

THE 2020 CHADEMA SPECIAL SEATS DISPUTE IN TANZANIA

*Does the National Electoral Commission Comply with
the Law?*

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ABSTRACT

This article focuses on the CHADEMA dispute regarding the selection of its 19 women to special parliamentary seats after the completion of the 2020 general elections in Tanzania. It argues that the dispute is caused by the failure of the National Electoral Commission (NEC) to provide political parties with a uniform and transparent modality for the selection of women to special seats against the requirement of Article 81 of the 1977 Constitution. The NEC's failure has led to modalities of implementing women's special seats that are incompatible with the international standards governing 'Temporary Special Measures' (TSM). This has led to conflict, the marginalisation and discrimination of women in special seats, ridicule of the special seats system, and a slow transition of women from special to constituency seats. The article provides suggestions on how the special seats system could be reviewed and repositioned to achieve its intended objectives.

Keywords: temporary special measures; special seats system; elections; women and electoral rights

INTRODUCTION

In 2020 Tanzania held its sixth general elections since the reintroduction of multiparty democracy in 1992, with the ruling party, Chama cha Mapinduzi (CCM), winning all those elections (Tanzania Election Watch 2021). With a low voter turnout of 50.2%, the CCM's presidential candidate, the late President John Pombe Magufuli, won the election by 84%, an increase of 26% compared to the 56% of votes obtained in the 2015 presidential election (Tanzania Election Watch 2021). For the first time, the CCM won a majority of the parliamentary seats by

clinching 256 out of 264 seats (Tanzania Bora Initiative 2021). Winning just 4% of the parliamentary seats, the opposition parties collectively failed to secure sufficient seats to form the official opposition camp in the National Assembly (Tanzania Election Watch 2021). The conduct and the delivery of the 2020 Tanzanian elections attracted contradictory conclusions from observer missions. For example, observers from the East African Community (EAC) and the Southern African Development Community (SADC) deemed the elections to be generally credible, while those from the Electoral Institute for Sustainable Democracy in Africa (EISA) and Tanzania Elections Watch perceived the elections to be marred by voting irregularities, internet interruptions, arrests, and violence by security forces both on the Mainland and in Zanzibar, thus neither free nor fair (Tanzania Election Watch 2021).

Since Tanzania became independent in 1961, men have consistently been the majority of the directly elected members of the National Assembly (Killian 1996). No women were elected from constituencies during the single party elections conducted between 1965 and 1980 (TEMCO 2016). The first woman to win a constituency was in 1985, followed by two more women in 1990 (Killian 1996). This number kept increasing, albeit at a slow pace. Subsequent elections led to eight women winning constituencies (3.4%) in 1995, twelve (5.3%) in 2000 and seventeen (7.3%) in 2005. In more recent elections, 21 (8.7%) women won constituencies in 2010, followed by 25 women (9.4%) in 2015. Sixty years after independence, women in Mainland Tanzania still constitute less than 10% of the directly-elected parliamentarians. After the 2020 elections and subsequent by-elections,¹ women won 26 seats out of 264 seats (9.8%).

The low progression of participation by women in the National Assembly resulted in the introduction of the Special Seats System (SSS) in 1985 (The Constitution of United Republic of Tanzania 1977, Article 66-1(b) & 78). The system was established as part of a global movement for countries to adopt Temporary Special Measures (TSM) to address the systemic challenges that women face when accessing decision-making positions (Killian 1996; Makulilo 2009; Meena et al. 2017). The SSS is constitutionally managed by the National Electoral Commission (NEC).

Before the introduction of the SSS, women constituted 7.5% of the first post-independence Tanzanian Parliament (1962-1965). The number remained below 10% until 1985 (Meena 2009), when the constitutional reform to the 1977 Tanzanian Constitution introduced a parliamentary quota system mandating that

1 There have been two by-elections in Muhamwe and Buhigwe in Kigoma region since the 2020 general election in Tanzania Mainland and one by-election in Zanzibar. In Tanzania Mainland, the by-election was undertaken on 16th May 2021, a woman, Frolence Samizi, won in Muhambwe constituency.

15% of all members of parliament be women.² The influence of the 1995 Beijing Declaration and Platform for Action (United Nations 1996), which inter alia called upon states to take steps to achieve equal representation of men and women in political spaces, occasioned the increase of special seats for women to 20% in 2000 and later to 30% in 2005 (Constitution Article 66-1(b)). Following the government decision, the number of special seats for women was increased to 40% in 2015 (Interview, Director of Elections, National Electoral Commission, May 2021). With the introduction of SSS, the number of women in Tanzania's Parliament increased to 16.73% after the 1995 election, 21.5% after the 2000 general elections, 30.3% after the 2005 elections, and 35.85% after the 2010 general elections. The number increased slightly to 37.2% after the 2015 election and remains at 37.1% after the 2020 general elections (IPU, 2021).

