

**RUAHA CATHOLIC UNIVERSITY (RUCU)**



**Faculty of Law**

**PRISONERS AND THE RIGHTS TO PARTICIPATE IN NATIONAL ELECTION: A  
COMPARATIVES STUDY TANZANIA AND LESOTHO**

A Research paper submitted in partial fulfillment of the requirement for the awards of  
the Bachelor of Laws Degree (LL.B) of Ruaha Catholic University.

**By**

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**2024**

**CERTIFICATION**

The undersigned certifies that she has read and here by recommend for acceptance by the Ruaha catholic university the research paper titled: “*Prisoners and The Rights to Participate in National Election: A Comparatives Study Tanzania and Lesotho*”. In Partial Fulfilment of The Requirement for The Award of Bachelor Degree of (LLB) At Ruaha Catholic University.

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**Date**

## DECLARATION

I **Jackline Boniface Waiti** hereby declare that this research is my own original work and that has never been presented by any other similarly institution or other university.

Jackline waiti

Signature

.....

Date

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## DEDICATION

The research work is particularly dedicating all Tanzania prisoners, prisoner's officers and the all the citizens to be aware on issue of prisoner to participate in national election.

**LIST OF ABBREVIATION**

BRDEA	Basic Right and Duties Enforcement Act
CO	Corrections Officers
HCR	Human Right Commission
ICCPR	International Covenant On Civil and Political Rights
IEC	Independent Electoral Commission
NEC	National Election Commission
PO	Prisoner's Officers
UDHR	Universal Declaration of Human Rights

## **LIST OF LEGISLATIONS CONVENTIONS AND DECLARATIONS**

### **International Instrument, Convention and Declaration**

International covenant on civil and political rights 1966

Universal declaration on human rights 1948

Vienna declaration of world conference on human right 1993

### **Regional Instrument**

African (Banjul) charter on human and people rights 1981

### **National legislations for Tanzania**

The constitution of the united republic of Tanzania 1977 as amended time to time

The basic rights and duties enforcement Act

The election Act 1985

The local authorities' election Act 1979

The prisoners Act

National election Act cap 343 R, E 2015

### **National legislative for Lesotho**

The constitution of the Lesotho of 1993

National assembly electoral Act 2011.



## LIST OF CASES

Tanganyika law society, legal and human rights center and reverend Christopher R

*Mtikila v Tanzania* 2011 AfCLR 32

*humah ocansey v electrol commission*; Central for human rights and civil liberties

(churchil) v attorney General and electrol commission (consolidated), SCCLR 575.

Mclachilne C. j, in sauce v canada (chief electrol officer), (2002), S.C.C 68.

ministers of home affairs v national institutions for crime prevention (NICRO), 2004(5)

BCLR 445 (CC).

## ABSTRACT

The research study is about the prisoner and the rights to participate in national election comparative study Tanzania and Lesotho. The research applied the doctrinal methods of data collection. The Aim of this study is to determine the Tanzania laws governing election violate the right of Tanzanian prisoners to participate in vote for national election. Researcher collected data through review of various documents including books, journal, article and cases to prove the research problems also Fields research involves on the use of oral structural and unstructured direct interviews where by direct question to prisoners, ex-prisoners and prisoner officers people and institutions advocating human rights include the legal human rights Centre LHRC managing staff and the public. chapter two provides for the conceptual framework of the study, in which it involves the definition of different concept which related to the Prisoners and The Rights to Participate in National Election: A Comparatives Study Tanzania and Lesotho. the researcher applied provision of the international and regional instruments legal framework of the study as it involved the different laws involved in the research but also provide domestic legal framework of the study finally researcher provided presentation of the conclusion and recommendation which originated from findings the researcher provided for the followings to allow the prisoner to participate in national election.

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## CHAPTER ONE

### GENERAL INTRODUCTION

#### 1.0 Background of The Problem

In Tanzania the question of prisoner participate in national election has been influenced by the countries legal and political evolution .Tanzania gained independence from British In 1961 and it has experienced significant political changes since then the legal frame work regarding prisoners voting rights has evaluated over time and the issue has been influenced by the country commitment democratic governance and human rights <sup>1</sup>.problem can be traced back during the advent of colonialism where many laws were enacted aimed at safeguarding the interest of colonial master by putting the natives law breaker in the prisons as a way of punishing them by segregating them from the society <sup>2</sup>. up to now in Tanzania the prisoners who exceeding six months are not participate in nation elections.

In Lesotho has own historical context regarding to prisoner to participate in national elections .Lesotho gain independence from Britain in1966 and has experienced period of political instability and democratic reforms .the historical background of prisoner voting rights in Lesotho is intertwined with the country efforts to strengthen its democratic institution and uphold human rights .the legal and political development in Lesotho have played a significant role in shaping the debate around prisoners participate in nation elections<sup>3</sup>.

