

Protesting the Independent Candidacy in Tanzania's Elections: A Bona Fide Cause?

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Abstract

Independent candidates are legally prohibited in the Tanzanian electoral system. Promoting representative democracy; preserving peace, order, and security, and the ability of political parties to advance people's interests have often been cited as the rationale for such proscription. This paper interrogates the validity of these claims. Based on documentary analysis and primary data gathered by the author, the paper argues that the proscription of independent candidates in Tanzania under the guise of people's interests fails the test of validity. Further, although independent candidates are prohibited in Tanzania, findings suggest that the country's 2010 general election results presented a case for their de facto presence. The remarkable discrepancies in electoral support between the parliamentary and presidential candidates of the same political parties present indicative evidence to that effect.

Keywords: Independent candidacy, Elections, Democracy, Constitution, Tanzania

1. Introduction

The literature on Tanzanian electoral politics has a relatively adequate representation of the issue of independent candidates. Scholars of diverse persuasions treat the question of independent candidates in Tanzania differently. Some have approached it from the normative point of view – that independent candidature is desirable not for its own sake but rather because it is a fundamental right ought to be enjoyed by all citizens (Nyerere, 1995; Chaligha, 2002; TEMCO, 2006:173 and 2011:68-71; Makulilo, 2011). Yet, others have challenged the validity of independent candidacy in Tanzania arguing that it promotes individualism and selfishness (Msekwa, 1995).

The purpose of this paper is threefold, namely; to contribute to the debate on the issue of independent candidature in Tanzania; to interrogate the claims against independent candidates; and finally, to present findings suggestive of instances of de facto independent candidacy in Tanzania. In so doing, I argue that the proscription of independent candidates in Tanzania under the guise of promoting representative democracy, peace, order, security, and people's interests is ill founded. It seems, the real motive underlying the government's reluctance to endorse independent candidacy stems from the ruling party's fear of not only losing its grip on dissenting members within the parliament and local government councils but also a possibility of split.

To execute this task I employ data gathered from the 2010 Tanzania general election results of 30 constituencies from Tanzania mainland. It should be noted that five opposition parties won parliamentary seats (in Tanzania mainland) as shown in brackets in the following distribution: the Chama Cha Demokrasia na Maendeleo (CHADEMA) (23); the National Convention for Construction and Reform – Mageuzi (NCCR-Mageuzi) (4); the Civic United Front (CUF) (2); the Tanzania Labour Party (TLP) (1) and the United Democratic Party (UDP) (1). However, the UDP, which won the Bariadi East constituency, is excluded from the analysis for it did not field a presidential candidate during the period. The secondary information is supplemented by data obtained through in-depth interviews held with four parliamentary candidates, four council candidates, four district party leaders and two election officials in Maswa district in Shinyanga between August and October 2010 (Note 1) For analytical purposes Zanzibar is excluded because unlike Tanzania mainland its voting pattern has, since 1992 when the multi-party system was reintroduced in Tanzania, been influenced by party orientation. The electoral outcomes of Zanzibar reflect partisan politics more than anything else. This is especially so due to the consistent correspondence of the electoral support accorded to the respective parties' candidates in both the parliamentary and presidential

elections as well as those of the House of Representatives.

Significant variations are noted in terms of the electoral support committed to the parliamentary and presidential candidates of the same political parties in many of the opposition-won constituencies in Tanzania mainland. It is these variations that this paper seeks to explore and understand their logic in the context of the debate about independent candidacy. Here the electoral support is measured in terms of the total number of votes scored by each parliamentary or presidential candidate in the election within a particular constituency. To that end, I select the top three political parties that scored more votes than the rest in the parliamentary elections and their respective parties' presidential candidates in a sequential order. The paper is divided into five main parts: independent candidacy and political parties; a historical context of independent candidature in Tanzania; the synopsis of independent candidates and the legal debates; examination of the claims against independent candidates; an exploration of whether the 2010 Tanzania elections presented a case for de facto independent candidates. The last part offers some concluding remarks.

2. Independent Candidates: A Substitute for Political Parties?

The role and place of political parties (Note 2) as 'key institutions of representative democracy' in modern democratic society cannot be underestimated (Biezen, 2004). In fact Molomo and Sebudubudu (2005) eulogize them (political parties) as the linchpin of democracy without which 'democracy withers and decays.' This points to the fact that political parties are accorded an important role to the extent that in some countries, they are seen by some observers as the only *rational* platforms through which political activity can be realized in a democracy (Msekwa, 1995; Mainwaring and Scully, 1995; Sherrill, 1998; Wright and Schaffner, 2002). However, much as we would agree that political parties serve as an important platform for the discourse of political engagement, they cannot supplant all other means of democratic engagement. Independent candidacy is another means, no matter how weak it may be rated; it provides an alternative platform through which basic rights of citizens can be exercised. Thus, independent candidates can contest elections alongside contestants who have been nominated and sponsored by political parties.

