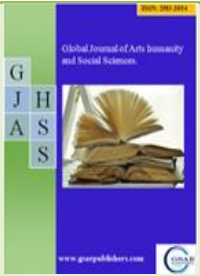
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## Tanzanian Diasporas Voting Rights: An Appeal for Electoral Legislative Amendment to Promote Inclusivity in National Elections

By

Pantaleo Rutambuka<sup>1</sup>, Dr. Francisco Damas<sup>2</sup>

<sup>1</sup> LLM Student, School of Law, St. Augustine University of Tanzania (SAUT)

<sup>2</sup> Assistant Lecturer, School of Law, St. Augustine University of Tanzania (SAUT)



### Abstract

A key component of democracy is the right to vote, yet many Tanzanians who live overseas encounter major restrictions when trying to exercise this constitutional right. This paper examines the difficulties the Tanzanian diasporas face in attempts to exercising their right to vote. The paper argues for amendment to the electoral law to include all eligible voters to cast their ballots on the election day during Tanzania's national elections.

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This article emphasizes how important and necessary it is to guarantee that all Tanzanians who have attained the age of majority, who are mentally well and are not in prison serving a sentence exceeding six months, irrespective of where they live, have access to just and equal voting procedures. This paper finds that there are alternative voting methods such as online voting, voting at embassies and postal voting which can be incorporated in Tanzania for conducting inclusive national elections.

**Keywords:** Tanzanian Diasporas, Right to Vote, National Elections.

### 1. Introduction

The Constitution of the United Republic of Tanzania<sup>1</sup> provides for the right to vote for all Tanzanians, except when one is underage, mentally unwell, or being in prison due to some offences. However, there are Tanzanians who live outside Tanzania who rarely enjoy this constitutional guarantee and right. Regardless of their economic contribution to the country, the recently enacted electoral Act<sup>2</sup> continues to exclude the diasporas from voting on the election day during national elections. It is the concern of this paper to underscore whether Tanzanian electoral voting method protects the voting rights of Tanzanian diasporas and the need to include them in national elections to enjoy and exercise their constitutional right to vote as citizens of Tanzania.

The exact number of Tanzanian diasporas remains unclear due to a lack of systematic identification since independence in 1961, although the government has recently sought to engage with them.

Despite the uncertainty, the diaspora is deemed crucial for economic development, with a target of USD 1.5 billion in remittances by 2028. The study's findings can aid policymakers, electoral bodies, and civil society in enhancing voting law provisions and safeguarding the voting rights of Tanzanians.

### 2. Understanding the Key terms Relating to Tanzanian Diasporas Voting Rights and Their Inclusion in National Elections

#### Tanzanian Diasporas

The term diaspora means people who reside outside of their country's boundaries yet have close sociocultural ties and continuity with the indigenous population of their native country<sup>3</sup>. Diaspora is a distribution of people from a certain nation or

<sup>1</sup> Constitution of the United Republic of Tanzania, 1977, Article 5(1) & (2)

<sup>2</sup> The Presidential, Parliamentary and Councilors' Elections Act, Act No. 1 of 2024

<sup>3</sup> KESSY T. Ambrose & SHAYO E. Hildebrand. *Shayo Tanzania's diaspora engagement: The Need for a Paradigm Shift in Diaspora Engagement and Investment Policies. Research in Globalization 5 (2022) 100095. Available at <https://www.sciencedirect.com/journal/research-in-globalization>*



tradition living in another country.<sup>4</sup> Diasporas are immigrants and their descendants who maintain ties to their native land. The US State Department defines diasporas as immigrant groups that share any of the following characteristics: dispersion across culture and at least one political boundary, whether deliberate or involuntary.<sup>5</sup>

People who physically reside beyond the borders of numerous other states but who continue to be socially, politically, culturally, and frequently economically affiliated with the nation-state of their ancestors are known as diasporas.<sup>6</sup>

From the above description of diaspora, contextually it can be defined that Tanzanian diaspora voters are Tanzanians who are above 18 years of age and despite their living outside Tanzania, they still have close political ties with their motherland and would still like to participate in the political governance of Tanzania. Therefore, they need to be accorded the right to vote on the election day during Tanzania's national elections.

### Right to Vote

Abraham Lincoln in his Gettysburg Address described democracy that the government is of the people, by the people for the people.<sup>7</sup> Because of this, voting is a best way used by the people to form their government. If the government is formed by the people, needless to say it is the right of the people to elect who and when should form their government. The right to vote as a fundamental right of citizenship.<sup>8</sup>

The Constitution of the United Republic of Tanzania holds it firm that it is the people who have the sovereign to form the government<sup>9</sup>. In other words, the democratic government derives its power from the people.

Deducing from this contention of the constitution, therefore it is the right of the people to elect their leaders through voting. Tanzania as the democratic state guarantees this right to elect leaders suitable to form the Tanzanian government in Article 5(1) of the Constitution of the United Republic of Tanzania.<sup>10</sup> The right to vote is fundamental human right that enables people to protect their other rights and have an impact on governmental decision-making.<sup>11</sup>

<sup>4</sup> Collins Cobuild English Language Dictionary. 1992 Collins Publishers. Pg 389

<sup>5</sup> KESSY, T.A & SHAYO, H.E. (2022). *Tanzania's Diaspora Engagement: The Need for a Paradigm Shift in the Diaspora Engagement and Investment Policies. Research in Globalization*. 5. 100095. 10.1016/j.resglo.2022.100095.

<sup>6</sup> BASCH, Linda, (et al). (Eds.). (1994). *Nations Unbound: Transnational Projects, Postcolonial Predicaments, and Deterritorialized Nation-States* (1st ed.). Routledge. P.23

<sup>7</sup> <https://www.abrahamlincolnonline.org/lincoln/speeches/gettysburg.htm> visited on 21/7/2024 at 6:21pm

<sup>8</sup> Sobel R. 2016. *The Right to Vote*. In: *Citizenship as Foundation of Rights: Meaning for America*. Cambridge University Press; p. 38.

<sup>9</sup> *The Constitution of the United Republic of Tanzania, Article 8(1)(a)*

<sup>10</sup> *Ibid*. Article 5 (1)

<sup>11</sup> TUZIN, Alexander (et al.), (2007). *The Right to Vote: A Basic Human Right in Need of Protection: Human Rights Advocates*. p.2 Available at:

Based on the fact above, any democratic state must derive its power from the people. People elect their government through voting. Therefore, Tanzanian diasporas need to participate as well in forming their home government by way of voting during national elections.