Table 1: Trend of the Number of Women in Parliament 1985-2021

Year	Women who won in constituencies	Women Special Seats	Total Number of Parliamentarians	Total Percentage of Women in the Parliament
2020	26	113	393	37.1
2015	25	113	393	37.2
2010	26	102	357	35.85
2005	17	75	307	30.03
2000	12	48	279	21.51
1995	8	37	269	16.73
1990	2	19	242	8.68
1985	1	22	239	9.62

Source: Parliament of Tanzania; Reports from National Electoral Commission

The SSS has also contributed to a gradual improvement in community perceptions of the role of women as leaders, and in passing progressive policies and laws relating to gender, especially in the areas of marriage, sexual offences, education, labour, land ownership, leadership, elections and political participation. The SSS has also facilitated women's nominations in senior political positions and has inspired many women to consider politics as a career (Lihiru 2019).

2 The proposal was made by the Nyalali Commission – The Presidential Commission on Single Party or Multiparty System in Tanzania 1992 (Volume 1), Dar es Salaam University Press. The Chairman of this Commission was the late Chief Justice, Francis L. Nyalali, and hence the commission is popularly known as the Nyalali Commission. The report was submitted on 17 February 1992.

The merits and challenges facing the implementation of women's special seats in Tanzania are thoroughly documented (Killian 1996; IDEA 2003; Makulilo 2009; Swai et al. 2013; Kairuki; Bjarnegård & Zetterberg 2016). However, this body of literature is from the perspective of political science. Despite its usefulness, such literature does not offer an analysis regarding the compatibility of the SSS's national legal framework with the international and regional temporary special measures' guiding frameworks; areas of convergence and divergence; and the implication of the implementation and success of the SSS in the Tanzania. The status quo leads to an absence of concrete recommendations to the government and NEC on strategies to align the SSS with the international and regional frameworks, as well as the objectives for its establishment. Consequently, this gives room to the emergence of disputes, such as that of *Chama cha Demokrasia na Maendeleo* (CHADEMA), the second-largest political party in Tanzania, as explained below.

Since their inception, the implementation of special seats for women has been tainted with concerns over its rationale, the interests they serve (Makulilo 2009), and the soundness of the mechanisms for obtaining women for special seats (Killian 1996). Thirty-six years since its introduction, concerns exist as to whether the implementation of SSS is on track and if it should continue. After the 2020 general election there was further attention to the SSS with a contestation between the main opposition party CHADEMA, the NEC, and the Speaker of the National Assembly, over the selection of the 19 CHADEMA women candidates for special seats. After the vote-counting exercise for the 2020 general election had been completed, the NEC declared CCM and CHADEMA as the only political parties qualifying to nominate women for special seats. The NEC apportioned 94 and 19 seats to CCM and CHADEMA respectively, in line with parliamentary votes obtained by such parties.³ While CCM moved swiftly with the submission of the list of women for special seats to the NEC, ⁴ CHADEMA boycotted the process of submitting their list of women for special seats. CHADEMA claimed that acceptance of special seats would mean endorsing the manner and the outcome of the 2020 general election, and principally sanctifying what they perceived to be a rigged election. While CHADEMA's national leadership continued to maintain its public stance, a faction of the CHADEMA's women wing, *Baraza la Wanawake Chadema* (BAWACHA), under the leadership of its chairperson, Halima Mdee, together with 18 other women appeared in the Parliament and took an oath before the Speaker of Parliament to become special seats parliamentarians. The CHADEMA central committee's emergency meeting claimed not to have

3 In the 2015 general election, CCM received 66 seats for women special seats while CHADEMA received 37 seats and the CUF received 10 seats.

4 In total CCM have 118 women in the 12th Parliament (24 won constituency seats and 94 women special seats), the largest number since the introduction of multiparty democracy in Tanzania.

submitted names to NEC, selected, or blessed the swearing in of the 19 women. The Speaker of Parliament claimed to have administered the oath to the 19 women based on the official notification of declaration received from the NEC. Similarly, the NEC claimed to have nominated the 19 women from the official letter submitted by CHADEMA on 19 November 2020. CHADEMA accused the 19 women of forging party documents, and subsequently stripped them of leadership positions and expelled them from the party. CHADEMA accorded the 19 women the right to appeal through intra-party appeal mechanisms if they felt aggrieved by the expulsion. The women appealed against the party decision, but months have lapsed without CHADEMA determining the appeal (Interview with one of the 19 women, 2021).