The literature presents varying conceptions of independent candidates. Some scholars take independent candidates to mean simply those that compete for political office but "are not affiliated to any political party" (Brancati, 2008; Weeks, 2009; Bhattacharya, 2010). This definition, while sufficing for a partial understanding of the term independent candidates, it excludes those who run for office not necessarily on a particular party's ticket but receive some form of support from the party. The latter are categorized as independent candidates who "are aligned to political parties" (Weeks, 2011:21). Yet other independent candidates represent certain interest groups or a group of voters. The latter category is typical of the Chinese electoral system where a certain number of voters, say not less than 10, can nominate a candidate to contest elections (Yuan, 2011). It is, thus, imperative to have a broader conception that ably distinguishes independent candidates who have no party affiliation from those who may be supported by political parties or other non-party groups. In this paper the term 'independent candidate' is used to refer to a candidate who is running for a political office not on a particular party's ticket. This definition befits the context of this paper for it avoids assigning a narrow meaning to the concept of independent candidates that confines itself to non-party members. Having said that Independent candidates are broadly understood to include all those who seek to be elected into political office outside the party system or the *party machine* with or without the support of political parties (Weeks, *ibid*).

There are multiple explanations regarding the emergence and/or success of independent candidates in elections worldwide. Some studies have suggested that attempts by some political parties to 'clone' independent candidates in order to buy out potential votes of their major rivals, especially in the first-past-the-post electoral systems (Note 3) like that of India, lead to the emergence of independent candidates (Bhattacharya, 2010). Yet others indicate that independent candidates succeed in elections because of personalities and proximity of independent candidates to their voters (Carty, 1981; Busted, 1990); their capacity to use pan-country resources for their constituencies (Murphy, 2010) to the extent some are seen as *grassroots heroes* or heroines (Yuan, p. 394); and the declining efficacy of political parties to meet the voters' expectations (Owen and Dennis, 1996; Allen and Brox, 2005; Belanger, 2004). Important to note, at this juncture, is that the visibility (i.e. presence and role) of independent candidates in government varies from one country to another. For instance, while in countries such as Russia, Pakistan and Ireland they exhibit a high degree of visibility, their impact in Britain, Germany and Spain remains minuscule (Weeks, 2008; 2009:21).

Independent candidates are by no means a replacement of political parties. It follows that when political parties are perceived to be organizationally (Note 4) able to mobilize both resources and the electorates' support, candidates would regard them as viable paths to political office. In this way, they serve as a 'convenient ladder' to political

office. On the contrary, when independent candidates are prohibited while the relevance and, perhaps, legitimacy of political parties is perceived by the electorates to be diminishing, as Bartolini and Mair (2001) and Schmitter (2001), have suggested, the latter becomes a 'forced ladder.' As such the exclusive control legally granted to political parties over candidates' recruitment for elective office, as is the case in Tanzania, becomes an impediment to democratic exercise of the right to have alternative means of representation.

The loyalty and electoral support, which consistently follows candidates defecting to different political parties, suggests a relative departure of loyalty from parties to candidates.

Hence the Tanzanian experience in which, parties have, to use Biezen's (2004) phrase, *exclusive control over candidates' recruitment* to political office – typical of procedural democracy – becomes itself an obstacle to the exercise of substantive democracy. Articles 39 and 67 of the Tanzanian Constitution, for example, set party membership as one of the basic conditions for whoever aspires for political office. In this context the parties may not necessarily be legitimate instruments for the expression of the will of candidates or that of electorates but rather a forced ladder to the realization of rights.

3. A Historical Context of Independent Candidature in Tanzania

To put our discussion into context, a brief background to the independent candidate question is vital. Tanganyika achieved her political independence on 9th December 1961. Following the merger between the two states, that is Tanganyika and Zanzibar on 26th April 1964, a new country known as Tanzania was born. It must be noted that prior to the 1965 constitutional amendment independent candidates were allowed to contest the elections in Tanzania. Both the independence and the republican constitutions of 1961 and 1962 respectively did not proscribe independent candidates.

However, the 1965 constitutional amendment, just four years after independence, marked the ban of opposition parties paving the way for the single-party rule and the consolidation of the *state-party* in the country (Makulilo, 2008). The Tanganyika African National Union (TANU) and the Afro-Shiraz Party (ASP) remained the sole political parties in Tanzania mainland and Tanzania Zanzibar respectively. Later in 1975, the two parties merged to form one party – the Chama Cha Mapinduzi (CCM). Article 3 (1) of the constitution of Tanzania stated: "there shall be one political party in Tanzania." This had implications not only for the opposition parties, but also it meant that independent candidature had been prohibited.

Articles 3(3), 7(3) and 27(1) of the 1965 constitution are notably relevant. Article 3(3) restricted political participation to the sole political party. It stipulated: "All political activity in Tanzania other than the organs of the state of the United Republic, the organs of the executive and legislature of Zanzibar, or such local government authorities as may be established by or a law of the appropriate legislative authority, shall be conducted by or under the auspices of the party." Articles 7(3) and 27(1) not only gave the Electoral Conference of the ruling party the mandate to nominate candidates, but also prescribed the qualifications for election into a political post including citizenship of Tanzania, age (30 years for the presidency (Note 5), and 21 years for the Member of Parliament), and membership to the Party.

In 1992 the constitution was amended to open up the political space for multi-partism in which other political parties were legally allowed to operate along side the ruling party – CCM. The Elections Act of 1985 and the Local Authorities (Elections) Act of 1979 were also amended to accommodate multi-party politics. Sadly, however, some clauses restricting independent candidates were retained in the Electoral laws. The law still required that for one to be elected to a political post, he/she must be a member of, and sponsored by, a political party.