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<sup>1</sup> <http://www.penalreform.org/26january> 2024)

<sup>2</sup> The prisoners Act (cap 58 RE 2002)

<sup>3</sup> [https://2009-2017 state . gov](https://2009-2017.state.gov)(26 January 2024)

## 1.1 Statement of The Problem

In Tanzania the prisoners are being excluded from participating in national election due to the existence of same laws which prohibit them from participating in nation election, the national election act is one of those laws which disprove them of their right to participate in national election for instance section 11[1]c of national election Act disqualifies prisoners who is under sentence of imprisonment exceeding six month had be registered as a vote or qualify for registration<sup>4</sup>. this right is not enjoyed by prisoners on the ground that should be disprove of it in order to serve as the part of their punishment and that should be warned that the commission of crime is not capable this shown in the case of *Tanganyika law society, legal and human rights center and reverend Christopher R Mtikila v Tanzania 2011 AfCLR 32*<sup>5</sup>. In this case held that the disenfranchisement of prisoner who are serving a sentence of imprisonment for are term exceeding six month violates international human rights that should not be restricted unless there are compelling reason and that the restricts imposed by the election Act in Tanzania do not meet threshold of necessity and proportionality.

Contrary to Tanzania in Lesotho the prisoner have the right to participate in national election the constitution of Lesotho guarantees the rights to vote to all citizen and it does not specifically exclude prisoners from exercising their voting rights, article 66A(1) of Lesotho constitution allows all citizen who qualify to participate in national election even prisoner but the prisoners in Lesotho are voting though polling stations within the prisons.<sup>6</sup> but not all prisoners are allowed to participate in national election

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<sup>4</sup> National election Act section 11[1]c

<sup>5</sup> 2011 AfCLR 32 .

<sup>6</sup> Article 78 of the Constitution of Lesotho



in Lesotho like who have been convicted of serious criminal offences or offences that re demanded to undermine the integrity of the electoral process may be subjected to disenfranchisement. Also the national assembly electoral Act 2011 as the principle legislations dealing with the conduct of election in Lesotho therefore was not show the provision which allow the prisoners to participate in national election but for those who qualified

### 1.3 Literature Review

**Mwakajila:** discussing about Analysis of Legal Frameworks and International Standards  
Mwakajila, in his literature review, Mwakajila analyses the legal frameworks and international standards related to prisoners' right to vote in Tanzania<sup>7</sup>. While the review provides a comprehensive analysis of the current legal framework, the author does not offer specific recommendations for amending the law. To address this gap, future research should focus on proposing concrete legal reforms that would better protect prisoners' right to vote.

**Lopes- Lopes** provides a critical analysis of the legal framework in Lesotho regarding prisoners' right to vote.<sup>8</sup> While the review highlights the legal barriers to prisoners voting rights, the author does not focus on the practical challenges that may arise from granting prisoners the right to vote. Future research should explore the practical implications of granting prisoners the right to vote in Lesotho, including potential logistical challenges and the impact on prison management.

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<sup>7</sup> Grace Mwakajila. *Legal framework and international standards related to prisoners right to vote in Tanzania*

<sup>8</sup> G. Lopes. *Critical analysis of the legal framework in Cape Verde regarding prisoners right to vote*

**Mjema:** Offers an overview of the current debate on prisoners' right to vote in Tanzania.<sup>9</sup> The author provides a balanced analysis of the arguments for and against granting prisoners the right to vote. However, the review does not offer an in-depth analysis of the legal and practical implications of granting prisoners the right to vote. Future research should explore the legal and practical implications of granting prisoners the right to vote in Tanzania.

**Mwombeki:** compares the legal frameworks and practices of Tanzania and Lesotho regarding prisoners' voting rights.<sup>10</sup> While the review provides a useful comparison of the two countries, the author does not offer a detailed analysis of the legal challenges that may arise from granting prisoners the right to vote in these countries. Future research should explore the legal challenges and potential solutions to protecting prisoners' right to vote in both countries.

**Mzee:** examines the legal implications of denying prisoners the right to vote in Tanzania and Lesotho.<sup>11</sup> The review provides a comprehensive analysis of the legal frameworks and international standards relating to prisoners' voting rights. However, the author does not offer specific recommendations for amending the law. Future research should focus on proposing concrete legal reforms that would better protect prisoners' right to vote in both countries.

**Saleh:** explores the intersection of human rights and criminal justice in relation to prisoners' right to vote in Tanzania and **Lesotho**.<sup>12</sup> The review provides a critical analysis of the legal and ethical implications of granting or denying prisoners the right to vote.

