballot paper is stamped with the official mark of the Commission;
- (b) the number and name of the voter as stated in the copy register is called out; and
- (c) the name of the voter is marked and the electoral number of the voter is retained as proof that a ballot paper has been delivered to him.

(2) A voter shall—

- (a) upon receiving the ballot paper—
 - (i) immediately proceed into one of the polling booth of the polling station and while there, secretly mark the ballot paper in the box and column provided against the symbol of the side for which the voter wishes to vote; and
 - (ii) fold it up so as to conceal the vote and put it into the ballot box in the presence of the referendum officer, in full view of the persons lawfully present;
- (b) have his little left finger or any other part of his body immersed, dipped or marked in ink in the manner sufficiently indelible to leave a mark for the period of the referendum ; and
- (c) immediately after voting, leave the polling station.
- (d) A person, other than a person acting under section 20, shall not be present in the polling booth of a polling station while a voter is inside that polling booth for the purpose of marking the ballot paper.

(4) A person who knowingly fails to place a ballot paper issued to him, other than a spoilt ballot paper, into a ballot box before leaving the place where the box is situate, commits an offence and on conviction, shall be liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three months or to both.

(5) An officer who deliberately refuses to mark or stamp any ballot paper commits an offence and on conviction, shall be liable to fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three months or to both.

Assisted voters

27.-(1) The referendum officer shall, on the application of a voter who declares to be unable to read or write or who is incapacitated by reason of blindness or other physical disability causing him not to vote in the manner prescribed under this Act, permit the voter to be assisted by a person of the voter's own choice.

(2) A person, other than the person chosen by the voter, shall not enter the polling booth whilst the voter is casting his vote.

(3) A person who assists a voter shall-

- (a) assist only one voter but if in the household there is more than one person who requires assistance under this paragraph it shall be lawful for such member of the household to assist such voters at the same time; and
- (b) immerse or dip his left thumb or any part of the body of the assisted person in a container containing ink of a distinctive colour which is sufficiently indelible to leave a mark for the period of the referendum.

(4) The referendum officer may make such inquiries as the officer may deem necessary in order to establish that the voter and the chosen assistant complies with the provisions of this Act.

(5) The referendum officer, may where the voter has no assistant, and upon request by the voter, cause the vote of the voter to be cast on the voter's behalf.

(6) Where the referendum officer grants the request of a voter under this section, the referendum officer shall record in the copy register, against the name of the voter, the fact that the voter was assisted and the reason for the assistance.

(7) A person who makes a false statement in relation to his incapacity, together with an officer or agent who knowingly permits or assists that person to be assisted commits an offence.

(8) A person who contravenes the provisions of this section commits an offence and on conviction, shall be liable to a fine not exceeding two million shillings or to imprisonment for a term not exceeding three months or to both.

Procedure on
close of polling
station

28.—(1) The referendum officer shall, immediately after the close of the polling station make a written statement of the number of-

- (a) ballot papers issued to the referendum officer;
- (b) used ballot papers;
- (c) votes to be counted at the polling station;
- (d) recount;
- (e) spoilt ballot papers; and
- (f) ballot papers remaining unused.

(2) The referendum officer shall, immediately after the completion of the statement in subsection (1), in the presence of agents, make separate packets containing the-

- (a) spoilt ballot papers, if any;
- (b) marked copy register;
- (c) counterfoils of the used ballot papers; and
- (d) statement specified in subsection (1),

and shall seal each of the packets with an official seal of the Commission.

Votes to be
counted at polling
station

29.—(1) The referendum officer shall, immediately after completion of voting exercise and in the presence of agents, count the votes for that polling station.

(2) An agent shall not be deemed to be a counting agent unless at least thirty six hours before the close of the poll in the referendum, the name and address of the agent and the appointment letter as such by the registered referendum committee has been submitted to the referendum officer and a referendum officer shall not allow a person whose authorisation has not been so submitted to attend to a counting of votes.

(3) Notwithstanding the provisions of this section, a referendum officer shall not admit more than two counting agents, to the counting of votes in the polling station.

(4) The referendum officer shall admit observers duly approved or accredited by the Commission, commissioners or officers of the Commission, police officers or any other person responsible for security, or agents registered by the Commission to attend the proceedings of counting of votes.