Article 71 (1)(e) 1997 of the 1977 Constitution provides that ‘a Member of Parliament shall cease to be a Member of Parliament and shall vacate his seat in the National Assembly’ if, inter alia, he or she ceases to be a member of the party to which they belonged when elected or appointed to be a Member of Parliament. Precedent suggests that parliamentarians who were expelled from their parties were subsequently removed from the National Assembly with immediate effect, and those who resisted managed to do so with the injunction of the High Court. The Speaker of the National Assembly, Job Ndugai, however, maintains that CHADEMA’s 19 expelled members are still valid MPs and will continue to serve as such. The Speaker cites patriarchy on the side of CHADEMA and that no official letter had been received by the National Assembly from CHADEMA regarding the dismissal of the 19 women.

The CHADEMA special seats saga raises countless questions, calling for in-depth interrogation of the procedure for selecting women for special seats; the efficacy and fairness of political parties’ internal dispute resolution mechanisms; the position and autonomy of women’s branches within political parties; the procedure for the cessation of parliamentary membership; the role of patriarchy; and how power struggles and the use of government machinery affect women’s leadership agenda. This article focuses on discussing the legal framework guiding the selection of women for special seats in Tanzania, its contribution to the emergence of the CHADEMA women special seats dispute, and other related challenges resulted from the implementation of women SSS. In doing so, the article compares the national legal framework governing the nomination of women for special seats in Tanzania and its practice to international and regional frameworks in order to draw similarities and differences, and offer recommendations.

The article uses primary qualitative data collected from the Tanzanian Constitution and election-related legislation to grasp the legal underpinnings governing the operation of SSS in the country. Moreover, international and regional conventions, election data, and other secondary sources are studied

in order to understand the international framework governing the execution of temporary special measures. Key informant interviews and focus group discussions conducted between 2019 and 2021 with the Association of Local Government Authorities (ALAT),⁵ Association of Women in Local Government,⁶ Tanzania Women Parliamentary Group (TWPG),⁷ political parties, and other practitioners, provided insights on practical aspects and challenges related to the implementation of the women's special seats system in Tanzania.

THE INTERNATIONAL STANDARDS FOR IMPLEMENTING SPECIAL SEATS FOR WOMEN

The Special Seats System (SSS) in Tanzania draws its legal roots from Article 4(1) of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and Article 9 of the *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)*. Tanzania ratified both CEDAW and the Maputo Protocol in 1986 and 2007 respectively with no reservation. Article 4 of CEDAW states that:

Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

The framing of Article 4 of CEDAW encourages the use of temporary special measures in order to give full effect to Article 7 of the Convention which requires states parties to take appropriate measures to eliminate discrimination against women in political and public life (CEDAW, 1979).

Similarly, Article 9 of the Maputo Protocol states that:

States Parties shall take specific positive action to promote participative governance and the equal participation of women in the political life of their countries through affirmative action, enabling national legislation

5 The Association of Local Government Authorities of Tanzania (ALAT) is the national local government association whose role is promoting and sustaining the goals and ideals of decentralization, available at <http://alat.or.tz/>.

6 Popularly known as *Wanawake wa Serikali za Mitaa* (WASEMI), it is an association of women working in local government councils to advance women issues in local government.

7 A cross-party women's parliamentary caucus, working to advance gender equality in the National Assembly in Tanzania.

and other measures to ensure that: a) women participate without any discrimination in all elections; b) women are represented equally at all levels with men in all electoral processes; and c) women are equal partners with men at all levels of development and implementation of state policies and development programmes.

Articles 4 of CEDAW and 9 of the Maputo Protocol describe criteria for implementing temporary special measures by member states, including the need for the adopted measure to accelerate the realisation of de facto equality between men and women, not to be regarded as discrimination, not to maintain unequal or separate standards, and to be discontinued when the goal of equality of opportunity and treatment has been achieved (CEDAW 2007).