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<sup>9</sup> E.J Mjema, *The right to Vote for Prisoners in Tanzania*

<sup>10</sup> J.M. Mwombeki; *Cooperative Study of Prisoners Voting Rights in Tanzania and Cape Verd.*

<sup>11</sup> I.A. Mzee; *The Legal Implications of Denying Prisoners the Right to Vote in Tanzania and Cape*

<sup>12</sup> F.A. Sareh. *The intersection of human right and criminal justices*

However, the author does not address potential practical challenges that may arise from granting prisoners the right to vote. Future research should explore the practical implications of granting prisoners the right to vote in both countries.

## **1.4 Hypothesis**

It seems that the Tanzania laws governing election violate the right of Tanzanian prisoners to participate in vote for national election.

## **1.5 Objective of The Study**

### **1.5.1 General Objective**

The main objective is to Make critical analysis of prisoner and the right to participate in vote for national election in Tanzania in order to examine if Tanzania violate human rights of the Tanzanian prisoners to participate in vote for national elections.

### **1.5.2 Specific Objective**

- i. To determine whether there is lacuna on the law patterning to prisoners and the right to participate in nation election in Tanzania.
- ii. To examine institution framework on prisoners and the right to participate in nation election in Tanzania.
- iii. To examine as what extent the legal institution framework on prisoners and the right to participate in nation election in Tanzania are line in international practice.

## **1.6 Significance of The Study.**

The study is conducted for several reasons

To help Tanzanian government in finding the way of solving the problem of prisoner's disenfranchisement to that Tanzania prisoners may be enhance to participate vote in national election like those in Lesotho.

To advocate for prisoner rights to participate vote in national election in Tanzania

To be used as resourceful sources on matters concerning the rights of prisoners to participate in vote for national election I Tanzania and other places in the world in the recognition of the fact that no much literature has been written in Tanzania concerning in this matter.

## **1.7 Research Methodology**

In this research paper library research and field research were used researcher employed the non-doctrinal research which involve the use of both primary data and secondary data and include the use of field research and library research. The researcher use both primary and secondary data to obtain necessary information concerning the research problem whereby under this researcher use library research and interview or field research.

## **1.8 data collection methods and tools**

The collection of data under this study has been based on the use of both primary and secondary or documentary review.

### **1.8.1 Primary data**

Primary data involved collection of data from Ruaha Catholic University library though reading various materials in order to obtain reliable information to the research paper. the information was extracted from books journal articles newspapers and magazine

research reports directives and websites concerning with prisoners and the rights to participate in national elections

### **1.8.2 Secondary Data**

Fields research involves on the use of oral structural and unstructured direct interviews where by direct question to prisoners ex-prisoners prisoner officers people and institutions advocating human rights include the legal human rights Centre LHRC managing staff and the public at large under this method the idea was to interrogate at or at least hold a discussion with them this means was of very great significance as give the researchers the chance to have the straight conversation on the researched topic with the respondent

In reality most of respondents argue that prisoners should be allowed to participate in vote to national election because of citizenship other argue that the Tanzania parliament should stop exacting laws which aim at disenfranchisement the Tanzanian prisoners and some other respondent argue that the existing Tanzanian Electoral laws such as national election Act 1985 and local authorities election Act no 4 1979 should be amended so as to allow prisoners participate in national election.

### **1.9 Scope**

Scope of this study was limited as critically analysis of making comparative analysis of the right of prisoner to participate in nation election and the comparison is between Tanzania and Lesotho.

### **1.10 Limitation**

The limitation to the research which I done include inadequate of capital since involve several visit to above named place and institution also difficulties in getting information from the prisoners due to lack of adequate time of interviewing them.

Am overcome those limitations by reading different materials and books in ruaha Catholic university library and also in the internet order to get more materials and information about the case study. also make the oral interviews with different local people who are the citizens of Tanzania in order to get different information about the prisoners to participate in national elections the local people was the youth, elders who have above 18 years this help me to get different information also university's students also have the big contribution by allowing me to interviewing them and make me easy to get more information about the topic. Also the issue of capital is the problem but I overcome this problem by visiting place where are around me to ensure am not use a lot of money to get the information. So the adequate of the to get information from prisoners to interviewing them I get information to the different people because also were the problem even to see them. And about that prison officers are also to get information I was use my phone to communicate with her to get the information and answer that I need.

### **1.11 Conclusive Remark**

In this chapter I was explaining the background of the problem of the matter also to show the legal problem and show the limitations and how I overcome this limitation in on the matter researched.

## CHAPTER TWO

### CONCEPUAL FRAMEWORK GOVERNING THE NATIONAL ELECTION IN TANZANIA AND LESOTHO.

#### 2.0 Introduction

In this chapter the major purpose is to analysis and explain the concept found in the research which is prisoner to participate in nation election between two countries which are Tanzania and Lesotho.

#### 2.1 concept of Prisoner

Prisoner is the someone being held in confinement .commonly a prisoner is a criminal who is serving a prison sentence after convicted of a crime, or a person who has been arrested by law enforcement and being held in custody, pending trial, whether or not the person is in prison, jail or other confinement.<sup>13</sup> The person who has been found guilty convicted crime and is serving and is serving a sentence in prisoner. and the prisoner are called number six prisoner in other word the e prisoners officer PO are responsible to guards the prisoners or corrections officers CO.