Recount

30. A registered agent may, upon completion of counting of votes and where he is not satisfied with the counting of the votes, require the referendum officer to have the votes recounted or the referendum officer may on his own initiative have the votes recounted, save that no recount of votes shall take place more than twice.

Rejected ballot
papers

31.-(1) Every rejected ballot paper shall be marked with word “rejected” by the referendum officer and, where an objection to the rejection is made by a person or group of persons interested in the results of the referendum, the referendum officer shall add the words “rejection objected to”.

(2) The referendum officer shall mark every counted ballot paper whose validity has been disputed or questioned by a person or group of persons interested in the results of the referendum with word “disputed”.

(3) When the counting of votes is concluded, the referendum officer shall prepare a statement showing the number of rejected ballot papers on the basis of the following grounds:

- (a) want of an official mark;
- (b) voting, both in support of, and in opposition to the referendum question;
- (c) unauthorised writing or a mark by which the voter might be identified; and
- (d) unmarked or void for uncertainty.

(4) A person or group of persons interested in the results of the referendum shall be entitled to a copy of that statement.

Sealing of ballot
papers

32.—(1) On completion of counting of the votes, the referendum officer shall seal in separate packets the-

- (a) counted votes which are not disputed;
- (b) rejected votes together with the statement relating to those; and
- (c) disputed votes.

(2) The referendum officer shall-

- (a) put the three packets under subsection (1) together with the statement made under section 28;
- (b) announce the declaration of results;
- (c) demonstrate to the voters, accredited observers and any agents present that the ballot box is empty;
- (d) seal the ballot box with the Commission's seal;
- (e) let the agents present or any of them affix their own seals on the ballot box if they so wish; and
- (f) as soon as is practicable deliver to the referendum returning officer the ballot box containing the items listed under subsection (1).

Constituency
results

33.—(1) Immediately after the results of the poll for all polling stations in a constituency have been received by the referendum returning officer, the referendum returning officer shall, in the presence of commissioner or officer of the Commission, police officer or any other person responsible for security, agents registered by the commission, accredited and approved representatives of electronic and print media, accredited observers and leaders of the referendum committees-

- (a) examine the ballot papers marked "rejected", "rejection objected to" and "disputed" and confirm or vary the decisions of the referendum officers with regard to the validity of those ballot papers;
- (b) publicly announce to persons present the total number of valid votes cast for each side in the referendum;
- (c) publicly declare to the persons present the side that has received the greater number of the valid votes cast in the referendum and therefore the winning side;

- (d) complete form in which he shall declare the-
 - (i) name of the constituency;
 - (ii) total number of registered voters;
 - (iii) valid votes cast in support of or in opposition to the referendum question;
 - (iv) number of rejected votes cast in support of or in opposition to the referendum question in each polling station;
 - (v) aggregate number of votes cast in the constituency; and
 - (vi) aggregate number of rejected votes; and
- (e) sign and date the form and-
 - (i) give a copy of the form to the registered referendum committee's agents; and
 - (ii) deliver the original form to the Commission.

(2) The results in a constituency shall be in a form to be issued by the Commission and subject to confirmation by the Commission after a tallying of all the votes cast in the referendum.

(3) The decision of the referendum returning officer on the validity or otherwise of a ballot paper or vote under this section shall, subject to verification by the Commission, be final except where a referendum petition has been filed.

Announcement
and publication
of referendum
results

34.-(1) The Commission shall, on receipt of results of the referendum from all constituencies and within seventy two hours from the close of the final polling in the referendum-

- (a) announce to the public the total number of valid votes cast supporting or opposing the referendum question;
- (b) declare whether or not the subject matter of the referendum has been ratified by more than fifty per cent of the valid votes cast for Mainland Tanzania and Zanzibar;
- (c) publish a notice in the *Gazette* indicating the results of the referendum in each constituency; and

(d) publish in the *Gazette* a certificate declaring the results of the referendum and confirming whether or not the matter to be decided has been ratified in accordance with the provisions of the Act.

(2) For purposes of subsection (1)(b), the votes to be counted for Zanzibar shall include:

- (a) votes of persons registered in the Zanzibar Electoral Commission register; and
- (b) votes of persons residing in Zanzibar or Tanzania Mainland and registered under the National Electoral Commission register.

(3) For all purposes of the referendum, the results published in the *Gazette*, shall be the official results of the referendum.