4. Independent Candidates and the Legal Debates in Tanzania: A Synopsis

4.1 Independent Candidacy: Its Proscription Questioned in Court

The issue of independent candidates first appeared in the Tanzanian courts in 1993. Displeased by the amendment to the Elections Act of 1985, among others, Reverend Christopher Mtikila of the Democratic Party (DP) – a politician and activist - filed a case in the High Court of Tanzania in 1993 challenging the constitutionality of the law that set membership of a political party as a condition for contesting elections. After due consideration the High Court of Tanzania observed the following points as premises for its decision regarding independent candidature (Judgment pp.24- 26):

- (i) It is illogical for a law (vide Article 21) to provide that no person shall be compelled to belong to a political party and in the same breath to provide (vide Articles 39 and 67) that no person shall run for political office except through a political party.
- (ii) While participation through a political party is a procedure, the exercise of the right of participation through a

political party only is not a procedure but an issue of substance.

- (iii) Article 39(c) and allied amendments are not fundamental in themselves but restrictions on the exercise of a fundamental right. It is the fundamental rights, but not their restrictions, that the Court is enjoined to guard jealously.
- (iv) Only a minority of between three and four million, out of over twenty million people, that subscribes to political parties. The literal application of the amendments could lead to monstrous and nationally injurious results due to gross injustice.
- (v) Given the history of the country and the pervasiveness of the ruling party – the CCM – any talk of “parties” cannot be serious.
- (vi) Article 21(1) can, in fact, operate alongside Article 39 and allied amendments, without the latter’s exclusionary properties, there being nothing strange in having party and independent candidates in any election.

Having made the foregoing premises Justice Kahwa Lugakingira of the High Court of Tanzania held: “For everything I have endeavored to state and notwithstanding the exclusionary elements to that effect in Articles 39, 67 and 77 of the Constitution as well as section 39 of the Local Authorities (Elections) Act 1979, I declare and direct that it shall be lawful for independent candidates along with candidates sponsored by political parties, to contest, presidential, parliamentary and local council election” (URT, 1994).

4.2 Appeal Discarded for a Constitutional Amendment

Discontented with the High Court’s ruling, in 1994 the government of Tanzania through the Attorney General appealed to the Court of Appeal challenging the verdict. But even before the appeal was set for hearing, the government withdrew the appeal and went to parliament on 16th October 1994 seeking to amend Article 21(1) of the constitution so as to include in the constitution of Tanzania the words: “Subject to Sections 5, 39, and 67 of the constitution, and the qualifications for election or nomination specified in the electoral laws.” The parliament in which the ruling party commanded over 80% of the seats - through Act No.34 of 1994 – unanimously amended Article 21(1) to read: “Subject to the provisions of Articles 5, 39 and 67 of this constitution and of the laws of the land in connection with the conditions for electing and being elected or for appointing and being appointed to take part in matters related to governance of the country, every citizen of the United Republic is entitled to take part in matters pertaining to the governance of the country, either directly or through representatives freely elected by the people, in conformity with the procedures laid down by, or in accordance with, the law.” Article 67(1)(b) of the Constitution, for example, stipulates: “Subject to the provisions contained in this Article, any person shall be qualified for election or appointment as a Member of the Parliament if he is a member of, and a candidate proposed by a political party.” Section 2(e) of Article 67 further states that “... no person shall be qualified to be elected to the office of President of the United Republic if he is not a member of, and a candidate proposed by, a political party.” I have argued elsewhere that Article 67(1)(b) is one of the most notorious leverages that political parties often use to control dissent among MPs in Tanzania. Given the status and lucrative nature of the position of MPs very few MPs would hold to dissent from their party’s position when faced with the threat of expulsion (Mateng’e, forthcoming).

Before the 11th constitutional amendment of 1994, Article 21(1) of the Tanzanian constitution simply read: “Every citizen of the URT is entitled to take part in matters pertaining to the governance of the country, either directly or through representatives freely elected by the people in conformity with procedures laid down by, or in accordance with, the law.”

As it can be noted from the foregoing, in anticipation of the Court’s decision the government chose to amend the constitution in order to forestall any possibility of being ordered to amend its electoral law. The very requirement – membership to, and nomination by, a political party - that the Court had ruled unconstitutional was now underlined in the constitution. Critics have described this move as *very dangerous* (Nyerere, 1995:9) and runs counter to the consolidation of democracy in the country.

4.3 The Second Attempt at Restoring Independent Candidacy

Again in 2005 Rev. Mtikila filed a second petition in the High Court of Tanzania praying for a declaration of the Court that:

- i. the 11th constitutional amendment to Articles 39 and 67 as introduced in 1994 is unconstitutional.
- ii. the petitioner has a constitutional right under Article 2(1) of the constitution of Tanzania to contest for the post of the president and/or the seat of a member of parliament as an independent candidate.

In its verdict made on 5th May 2006 again the High Court of Tanzania adjudged in favour of the petitioner. It ruled:

[W]e wish to make it very plain that in our view Act 34 of 1994 which amended Article 21 (1) so as to cross refer it to Articles 5, 39, and 67 which introduced into the Constitution, restrictions on participation in public affairs and the running of the government to party members only was an infringement on the fundamental right and that the restriction was unnecessary and unreasonable, and so did not meet the test of proportionality. We thus proceed to declare that the said amendments to Articles 21 (1) 39 (1) (c) and 67 (1) (b) are unconstitutional” (URT, 2006).