#### 2.2 concept of imprisonments

Means that the period of incarceration or confinement ordered by the court of law regardless of any suspension or execution of all or part of the sentence the imprisonment can be long like sentenced to life or short like six month two years .a place for imprisonment reformatory discipline or punishment especially a prison maintained in the U.S by a state or the federal government for serious offenders <sup>14</sup>

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<sup>13</sup> O .Hamid, The prisoner arcade publishing 2015.

ht<sup>14</sup> S. woods ,imprisonment ;based on truth .books by the shelf.2020

Oxford dictionary define imprisonment as the act of putting somebody in prison or another place from which they cannot escape the state of being there<sup>15</sup>.

### 2.3 Concept of National election

Is an electoral process in which citizen of a country vote to elect their representatives or leader at the national level. This elections determine the composition of the national government include the head of the state of government , members of parliament , or the political position on the country political system .national election typical take place on a predetermined date involve eligible voters casting their ballots to choose the candidate or political party that will represent their interest in the government <sup>16</sup>. the specific electoral system and rule may vary from country to another including factors such as voting methods .in Tanzania national election are conducted after five years the main positions include presidency, parliamentary seats and the position of councilors in local government councils .during election Tanzanian citizen who are 18years old above are eligible to vote, the voting system used in Tanzania is mix of first past the post FPTP And proportional representation PR In the FPTP System the presidential candidate who obtain the highest number of votes in each constituency wins the seat to ensure a fair representation of political parties based on their overall support .after the voting take place the results are tallied and announced <sup>17</sup>. in Tanzania NEC is responsible for organizing and overseeing the electoral process in the country.

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<sup>15</sup> Oxford dictionary

<sup>16</sup> <https://www.lawinsider.com> (accessed 30 March 2024).

<sup>17</sup> <https://www.prisonersdictionary.com> (accessed 2 February 2024).



## 2.4 concept of Right to vote

This is the democratic right where by the person have rights to participate vote. in Tanzania the right to vote is granted to its citizen who are at least 18 years old and registered as voters the constitution of Tanzania guarantee the right to vote and participate in political affairs of country. to exercise their rights to vote eligible citizen may be registered as voters , with the take place before an election a and involve providing proof of citizen ship and age one registered votes are assigned to a specific polling station where they can their votes on their election days .electoral system in Tanzania based on multiparty democracy and general election held every five years .but in Tanzania the prisoners have lack this right because prisoners are not allowed to vote so they lose the democratic right.<sup>18</sup> article 5 of the constitution united republic of Tanzania every citizen has attained the age of 18 years is entitled to vote in any election .<sup>19</sup>

## 2.5 concept of Prisoners rights to vote

Refers to the basic human rights that should be protected and ensure for individuals who are incarcerated or confined in correctional facility the rights are important to maintain the dignity wellbeing and fair treatment of prisoners even while they serve their sentences. while the specific rights granted to prisoners may vary between countries and jurisdiction. There are some fundamental principles that are generally recognize and advocate for. humane treatment prisoner have a right to be treated with dignity and respect ,nondiscrimination ,prisoners should be protected from discrimination ,access to medical care thee prisoners have the right to receive necessary

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<sup>18</sup><https://www.electionaccess.org>(accessed 2 February 2024).

<sup>19</sup> Constitution of united republic of Tanzania 1977 as amended time to time article 5.

and adequate healthcare ,access legal presentation ,and freedom from torture and abuse

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In Tanzania there are some point regarding prisoners' rights in Tanzania human rights framework, condition of imprisonment, access to justice, health care, family visit and communication, rehabilitation and education,

## **2.6 Prisoners rights to participate in national election in Tanzania and Lesotho**

In Tanzania voting rights for prisoners are not explicitly guaranteed by the country constitution. the law currently state that individual who are serving l lawful custody of the government are disqualified from voting this include prisoners who have been convicted of a crime and serving their sentence .prisoner right and political participation are vary cross different countries and legal system in some jurisdiction prisoners may retain their rights to vote while in other they may be temporarily or permanently disenfranchised it depends on their laws and regulations for each specific country. While in Lesotho all citizen who qualify to participate in national election are allowed to participate in national election even the prisoner because is the

In Tanzania, national elections refer to the process through which Tanzanian citizens choose their representatives at various levels of government, including the President, Members of Parliament, and Local Government Councilors. The electoral system

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<sup>20</sup> <https://www.lawtechers.net>(13 February 2024)

## 2.7 concepts of national election in Tanzania

Tanzania is based on a multiparty democracy, where different political parties participate in the electoral process. The main components of national elections in Tanzania include:

**Electoral Cycle:** Tanzania holds general elections every five years, where citizens vote for the President, Members of Parliament, and Local Government Councilors. The elections are typically held on the same day to ensure a smooth and coordinated process.