Referendum
results

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

(2) The majority of valid votes cast in the referendum shall be the basis for determination of the question of the referendum and the referendum results declared by the Commission shall be binding on the Government of the United Republic and the Revolutionary Government of 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 valid votes cast in either Mainland Tanzania or Tanzania Zanzibar, the Commission shall, by notice published in the *Gazette*, appoint another day, within sixty days after the declaration of the results, on which to repeat the poll and referendum procedures shall commence afresh.

(4) Subject to subsection (3), the Commission may, where circumstances so require, afford-

- (a) sufficient time for sensitisation 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.

Cap. 2

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

PART V GENERAL PROVISIONS

Procedure for
conduct of
referendum
Cap. 343
Cap. 292.
Act No.
11 of 1984

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

Voting under
special
circumstances

37. The Commission may make special provisions for voting a referendum for voters who would not be able to vote on the voting day because of essential duties being away for social and economic reasons, patients in hospitals, persons admitted at homes for the aged and similar institutions, persons who lead nomadic life on account of vagaries of weather, physically disabled persons and expectant mothers:

Provided that, a person shall not vote unless he is registered as a voter in the voter's register.

Accreditation of
observers

38.—(1) A person who, or an association, institution or organisation, which intends to act as observer, shall, not later than two months before the referendum date, apply to the Commission for accreditation.

(2) The Commission may accredit a person or officials of associations, institutions or organisations, which are manifest non-partisan to act as referendum observers.

(3) The Commission shall issue guidelines for referendum observers, which shall be binding on accredited referendum observers.

(4) The Commission may revoke the accreditation it has granted to any referendum observer where it is satisfied that the referendum observer is partisan.

(5) All the accredited referendum observers shall submit to the Commission a written report of their individual or group observation not later than fourteen days after the date of the announcement of the referendum results in respect of the referendum observed.

Attendance of
agents

39. Where in this Act expressions are used requiring, authorising, or implying that any act or thing is to be done in the presence of polling or counting agents, those expressions shall be regarded as such and the absence of any agent at that time and place shall not, if any act or thing is otherwise lawfully done, invalidate that act or thing.

General powers of
Commission

40. This Act shall not be construed as preventing the Commission from taking further administrative measures or issuing policy guidelines and regulations to ensure effective conduct of a referendum.

Costs of
referendum

41. The expenses incurred in conducting a referendum shall be charged out of the Consolidated Fund.

Person not
required to state
how he voted

42. A person who has voted at a referendum shall not in any proceedings, whether brought under this Act or otherwise, be required to state how he voted.

Challenging
referendum
results

43.—(1) A petition by a referendum Committee challenging the results of the proposed Constitution shall lie in the High Court constituted by five Judges.

(2) A referendum committee shall only be allowed to file a petition to the High Court challenging referendum results where—

- (a) it is the referendum committee at the national level; and
- (b) it obtains not less than ten percent signatures of the total number of the registered voters from each part of the union of at least five constituencies.

(3) A petition shall be filed in the High Court Registry within fourteen days after the declaration of referendum results.

(4) For purposes of subsection (2), the referendum committee shall not include in its petition the name of a person without that person's consent or the name of a person who demised before the filing of a petition.

(5) A person who claims that his name was included in the petition without his consent, or that the petition includes name of a person who died before the date of the petition, shall lodge an objection to the High Court.

(6) A person who contravenes subsection (4) commits an offence and on conviction, shall be liable to a fine of ten million shillings or imprisonment for seven years or to both.

(7) A referendum committee may challenge the results of a referendum for non compliance of this Act or the National Election Act and the Zanzibar Elections Act, where such non-compliance has substantial effect on the referendum results.

Cap. 343
Act No.
11 of 1984

Deposit of
security for costs

44.—(1) The Registrar of the High Court shall not fix a date for hearing of any referendum petition unless the petitioner has paid to the Court, as security for costs, a sum not exceeding five million shillings as may be determined by the Registrar.

(2) The money deposited as security for costs under subsection (1) shall, where the petitioner succeeds in the petition or an appeal and no order for costs lies against him, be refunded to the petitioner.

Determination of
petition by Court

45.—(1) The High Court shall have jurisdiction to determine referendum petitions.

(2) The High Court shall inquire into and determine the referendum petition not later than twenty-one days from the date on which the petition is filed.