CEDAW expounds the criteria for operating temporary special measures through its General Recommendation No. 25, Article 4, 30th Session, 2004. The recommendation calls on member states to ensure that the legislation providing for temporary special measures gives detailed guidance and justification of measure adopted (*ibid.*). Countries are similarly required to implement plans with clear goals, targets, and steps for women to access such measures in line with respective electoral systems. The recommendation further calls for the institution, implementation, and monitoring of long-term measures for men and women to equally access decision-making positions to accompany the adopted form of temporary special measure. Generally, a country's governing legal framework for temporary special measures must provide answers to questions such as: how would women be nominated to such seats; what would their constituencies be; what would women do on reserved seats; and how would their positions differ from and relate to constituency MPs (UNDP, 2015). Owing to their important role in accessing political decision-making roles, member-states are required to institutionalise clear guidelines for the political parties' nomination of women for any form of the adopted temporary special measure. Successful implementation of any form of temporary special measure, including SSS, is dependent on how a country complies with the established criteria listed above.

COMPATIBILITY OF TANZANIA'S SPECIAL SEATS SYSTEM WITH INTERNATIONAL STANDARDS

In Tanzania, the procedure for implementing the women's special seats system is not centrally established, but can be deduced from Articles 66(b), 67, 78 and 81 of the 1977 Constitution of the United Republic of Tanzania, and Section 86A of the National Election Act.⁸ The legal framework requires not less than 30%

8 Cap 343 R:E 2012.

(currently increased to 40%) of all categories of members of parliament to be designated for women through the SSS. Women are nominated by political parties which contest for election and obtain at least 5% of the total valid votes cast for parliamentary seats (The Constitution of United Republic of Tanzania, Article 78). The qualifying political parties propose and submit the names of eligible women candidates arranged in order of preference to the NEC. The NEC, in accordance with the proportion of votes obtained by each party and the order of preference proposed, then declares such number of women as parliamentarians for women special seats. Finally, the NEC sends a notification declaring the women for special seats to the Speaker of the National Assembly and to the secretary-generals of the respective political parties.

Apart from the content of Articles 66, 67 and 78 of the 1977 Constitution, and section 86A of National Election Act, no further procedure for implementing the women's special seats system, including the selection modality, is provided (Swai et al. 2013). Nevertheless, Article 81 of the 1977 Tanzanian Constitution directs the NEC to make provisions specifying the procedure to be followed by political parties for the purpose of electing and proposing the names of women special seats MPs. Despite this requirement, the NEC has not provided such guidance to political parties on the procedure for selecting women for special seats as required by Article 81 of the 1977 Constitution. The NEC has left the matter to political parties to use their discretion and designate their own procedure to nominate women for special seats (Meena et al. 2017). The NEC only calls, receives, declares, and submits the names of women special seats to the Parliament and replaces them as need be in line with Articles 66, 67 and 78, completely overlooking Article 81.

Equally, in 2020, political parties invoked their internal mechanisms to nominate women for special seats. Most political parties delegated and/or purported to delegate the role of nominating women for special seats to the political parties' women's wings. A faction of the 19-strong BAWACHA women claims to have been more systematic in undertaking the women special seats nomination exercise for the 2020 general election compared to previous elections in 2010 and 2015 (interview with one of the women's special seats parliamentarians in May 2021). The process started from districts to regions and then to national levels, birthing a secretly-kept list of women nominated for special seats waiting final endorsement by the Party. After the NEC declared that CHADEMA had passed the 5% mark and was eligible for 19 parliamentary special seats for women, criteria were set for ranking the nominees. Given the small number of special seats obtained, preference was given to women who had contested and lost in constituencies, and those from the BAWACHA leadership (ibid.). Respondents amongst the 19 women claim that the CHADEMA special seats dispute goes beyond the public statement that the party had boycotted the seats