### National Elections

It is worth to note that election is an official procedure for choosing a candidate for public office or for voting to approve or disapprove a political proposal. It is hard to distinguish between elections' form and content. In certain instances, electoral forms exist but the election's substance is absent, such as when voters are not given a true and free choice between at least two options.<sup>12</sup>

When it comes the moment that all citizens of the Country can exercise their authority through elections, which provide them with the opportunity to select leaders and cast their votes for the candidate they believe will best represent them, this is what is called national elections. One of the main metrics used to assess a nation's level of democracy is its election system.<sup>13</sup>

National elections illustrate the nature of democracy as a communal and individual endeavor, as well as to socialize citizens into their responsibilities as equal political agents.<sup>14</sup> On the other hand, national elections are a pillar and an important pillar of a democratic government. A democratic political system is one that gives its citizens the freedom to choose their government over a regularly scheduled, trustworthy, valid, and acceptable elections.

National elections allow citizens through voting to have enough avenue to participate in national affairs and at the end, ensure that those affairs are managed by leaders who have been chosen democratically. Therefore, national elections are crucial for democracy because they allow citizens to express their preferences and influence the governance of their country.<sup>15</sup>

The idea of democracy is based on the premises that a nation's political leadership must be chosen through national elections run under just procedures, allowing social groupings and political parties to compete on an even playing field<sup>16</sup> Therefore a nation

<https://www.humanrightsadvocates.org/wp-content/uploads/2010/05/The-Right-to-Vote-A-Basic-Human-Right-In-Need-of-Protection.pdf> Accessed on 7/6/2024

<sup>12</sup> Britannica, available at: <https://www.britannica.com/topic/election-political-science>

<sup>13</sup> VAMBE M.T, (2021) *Voting Right of Zimbabweans in the Diasporas. Journal of African Elections* Vol.20. Available at: <https://www.eisa.org/storage/2023/05/2021-journal-of-african-elections-v20n1-voting-rights-zimbabweans-diaspora-eisa.pdf?x16382> Accessed on 12/6/2024 at 2:47pm

<sup>14</sup> CHAPMAN B.E. (2022). *Election Day: How We Vote and What It Means for Democracy*. Princeton University Press. pp. 154-158

<sup>15</sup> NYASHA, C. Chingore, (2005). *Rethinking the right to vote: HIV/AIDS and its impact on electoral participation in sub-Saharan Africa (Master's thesis, University of Pretoria (South Africa))*. Available at: <https://repository.up.ac.za/handle/2263/1141>. last visited on 17/7/2024

<sup>16</sup> *Ibidem*: Available at: <https://repository.up.ac.za/handle/2263/1141>. last visited on 17/7/2024



needs to have voting methods which include all nationals regardless of their location.

This paper examines the magnitude of which the Tanzanian diasporas are included in Tanzania's national elections in respect of protection of their voting rights as citizens of Tanzania.

### 3. On the Study Methodology

This study reviewed various literature to explore whether the voting system currently used in Tanzanian elections, includes all eligible voters to participate in choosing leaders of their country. The study conducted interviews with some respondents. The study specifically focused on the laws governing in-person voting and ballot access during national elections. It compared Tanzania's electoral situation with other countries to identify best practices that could enhance Tanzania's electoral system.

To gain deeper understanding on whether Tanzania's elections Act includes all voters in national elections, this study purposively conducted interviews with respondents well versed in constitutional law, human rights law, elections and life in the diaspora.

### 4. An Overview on the Legal Framework Regulating National Elections in Tanzania and Challenges to Diaspora Voting Rights.

Tanzania as a sovereign state has its own legal framework that regulates national elections. Being a sovereign state does not make a state an island. There is need for regional and international collegiality and cooperation among states. By gaining sovereignty status, a state can receive the fundamental international rights, such as, expropriation, diplomatic and sovereign immunity, and national jurisdictions. Simultaneously, such state attains state responsibility for governing, defending and promoting human rights<sup>17</sup>. Therefore, in promoting and protecting human welfare, Tanzania has become party to various regional and international instruments, for the purpose of this paper, which provide and regulate the right to vote and inclusion of all citizens in national elections.

The following is the snapshot on the legal framework which regulates universal suffrage:

#### 4.3.1 The Universal Declaration of Human Rights (UDHR) 1948

The United Nations General Assembly adopted the Universal Declaration of Human Rights (UDHR) in 1948, outlining everyone's right to universal suffrage and participation in government.<sup>18</sup> The UDHR, has a non-binding nature. That means

<sup>17</sup> KOESRIANTI, Koesrianti (2013) "International Cooperation Among States in Globalized Era: the Decline of State Sovereignty," *Indonesia Law Review*: Vol. 3: No. 3, Article 5. DOI: 10.15742/ilrev. v3n3.41 Available at: <https://scholarhub.ui.ac.id/ilrev/vol3/iss3/5>

<sup>18</sup> <https://www.un.org/en/about-us/universal-declaration-of-human-rights> Accessed on 12/10/2024 at 4:45

its provisions are not considered binding international law. Some of its provisions are considered customary law.<sup>19</sup>

The convention upholds each person's right to engage in state politics.<sup>20</sup> which among other things declares that every person has the right to participate in national governance directly or through representatives chosen at large.<sup>21</sup> For that reason, it can rightly be asserted that the Universal Declaration of Human Rights is an international voice raised to the Tanzanian government to grant and protect the right to vote for all eligible voters. That means in the eyes of the Universal Declaration of Human Rights, voting rights of Tanzanian diasporas need to be protected during national elections.

Similarly, the value of universal suffrage is regarded as a tool of expressing the people's will.<sup>22</sup> This is because the people's will, which is expressed in regular, legitimate elections with universal and equal suffrage and a secret ballot process akin to free voting, serves as the foundation for the authority of the government. Therefore, the right to vote is advocated by the Universal Declaration of Human Rights as a necessary component that aids people (diasporas inclusive) to participate in their nation's politics and governance.<sup>23</sup>

#### 4.3.2 The International Covenant on Civil and Political Rights (ICCPR) 1966

This covenant was ratified by the United Nations General Assembly on December 16, 1966. It became operative on March 23, 1976. It has been ratified by 167 member states as of May, 2012, and therefore, it is binding.<sup>24</sup>

The International Covenant on Civil and Political Rights (ICCPR) emphatically provides that every citizen has the right to take part in public affairs and cast a ballot in legitimate, recurring elections that are conducted in private to guarantee equal and universal suffrage.<sup>25</sup>

Adopting the spirit of this covenant, that all citizens have the right to vote and to be voted for, therefore Tanzanian diasporas remain to be citizens of Tanzania until declared otherwise. Therefore, it is the duty of the government of Tanzania to set electoral laws and methods that include diaspora voters to participate in the national elections and to facilitate them to vote on the election day.