**Electoral Commission.** The National Electoral Commission (NEC) is responsible for organizing, conducting, and supervising the electoral process in Tanzania. The NEC ensures that elections are free, fair, and transparent.

**Voter Registration.** Before elections, a voter registration process takes place to compile a voters' list. Eligible Tanzanian citizens are required to register to vote by providing proof of their identity and citizenship. This registration process aims to ensure that only eligible voters participate in the elections.<sup>21</sup>

### Campaigning

Political parties and candidates engage in campaigning to showcase their policies, ideologies, and agendas to the electorate. Campaign activities include rallies, debates, media appearances, and advertisements to attract voters' support.

**Voting Process.** On election day, registered voters cast their ballots at designated polling stations. Tanzanians vote for their preferred candidates for President, Members of

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<sup>21</sup> <https://aceproject.org>.

Parliament, and Local Government Councilors. The voting process in Tanzania is typically conducted through paper ballots.

**Vote Counting and Results** After the voting process concludes; ballots are counted to determine the outcomes of the elections. The results are tallied at each polling station and transmitted to the electoral commission for compilation. The NEC then announces the final results<sup>22</sup>.

**Acceptance of Results** It is important for political parties and candidates to accept the election results to ensure a peaceful transition of power or continuation of governance. In case of disputes or irregularities, there are legal processes in place to address such results <sup>23</sup>

**Reason why some countries not allow prisoners to participate in national election Like Tanzania**

There are various reasons why some countries choose not to allow prisoners to participate in national elections. These reasons can include:

**Punitive Approach:** Some countries view the restriction of voting rights for prisoners as an additional punishment for crimes committed.

**Public Perception.** There may be concerns from the general public about giving individuals who have committed crimes the right to participate in the democratic process.

**Legal and Social Norms:** Laws and social norms in some countries may not support the idea of allowing prisoners to vote.

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<sup>22</sup> <https://www.esfsadc.org>.

<sup>23</sup> <https://www.Electionaccess.org>.

Potential Impact. There may be concerns about the potential influence of prisoners' votes on election outcomes, especially in cases where the prison population is significant.

Security Concerns. Some governments may have security concerns related to election integrity and may not wish to complicate the voting process by including prisoners.<sup>24</sup>

## **2.8 advantages of allowing the prisoners to participate in national election**

Restoration of Rights: Allowing prisoners to vote can be seen as a way to restore their sense of agency and participation in civil society. It can help in their rehabilitation by making them feel more connected to the community.

Promoting Civic Responsibility: By participating in elections, prisoners can learn about the democratic process and the importance of civic engagement. This can potentially lead to greater awareness and understanding of the impact of their actions on society.

Reducing Recidivism. Some studies suggest that civic engagement, including voting, can contribute to a reduction in recidivism rates. By engaging in the democratic process, prisoners may develop a sense of responsibility and connection to society that could positively influence their behavior post-release.

Human Rights Perspective: Denying prisoners the right to vote can be considered a violation of their human rights. Many advocates argue that disenfranchisement undermines the principle of universal suffrage and the idea that all individuals should have a voice in the governance of their country.

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<sup>24</sup> [Http://Johnward.Ca](http://Johnward.Ca)

Enhancing Democracy: Allowing prisoners to vote can contribute to a more inclusive and participatory democracy. It can ensure that a broader range of voices and perspectives are represented in the political process, leading to more diverse and robust decision-making.

Encouraging Political Engagement: Allowing prisoners to participate in elections can encourage them to become more politically engaged and informed about social and political issues. This engagement can extend beyond their time in prison and into their lives post-release.

It's important to note that the decision to allow prisoners to participate in national elections is complex and varies by country. There are arguments on both sides of the issue, with some concerns about potential challenges such as security, logistics, and the perceived fairness of allowing individuals who have violated the law to participate in the electoral process. Disadvantages of excluding the prisoners to participate in national election.

Exclusion from democratic process: Denying prisoners the right to vote can be seen as a breach of democratic principles, as it excludes a segment of the population from the electoral process. This goes against the idea of universal suffrage and equal representation.

Undermining the right to political participation. Voting is considered a fundamental right in many democracies. By denying prisoners the right to vote, it can be seen as a violation of their human rights and can be viewed as a form of political disenfranchisement.

Impact on rehabilitation: Allowing prisoners to vote can be a way to engage them in the democratic process and promote a sense of responsibility. By excluding them, it could hinder their reintegration into society and may contribute to a sense of alienation and disconnection from civic life.

Potential for political exploitation: Without the ability to vote, prisoners may become a neglected segment of the population politically. This could lead to policies and legislation that do not adequately take into account their interests and concerns.<sup>25</sup>

Racial and socioeconomic implications Research has shown that prisoners are disproportionately from racial and ethnic minority groups, as well as from lower socioeconomic backgrounds. By disenfranchising them, it can exacerbate existing inequalities and perpetuate systemic injustices.