due to malpractices in the 2020 general election. According to them, the internal dispute started when a faction of CHADEMA national leadership disregarded the list that BAWACHA had worked on for months so as to provide room for new women, and/or women below the 19 cut-off point to fill the positions. They argue that BAWACHA national leadership's unwavering stand in defence of the list fueled the dispute and divided the national leadership into those against and those in support of the BAWACHA move, with the latter facilitating the eventual signing and delivery of the list to the NEC (Interview with a respondent from the disputed 19-CHADEMA women special seats parliamentarians, May 2021). In addition, some of the 19 women view the public stance of CHADEMA's national leadership regarding boycotting special seats as unconstitutional, since the seats are constitutionally established for the benefit of all women whose political party obtains 5% and above of the parliamentary votes. They argue that since the introduction of multi-party elections, CHADEMA has never accepted the election results, but still those who won the seats and the respective number of women special seats were not prohibited from taking the oath and/or undertaking parliamentary roles. Concerns about the composition and fairness of CHADEMA's internal dispute resolution mechanisms were also raised, with the 19 women citing months of no action since lodging their appeal in December 2020. They further argue that the decision to boycott special seats was not inclusive of the views or the interest of the women's wing, citing the party's consistent practice of overlooking and undermining the wing (*ibid.*). On the other hand, a respondent from CHADEMA's national leadership claimed to have communicated its decision to boycott participation in Parliament through special seats early enough, both internally and externally (Interview with Reginald Munisi, CHADEMA's Director of Election Strategy and Organization, 2020). BAWACHA is perceived as a semi-autonomous department which has to conform to the party's stand, regardless of the circumstances. CHADEMA claims not to have simply boycotted the special seats, but also TZS 109 million party subsidy per month and all elections until there is assurance of an independent electoral commission to deliver the elections. The CHADEMA national leadership perceived the special seats dispute as a continuation of the late President Magufuli's plans to weaken the opposition parties (*ibid.* 2020). The respondent blames the state for using its institutions to legitimise the controversial 2020 elections in the eyes of the national and international community. The state is condemned for the interference and disruption of the intra-party special seats nomination process, stealing the election, and for harassing the party since 2016 (*ibid.*). The respondent further accused the 19 women of being greedy, forging party documents, and going against party directives. CHADEMA condemns the presence of 19 women in Parliament, including their reference as the CHADEMA's MPs, since their

dismissal from the party. The respondent further submitted that, over the years, the increase of CHADEMA's constituency and special seats parliamentarians has been significant, with the exception of what they referred to as 'the stolen 2020 elections'. CHADEMA had four MPs in 1995, three from constituencies and one from women special seats. The number increased to five in 2000, with four parliamentarians winning constituencies and one obtained through special seats. In 2005, CHADEMA won five constituency seats and six special seats. In 2015, the party exponentially increased its dominance by winning 35 constituency seats and 37 special seats. Only one female from CHADEMA won a constituency in 2010, a number that increased to six in the 2015 general election and dropped to one after the 2020 general election (Munisi 2020). According to CHADEMA, the 2020 general election swept away the gains accumulated through the past elections. The party won only one constituency seat and is questioning how one seat would translate to 19 special seats.

On the side of the NEC, the respondent submitted that the Commission duly received the letter and list of names for women special seats from CHADEMA, from which the 19 women were declared to be parliamentarians. The declaration form was duly transmitted to the Speaker of the National Parliament who then administered the oath to the 19 women (NEC official, 2021). The respondent admitted oversight of Article 81 of the Constitution, agreeing that common and transparent guidelines are paramount in avoiding similar disputes in future.

ANALYSIS

In the absence of a clear, transparent, and uniform modality for the selection of women to special seats by the political parties, it is difficult to discern who is honest: the 19 women (who argue that the list was duly signed, endorsed, approved, and submitted to the NEC by CHADEMA), CHADEMA national leadership (who vehemently deny submitting a list of women for special seats), and the NEC (which has confirmed having received the official letter and list from CHADEMA). CHADEMA claims that nomination of women to special seats through political parties' own internal mechanisms respects the autonomy of political parties, and is similar to the basic procedure for nominating candidates for constituencies in which intraparty procedure, customs and traditions apply (Munisi 2020). It is however noted that the aspirants nominated by the political parties do not automatically become candidates; they pass another level of scrutiny at NEC level. The election laws require the NEC to have a final check of the nominated candidates in line with legally-established criteria, a procedure that is not applied to special seats. CEDAW (2004) advises that, owing to a specific purpose that the special seats serve, the patriarchal nature of political parties, and

their imperative role in accessing political decision-making roles, a clear procedure must be put in place to guide the political parties' nomination of women to any form of the adopted temporary special measure.

The self-made procedures used for the selection of women special seats by political parties are vaguely known by their members and largely unknown by outsiders. Literature suggests that due to the absence of uniform guidelines from the NEC, political parties have adopted special seats selection procedures that serve the objective of maximising political power rather than promoting the gender equality agenda (Bjarnegård & Zetterberg 2016). Parties' internal special seats nomination and the endorsement stages have been accused of nepotism, favoritism, and corruption – including sexual corruption (Swai et al. 2013). This is evidenced by the fact that, despite the nomination process being undertaken by women's wings, party organs such as the central or executive committee retain the final say on who is on the final list, including the order of preference (Bjarnegård & Zetterberg 2016). Even though Article 78(1) of the 1977 Constitution suggests that the names of women special MPs should be taken to the NEC after the declaration of election results, political parties have been submitting these lists before or after the elections. They also retain the freedom to change the lists and/or order of preference at any time before the NEC declares the names (interview with high-ranking NEC official, June 2021). There is also no transparent mode of submitting the political parties' lists of women for special seats to the NEC. The blurred nomination process of women special seats at party level and subsequent submission of the list at NEC level does little to erase concerns as to whether the names of the 19 women were legitimately or illegitimately obtained and submitted to NEC. None of the explanations from the 19 women themselves, or the NEC, the National Assembly, and/or CHADEMA, could expunge the confusion. The only way this dispute could have been either avoided or rationalised was if the NEC had had a clear, transparent, and uniform mechanism for political parties to nominate women to special seats, and transmit the names to the commission, a responsibility it has under Article 81 of the 1977 Constitution.

