

**AFRICAN UNION COMMISSION**



**AFRICAN UNION TECHNICAL ELECTION OBSERVATION MISSION TO  
THE 20 MARCH 2016 RE-RUN ELECTIONS IN ZANZIBAR, TANZANIA**

**JUNE 2016**

**TABLE OF CONTENTS**

<b>I. BACKGROUND .....</b>	<b>2</b>
<b>II. PRELIMINARY FINDINGS AND OBSERVATIONS .....</b>	<b>4</b>
(a) The Legal Framework .....	4
(b) Election Dispute Resolution .....	4
(c) Election Management .....	4
(d) Voter Registration .....	5
(e) Demarcation of Boundaries .....	5
(f) Political Parties, Candidate Nomination and Campaigns .....	5
<b>III. ELECTION DAY OBSERVATIONS .....</b>	<b>7</b>
(a) Security .....	7
(b) Opening the Polls .....	7
(c) Voter Turnout .....	7
(d) Party Agents .....	7
(e) Election Personnel .....	7
(f) Voting Procedures .....	8
(g) Closing and Counting .....	8
<i>a. Inconsistent reconciliation of used and unused ballot papers: .....</i>	<i>8</i>
<i>b. Validity .....</i>	<i>9</i>
<i>c. Sorting of used ballot papers in each category of election .....</i>	<i>9</i>
<i>d. Counting process .....</i>	<i>9</i>
<b>IV. POST ELECTION PHASE .....</b>	<b>10</b>
<b>V. CONCLUSIONS AND RECOMMENDATIONS .....</b>	<b>11</b>
To Government/Parliament: .....	11
To ZEC: .....	11
To Political Parties: .....	12
To the African Union Commission and International Community: .....	12

## I. BACKGROUND

1. The March 2016 Zanzibar election re-run was conducted following the nullification of the 25 October 2016 General Elections in Zanzibar. Whereas the electoral process in the mainland Tanzania was concluded in line with the electoral calendar, the process in Zanzibar was interrupted soon after counting and tabulation of results was started. Following the partial announcement of results, the Chairperson of Zanzibar Electoral Commission (ZEC), Mr. Jecha Salim Jecha, announced that the Commission was nullifying the voting and results over claims of election fraud. The Commission announced a new date for a re-run of the elections as 20 March 2016.
2. Based on the annulment of the result, the President of Zanzibar, H.E Dr. Ali Mohamed Shein, remained in power in accordance with Section 28 (1) of Zanzibar Constitution. The decision by the Commission to annul the elections and set a new date was met with mixed reaction by various stakeholders. On the one hand, stakeholders including the main opposition party Civil United Front (CUF) and Zanzibar Law Society (ZLS) questioned the legitimacy of the ZEC's decision claiming that it was legally flawed. They argued that the ZEC chairperson did not have constitutional powers to nullify elections stating that the reasons advanced by the Commission for the annulment were invalid.
3. CUF announced that they would boycott the re-run and asked their candidates to write letters to the ZEC informing the Commission to that effect. The AU Technical Mission was also informed by the ZEC that five other political parties also abstained from the elections<sup>1</sup>. However, the ZEC explained that the CUF boycott did not qualify as withdrawal from the elections because they did not follow correct procedures for withdrawal as stipulated in section 28 of the Election Regulations of 2015.
4. On the other hand, the governing party Chama Cha Mapinduzi (CCM) came out in support of the ZEC decision alleging that there was massive fraud particularly in Pemba Island.
5. There was a number of security related incidence reported in Zanzibar Ugunja Island subsequent to the annulment. For instance, opposition supporters took to the streets and some youth were also arrested. In addition, it was reported that the police detonated two improvised explosive devices discovered in a densely populated neighbourhood in Stone Town of Michenzani. Two other explosions were reported in Mkunazini near the centre of Stone Town. There were also reports of arsons involving nine homes from the northern Ungujan town of

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<sup>1</sup> CHAUMA, D-MAKINI, DP, J.ASILIA, NRA

Tumbatu. There were also unverified reports from opposition parties that a mosque was burned and that 16 people were severely injured.