<sup>19</sup> KIRSHNER, Alexander (2003). *The International Status of the Right to Vote. Democracy Coalition Project*. Available at: <https://archive.fairvote.org/media/rvt/kirshner.pdf> Accessed on 15/5/2024 at 6:17pm

<sup>20</sup> *The Universal Declaration of Human Rights (UDHR) 1948. Article 21(1)*,

<sup>21</sup> *Ibidem*

<sup>22</sup> KEYSAR, Alexander (2000). *The Right to Vote. The Contested History of Democracy in the United States*. Basic Books Publisher, NY, pp. 268-270 available at: [https://www.nypl.org/sites/default/files/keyssar\\_-\\_part\\_1.pdf](https://www.nypl.org/sites/default/files/keyssar_-_part_1.pdf). last visited on 24/7/2024 at 8:47 pm

<sup>23</sup> *Ibidem*.

<sup>24</sup> *Compass, Manual for Human Rights Education with Young People* Available at <https://www.coe.int/en/web/compass/the-international-covenant-on-civil-and-political-rights> visited 12 August 2024

<sup>25</sup> *The International Covenant on Civil and Political Rights, Article 25*



The International Covenant on Civil and Political Rights is among the international instruments that obligates the member states to protect the right to vote and to stand for election as it is one of the most fundamental rights which must be enjoyed and exercised by all citizens<sup>26</sup> Tanzania being party to this covenant, has the obligation to include her diasporas in national elections.

#### 4.3.3 The African (Banjul) Charter on Human and Peoples Rights 1981

The Banjul Charter, also known as the African Charter on Human and Peoples' Rights, is an international human rights document that upholds and defends fundamental rights throughout Africa. It was approved in June 1981 and became operative on October 21, 1986.<sup>27</sup>

The Banjul Charter does not explicitly provide for the right to vote, instead, the Charter acknowledges the right to vote for all citizens in its member states, under Article 13(1).<sup>28</sup> This right allows citizens to participate freely in their country's government, either directly or through a representative.<sup>29</sup> Article 3(1) of the Charter guarantees equality before the law, meaning that everyone is subject to and accountable for the provisions made by the law, including the rights that the law grants to everyone.<sup>30</sup>

In Tanzania, the constitution provides for equality before the law.<sup>31</sup> It goes further to provide that there should be no law enacted that discriminates people.<sup>32</sup> That being said, concerning the right to vote, is a constitutional right which must be exercised by all citizen of the state without any limitations to some or a group of people.

Therefore, in the spirit of the Banjul Charter, Tanzanian diasporas who cannot vote in person at the polling station on the election day as required by section 84(3)(a) of the Presidential, Parliamentary, and Councilors Elections Act should be treated equally like those who appear at the polling station to exercise their voting rights on the election day.

#### 4.3.4 The African Charter on Democracy, Elections and Governance (ACDEG) 2007

This charter is described by some scholars to be normative.<sup>33</sup> The African Charter on Democracy Elections and Governance, adopted

<sup>26</sup>AL-MUSBEH, Muhammad, (2013). *Right to Vote and to Be Elected in the International and Regional Standards and Legal Instruments*. Available at:

SSRN: <https://ssrn.com/abstract=2341344> or <http://dx.doi.org/10.2139/ssrn.2341344>

<sup>27</sup>University of Minnesota, Human Rights Library. Available at <http://hrlibrary.umn.edu/instreet/z1afchar.htm>. Visited on 12<sup>th</sup> August 2024 at 3:30pm

<sup>28</sup>BELL, Christine. (2007). *Human Rights and Voting Procedures in Plural Societies*. In: Emerson, P. (eds) *Designing an All-Inclusive Democracy*. Springer; Berlin, Heidelberg. [https://doi.org/10.1007/978-3-540-33164-3\\_8](https://doi.org/10.1007/978-3-540-33164-3_8)

<sup>29</sup>Op.cit

<sup>30</sup>The African (Banjul) Charter on Human and Peoples Rights 1981

<sup>31</sup>The Constitution of the United Republic of Tanzania of 1977, as amended, Article 13(1)

<sup>32</sup>Ibidem.

<sup>33</sup>CHIKA Charles Aniekwe (et al), (2017) *The 10th Anniversary of the*

in 2007, sets standards for better governance in Africa, with ratifications and signatures from 15 states to 45 states as of September 2017. The Charter emphasizes the importance of regular, transparent, and free elections.<sup>34</sup> It requires member states to conduct democratic elections. The Charter also recognizes the right to vote and calls for member states to ensure fair elections that include all citizens in national elections.<sup>35</sup>

From the above perspective about this charter, this paper understands that democratic elections must be transparent, free and fair to all voters. Therefore, for the purpose of this study, section 84(3)(a) of the Elections Act<sup>36</sup> as provision on the method of voting, it is expected that it must include diaspora voters registered to participate in Tanzanian national elections.

#### 4.3.5 The Declaration on the Principles Governing Democratic Election in Africa (2002)

This declaration was adopted by Heads of State and Governments on 8<sup>th</sup> July 2002. It affirms democratic election rights and obligations, ensuring every citizen has the right to participate freely in their country's government and the right to vote for the representative government<sup>37</sup>

In the attitude advanced by this declaration, Tanzania is supposed to conduct elections which ensure that all citizens qualifying to vote are facilitated to access the polling booth on the election day to vote for their representatives in the governance of the country.

In other words, where the declaration requires member states to ensure every citizen participates in the elections, it indirectly implies that even Tanzanian diasporas, are still citizens of Tanzania, so they must vote on the election day in the national elections.

#### 4.2. 6. The Constitution of Uganda, 1995

For comparative analysis, this study examines the Constitution of the Republic of Uganda where it extends the right to vote to all Uganda citizens who have attained eighteen years old<sup>38</sup> it includes diaspora voters, as Ugandan citizens, to vote in national elections.