Besides the CHADEMA dispute, the absence of uniform NEC guidelines for the selection of women's special seats by political parties has resulted in ways of implementing SSS that are incompatible with both their objectives and international standards governing their operation under Articles 4 of CEDAW and 9 of the Maputo Protocol, as follows:

The absence of common guidelines has led to a situation where there is no room for the public to be involved in the nomination of women for special seats. The disconnection between the women special seats MPs and members of the public has raised concerns about whether party processes bring about authentic women's voices and substantive representation of women's issues to the

Parliament, or whether women are simply used politically to further the interests of their political parties. Accordingly, the public debate on women's special seats is often controversial and demeaning. The fact that special seats give women an advantage over men in circumventing the cultural, financial and political barriers that exist for women in the electoral process, has led to arguments that the seats are not merit-based overlooking its affirmative action purpose. There is also the view that taxpayers' money being used to pay the 113 women with special seats could have been directed to better use (Swai et al. 2013). Lack of connection with voters denies the women special seats electability status, consequently affecting their acceptance by voters, and limiting their willingness to transition from women's special seats to constituencies.

The existence of women's special seats which are not elected by citizens complicates the accountability of these seats. There is no established mechanism to allow women and/or the public to hold women's special seats representatives accountable for their action or lack of action. Since these special seats are nominated by political parties, the constituency for the seats is automatically deemed to be the political parties and the women's wings (Bjarnegård & Zetterberg 2016). Under the CCM, for example, the women's special seats representatives are supposed to submit monthly progress reports to the headquarters of *Umoja wa Wanawake wa Tanzania*, the CCM's national women's organisation, according to an interview with CCM Special Seats MP in 2021. Women's special seats representatives work to embrace the interests of the political wings even when such interests are incompatible with women or general public interests, according to an interview with WASEMI in 2019. Given that the CCM gets the lion's share of the total number of available special seats, women candidates for special seats under the CCM are selected to represent regions, institutions and/or special groups. Because the main opposition political parties such as CHADEMA and the Civic United Front receive a small share of the special seats, the practice of allocating women special seats by regions is inconsistently practised and is still in its infancy. In these political parties, women's special seats representatives are deemed to be working for all Tanzanians across all national issues (Bjarnegård & Zetterberg, 2016). Making women's special seats representatives responsible for large areas such as a region or a nation makes it difficult for these representatives to engage in any meaningful way, demonstrate tangible results, and build the electorate support required to run for a constituency.

The lack of attachment to a geographical area and absence of people-based accountability for women's special seats has attracted financial discrimination against these seats. This is contrary to Articles 1 and 4 of CEDAW and Article 9 of the Maputo Protocol, which require the adopted form of temporary special measure not to further discriminate against women. In Tanzania, members of

parliament elected from the constituency receive a Constituency Development Fund (CDF) of about 40,000,000 TZS per annum for development activities at constituency level. By law they are recognised as members of parliament, but women in the special seats receive no CDF funding due to the presumption that they do not represent constituencies (Constituencies Development Catalyst Fund Act, Act No 16 of 2009). Although women special seats MPs are deemed to represent women's interests across the nation, such interests are not perceived as a constituency worthy of CDF funds to cater for their unique needs. This implies that women special seats representatives are supposed to use their salaries or raise funds to undertake any meaningful development projects in their area. In the CCM, for example, women special seats representatives are supposed to contribute to social service improvement initiatives in their regions from their salaries and upkeep (subsistence and transport) allowance (Interview with CCM special seats MP, April 2021). Similarly, in CHADEMA between 2015 and 2020, more than TZS one million was deducted from the women special seats MPs monthly salary to contribute to party building activities, according to an interview with CHADEMA Special Seats MP (2015-2020) in April 2021. Denying CDF to women special seats MPs is contrary to Article 4 of CEDAW, which requires a temporary special measure not to maintain separate standards among MPs. On the other hand, undertaking projects in constituencies even with their own funding comes with challenges for women special seats MPs. Constituency MPs dislike having women special seats MPs engage in and/or undertake any development activities in their constituencies. These MPs are concerned that women special seats representatives might leverage their constituencies, build themselves politically and take over the constituency in future elections (Interview with Special Seats MP from CCM, in April 2021). Other constituency MPs insist that women special seats MPs ask for permission before visiting and/or undertaking any engagement with the electorate in their constituencies (*ibid.*). This practice widens the gap between these MPs and the electorate and poses serious questions about how special seats MPs are accepted, appreciated by the voters, and transition to constituency seats (Swai et al. 2013).