4.4 *The Last Knock*

There were hopes that the electoral law would be amended to allow independent candidates during the 2010 elections. However, in 2009 the government through the Attorney General prayed to the Court of Appeal of Tanzania vide Civil Appeal No. 45 of 2009 challenging the earlier ruling of the High Court of Tanzania on the ground that such Court had no mandate to declare provisions of the constitution to be unconstitutional. On 17th June 2010 the Court of Appeal adjudged that the High Court was constitutionally incompetent to expunge Articles 39(1)(c) and 67(1)(b) and 67(2)(e) of Tanzania’s constitution, as that remained the Parliament’s prerogative. In the opinion of the Court of Appeal, such declaration would be as good as “meddling in constituencies of the other pillars of the state ... because after all, the issue of independent candidates is political not legal.” Hence it was solely for the parliament, which is *the custodian of the will of the people, not the Court*, to decide whether to allow or disallow independent candidates in Tanzania (URT, 2010). Given the current composition of the parliament predominantly tilting in favour of the ruling party and the fact that it was the very institution that unanimously approved the proscription of independent candidacy, changes against that effect are very unlikely.

In his article, captioned “Join A Party or I Cannot Elect You: The Independent Candidate Question in Tanzania,” Alexander B. Makulilo, offers a characterization that befits the Court of Appeal’s verdict. Accordingly, he asserts that the court erred in ruling that the issue of independent candidate is a “political” rather than a “legal” affair and that it should be resolved politically through the parliament (Makulilo, 2011). He goes on to argue that in adjudging the previous ruling of the High Court a nullity, the Court of Appeal (of Tanzania) failed not only “to assert its powers in safeguarding the right of individuals to contest during elections” but also “subjected itself to an inferior status before the legislature” (ibid.p.129, 135). In this way, the principle of separation of powers and checks and balances is seriously undermined. Makulilo ascribes such failure of the justices to their fear of the ruling party and its government. To the foregoing, three issues are noted:

First, I think the framing of the author’s title was partly inspired by Justice Lugakingira’s uneasiness with the contradictions in Articles 20(4), 21(1) and 39(c) of the Tanzania’s Constitution. In his ruling of the first petition regarding independent candidates in 1994, Lugakingira remarked that central to these Articles is the message that: “you either belong to a political party or you have no right to participate” in government (URT, 2010). The title of Makulilo’s article implicitly suggests the electorates’ preference for party-sponsored candidates to independent candidates. However, in the text the article entirely devotes its attention on examining the validity of the verdict made by the Court of Appeal in respect of independent candidacy. He makes no attempt to test the visibility of de facto independent candidacy in Tanzania. Against this drawback, the present paper employs data from the 2010 elections to demonstrate a scenario of de facto independent candidacy in Tanzania. To this end, Table 1 presents findings which suggest that some candidates in the 2010 elections were elected not primarily because their parties were influential enough to attract electoral support but rather because of their personalities.

Secondly, the author argues that the ruling party uses the state to oppose independent candidates in Tanzania. He writes: “...if the ruling party holds a position, it would use every mechanism at its disposal to defend it” (ibid.p.134). But he does not go a step further, like other scholarships on the subject, to interrogate the validity of the claims upon which the government/ruling party’s reluctance to endorse independent candidacy is hinged. This certainly does not help the reader to comprehend the logic of such resistance.

Thirdly, although the author ascribes the Court’s failure to exercise its constitutional duty of protecting people’s fundamental rights to the fear of the ruling party and its government by the justices, he does not explain further as to why the learned judges feared the ruling party. Since this last aspect requires a lengthy treatment far beyond the scope of this article, I will not delve into it except noting that if the court’s functioning depends on the pleasure of the government/ruling party, there would obviously be serious implications for its impartiality. Instead, the ensuing discussion interrogates the validity of the claims against independent candidacy in Tanzania. In so doing, an exploration of the logic for the government/ruling party’s reluctance to endorse independent candidacy is also in order.

5. Examining the Antithesis of Independent Candidacy

The antithesis of independent candidates in Tanzania has mainly stemmed from two sources: the government/ruling

party and Msekwa's (1995) work, *Essays on the Transition to Multi-Partism in Tanzania*. Four arguments are advanced in opposition to independent candidates in Tanzania. According to the government, the proscription of independent candidacy aims at: (i) promoting representative democracy thereby safeguarding peace, order and security, (ii) ensuring that whoever is made a candidate is well known to the people he wants to lead (URT, 1994); (iii) preventing individualism or selfishness which runs counter to the advancement of people's political and economic interests, and (iv) promoting the party system whose functioning does not accommodate independent candidates (Msekwa, 1995). It is to an interrogation of these justifications that we now turn.

5.1 Representative Democracy, Peace, Order and Security

In defense of the legislation outlawing independent candidates in the High Court of Tanzania in 1993, the State Attorney submitted that: "the prohibition to individual contestants in the general and local government elections is one way to achieve representative democracy. The constitution primarily aims at establishing and safeguarding a representative democracy, which is the policy our country follows, ... a policy that intends to safeguard peace, order, security and tranquility. [I]t is also intended to ensure that, the argument runs, whoever is made a candidate is well known to the people he wants to lead."

At face value these reasons may sound very appealing. When critically examined, however, they hardly resonate with the test of logic. To be sure, two points will illustrate this position. First, the argument that the proscription of independent candidates seeks to promote representative democracy appears to be based on a rather naïve conception of representative democracy. It is unclear as to how independent candidacy stifles representative democracy. Essentially, representative democracy is premised on the understanding that voters choose persons and entrust them to make decisions (in their behalf) that represent the former's view and values (Kirkpatrick, 1981). It may be absurd to imagine that independent candidacy would be an impediment to representative democracy. On the contrary, it only offers a more inclusive framework of representative democracy (Chambers, 2003).