Not only that the Constitution of Uganda grants the right to vote to all citizens who have attained eighteen years old, but also, it protects the right to vote where it orders that the government should take all necessary steps to ensure that all citizens qualified to vote register and exercise their right to vote<sup>39</sup>. That is to say, the Ugandan Constitution protects the voting rights of all eligible voters, the diaspora inclusive.

*African Charter on Democracy, Elections and Governance Institute of Development Policy, Antwerp available at: <https://cris.unu.edu/10th-anniversary-african-charter-democracy-elections-and-governance> last visited 18/7/2024 at 4:20 am*

<sup>34</sup> *The African Charter on Democracy, Elections and Governance (ACDEG), 2007 Article 2(3)*

<sup>35</sup> *Ibidem. Article 32(7)*

<sup>36</sup> *The Presidential, Parliamentary and Councilors Elections Act, 2024*

<sup>37</sup> *Declaration on the Principles Governing Democratic Elections in Africa, Decl.1 (XXXVIII), 2002 Part IV (2)*

<sup>38</sup> *The Constitution of the Republic of Uganda, 1995 Article 59(1)*

<sup>39</sup> *Ibidem. Article 59(3)*





When one compares the Constitution of Uganda and the Constitution of the United Republic of Tanzania, there is a glimpse of protection of the right to vote for all eligible citizens during national elections. This paper examines the electoral law and the elections institutions in Tanzania to explore how they comply to the spirit of the Tanzanian Constitution in respect of providing for the right to vote to all including Tanzanian diasporas.

#### 4.2.7 The Constitution of Kenya, 2010

The Constitution of Kenya provides those citizens with required qualifications<sup>40</sup> have the right to register as voters and must vote by secret ballot in elections or referendums without unreasonable restrictions.<sup>41</sup> The phrase “unreasonable restrictions” would be interpreted to mean that no eligible voter should be denied the right to vote in national elections due to limitations which have alternative ways to allow him to cast his ballot during national elections. Therefore, Kenyan diasporas have chances to vote in national elections if the limitations to access the ballots on the election day are lifted.

It is the view of this study that Tanzania can still learn from Kenya in facilitating the diasporas to exercise their constitutional right of participating in the politics of their home country. This stand is fortified by the decision of the Kenyan Court of Appeal in the case of Independent Electoral and Boundaries Commission (IEBC) v. New Vision Kenya (NVK) Mageuzi and 4 Others<sup>42</sup> which held that Kenyan diasporas must enjoy the same voting rights as other qualified citizens. It, therefore, required the IEBC to support the diasporas’ voting rights. For this reason, during the 2017 Kenyan general elections, Kenyans living in South Africa and East Africa were able to cast ballots. According to this analysis, this is a step in the right direction toward voting rights protection.<sup>43</sup>

If voting limitations in Kenya can be lifted to allow Kenyan diasporas to vote in diaspora why not should the government of Tanzania include Tanzanian diasporas in national elections by allowing them to vote in diaspora?

#### 4.3.8 The Constitution of the United Republic of Tanzania of 1977 as amended

A constitution is a set of fundamental laws that determine how a country or state is run.<sup>44</sup> It is the constitution that guarantees every citizen's freedom to fully participate in the process that leads to decisions that impact him personally, his well-being, or the country.<sup>45</sup>

<sup>40</sup> *The Constitution of Kenya, 2010 Article 83(1) (a)-(c)*

<sup>41</sup> *Ibidem Article 38 (3) (a)-(b)*

<sup>42</sup> [2015] eKLR

<sup>43</sup> *Africa News: Kenya Decides 2017: Uhuru Kenyatta leads in diaspora votes. Available at <https://www.africanews.com/2017/08/11/kenya-decides-2017-uhuru-kenyatta-leads-in-diaspora-votes/> Accessed on 19/8/2024 at 4:56 pm*

<sup>44</sup> NORTON, P. (2005). *The Constitution*. In: Hickson, K. (eds) *The Political Thought of the Conservative Party since 1945*. Palgrave Macmillan, London. [https://doi.org/10.1057/9780230502949\\_6](https://doi.org/10.1057/9780230502949_6)

<sup>45</sup> *The Constitution of the United Republic of Tanzania of 1977 as amended, Article 21(2)*

Article 8(1)(a) of the Constitution states unequivocally that people are the sovereign, and that the government's powers and authority shall come from them. Voting is one way that the people obtain power, as the Constitution provides for the right to vote to all citizens above eighteen years old.<sup>46</sup>

There are groups of citizens who have been barred by the constitution from voting, and these include: non-citizens, the mentally ill, the prisoners, the underage and the nonregistered voters.<sup>47</sup>

When the Constitution of the United Republic of Tanzania grants the right to vote to all citizens of eighteen years old, it does not exclude Tanzanian diasporas, and other eligible voters who cannot be able to appear physically at the polling station to cast their ballots on the election day as required by the enacted electoral law.<sup>48</sup>

Borrowing from the above contents, the constitution is the basic law of the country, and once it provides that all citizens above eighteen years old have the right to vote and participate fully in electing the leaders of their government, no other law should be enacted that limits some citizens from exercising this right to vote. Therefore, any electoral legislation enacted in Tanzania, must serve the spirit of the constitution in promoting and protecting the voting rights of all, including Tanzanian diasporas.

#### 4.3.9 The Presidential, Parliamentary, and Councilors Elections Act No. 1, 2024.

This law was enacted in early April as Act number 1 of 2024. It repealed the National Elections Act.<sup>49</sup> and the Local Authorities Elections Act.<sup>50</sup> The Presidential, Parliamentary and Councilors’ Elections Act is the result of several demands for a functional legal framework which assures the independence of political and electoral institutions. Voter’s registration, candidate nominations, election day, campaigns, voting process and procedures, councilors, parliamentary elections, and presidential elections are among the topics covered by the Act.

Section 84(3)(a) of this Act<sup>51</sup> is the trigger factor behind this study. This section requires every voter to appear in person to cast a ballot at the polling station where he/she had registered to vote. This voting method excludes Tanzanian diasporas from voting on the election day during national elections simply because they cannot physically appear at the polling station to cast ballots on the election day.

Borrowing from the above, one can be influenced to say that more is still needed to improve this Act since it has no provision that

<sup>46</sup> *Ibidem Article 5(1)*

<sup>47</sup> *The Constitution of the United Republic of Tanzania of 1977 as amended, Article 5(2)*

<sup>48</sup> *The Presidential, Parliamentary, and Councilors Elections Act No. 1, 2024. Section 84(3)(a)*

<sup>49</sup> [CAP 343 R E 2019].