The absence of guidance from the NEC on the implementation of women's special seats has also led to several practices that marginalise, discriminate against, and limit the full potential of women's special seats representatives against Article 4 of CEDAW. For example, women in special seats do not qualify to become prime minister as only elected members of parliament are eligible for the premier position (Article 51(2) of the Constitution of United Republic of Tanzania). In the local government authorities and councils – one of the main incubation platforms for women's careers in politics – there are guidelines and practices that prohibit special seats councillors to be members of the local governments'

ethics committee (Interview with women councilors from the Association of Local Authorities, Tanzania, May 2019). Even in those committees where special seats women can be members, such as the committees on HIV/AIDS, Social Services, and Planning, women holders of special seats are not allowed to chair such committees. There are also guidelines and practices depriving special seats councillors from becoming mayors, deputy mayors, and chairpersons of districts, municipalities and city councils (ibid.). In some wards, special seats councillors are not allowed to chair ward development committees (WDCs) meetings even when an elected councillor is absent. The ward leaders and members would prefer that a village or street chairperson to act as a WDC chair rather than a special seat councillor (ibid.). Limiting positions and resources that women special seats MPs (and councillors) can hold, access or receive, indicates outright marginalisation and discrimination of the women in such seats, contrary to Article 4 of CEDAW.

Finally, the absence of NEC guidelines on the management of special seats means the absence of long-term plans to complement the special seats system and level the political playing field. Temporary special measures are supposed to be used in the short term and as a catalyst to kick-start access to decision-making processes, while longer-term efforts are laid to create a sustainable, level playing field for women to transition to competitive seats. Article 4 of CEDAW requires the existence of special seats in the country to be temporary in nature, depending on the country's context, and the level of past inequality and discrimination against women. This means that it is possible for a temporary special measure to apply for a long period of time. According to the United Nations *Convention on the Elimination of All Forms of Discrimination against Women* (General Recommendation no. 25, Article 4, paragraph 1 (2004)), countries are supposed to ensure that they do not eradicate the adopted measure prematurely, but such measures should not continue to exist indefinitely.

The projected timeframe in which temporary special measures can exist must be informed by an implementation plan that should contain clear goals, targets, expected outputs and outcomes, and an evaluation plan to trace progress and make the required adjustments along the way. Thirty-six years since special seats were introduced in Tanzania in 1985, the NEC has not in itself and/or through stakeholders come up with its implementation and evaluation framework to track progress and determine for how long these seats should be continued, and when they should be paused and/or replaced by other mechanisms.

The absence of long-term plans is also evident in the absence of term limits for women serving in the special seats. The 1977 Constitution, electoral laws, and the NEC do not provide for a timeframe for an individual woman to serve in special seats. One woman can legally serve on a special seat endlessly, contrary to the intention of the special seats which is to develop the political capacities

of many women who will afterwards transition to compete in constituencies.⁹ The absence of term limits has slowed down the rate at which the special seats system contributes to the realisation of equal representation by men and women in the political decision-making process. For example, since their establishment, special seats have at most facilitated only 9.8% of women to win constituencies (in the 2020 general election). When one woman stays in a special seat for a long time, she blocks both her chance to transition to a constituency seat and the opportunity for other women to obtain a special seat, gain political experience, and later also transition to constituencies. The transition to competitive seats is also affected by the unintended consequences of the special seats system. Working on the assumption that women already have representation through special seats, the political parties are reluctant to field women as candidates. Women with the potential to compete for constituency seats are discouraged with the promise of being given special seats (Meena et al. 2017). This bias is also carried by some of the male candidates; when they vie against female candidates, they tell the voters to refrain from voting for a woman candidate because she is greedy to even consider contesting for competitive seats instead of competing for special seats positions, which are her rightful place (Lihiru, 2019).