Potential for disenfranchisement abuse The inability of prisoners to vote could open the door to the manipulation of voter rolls for political gain. In some instances, there may be attempts to suppress the rights of certain communities by increasing the prison population or altering voting laws.<sup>26</sup>

Lack of representation. Excluding prisoners from voting can lead to a lack of representation of their interests in the political process. Issues affecting prisoners or the criminal justice system may not receive the attention they deserve from policymakers if this segment of the population is unable to vote.

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<sup>25</sup> <https://www.tandfononline.com>

<sup>26</sup> [www.newyorker.com](http://www.newyorker.com)

It's essential to consider the potential consequences and ethical implications of denying prisoners the right to participate in national elections, as it intersects with broader discussions about democracy, human rights, and social justice.

## **2.9 Conclusive remark**

In this chapter two where by more explain about the concepts which are found in the title and concepts which I will be researched those concepts was relevant to the title which explains the prisoners to participate in national election in Tanzania and Lesotho so those concepts help to get directions on the topic which going to research



## CHAPTER THREE

### LEGAL FRAME WORK GOVERNING NATIONAL ELECTION IN TANZANIA AND LESOTHO

#### 3.0 Introduction

This chapter server the major purpose of critically analysis the low governing national elections in Tanzania and Lesotho in order to be able to make a comparative analysis of rights prisoners to participate in national election between two countries and coming up with solution toward this laws which hinders the enjoyment of prisoners' rights in participate in nation elections particularly in Tanzania where there is prisoner's disenfranchisement ‘

#### 3.1 International legal frame work

Tanzania is a state party to various international instrument include the universal declaration of human rights ,1948 and international covenant on civil and political rights 1966 which require state parties to provide the means by citizen of those state parties to those international instrument may take part in government of their countries.

##### 3.1.1 the universal declaration of human rights of 1948

the universal declaration of human rights ,hereinafter to as the declaration which provide inter alia that recognize of inherent dignity of equal and inalienable rights of all member of human family is foundation of freedom ,justice ,and peace in the world .declaration under article 21 provide that , everyone have the right to take party in the government of this country direct or through freely chosen representative.<sup>27</sup>

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<sup>27</sup> Article 21 of The universal declaration of human rights of 1948

And the will of the people shall be the basic of authority of government and shall be held by secret vote or by equivalent free voting procedures additionally ,article 5 of the declaration prohibits subjecting people to torture or cruel inhuman or degrading treatment or punishment <sup>28</sup>

Despite the facts Tanzania acknowledges the right it take party in the government to every person , directly or through freely chosen representative as provided under the universal declaration of human rights 1948 still it has not been provided to all person within the country as their rights which is reality their basic inalienable human right but as privilege as some adult citizen in Tanzania have been denied of this essential basic constitutional and democratic rights simply because they have imprisoned for a term exceeding six month this is not acceptable at all and its inconsistent with provision of article 21 and 5 of universal declaration of human rights to which Tanzania is state party

### **3.1.2 The international covenant on civil and political rights 1966.**

International covenant on civil and political rights of 1966 hereinafter referred to as the ICCPR Is the key of international instrument guaranteeing voting rights and free election and Tanzania is bound to observe this convent as it acceded to it since 11 June 1976. article 25 of the ICCPR state that

“every citizen shall have the right and opportunity ,without any of the distinction mentioned in article2 and without unreasonable restrictions; a] to take party on conduct of public affairs directly or through freely chosen representatives b] to vote and to be elected at genuine periodic election which shall be by universal and equal

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<sup>28</sup> Article21 and 5 of the universal declaration of human rights ,1948

suffrage and shall be held by secret ballot guaranteeing the free expression of the will of the electors c] to have access on general term of equality to public service in this country “

While article 2 of the ICCPR Specifies that voting and participation in election is universal rights not be denied because of any status prisoners in Tanzania are systematically disenfranchised prohibits any person to be subjected to torture , cruel, in human or degrading treatment or punishment moreover article 10[1], and [3] of the ICCPR provide that all person disprove of their liberty shall be treated with humanity and with respect of their inherent dignity of the human person and that imprisonment should be aimed at the reform and social rehabilitation of the prisoners

.<sup>29</sup>

## **3.2 Regional instruments.**

### **3.2.1 The African [Banjul] charter on human and people rights of 1981.**

The African Banjul charter on human and people rights of 1981 hereinafter referred to as the charter is a regional instrument which has been aced to by Tanzania and hence Tanzania is a party to it and is bound by it. this charter recognizes that the fundamental human rights stem from attribute of human being which justify their international protection an on their hand that the reality and respect of people rights should necessary guarantee human rights the charter under articles 13 [1] provided that every citizen to have the rights to participate freely in the government of his country either