6. The African Union (AU) deployed a six-member Technical Mission to the re-run elections in Zanzibar. The Mission arrived on 17 March 2014 and stayed until 25 March 2016.
7. The AU Technical Observation Mission was not able to establish whether or not the above-mentioned incidents were attributable to the annulment of elections. However, it is clear that against this background, the 2016 re-run elections were conducted within a tense political environment.
8. The AU Technical Mission noted that this notwithstanding, there was low presence of local and international observers compared to the October 2016 elections. Only three international observer groups observed the elections. These included: the East African Community (EAC), Electoral Commissions Forum of the SADC Countries (ECF-SADC). The AU Technical Mission met only one local observation group namely Safari Development Organisation (SADEO).
9. On Election Day, the AU Technical Observation Mission visited 30 polling stations in 20 constituencies in the Northern, Central and Southern regions of Unguja Island. The Mission did not deploy a team to Pemba due to security considerations. The following observations were made prior to, during and after the polling day.

## II. PRELIMINARY FINDINGS AND OBSERVATIONS

### (a) The Legal Framework

10. The Constitution and legal framework allows for conduct of credible elections. However, the Mission noted that both the Constitution and Electoral Act of Zanzibar do not specifically provide for the annulment of the elections by the Commission. ZEC informed the AU Technical Mission that they used their discretion to nullify the elections based on their understanding that they are legally mandated to preside over the electoral process.
11. The Mission also noted that the Constitution does not provide for legal recourse for stakeholders to challenge the decisions of the ZEC. Article 5 (6) of the ZEC Act 9 of 1992 stipulates that no court shall have jurisdiction to inquire into the question whether the Commission has validly performed any function vested in it by this Act. This is in line with Article 74 (12) of the Constitution of the United Republic of Tanzania.

### (b) Election Dispute Resolution

12. The legal framework provides for the resolution of certain election disputes through the judiciary. In the case of a dispute, petitions are to be lodged with the High Court. The AU Technical Mission noted that none of the electoral stakeholders, including political parties, formally filed complaints with relevant authorities regarding the electoral process or its subsequent nullification.
13. Consulted interlocutors informed the AU Technical Mission that there were bilateral efforts between the two main parties, CCM and CUF, to address the differences arising from the annulment of the elections and map a way forward. This initiative was not concluded before the re-run of the elections and there was no official statement issued by the two parties regarding the outcome of the consultations.

### (c) Election Management

14. The management of elections in Zanzibar is the domain of the ZEC, which is made up of a Chairperson, six Commissioners and a Secretariat. Unlike in mainland Tanzania, in the case of the National Electoral Commission (NEC), the composition of the ZEC comprises mainly of political party nominees. The AU Technical Mission noted that against the background of its composition and decision to annul October 2015 elections, some stakeholders questioned the impartiality of the ZEC in particular and the credibility of the electoral process in general.

15. The AU Technical Mission observed that despite perceptions around its credibility, the ZEC was adequately prepared in terms of the numbers of polling personnel, availability and distribution of election materials and general conduct of the voting day operations.

**(d) Voter Registration**

16. The 25 October 2015 Election Voters Roll was used during the March 2016 re-run elections. The ZEC indicated that a total of 503,518 voters were registered.

17. None of the participating political parties or consulted interlocutors raised concerns on the use of the voters roll in its existing state.

**(e) Demarcation of Boundaries**

18. The boundaries of the 54 constituencies remained unchanged from the 2015 general elections.

**(f) Political Parties, Candidate Nomination and Campaigns**

**19. The following fourteen (14) parties were reflected on the ballot paper:**

- |  |             |
|--|-------------|
| • Alliance for Change and Transparency | ACT-W       |
| • Tanzania Democratic Alliance         | ADA – TADEA |
| • Umoja Wamabadiliko ya Democracia     | ADC         |
| • Allinace For Tanzanian Farmers Party | AFP         |
| • Chama Cha Kijamii                    | CCK         |
| • Chama Cha Mapinduzi                  | CCM         |
| • Chama Cha Ukombozi wa Umma           | CHAUMA      |
| • Civic United Front                   | CUF         |
| • Chama Cha Democracia na Maendeleo    | CHADEMA     |
| • Attentive Democracy Party            | D-MAKINI    |
| • United Democratic Party              | DP          |
| • Tradition Dhow (Jahazi Asilia)       | J-ASILIA    |
| • National Reconstruction Alliance     | NRA         |
| • People's Voice                       | SAU         |
| • Tanzania Labour Party                | TLP         |

