

General Observations on the Election Expenses Act, 2010 and It's Regulation

3rd October 2023



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A. Introduction

Legal and Human Rights Centre (LHRC) is delighted to present its observation and recommendations on the Election Expenses Act, 2010 and its regulation namely the Election Expenses Regulation, 2010. The overall objective of this analysis is to provide insights for reforms of both documents to enhance free and fair elections in both local and general elections. The analysis is developed in three (3) main components, identification of the legal issues, description of the legal issues and recommendations for legal improvements.

LHRC being an experienced election observer since 2005, the provided recommendations emanated from the long experience in election observation and other related civic process engagement in the country and outside the country.

B. Background information

The Elections Expenses Act and its regulations are fundamental legislation which the United Republic of Tanzania enacted to curb misuse of funds corrupt practices during elections by particularly controlling election expenses.

According to its long title, the Election Expenses Act strives to make provisions for the funding of the nomination process, election campaigns and elections to control 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 provide for consequential and related matters.'



As well as requiring the disclosure of funds before election campaigns, during election campaigns and the receipt of election expenses. The Election Expenses Act lists unfair election conducts and prohibits certain practices before the nomination process.

The act was enacted following the requirement by the African Union Convention on the Prevention and Combating of Corruption of 2003 for all countries to enact a comprehensive legal framework to restrict corruption during elections.

C. Key observations and recommendations

S/N	Issue	Description	Recommendation
1.	There is no time frame for record-keeping requirement Obligation to keep records.	The Act under section 19 poses an obligation to keep records for financial accountability, however, there is no clear stipulated timeframe for a political party or organization to keep records required under the Election Expenses Act, 2010 both section 19 and regulation 16 are silent in terms of time frame for a political party and organization to keep such records.	There should be a specific timeframe for record-keeping requirements.
2.	Limitations of funds for advocacy and public awareness programs	Regulation 12 (1) provides that a Non-Governmental Organization, Faith Based Organization or community-based that participates in advocacy and public awareness activities should not spend an amount of funds exceeding one billion Tanzanian Shillings for a country-wide organization, one hundred million Tanzanian Shillings for a constituency-based organization and ten million Tanzania Shillings for a ward-based organization.	The range should be reviewed in consultation with the National Council for Non-Governmental Organizations (NaCONGO).



S/N	Issue	Description	Recommendation
3.	Discretionary Powers of the Minister to Limit Election Expenses.	Section 10 (2) Limitation of Election Expenses, the administrative powers vested to the Minister should be amended by providing such powers to Parliament by legislative action of enacting or amending a law for such purposes. However, a respective minister might have knowledge and understanding of the context to avoid conflict of interest in exercising such powers.	The Parliament should be given such a mandate for legislative action.
4.	Absence of uniform requirement for disclosure of voluntary donation	Provision of section 11 stipulates for voluntary donation in or outside the United Republic of Tanzania, in the other side, the Election Expenses Regulation under Regulation 10 exclude disclosure of voluntary donations of Tanzanian citizens.	Therefore, the law should be amended to harmonize disclosure requirements to include both non-citizens and citizens of the United Republic of Tanzania.
5.	The law does not exhaust all election expenses.	The law does not exhaust all election expenses malpractices because some of malpractices are done by political aspirants before party nominations and during party 78 nomination.	The law should cover party nomination expenses and processes. Leaving behind party nomination is a grave mistake because there is where election malpractice starts.
6.	Definition of terms.	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	Terms should be clearly defined.



S/N	Issue	Description	Recommendation
6.		excess use of funds in elections among other things. Neither the EEA nor its regulations define “other type of funds”.	
7.	Penalties	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 penalties should be reviewed.

D. Conclusion

Tanzania could learn from South Africa and the United Kingdom, both countries shows that election financing is fundamental for free and fair election. Furthermore, it is important to put a requirement for a full disclosure of expenses of all political parties for public monitoring and scrutiny. This will put an end to malpractice in both civic and general elections.