Moreover, there has not been any empirical evidence that associates independent candidates in elections with threats to 'peace, order, security and tranquility' at least in Tanzania. Since independence in 1961 Tanzania has had only one independent candidate – Mr. Herman Sarwatt – from Mbulu constituency. During the intra-party nomination Mr. Sarwatt was rejected by his party – the Tanganyika African National Union (TANU) but decided to stand as an independent candidate to challenge the TANU's nominated candidate Chief Amri Dodo. Despite contesting as an independent candidate and actually defeating the TANU-sponsored candidate in the 1960 pre-independence elections in Tanganyika, Mr. Sarwatt remained a faithful member of TANU. He represented his constituency without breaching peace and order in the country.

Secondly, not all members nominated and sponsored by a political party to contest for elections are well known by the 'people.' After all, it is the electorates who determine through the ballot box whether or not a particular candidate is well known to them. Related to Sarwatt's case is Mr. Ngusa Nangale, (Note 6) who despite leading in the CCM primaries for the Busilili council during the 2010 elections, was rejected by his party on the ground that he was "still too young and unpopular with the electorates." Unsatisfied with his party's decision, Mr. Nangale defected to CHADEMA where his bid for nomination was approved. During the election he turned out to be the most popular candidate thereby defeating his opponents. Therefore the question of being "well known" is too subjective to fit any objective criteria of people's fundamental rights.

5.2 Independent Candidacy: Promotes Individualism and Selfishness?

Pius Msekwa's criticism for independent candidacy arises from two premises. The first one is that he equates it to *individualism* or *selfishness*, which according to him *has no role to play* in advancing the socio-economic and political interests of the people usually pursued by political parties (Msekwa, 1995:68). The other reason basically stems from his implicit preference of party system to independent candidates. In this, he invokes the British experience in asserting that even in the House of Commons of the United Kingdom, independent candidates disappeared because they "did not fit into the pattern of the party system – which is central - in the conduct of parliamentary business" (ibid, p.69).

Msekwa's arguments can hardly be substantiated. First, while he equates independent candidacy to *individualism* and *selfishness*, which according to him, have no room in pursuance of the interests of the people, he ostensibly celebrates political plurality. Flattering a complete ban of independent candidacy whereas the exercise of political rights is confined to party politics and at the same time proclaiming to be a believer in plural politics is logically contradictory and hypocritical. Nyerere has summarized it all when he argued:

It is very illogical to argue that moving to a multi-party system is to make the country more democratic, and at the same time there are laws restricting the citizens' right to contest for an

elective office to membership of a political party – or disallowing them to stand against their party's official candidate (Nyerere, 1995:11, emphasis is the author's).

But more interestingly, in his description of the duties of an MP, Msekwa asserts: “responsibility to his/her political party is clearly the MP's first and foremost task” (ibid, p.78). It remains controversial as to how a person so passionate about the people's interests would accord preeminence to interests of the party and assign to the very people and the nation at large a secondary importance. Msekwa pretentiously arrogates to himself competency not only in defining who the ‘people’ are but also safeguarding their interests against ‘individual-self’ interests. In so doing he fictitiously situates the exercise of a fundamental right – to participate in government - in the context of individual selfishness. This is wrong because it tends to treat independent candidacy as a complete substitute for a party system rather than a supplement to it.

In addition, although currently there is no precise and reliable figure of political party members in Tanzania, the approximated figure does not exceed 6 million. This is an equivalent to 17% of the Tanzanian population estimated at above 35 million people. Of the 20 million voters registered for the 2010 elections (TEMCO, 2011), the estimated 6 million members political parties constitute only 30% of the voting population. This hypothetically means that members of political parties who, in this case, constitute a minority of 30% of the voters are the only people eligible for election into political office and the remaining population of non-party members who constitute 70% of the voting population are not eligible to enjoying their fundamental right of contesting political positions. This brings us to the contextual question: who is *selfish* in these circumstances? If embracing the idea of inclusiveness to the extent both the majority and the minority can enjoy their basic rights is a manifestation of selfishness, then, there would be serious definitional problems to handle regarding the term selfishness.

Furthermore, given the current state of political parties in Tanzania (most of which are organizationally and functionally weak) they cannot be thought of as being the sole guardians of the socio-economic and political interests of the ‘people.’ As Mhina (2005) aptly doubts: “in this era of multiparty politics, the possibility of citizens choosing competent leaders is partly reduced by party choices, which are becoming more and more dominated by money and corruption. The candidates presented to voters are sometimes those who have passed through controversial primaries and not always the best candidates” and may not therefore necessarily safeguard the interests of their electorates. In other words, the party system that Msekwa prizes does not seem to, and certainly will not, be the panacea for the country's ills of democratic representation. Arguably, independent candidacy in an electoral system presents an alternative political avenue for non-partisan or even dissent party aspirants for elective office to exercise their basic right - to participate in government – which by itself is an important component of a healthy democracy.