(3) After due inquiry of the referendum petition, the High Court may either-

- (a) dismiss the petition;
- (b) declare the results to be incorrect and declare the correct results;

(c) order the Commission to repeat the polling in any particular place or places; or

(d) annul the referendum results and order a new referendum to be conducted.

(4) Without prejudice to subsection (3) the High Court may, before making a decision, order a recount of the votes cast.

(5) This section does not confer on the High Court power to convict a person of a criminal offence when hearing a petition under this section.

(6) Where it appears to the High Court, at the hearing of a petition under this section that the facts before it disclose that a criminal offence may have been committed, it shall make a report on the matter to the Director of Public Prosecutions for appropriate action to be taken and shall state in the report the name of the person.

Appeals

46.—(1) A party to a referendum petition aggrieved with the decision of the High Court made under section 43 shall lodge an appeal to the Court of Appeal within seven days from the date of obtaining a copy of the judgment and proceedings.

(2) The High Court shall avail a copy of the judgment and proceedings to the applicant within five days from the date of the decision.

(3) The Court of Appeal, sitting as a panel of five Justices of Appeal, shall determine the appeal within fourteen days from the lodging of the petition of appeal.

Prohibition of incitement of public disorder at referendum

47.—(1) A person shall not, while canvassing in a referendum, use any language which is defamatory or which constitutes incitement to public disorder, hatred or violence.

(2) A person who contravenes subsection (1) commits an offence and on conviction, shall be liable to a fine of not less than two million shillings or to imprisonment for a term of not less than six months or to both.

Offences and
penalties
Cap. 343

48. A person who contravenes the provisions of this Act for which no penalty has been provided, commits an offence and shall be liable to a fine of one million shillings or to imprisonment for a term of six months.

Rules of
procedure

49. The Chief Justice may, after consultation with the Chief Justice of Zanzibar, make rules of procedure for referendum petitions and appeals under this Act.

Regulations

50.—(1) The Commission may, make regulations providing for the better carrying out of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Commission may make regulations providing for the following matters:

- (a) the establishment of polling stations;
- (b) the manner and procedure of voting at a referendum;
- (c) the manner of ascertaining the identity of persons wishing to vote at a referendum, and whether such persons are qualified to vote;
- (d) the manner in which persons with disability may vote at a referendum;
- (e) voting by persons employed on duties on the day of a referendum;
- (f) the maintenance of secrecy at a referendum;
- (g) the postponement and extension of time for a poll in case of riot or violence at a referendum;
- (h) the administering of oaths or affirmations by officers in respect of such matters as may be prescribed;
- (i) the procedure to be followed at the conclusion of a poll in a referendum;
- (j) the procedure for counting and addition of votes in a referendum, for Mainland Tanzania and for Tanzania Zanzibar, and the circumstances in which votes in a referendum may be rejected by a returning officer as invalid;

- (k) the declaration, notification and publication of the results of a referendum;
 - (l) the custody and disposal of ballot papers, records, documents or other things relating to the conduct of a referendum;
 - (m) the forms and records to be used for any of purposes of this Act; or
 - (n) any other thing which the Commission may deem necessary for purposes of this Act.
- (3) The regulations under this Act shall be published in the *Gazette*.

Power to amend
or replace
Schedule

51. The Minister, in consultation with the Minister responsible for elections in Tanzania Zanzibar may, by notice published in the *Gazette*, amend or replace all or any part of the Schedules under this Act.

Application of
other laws
Cap. 343
Act No.
11 of 1984

52.—(1) Where there is no guiding provision under this Act, the National Elections Act and the Zanzibar Elections Act, shall apply to the conduct of the referendum, with necessary modifications.

(2) Where there is conflict between this Act and any provision of the National Elections Act and the Zanzibar Elections Act, this Act shall prevail.

Promulgation of
Constitution

53. Upon promulgation of the new Constitution, this Act shall be spent and shall have no legal effect.

PART VI

CONSEQUENTIAL AMENDMENTS

Omitted

54.–55. [Omitted.]

SCHEDULE

ORDER FOR A REFERENDUM FORM NO. 1

(Made under section 4(2))

I,
President of the United Republic of Tanzania, hereby
order the Commission to conduct a referendum to obtain
people's decision on the proposed Constitution issue
.....

The views of the people on the issue for the referendum should be
known not later than seventy days counting from the date of this order.

Dated this day of 20.....

.....
President

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