<sup>50</sup> *The Local Authorities Elections Act, 1979*

<sup>51</sup> *The Presidential, Parliamentary, and Councilors Elections Act No. 1, 2024*



includes Tanzanian diasporas in national elections to exercise their constitutional voting rights as citizens of Tanzania.

#### 4.3.10 The Independent National Elections Commission Act No. 2, 2024

This Act establishes the Independent National Elections Commission (INEC)<sup>52</sup> The INEC among its responsibilities, it has authority to organize and oversee local government elections, the Councilors, the Parliamentary and the Presidential elections in Tanzania Mainland.<sup>53</sup>

The INEC is expected to be an autonomous body. It should not be influenced by any other organ, party or body so that it may supervise the elections fairly. Election is not just a political act but a reflection of individual and collective identities in Tanzania.<sup>54</sup> Therefore, INEC must serve all Tanzanians regardless of their locations when it comes to voting on the election day.

In supervising and overseeing the national elections, the INEC establishes polling stations for the registration of voters and polling activities. It is the responsibility of the INEC to ensure that the voting method established by the Presidential, Parliamentary and Councilors Elections Act<sup>55</sup> is strictly followed on the election day. It is in the observance of the law on the voting method the INEC has not yet included Tanzanian diasporas to exercise their voting rights as granted by the Constitution.<sup>56</sup>

From the foregoing analysis, it is crystal clear that the Tanzanian diasporas are not covered by the INEC to be able to vote on the election day since the electoral Act in section 84(3)(a) requires them to appear physically at the polling station to cast a ballot for the leaders of the government.

### 5. Views of Tanzanian Diasporas and Need for Their Inclusivity in Tanzanian National Elections

One respondent who has lived in the United States of America for 23 years now, says he has been following Tanzania's General elections for all periods since 2000 to 2020 general elections. In all periods he had never secured a chance to vote for he was barred from participating in the election because he was unable to appear at the polling station where he had registered for voting. Therefore, he is bitter with section 84(3)(a) of the Presidential, Parliamentary and Councilors Elections Act.

He wants it to be reviewed to allow eligible voters like the diasporas to be able vote on the election day in Tanzania's national elections regardless of their location. He holds it firm that if the

law on in-person voting is not modified to adopt other models of voting that are favorable to allow such groups to vote, then the law will continue to disenfranchise the diasporas and other groups of voters who cannot physically appear at the polling stations to cast their ballots on the election day.<sup>57</sup>

Another respondent who has lived in India for more than 17 years, both as a student and worker, questioned why the government of Tanzania is delaying adopting distant voting, instead it keeps mandating in-person voting method for all national general elections? He lamented that section 84(3)(a) of the elections Act<sup>58</sup> denied him the right to vote in national elections of 2010, 2015 and 2020 consecutively. He went further to expound that if he is denied the right to vote by this section of the law, it is enough to conclude that this law imposes sanctions of "no right to vote" to other Tanzanians like him, who cannot be physically present at the polling station on the election day.<sup>59</sup>

It was further argued by this respondent that the law that mandates in-person voting method in Tanzania's elections, goes against the constitution which provides the right to vote to all Tanzanians above 18years old unless disqualified as non-citizens, underage and criminals.<sup>60</sup>

Another Tanzanian diaspora (native of Ushiroombo, Kahama, Tanzania) living in Uganda for 7 years now, expressed a sad incidence of being denied a right to vote at Mutukula during the 2020 Tanzanian general elections. He had registered to vote at Ushiroombo, Kahama, Tanzania. He later migrated to Masaka, Uganda in search of pastures. He narrated how on 28/10/2020, he managed to rush from Masaka, Uganda to Mutukula border (Tanzania's side) and presented his voter's Identification card to the elections authority to allow him to vote. He was told that according to the electoral laws, he was illegal to vote at that polling station, which was different from Ushiroombo, Kahama where he was recognized as an eligible voter.

In the interview, he expressed how he felt bad to be denied the right to elect his leaders, he felt segregated by the electoral law, he felt living outside Tanzania was like a crime, he felt the electoral law had denied his citizenship. He concluded that the electoral law that mandates in-person voting as a sole voting method in national elections, disenfranchises Tanzanians who cannot physically attend at the polling station where they had registered to vote on the election day.<sup>61</sup>

<sup>57</sup> Respondent (Tanzanian living in USA for 23 years now, interviewed on 23/7/2024, responding on the question as he was still a Tanzanian, what hindered him from voting in the past national elections?

<sup>58</sup> Presidential, Parliamentary and Councilors Elections Act, 2024

<sup>59</sup> Respondent (Tanzanian Diaspora in India, interviewed on 12/8/2024 on the legal challenges to the diaspora as posed by section 84(3)(a) of the President, Parliamentary and Councilors Elections Act, 2024

<sup>60</sup> The Constitution of the United Republic of Tanzania, 1977 (as amended from time to time) Article 5(1)

<sup>61</sup> Respondent (Tanzanian Diaspora in Uganda, interviewed on 7/8/2024 on why as he was still a Tanzanian what hindered him to vote in the 2020 national elections

<sup>52</sup> The Independent National Elections Commissions Act No 2, 2024 section 4 10(1)(a)-(k)

<sup>53</sup> Ibidem. 10(1)(a)-(k)

<sup>54</sup> MALIYAMKONO, T.L., (1995). *Who Votes in Tanzania and Why?* Tema Publisher: Co Dar es Salaam. pp. 18-25

<sup>55</sup> The Presidential, Parliamentary, and Councilors Elections Act No. 1, 2024 section 84(3)(a)

<sup>56</sup> The Constitution of the United Republic of Tanzania of 1977 as amended, Article 5(1)-(2)



Another respondent who lives in Kenya since 1999, viewed the electoral law despite disenfranchising the diaspora, the bedridden, transit-bound and relocated voters, he was worried of the voting rights of other eligible voters who come late at the polling station and find it was already closed.

He was of the opinion that the electoral legal system places a premium on physical presence. This requirement was appropriate in the past but is becoming less and less relevant in an increasingly interconnected world.

According to him, voting alternatives like electronic or an election application that would enable a citizen to voter from where he was by using his smartphone would be plausible efforts to protect the voting rights of late comers to access the polling booth<sup>62</sup>.