5.3 What is the Underlying Logic?

At this juncture it may be imperative to ask: why has the government/ruling party been reluctant over the past 18 years to endorse independent candidates in Tanzania? The logic of government's opposition to independent candidacy seems to be hinged on the ruling party's fears of losing control over its dissent MPs. In a situation as delicate as when dissenting MPs firmly hold an independent position over policy issues in the House, the threat and/or actual use of the power of expulsion becomes a very powerful weapon for maintenance of the party's discipline. Given the irrepressible intra-party factions characterizing most political parties in Tanzania, it would have been possible for members expelled by their parties to remain MPs had it not been the inclusion in the electoral law of a clause setting membership to a political party as a precondition for election into a political office. This would be even more disadvantageous to the ruling party – the CCM – because it would have more to lose than other political parties. First, there are risks of losing its hold on the policy process in parliament if the party fails to maintain a clear majority in the House. Secondly, such failure would have implications over the resource base of the party. The CCM currently receives a lion's share of the financial support from the government in the form of subvention calculated in terms of the percentage of seats the party commands in the House. According to Section 16(2) and (3) of the Political Parties (Amendment) Act, 1996, (subsection 2) “the government is required to grant an annual subvention to every qualifying party, the amount of such grant shall be computed on the basis of the number of members of a party who are members of a district or urban council.” Subsection 3 adds: “No party shall qualify for the grant to it of a subvention in accordance with this Act unless: (a) it is a party which is fully registered under this Act; (b) it has, in the immediately preceding general or local government election, had any of its candidates elected to be members of parliament or of a local government authority.” It follows that uncertainties about its future political and financial wellbeing compel the ruling party and its government to strategically seal all possible windows, including independent candidacy, mainly as a mechanism for holding together its own MPs.

Despite the official ban on independent candidates, the pattern of electoral outcome in 22 out of 31 constituencies

won by the opposition parties suggests a scenario one can describe as de facto independent candidacy. It is to an exploration of this that the ensuing discussion turns.

6. The 2010 General Elections: A Case for De Facto Independent Candidates?

The term de facto independent candidacy is used in this paper to simply describe an emerging pattern in Tanzanian politics where more emphasis is placed on electing candidates based on their personal qualities rather than voting on the basis of party lines. It is in this context that candidates are elected not necessarily because their respective political parties are organizationally stronger or weaker, but because of their personal appeals to the voters.

Out of the 30 constituencies covered by this study, it is only in 8 constituencies that the electoral support for the opposition parliamentary candidates who won the elections corresponded to that of the respective party's presidential candidate. These include: Moshi Urban, Ilemela, Ukerewe, Musoma Urban, Mbeya Urban, Mbulu, Arusha Urban and Karatu. The CHADEMA parliamentary contestants won all of these constituencies. The pattern of electoral support in the parliamentary elections within the remaining 22 constituencies, as Table 1 shows, tilts toward independent candidacy.

For example, there was a significant gap between the percentages of votes earned by the NCCR-Mageuzi parliamentary candidates and those accorded to the party's presidential candidate in all the 4 constituencies of Kasulu Urban, Kasulu Rural, Kigoma South and Muhambwe. Despite winning the parliamentary seats in the said four constituencies as Table 1 shows, the NCCR-Mageuzi presidential candidate had the least performance among the top three parties scoring as lower as 538 (1.58%), 1,132 (2.32%), 708 (1.56%) and 1,086 (1.89%) of the valid votes in Kasulu Urban, Kasulu Rural, Muhambwe, and Kigoma South respectively (NEC, 2010). Likewise the TLP's presidential candidate scored only 2,779 (5.03%) of the votes despite the party's parliamentary candidate – who is also the party's national Chairperson – winning by 29,047 (52.71%) of the votes in Vunjo constituency.

In addition, in constituencies such as Hai, Kigoma North, Mbozi West, Meatu and Lindi Urban where CHADEMA and CUF won parliamentary elections respectively, the CCM presidential candidate recorded an electoral support of more than 60% of the valid votes. Such pattern of electoral support confirms our assumption that voting in these constituencies did not strictly follow party lines. Instead, personalities played a significant role in shaping the parliamentary electoral outcome. Had the voting followed party orientations, the electoral support given to a particular party's parliamentary candidate would have been congruous with the support accorded to its presidential candidate. However, as already shown above, this was not the case in the 22 constituencies covered by this study – a scenario I describe as de facto independent candidacy. The fact that most parliamentary candidates from the opposition parties had limited (in some cases no) financial support from their respective parties for campaign purposes, the issue of financial resources from political parties can hardly serve as a variable to explain their victory. Apparently, unavailability or limited financial support from the parties was cited as one of the biggest challenges facing parliamentary candidates, most direly affected were the opposition side, as revealed in interviews with the author. The CHADEMA parliamentary candidate from Maswa East constituency when interviewed, for example, had this to say about his sources of finance for campaigns:

We hardly receive any financial support from the party. This is a huge obstacle to our campaign efforts. I finance my parliamentary election campaigns mainly from my own sources. I must admit that I also received some donations from a few supporters most of whom prefer their identities to remain anonymous for fear of being embarrassed by the ruling party and government organs (Note 7).

While the CUF parliamentary candidate, who contested the same constituency, admitted to have received some funds from her party's district account, she insisted that the money was too little to make any difference. Arguably, it may be said that opposition candidates who won the election in the selected constituencies did so not primarily because of their party's influence in those constituencies but rather, and in large part, due to the candidates' own personalities.