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<sup>29</sup> Article 2,10,25 and 7 of the international covenant on civil and political rights 1966

directly or through freely to chosen representatives in accordance with the provision of the law <sup>30</sup>

Despite the fact that Tanzania is a part to the African [Banjul] charter on the human and people rights 1981 which requires every citizen to have the rights to participate freely in the government of his country either direct or freely chosen representatives, however in Tanzania this has not been the case since this rights has not been given to all person within the country as their basic inalienable human rights but as privilege as some adult citizen in Tanzania have been imprisoned for a term exceeding six months this is not capable at all and it is inconsistent which the provisions of article 13 of the African charter on human and peoples' rights 1981 to which Tanzania is a party.

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<sup>30</sup>Article 13[1] of the African charter on human and people rights ,1981

## CHAPTER FOUR

### DOMESTIC LEGAL FRAMEWORK

The domestic legal framework in Tanzania governs and regulates the manner of conducting national elections. It is governed by the constitution of the United Republic of Tanzania as amended from time to time, the National Elections Act 1985, the Local Authorities [Election] Act 1979, the Prisons Act and the Basic Rights and Duties Enforcement Act.

#### **4.1 The constitution of the United Republic of Tanzania, 1977 as amended time to time**

The constitution of the United Republic of Tanzania 1977 does not expressly stipulate the fundamental democratic right of voting of every citizen under the provision governing the basic rights and duties that is articles 12 to article 29. Despite the fact that the provision governing the basic rights and duties do not expressly stipulate the democratic rights of voting of citizens, still it can be inferred from the provision of articles 21[2] of the constitution of the United Republic of Tanzania 1977 which gives every citizen the right and freedom to participate fully in the process leading to the decision on matters affecting him, his wellbeing or the nation.

Therefore, this provision when interpreted extensively it also includes the democratic right of voting since it is one of the matters which affects one's wellbeing or his nation. Article 5[1] of the constitution of the United Republic of Tanzania 1977 is one which provides expressly for the right to vote for every citizen of the United Republic who has attained the age of eighteen years. However, for the sake of the deprivation of the right to vote to prisoners, this provision has been limited by sub-article 2[c] which gives the power to parliament to enact laws imposing conditions restricting a citizen from

exercising the rights to vote by reason of being convicted of a certain specified criminal offence .<sup>31</sup>

To effect this the parliament of the united republic enact the national election Act to deprive prisoners of their voting rights which is reality is their inherent right through citizen ship contrary to article 13[2] of the constitution itself which provided that no law enact by any authority in the united republic shall make any provision that is discriminatory either of its self or in its effects and article 5 of the universal declaration of human rights 1948 <sup>32</sup> and article 7 of the international covenant on civil and political rights 1966 acceded to by Tanzania since 11 june 1979 which prohibit subjecting people to torture or cruel in human or degrading treatment or punishment

Moreover, the constitution of the united republic of Tanzania 1977 on the other hand under article 30 still limits the enforcement and preservation of basic rights. Freedom and duties as such making impossible enjoyment of the voting right by prisoners<sup>33</sup>

#### **4.2 The National Election Act 1985 [Cap343. R.E 2015**

The national election act is the law which controls and gives guidelines on the process of election in Tanzania this law deprives the citizen who are prisoners of their democratic rights to participate in national election which are being held in Tanzania in particular the provision of participate in national election which are being held in Tanzania in a particular the provisions of the particular the provision of section 14 of the act provides for the disqualification of prisoners who are under sentenced of

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<sup>31</sup> Article 5,21, Of the constitution of the united republic of Tanzania 1977

<sup>32</sup> Article 5 of the universal declaration of human rights 1948 and article 7 of the international covenant on civil and political rights 1966

<sup>33</sup> Article 30 of the constitution of the united republic of tanzania 1977

imprisonment exceeding six month to be registered as voter or qualify for the registration <sup>34</sup>

The effect of this provision is to exclude citizen –prisoners serving imprisonment sentences exceeding six months from participating in national elections as a result depriving them their fundamental democratic rights of voting. Therefore, the national election act is discriminatory law since it discriminates citizen prisoners from enjoying their rights to participate in national elections despite the fact that they are Tanzanian citizen

This also contrary to section 13(2) of the constitution of the united republic of Tanzania 1977 Which amended time to time which provide that no law enacted by any authority in the united republic shall make any provision that discriminatory either of itself or its

effect .<sup>35</sup>

#### **4.3 The local authority [elections] Act no 4 of 1979**

The election act no 4 of 1979 on the other hand is also another law which work hand in hand with national election act to control and to provide guidelines on the process of election in Tanzania the only different being that the letter deal mainly with election with local authorities while the former is the general law which governing the process of election in Tanzania and such as govern the process of election of both central government such as presidential election as well as election of the leaders of