The above views, concur with the investigation made by Kimbi and Zlotnikova.<sup>63</sup> that Tanzanian voters prefer electronic voting. That means in-person voting method or traditional paper-based method is no longer a choice as a voting method that includes all voters and protects voting rights of eligible voters like Tanzanians living in Diaspora.

## 6. Views of Scholars on Inclusion of Diasporas in National Elections

This study reviewed various literature to explore whether the voting system currently used in Tanzanian elections, includes all eligible voters to participate in choosing leaders of their country. The study conducted interviews with some respondents. The study specifically focused on the laws governing in-person voting and ballot access during national elections. It compared Tanzania's electoral situation with other countries to identify best practices that could enhance Tanzania's electoral system.

Research indicates that although the Tanzanian constitution guarantees voting rights, the Presidential, Parliamentary and Councilors Elections Act<sup>64</sup> hinders Tanzanian diasporas from voting during national elections. It is self-evident the electoral law in Tanzania by mandating the in-person voting method as the only applicable voting method in Tanzania it empowers a select few to choose the leaders of the government of Tanzania. Only voters who can physically access the polling station on the election day are the ones who are allowed to vote.<sup>65</sup> By mandating that voters must physically attend the polling stations on the election day to cast ballots, this electoral law neglects broader public involvement.<sup>66</sup>

<sup>62</sup> Respondent (Tanzanian living in Kenya, interviewed on 18/7/2024, responding on the legal implications of the electoral law to the diaspora voters

<sup>63</sup> KIMBI, S. and ZLOTNIKOVA, I. (2014), "Citizens' readiness for remote electronic voting in Tanzania", *Advances in Computer Science: An International Journal*, Vol. 3 No. 8, pp. 150-159.

<sup>64</sup> Act No. 1, 2024

<sup>65</sup> Section 84(3)(a) of the Presidential, Parliamentary and Councilors Elections Act

<sup>66</sup> Elia Mwanga. *Who votes in Tanzania? An overview of the law and practices relating to parliamentary elections; African Human Rights Law*

Several studies have highlighted the importance of the right to vote in Tanzania's democratic process. For instance, Mwanga<sup>67</sup> discusses how the constitution of Tanzania guarantees the right to vote to every citizen but very few voters through the ballot paper appear to vote for their representatives in the Parliament. However, he also notes that several electoral laws and regulations on voting processes may affect this right indirectly.

According to Mwanga's paper, there are various flaws in Tanzanian parliamentary election laws and procedures that prevent voters from choosing the members of parliament they want to represent them in parliament. The inadequacies in the laws and procedures stem from giving a select few individuals the authority to choose who would represent them in parliament. Ultimately, people wind up being just pawns in the decisions made by a select few. One of its weaknesses is that there are no democratic or participatory processes in place for the party to nominate candidates for parliament.<sup>68</sup>

Unfortunately, Mwanga did not give light on the impact of the Presidential, Parliamentary, and Councilors Elections Act, 2024 which mandates in person voting as the sole method applicable during national elections in relation to the inclusion of Tanzanian diasporas to vote on the election day. This study through the literature review and face to face interviews done finds out that section 84(3)(a) of the elections Act<sup>69</sup> disenfranchises eligible voters who cannot appear physically at the polling station to vote. So, to say, Tanzanian diasporas who cannot come back to Tanzania on the election day for voting, have no chance to vote in Tanzania's national elections.

Also, Mwanga's work did not propose potential improvements or alternative voting methods that could enhance the inclusivity and accessibility for eligible Tanzanian voters who are unable to be physically present at polling stations on election day to exercise their voting rights.

Considering this short fall, this study recommends alternative voting methods like postal voting, online voting which can be incorporated in Tanzanian elections to ensure that Tanzanian diasporas can be able to vote on the election day.

According to Mkama<sup>70</sup> accessibility of the right to vote in Tanzania refers to a system that is all-inclusive and free of barriers that enables people to exercise their right to vote and be elected. However, there are certain obstacles that must be removed for

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<sup>67</sup> Elia Mwanga. *Who votes in Tanzania? An overview of the law and practices relating to parliamentary elections; African Human Rights Law Journal Vol. 22 n. 1 Pretoria, ISSN 1996-2096*

<sup>68</sup> *Op.Cit.*

<sup>69</sup> *The Presidential, Parliamentary and Councilors Elections Act, 2024*

<sup>70</sup> MKAMA, Rosemary Jotham, (2015) *The Right to Vote in Tanzania Multiparty Elections: Lessons from Nyerere's Perspective. Uongozi Journal of Management and Development Dynamics. Available at SSRN: <https://ssrn.com/abstract=3939726>. Accessed on 14/4/2024 at 12:45pm*



Tanzanians to exercise their right to vote.<sup>71</sup> This study smells such obstacles in areas of voting procedures, voter eligibility, and voting techniques. As a result, this study addresses the obstacles and limitations found in Tanzania's voting legislation system *vis-à-vis* the inclusion of Tanzanian diasporas to exercise their right to vote.<sup>72</sup>

This scholar continues to say that there are different voting procedures which include, but are not limited to, early voting, making election day a holiday, voting by mail, and casting a ballot in person on election day. Voters who live abroad may find voting by mail easy and applicable.<sup>73</sup>

This study intends to use Mkama's ideas when analyzing the role of the Independent National Election Commission (INEC) during the process of casting votes and the procedures involved in order to facilitate the protection of the voting rights of all eligible voters.

Abba et al<sup>74</sup> in their study they provided an overview of the methods, developments and current trends regarding privacy and verifiability in voting systems. In this scholarly work, the authors did not address in depth the adoption of in person voting method to access ballot papers and its impact in the protection of the right to vote. This study is intending to fill this gap in chapter five of this research by providing more detailed information on the methods of voting and its impact on voters.

Vambe M. T<sup>75</sup> writes that many African states use bounded citizenship to determine voting rights for citizens working in other countries. People relocate abroad and establish themselves in other nations due to a variety of socio-economic, political, and security reasons. Luckily, the African Union, reiterates the importance of advancing and safeguarding rights of such migrants. The African Charter on Democracy and Elections<sup>76</sup> also supports citizens' effective participation in democratic development and public affairs governance.

The author notes that African Union legislations are interpreted differently, thus he has sorted out some of the measures to ensure that Diasporas exercise their right to vote. However, he did not include the measures to be taken by the African countries to ensure the bedridden, the transit-bound, the detainees and late arrivals voters' voting rights are protected, as highlighted by the African

Union. Therefore, this study leads to legal ramifications of denying someone the ability to vote in Tanzania while they are overseas.