Personality in political terms implies the individual's traits, behaviour, qualities or character that combine to create the credibility of a candidate to voters as a form of power that increases his/her chances of electability (Mukangara, 1997; Wolfensberger, 1999). A brief account of one MP, Mr. Sylvester Kasulumbayi, from Maswa East constituency is illustrative. Mr. Kasulumbayi has been the Councilor for Ipililo ward in Maswa district for the past 17 years on the various opposition parties' ticket. He was elected an MP for Maswa East constituency in the 2010 elections. During his councillorship despite crossing over to three different opposition parties he has never lost his seat every time by-elections were held. He was first a CUF member before he defected to the Chama Cha Ustawi Tanzania (CHAUSTA) and CHADEMA in 2008 and 2010 respectively. His recent (2010) defection earned him a higher political status of being elected a member of parliament besides his re-election as a Councillor. (Note 8)

When the author wanted to know why Mr. Kasulumbayi kept on winning elections and by-elections despite defecting to various opposition parties, one government official, who was interviewed by the author, observed: “Mr. Kasulumbayi has been able to earn the loyalty of his voters because of his personal commitment and proximity to them. Some of his supporters perceive him as a simple and easy-to-talk-to kind of person, bold enough to pursuing issues of common interest among voters. Yet others metaphorically describe him as a *bush lawyer* – implying an advocate of ordinary people’s rights without formal legal/professional training.” All this points to the personality variable as a dominant factor in the re-election of Kasulumbayi.

Important to note, is that despite some signs of growth, at least, in terms of the electoral seats recorded in the 2010 elections it is noted that, on the whole, opposition parties in Tanzania are still organizationally weak (Chaligha, 2005). Unlike the ruling party (the CCM), the opposition parties have relatively no stable and functional structures anywhere beyond the district level. At the ward, village, branch and cell levels there is no predictable leadership to reliably fill the party structures. Most of the activities take place at the district level literally coordinated by volunteers (Mateng’e, 2010). In the absence of effectively functional structures and procedures at the grassroots levels personalities are more likely to determine the course of events towards political success or failure (Smith and Deering, 1984). What the foregoing paragraphs imply is that the electoral victory of opposition parliamentary candidates in the 22 constituencies has affirmed the case for independent candidates in Tanzania. Arguably, given the limited financial support from their respective parties and the ineffective party organization these could be taken to have won the elections as de facto independent candidates.

7. Conclusion

The paper has argued that much as political parties are important institutions for democratic political engagement they cannot supplant other forms of democratic participation including independent candidacy. The claims that independent candidates are prohibited in Tanzania for the sake of promoting peace, order, security, and preserving representative democracy are unsound. It is in order, therefore, to conclude that the proscription of independent candidates in Tanzania - motivated by the ruling party’s interests – is done at the expense of democracy. As long as the membership to a political party remains a pre-condition for contesting an elective political office despite the diminishing relevance and legitimacy of political parties, it serves as a forced ladder to the exercise of citizens’ fundamental rights. The 2010 parliamentary election results, at least in the selected constituencies, provide us with some insights that make it imperative to re-examine the ban of independent candidates in Tanzania. Hence, unless Articles 39 and 67 of the Tanzania’s Constitution, among others, are reversed they will continue stifling the democratization process.

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Notes

- Note 1. The author was engaged by the Tanzania Election Monitoring Committee (TEMCO) to observe the 2010 elections in the constituency for the three months' period. Many people, including politicians, government officials, election officials, and ordinary citizens were purposively interviewed during the period. I sincerely thank TEMCO for facilitating my stay in Maswa district throughout the period.
- Note 2. Political parties are generally conceived as coalitions of people organized formally to recruit, nominate, and elect candidates for public office. They are also instrumental in running the government as well as creating and implementing shared political goals through the election of officials to the executive and legislative branches of government, and bringing stability to the political system (See for example Gitelson, et.al 2001).
- Note 3. This is an electoral system - also known as the "winner-take-all" system - in which there is no minimum prescribed for a candidate to become the winner. Instead, the candidate with the highest number of votes polled is declared elected.
- Note 4. Party organization is mostly associated with the formal structures, rules and procedures of parties whose establishment becomes institutionalized - recognized and respected - among both party members society as a whole for the smooth performance of the party's functions (Chaligha, 2005).
- Note 5. The 1977 constitution (Permanent Constitution) vide Article 39 (1) (b) extended the age requirement for the presidential candidate from 30 to 40 years.
- Note 6. Mr. Nangale Ngusa was an incumbent councilor from Busilili ward in Maswa East constituency in Shinyanga region. He sought nomination by the ruling party - CCM - to contest for the 2010 council elections but was rejected by his party despite winning in the primaries on the ground that "he was still too young and unpopular." He defected to CHADEMA and won the election by a scoring 3400 votes (70.1% of valid votes) leaving his opponents with only 1281 votes (26.4%) and 166 (3.4%) from CCM and CUF candidates respectively.
- Note 7. Mr. Sylvester Kasulumbayi in an interview with the author on 5.10.2010 held in Maswa District, in Shinyanga region. In an earlier interview held on 4th October 2010 with the CUF parliamentary counterpart more or less the same sentiments were expressed.
- Note 8. Based on the candidate's own personal account of his political career in an interview with the author on 5th October 2010.