The period between 2011 and 2014 witnessed the constitutional reform process which, among other things, proposed the eradication of women's special seats and the introduction of an equality-based representation of men and women in the Parliament under Article 124(4) of the 2014 Proposed Constitution.¹⁰ Although this article is celebrated by many women's rights advocates, it also has many shortcomings. Its applications are restricted to parliamentary level, overlooking other arms of the state and institutions, and does not contain a modality for implementation.¹¹ Also, at present Article 124(4) is vague and therefore prone to manipulation. The referendum for the proposed constitution was indefinitely postponed by the late President of Tanzania, John Pombe Magufuli, who stated on a number of occasions that constitution-making was the least of his priorities (Lihiru 2019). The sixth president, Samia Suluhu Hassan, also hinted that those who need a revival of the constitution review process should be patient. The revival of constitutional reforms in Tanzania should ensure that Article 124(4) of the proposed constitution is reframed and is clear on how women will access electoral and political decision-making roles across the board.

9 Umyy Mwalimu, the current Minister of State in the Vice President's Office (Union and Environment), served in special seats for ten years before she competed through Tanga Urban constituency in 2020.

10 Article 124(4) simply provides that, 'the basis of composition of the Parliament shall be equal representation of female and male parliamentarians.'

11 Article 124 (4) is silent on the modalities for attainment of equal representation but obliges the Parliament, under Article 124 (6), to enact legislation to classify the procedure of implementation of Article 124.

CONCLUSION AND RECOMMENDATIONS

The CHADEMA fracas provided a glimpse of the challenges facing the implementation of the women's special seats system in Tanzania. This special seats system has existed for 36 years without an implementation plan and with no common guidelines for political parties on how to select women for special seats. The status quo has brought about ways of implementing the SSS that have the effect of ridiculing and watering down the good intentions with which these special seats were introduced. The challenges are largely avoidable. The NEC has to move beyond confining its special seats management role from Articles 66 and 78 of the 1977 Constitution and pick up its substantive role under Article 81 of the Constitution.

CEDAW requires member state to ensure that any form of the adopted TSM, together with its action plans, be designed, applied, monitored and evaluated over time within the specific national context and against the objectives and outcomes they intend to attain. CEDAW calls on state parties to ensure that women, civil society in general and political parties in particular have a role in the design, implementation, monitoring, and evaluation of the adopted TSM (CEDAW, 2004). Three-and-a-half decades since the introduction of the special seats system in Tanzania calls for the system to be nationally evaluated to determine the progress, challenges, and what is needed for the seats to yield the desired results. The evaluation should also look at the suitability of the name 'special seats'. CEDAW advises state parties to adhere to the terminology 'temporary special measures' to avoid confusion, live up to the expected objectives and results, and keep actors alert on the temporary nature of the adopted TSM. Further, the evaluation should look at the suitability of the NEC to manage women's special seats.

CEDAW advises that the responsibility for designing, implementing, monitoring, evaluating, and enforcing any form of TSM is to be vested in existing or planned national institutions. These include women's ministries, women's departments within ministries, presidential offices, ombudspersons, tribunals, or other entities of a public or private nature with the requisite mandate. The NEC's massive and complex responsibility to manage the elections has unfortunately not availed it of adequate time and interest to effectively manage the women's special seats system. Thirty-six years since its establishment, no special seats guidelines have been put in place and no evaluation has been conducted to track the progress, challenges, and necessary realignment (CEDAW 1989). After the evaluation process, the NEC together with stakeholders should create a framework for the implementation of the special seats system. The framework should bring home the locally based rationale for women's special seats in line with international instruments such as CEDAW, the Maputo Protocol, and the

Beijing Platform for Action. The locally based rationale for the special seats system should be well articulated, packaged and communicated to the people so that the seats are viewed as a local agenda serving the local purpose of improving the political situation of local women in the country. The framework should contain accountability measures for the relevant actors responsible for implementation of the special seats system (CEDAW, 1979 Article 2). Importantly, the framework must encompass common guidelines for the selection of women's special seats by political parties in line with the requirements in Article 81 of the 1977 Constitution. The common guidelines should provide guidance on term-limits for serving on special seats; the diversity of women selected for special seats; the geographical locations women special seats will represent; citizens' involvement in voting for women's special seats; and the country's long-term plans to level the political playing field for men and women, equally, to participate and win elections. The framework should also portray linkages and relationships between the special seats system and the country's long-term plans to level the political playing field to enable women eventually to contest and win elections. The long-term measures should include review of the constitution, electoral laws and those governing the operation of political parties to allow independent candidates, as per the 2020 directive from the African Court on Human and Peoples Rights (Makulilo 2017); and the adoption of an equality-based first-past-the-post (FPTP) or proportional representation (PR) electoral system.

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