20. According to the ZEC, given that this was a re-run election, political party candidates who were nominated for the 25 October 2015 general elections were automatically retained. Names of candidates belonging to the parties, which decided not to participate in the elections, were not removed from the final list

because, according to the ZEC, the time legally provided for withdrawals had elapsed. Those who submitted withdrawal letters did not attach affidavits sworn before a judge of the High Court as required by the Electoral Regulations Act of 2015.

21. The AU Technical Mission did not observe any campaign activities during its deployment in Zanzibar. Campaigning ended 48 hours before Election Day. The Mission was informed that the traditional campaign star rallies were banned by the ZEC due to security reasons. However, party political regalia including posters, flags and clothing were observed on the streets and on buildings.

### **III. ELECTION DAY OBSERVATIONS**

#### **(a) Security**

22. It was observed that there was visible policing in Zanzibar city and surrounding areas. Police officers were also seen in adequate numbers at polling stations throughout the observed districts. There were no incidences of violence observed by or reported to the AU Technical Mission at polling centres or their environs visited.

#### **(b) Opening the Polls**

23. The AU Technical Mission observed that polling stations opened on time at 7:00 am in all the polling stations visited. The polling staff adequately observed the pre-poll opening procedures. For instance, polling personnel displayed empty ballot boxes to party agents and observers before sealing them in compliance with the electoral act.

#### **(c) Voter Turnout**

24. The AU Technical Mission observed that voters turned out in numbers to vote. Many voters were already in queues when the polling stations opened. Based on the final results released by the ZEC, voter turnout was 67.9%. Considering past elections, for instance in 2010 elections, where voter turnout stood at 88.9%, the turnout for the 2016 elections was considered as a significant decline, which is partly attributable to the boycott of elections by the CUF and other opposition parties.

#### **(d) Party Agents**

25. The AU Technical Mission observed the presence of party agents in all the polling stations visited. In majority of the polling stations, the party agents present represented the CCM, SAU, CCK, TADEU, AFP, and ACT. The agents were mostly male and predominantly representing CCM.

#### **(e) Election Personnel**

26. The AU Technical Mission observed that ZEC deployed adequate personnel in all polling stations visited. The polling personnel were clearly visible in their ZEC regalia and identification badges. It was observed that the majority of the polling personnel were females.



### (f) Voting Procedures

27. The polling staff generally adhered to voting procedures. For instance, voter's identification and verification of their names on the voters roll was carried out in all polling stations visited. The party agents played a critical role in the voter verification process by cross checking the names of the voters in their copies of the voters roll. The voting stations lay out was in accordance with the ZEC polling guidelines, which enabled easy flow of voters and guaranteed secrecy of the ballot.
28. It was, however, observed that assistance of voters at polling stations provided for in the Electoral Act<sup>2</sup>. However, in practice, some polling staff went beyond the provisions of the law while assisting voters who required special support during voting, as the support became more of a proxy voting. For instance, In Paje constituency at Skuli ya Kitogani, a party agent was observed assisting a voter by collecting ballot papers, marking and casting them in the box on behalf of the voter without any consultation with the voter. This type of voter assistance did not guarantee secrecy of the ballot.
29. The AU Technical Observation Mission observed that different people provided assistance to voters. For example, in some cases voters were assisted by people who came with them to the polling stations while in other cases political party agents assisted them.

### (g) Closing and Counting

30. The AU Technical mission observed that all polling stations visited closed on time at 4:00 pm. At the closing, there were no voters in queue or coming to vote at the polling station. Most of the closing procedures were observed.
31. The AU Technical Mission observed some irregularities during the counting process. Among the observed anomalies worth mentioning are:

#### ***a. Inconsistent reconciliation of used and unused ballot papers:***

In some polling stations, polling officials did not conduct the reconciliation procedure of used and unused ballot papers. Instead, they proceeded to unseal and open ballot boxes soon after the close of the polling stations<sup>3</sup>.