Table 1. Distribution of Presidential Votes (%) in Constituencies won by Opposition Parties in Tanzania Mainland in 2010

	Parliamentary Candidate				Presidential Candidate	
	Constituency	Party	Votes Scored	(%)	Votes Scored	Percentage (%)
1	Kasulu Urban	NCCR-Mageuzi	15,299	44.9	538	1.58
		CCM	10,849	31.85	13,480	39.47
		CHADEMA	6,583	19.33	18,336	53.69
2	Kasulu Rural	NCCR-Mageuzi	26,130	54.6	1,132	2.32
		CCM	18,482	38.6	22,219	45.46
		CHADEMA	1,524	3.2	22,698	46.44
3	Kigoma North	CHADEMA	23,366	48.6	14,783	30.66
		CCM	18,352	38.1	30,370	62.98
		CUF	4,839	10.06	1,694	3.51
4	Kigoma South	NCCR-Mageuzi	23,162	40.34	1,086	1.89
		CCM	20,367	35.5	33,872	58.87
		CHADEMA	7,676	13.4	18,458	32.08
5	Muhambwe	NCCR-Mageuzi	25,574	56.5	708	1.56
		CCM	15,223	33.6	20,394	45.08
		CHADEMA	2,303	5.08	20,981	46.38
6	Moshi Urban	CHADEMA	28,697	62.31	25,707	55.62
		CCM	16,792	36.46	20,106	43.51
		CUF	97	0.21	135	0.29
7	Hai	CHADEMA	28,585	51.63	18,513	33.44
		CCM	23,349	42.17	35,910	64.85
		UDP	258	0.47	-	-
8	Vunjo	TLP	29,047	52.71	2,779	5.03
		CCM	17,498	31.76	27,649	50.01
		CHADEMA	6,558	11.9	22,442	40.59
9	Rombo	CHADEMA	32,010	49.94	27,960	43.59
		CCM	29,931	46.7	33,335	51.97

		DEMOKRASIA MAKINI	478	0.75	-	-
10	Bariadi East	UDP	38,254	51.58	-	-
		CCM	33,148	44.69	44,477	59.97
		CUF	397	0.54	2,412	3.25
11	Bukombe	CHADEMA	19,035	58.24	13,559	41.45
		CCM	11,750	35.95	16,637	50.86
		CUF	568	1.74	528	1.61
12	Maswa West	CHADEMA	17,418	53.19	11,823	36.04
		CCM	12,194	37.24	17,790	54.22
		CUF	1,690	5.16	1,488	4.54
13	Maswa East	CHADEMA	17,075	46.88	12,196	33.42
		CCM	17,024	46.74	21,171	58.01
		CUF	496	1.36	970	2.66
14	Meatu	CHADEMA	13,876	50.03	8,761	31.48
		CCM	12,902	46.52	17,104	61.46
15	Ilemela	CHADEMA	31,296	50.56	29,701	47.82
		CCM	26,870	43.41	29,143	46.92
		CUF	1,924	3.11	1,244	2
16	Nyamagana	CHADEMA	38,171	56.5	30,991	45.37
		CCM	27,883	41.27	32,320	47.32
17	Ukerewe	CHADEMA	34,642	55.22	30,372	49.73
		CCM	24,517	39.08	29,018	47.51
		CUF	1,915	3.05	677	1.11
18	Musoma Urban	CHADEMA	22,463	59.62	19,095	50.58
		CCM	14,378	38.16	17,294	45.81
		CUF	267	0.71	589	1.56
19	Lindi Urban	CUF	13,155	51.44	7,880	30.18
		CCM	11,445	44.75	15,951	61.09

		CHADEMA	384	1.5	1,474	5.65
20	Kilwa South	CUF	14,610	49.55	13,856	46.98
		CCM	14,027	47.57	14,431	48.93
		CHADEMA	288	0.98	523	1.77
21	Biharamulo West	CHADEMA	20,828	48.4	18,343	42.57
		CCM	19,843	46.11	21,640	50.22
		CUF	631	1.47	441	1.02
22	Mpanda Urban	CHADEMA	8,075	49.62	6,523	39.11
		CCM	8,026	49.31	9,526	57.11
		CUF	39	0.24	168	1.01
23	Mbeya Urban	CHADEMA	49,084	63.2	42,917	54.97
		CCM	25,878	33.32	32,249	41.31
		CUF	671	0.86	562	0.72
24	Mbozi West	CHADEMA	20,835	49.19	14,128	33.35
		CCM	20,203	47.7	25,562	60.35
		CUF	220	0.52	194	0.46
25	Mbulu	CHADEMA	48,428	63.39	52,271	65.7
		CCM	27,210	35.62	24,044	30.22
		CUF	570	0.75	243	0.31
26	Arusha Urban	CHADEMA	56,196	57.68	54,856	56.1
		CCM	37,460	38.45	39,828	40.73
		CUF	2,022	2.08	668	0.68
27	Karatu	CHADEMA	41,109	59.18	43,137	62.1
		CCM	26,211	37.73	24,364	35.08
		CUF	244	0.35	148	0.21
28	Kawe	CHADEMA	43,365	43.17	40,794	43.94
		CCM	34,412	34.26	45,321	48.81
		NCCR-Mageuzi	11,970	11.92	485	0.52

29	Ubungo	CHADEMA	66,742	49.56	65,450	43.75
		CCM	50,544	37.53	68,727	45.94
		CUF	12,964	9.63	13,048	8.72
30	Iringa Urban	CHADEMA	17,352	50.38	14,864	43.14
		CCM	15,266	44.32	18,457	53.57
		NCCR-Mageuzi	1,272	3.69	60	0.17
31	Singida East	CHADEMA	13,787	50.89	8,292	30.58
		CCM	12,161	44.89	17,078	62.97
		CUF	139	0.51	354	1.31

Source: Compiled by the author from the National Electoral Commission of Tanzania website: <http://www.nec.go.tz/> (21.10.2011)

Columns four and six of Table 1 present the total number of valid votes that candidates scored for the parliamentary and presidential elections respectively. Accordingly, the results in the table indicate that there was a significant difference in terms of electoral support between the parliamentary and presidential candidates of the same political parties.