According to Dilworth et al<sup>77</sup> the Federal Constitutional Court of the Federal Republic of Germany rendered a ruling on October 7, 1981, pertaining to non-resident citizens' ability to cast ballots in federal elections. The appellant, a German national living in Brussels and working for the European Communities as a civil servant, contested the legitimacy of the 1980 federal elections before the Bundestag. He argued that section 12 (1) of the Federal Electoral Law unconstitutionally deprived him and the majority of other citizens living abroad the right to vote, calling these elections illegal<sup>78</sup>.

Even though this author has addressed the violation of the non-resident citizens' right to vote in the Germany federal elections, he has not been able to clarify the voting methods that were employed in the elections to the extent of denying other people's right to vote. This study examines in person voting method as mandated in Section 84 (3) (a) of the Tanzania's electoral Act<sup>79</sup> and how it affects the voting rights of eligible voters who are absent on the polling station during national elections in Tanzania

Kalokora<sup>80</sup> says that there are two types of paper-based voting system: traditional paper ballot where a voter cast his/her vote at the polling station premises controlled by Electoral Commission's officials; and the paper ballot from outside the polling station (postal voting) where a voter send his/her casted vote to EC via available courier service providers.

Adoption and use of electronic voting systems are thought to offer numerous benefits over paper-based voting systems, such as: time-saving by serving a larger number of voters in a shorter amount of time; increased voter accessibility and potential participation by offering a convenient voting environment; quick and accurate (efficiency and effectiveness) cast vote tallying processes that reduce human error in vote counting; and cost-saving from printing, distributing, and enveloping voting papers.<sup>81</sup>

Furthermore, electronic voting systems are thought to reduce the amount of fraud. However, there are a number of concerns regarding the security of the e-voting system, such as issues with confidentiality, integrity, availability, stability, and maintainability; logistical and operational problems; a lack of a consistent and dependable power source (electricity); and a lack of technical expertise among the Electoral Commission's technical support staff. Furthermore, it is thought that the initial investment costs for e-voting systems would be greater due to the need to prepare for

<sup>71</sup> Op.Cit

<sup>72</sup> Op.Cit

<sup>73</sup> Op.Cit

<sup>74</sup> ABBA, Lawal Abdullahi, (et al), (2017) "Security Analysis of Current Voting Systems," *International Conference on Electrical and Computing Technologies and Applications (ICECTA)*, Ras Al Khaimah, United Arab Emirates. pp. 1-6, doi: 10.1109/ICECTA.2017.8252006. Available at: [https://www.researchgate.net/publication/322409208\\_Security\\_analysis\\_of\\_current\\_voting\\_systems](https://www.researchgate.net/publication/322409208_Security_analysis_of_current_voting_systems) Accessed on 18/4/2024 at 3:22pm

<sup>75</sup> VAMBE M.T, (2021) *Voting Right of Zimbabweans in the Diasporas. Journal of African Elections* Vol.20. Available at: <https://www.eisa.org/storage/2023/05/2021-journal-of-african-elections-v20n1-voting-rights-zimbabweans-diaspora-eisa.pdf?x16382> Accessed on 12/6/2024 at 2:47pm

<sup>76</sup> *The African Charter on Democracy and Elections of 2007 Article 3(7)*

<sup>77</sup> ROBERT Dilworth and FRANK Montag: *the Right to Vote of Non-resident citizens: a comparative study of the federal Republic of Germany and the United States of America* vol.12:267 pp. 269-271

<sup>78</sup> Op.cit

<sup>79</sup> Act No. 1 of 2024

<sup>80</sup> KAROKOLA, G., KOWALSKI, S. & Yngström, L., (2012). *Secure e-government Services: Protection Profile for electronic voting—A case of Tanzania. IST-Africa 2012 Conference Proceedings* (pp. 1-13).

<sup>81</sup> Op.Cit





procurement, implementation, and education of voters and Election Commissioners.<sup>82</sup> This study uses this article to borrow ideas in categorizing accessibility to the polling stations and casting of ballots on ballot papers and make advance suggestions to improve election voting methods by introducing e-voting.

In their work, Vladyslav et al<sup>83</sup> present the ballot paper as a constitutional tool for electoral democracy. The authors contend that the manner, substance, and form of ballot filing frequently influence the outcome of an election. It is demonstrated that a ballot is a conventional election tool that voters use to cast their ballots for individual candidates or lists of candidates, and which subsequently enables the establishment of election outcomes. It is determined that there is theoretical as well as practical significance in the definition and classification of ballot kinds.<sup>84</sup>

This work did not show whether in person voting to access ballot papers as the only means for voting violates or protects voting rights of registered voters who are unable to appear physically at the polling station on the voting day. This study examines the current Tanzania's electoral law with its requirement of in person voting to come up with conclusion as regards the protection of the right to vote.

In his view, Kimbi<sup>85</sup> puts it that other nations have already adopted remote electronic voting methods for their general and parliamentary elections, but Tanzania continues to rely solely on in-person voting to access paper ballots on the election day. Tanzania ought to take advantage of the chance that information and communication technology (ICT) presents to update its election system given the technology's quick advancement in today's world.<sup>86</sup>

He goes on to say that, however, prior to the implementation of remote electronic voting technology, one of the key issues that should be addressed is security.<sup>87</sup>

Kimbi's work is only based on the importance of security in electronic voting systems. He does not address the issue on how the mandatory in-person voting method to access ballot papers as sole means for voting either denies or protects diasporas' right to vote. This study makes comparative analysis on global voting systems to suggest which alternative voting methods befit to be applicable in Tanzania for the protection of the right to vote for all eligible voters.

Anderson J.B et al<sup>88</sup> discussed about the right to vote and access to the ballot in relation to the issue of disenfranchisement of

incarcerated and formerly incarcerated individuals. Many U.S. states restrict the voting rights of people who are in prison, on parole, or on probation, and some states deny the right to vote to all ex-offenders. This discussion presents a notable gap in the discussion on the protection of the right to vote and access to ballots as it treated only the denial of the right to vote to prisoners. The study did not address the right to vote of non-resident citizens, the disabled and the bedridden voters and their access to ballot papers on the Election Day. Hence the same will be clarified by the Research in this study under chapter four.