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<sup>2</sup>. Section 68 (3)(h)(i)(j) of the Elections Act, 11 of 1984.

<sup>3</sup>. See Section 80 (1)(a)(b)(c)(d)(e)(f)(g)(h) of the Elections Act, 11 of 1984.

**b. Validity**

The AU Technical Mission observed inconsistencies in the application of the criteria for determining the intention of the voter and therefore, validity of the casted ballot papers. In some instances, markings that were made across a section of 2 or 3 candidates on the ballot were deemed valid despite the fact that the mark was visibly clear on 2 or 3 other candidates.

**c. Sorting of used ballot papers in each category of election**

In some cases polling officials did not unfold and display the ballot papers to polling agents and observers. They also did not arrange them according to the candidates and also facing upwards as stipulated under section 80 (4)(b) of the Election Act, 11 of 1984.

**d. Counting process**

The counting procedure was not adhered to by the polling personnel in the polling stations observed by the AU Technical Mission. The counting of the ballot papers was not done in accordance with Section 80 (2) of the Electoral Act 11, of 1984. For instance, in one of the polling stations, the Presiding Officer simply counted the number of invalid ballot papers, deducted them from the total number of cast ballot papers and concluded that the rest were for CCM without physically counting the ballots<sup>4</sup>. In another polling station, the Presiding Officer silently counted the ballot papers instead of loudly, as stipulated under Section 11 of the Electoral Act 3 of 2004. After counting the ballots alone, the Presiding Officer then announced the results to the party agents and observers<sup>5</sup> present in the polling station.

The AU Technical Mission was not able to observe the pre-election training of the polling staff and could therefore not ascertain whether the irregularities were as a result of lack of proper training.

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<sup>4</sup> .Tuungu Constituency Skuli ya Msingi Jumbi.

<sup>5</sup> .Mahonda Constituency at Skuli ya Fujoni .

#### IV. POST ELECTION PHASE

32. The tabulation, transmission and results announcement processes were concluded by 11:00 am on 21 March 2016. The results issued by the ZEC reflect CCM's victory in the Presidential race.
33. The AU Technical Observation Mission noted that based on the election results released by the ZEC, there is a likely scenario that the appointment of the first Vice President from the opposition in line with the constitution will not take place because none of the opposition parties attained a 10% threshold. The political implication of this election outcome is that the unity of political parties achieved after the post-2010 elections may regress to inter-party conflict.

## V. CONCLUSIONS AND RECOMMENDATIONS

### (a) Conclusion

34. Against the foregoing preliminary findings, the AU Technical Observation Mission to Zanzibar noted that the 20 March 2016 election was not a fresh election but a conclusion of the 25 October 2015 election. The validity of the elections was disputed by some stakeholders leading to security and political concerns ahead of the polls. However, voting day operations were conducted in a calm and peaceful manner.
35. The AU Technical Observation Mission concludes that the partisan appointment of the ZEC and absence of legal recourse to challenge its decisions is not in conformity with the East African Principles and the African Charter on People and Human Rights as well as the African Charter for Elections, Democracy and Governance. Furthermore, based on the Mission's observations on counting procedures, it concludes that the counting process generally lacked accountability and transparency.

### (b) Recommendations

#### *To Government/Parliament:*

- Consider conducting constitutional and electoral reforms especially on the appointment of the ZEC Commissioners to be on merit;
- Put in place clear legal provisions on the powers of the Commission under statutory bodies on the partial or complete annulment of the elections; and
- The inter-party unity efforts, which had commenced after the 25 October 2015 general elections be sustained through dialogue among stakeholders.

#### *To ZEC:*

- The ZEC should consider providing adequate training to polling personnel especially in counting and tallying procedures; and
- The Commission should improve on its outreach strategies to communicate its decisions and functions clearly to the public.

***To Political Parties:***

- Given the pre- and post 20 March 2016 election tension in Zanzibar, all political parties should uphold the rule of law;
- Strengthen interparty dialogue mechanisms; and
- Political parties should provide adequate capacity building training of their agents for poll watching.

***To the African Union Commission and International Community:***

- Consider providing support to the political stakeholders to ensure political stability and post-election dialogue for national unity.