Douglas, J.A.<sup>89</sup> a renowned scholar in the field of election law and constitutional law in his work often focuses on state constitutions and their role in protecting and expanding voting rights. His work did not deeply explore the question on whether section 84(3)(a) of the Tanzania's elections Act<sup>90</sup> and its mandatory in-person voting method includes all eligible voters even if they live in diaspora.

This study addresses the implications of the requirement of in person voting to access the polling station to cast ballots and the exclusion of other eligible voters like the Tanzania diasporas who cannot appear at the polling station on the election day. This study finds that by excluding the diasporas from voting, section 84(3)(a) of the electoral Act disenfranchises them.

In Kalali Steven v Attorney General and the Electoral Commission<sup>91</sup> the High Court of Uganda ordered the electoral body to comply with Article 59 of Ugandan Constitution which allows diaspora voters, as Ugandan citizens, to vote in national elections. The High Court ordered the Electoral Commission to take all necessary steps to ensure that the Ugandan diaspora voters are included in voting during national election day.

However, the High Court of Uganda was very keen to underline the value of the right to vote to all citizens and the court ordered that appropriate measures should be done to guarantee that everyone can cast a ballot. The Court has not been able to define what such realistic steps are. Where this study would suggest such acceptable actions which would guarantee that all eligible Tanzanian voters are included to participate in national elections without any restrictions.

Despite extensive research on Tanzanian electoral laws, there is a noticeable lack of literatures specifically focusing on how Section 84 (3) (a) of the Presidential, Parliamentary, and Councilors Elections Act, 2024 impacts inclusivity of Tanzanian diasporas for voting in national elections.

Therefore, from the foregoing discussion, it is the conviction of this study that section 84(3)(a) of the elections Act that mandates the in person voting style as the sole voting mechanism in

*to Vote and Access to the Ballot," Nova Law Review: Vol. 29: Iss. 3, Article 3. Available at:*

*https://nsuworks.nova.edu/nlr/vol29/iss3/3. Accessed on 3/5/2024*

<sup>89</sup>DOUGLAS, J.A., (2014). *The right to vote under state constitutions. Vand. L. Rev.*, 67, p.89.

<sup>90</sup> *The Presidential, Parliamentary and Councilors Elections Act, 2024*

<sup>91</sup> *Misc. Cause No. 35 of 2018*

<sup>82</sup> *Op.Cit*

<sup>83</sup> VLADYSLAV Fodorenko, (et al), (2021) *The Ballot Paper: a Constitutional Instrument of Electoral Democracy or a Means of Manipulating the Electorate? Akademia Leona Koźmińskiego* 13/2021

<sup>84</sup> *Op.cit*

<sup>85</sup> KIMBI, S. and ZLOTNIKOVA, I., (2014). *A secure model for remote electronic voting: A case of Tanzania. Int. J.*, 3(4), pp.95-106.

<sup>86</sup> *Op. Cit*

<sup>87</sup> *Op.Cit*

<sup>88</sup> ANDERSON, John B.; (et al). (2005) *"Presidential Elections - The Right*



Tanzania's national election is discriminatory. It leaves outside the voting booth, the Tanzanian diasporas hence it disenfranchises these citizens of Tanzania.

## 7. Conclusion

The purpose of this study is to expose the flaws of the Presidential, Parliamentary and Councilors Elections Act, 2024 which in section 84(3)(a) sets in person voting method as a sole voting style in Tanzania's national election. The discussion explicitly shows that Tanzanians living in other countries have no chance to participate in Tanzania's national elections today. The law bars them from exercising their constitutional voting rights.

This study discusses alternative voting methods which are applicable in other countries which facilitate the inclusion of all eligible voters in national elections. Tanzania can still learn from countries like Kenya, India, USA and UK which have been able to accommodate all voters to cast ballots on the election day. For Tanzania, inclusivity of Tanzanian diasporas in national elections upholds the recognition for them as they continue to be citizens of Tanzania who keep close ties with their home country. Voting in diaspora increases patriotism on the side of the diaspora and therefore they feel part and parcel of their country.

## 8. Recommendations

### To the Government

- **Sustain the Principle of Sovereignty of the People.** Article 8(1)(a) of the Constitution of the United Republic of Tanzania provides that the Government of Tanzania derives its power from the people. Therefore, the Government of Tanzania in sustaining sovereignty of the people, it should facilitate Tanzanian diasporas.
- Incorporate e-voting in national elections to enable eligible voters to vote from wherever they are located. The adoption of e-voting as an alternative voting method applicable on the election day, increases participation and inclusion of voters who are geographically and physically unable to appear at the polling station to cast their ballots on the election day.
- Create regulations for monitoring accuracy, verifiability, flexibility, convenience and reliability of online voting.
- Establish a strong and qualified Information and Communication Technology Department at the Independent National Electoral Commission offices that will be responsible for the management of online voting.
- Support the Independent National Electoral Commission to establish polling stations and register voters in diaspora in all Tanzanian Embassies.

### To the Legislature

- Enact electoral laws which uphold universal suffrage.
- Amend the Presidential, Parliamentary and Councilors' Act No.1 of 2024 by modifying section 84(3)(a) which excludes the Tanzanian diasporas. In modifying this provision, the legislature may add to it the phrase that eligible voters who are geographically and physically

unable to appear at the polling station where they had registered to vote, on the election day, they may vote online or electronically, use postal voting and voting at Tanzanian Embassies for those living outside Tanzania.

- Enact a law that legalizes e- voting in Tanzania as a type of computer-mediated voting where voters use a computer-related device, such as a smartphone, tablet, or iPad, to cast their ballots from anywhere.
- Enact a Law on Permanent National Voters Register that accommodates all eligible Voters including registration of Tanzanian diasporas.

### To the Independent National Electoral Commission (INEC)

- Improve the accessibility of the polling stations at the embassies to ensure that Tanzanian diasporas are registered to vote at such polling stations.
- Partner with Tanzanian diasporas through their representatives or organization in order to ensure that all qualified Tanzanian diasporas are included in the elections.
- Advise the government of Tanzania on remote voting methods to implement inclusive elections through alternative voting methods for Tanzanian diasporas.
- Conduct research on the advantages of adopting technological advancement in national elections and advise the government on the same.
- Advise the government in creating the policy for the modality of establishing polling stations at the Tanzanian Embassies.
- Simplify voting processes by providing clear guidelines on registration of voters living abroad.