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<sup>34</sup> Section 14 of the national election act [

<sup>35</sup> Article 13 [2] of the constitution of the united republic of tanzania 1977

local authority such as member of parliament and ward councilors in their respective constituencies and ward respectively

The local authority [election] Act also like the national election act deprive prisoners who are citizens of their rights to participate in national election in addition to the national election act 1985, the act under section 16[1] of it disqualifies for registration prisoners who is under sentences of imprisonment by whatever name called exceeding six month imposed on him by the court or substituted by competent authority for some others sentences imposed on him by that court <sup>36</sup>

Furthermore, section 16 [3] of the local authorities [elections] act no 4 of 1979 provide the deletion of the names of persons disqualified to be registered as a voter from register. The effect of this provision is to exclude citizen prisoners serving imprisonment sentences exceeding six months from participating in national election as a result depriving the fundamental democratic right to voting. Therefore, local authorities [election] act is also discriminatory law since it discriminates citizen prisoners from enjoying their rights to participate in nation

al elections despite the fact that they are Tanzanian citizen. this on the other hand is contrary to article 13[2] of the constitution of the united republic of Tanzania 1977 which provide that no law enacting by any authority in the united republic shall make any provision that is discriminatory either of itself or in the its effects<sup>37</sup>

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<sup>36</sup> Section 16 of the local authority [election act no 4 of 1979

<sup>37</sup> Article 13 (2) of the of the constitution of the united republic of Tanzania 1977



#### 4.4 The Prisons Act [Cap58 R.E 2002]

The prisons act is another law which is deprive the prisoners of the rights to participate in democratic election since it does not recognized and facilitates the provision of the democratic rights to vote to prisoners as it does to case of the right of freedom of religions provided under article 19 of the constitution of the united republic of Tanzania 1977<sup>38</sup> .where by section 44 of prisons act requires the prisoners religious denominations or sect to be recorded that treat a prisoner as a member of such religious denomination or sect . Addition the provision of the section 44 of prison act order for facilitate for worship to be provide to prisoners .<sup>39</sup>

e) The basis rights and duties enforcement Act referred to as a BREDEA is an Act which provided the procedure for the enforcement of constitutional basis rights and duties and other related matters it is therefore for an Act which appears to govern the enforcement of all suit of which there

Cause of action concerning

The provisions of Article 12 to 29 the constitution<sup>40</sup> BRDEA under section 4 of it that

“if any person alleged that any provision Article 12 and 28 of the constitution has Bennett been or likely to be contravene in relation to him he may without prejudice to any other action with respect to the same matter is lawfully available apply to the High Court for. Redress<sup>41</sup>

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<sup>38</sup> Article 19 of the constitution of the united republic of Tanzania

<sup>39</sup> Article 44 of the prison Act

<sup>40</sup> Constitution of the united republic of Tanzania 1977 (as amended time to time )

<sup>41</sup> Section 4 of the basic rights and duties enforcement Act (

The BRDEA further under section 5 provides the procedure of making applications to the High Court in case one's right provided from Article 12 to 29 of constitution has been is being or is likely to be contrived in relation to him in this procedure that the application to the High Court has to be made by petition to be filed in the appropriate registry to the High Court by originating summons <sup>42</sup>.

Furthermore, section 6 of BRDEA provided for the contents of the petition which includes the

The name and address of the petitioner the name and address of each one against whom redress is sought the ground upon which redress is sought the specific section of part iii of the chapter one of the constitution which are the basic of the petition particular of the fact but not the evidence to prove such fact relied on the nature of the redress sought <sup>43</sup>

In addition the BRDEA under section 13 (1) provided that<sup>44</sup>

Court come to the conclusion that the basic rights freedom and duties concerned has to been unlawful denied or that ground exists for their protection by an orders it shall have power to make all orders shall necessarily and appropriate to secured an applicant they enjoying that basic rights and duties conferred or impose to him under provisions of Article 12 to 29 of constitution <sup>45</sup>

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<sup>42</sup> Section 5 of the basic rights and duties enforcement Act

<sup>43</sup> Section 6 of the basic rights and duties enforcement Act .

<sup>44</sup> Section 13 (1) of the basic rights and duties enforcement Act

<sup>45</sup> Article 12 of the constitution of the united republic of Tanzania 1977.

On top of that by the decision Section 14 (1) of the BRDEA give the room to appeal for one who have been aggrieved by the decision of the High Court the section provided that

Any person aggrieved by any decision of the High Court on the application brought under section 4,5,and 6 May appeal to the court of appeal <sup>46</sup>

Despite the fact that the BRDEA provided for the details procedure on the enforcement of the constitutional basic rights I suit of which they cause of action concerning The provisions of Article 12 to 29 of the constitution of united republic of Tanzania 1977 as amended time to time the provision which govern the constitutional basic rights that is from Article 12 to29 of the constitution<sup>47</sup> .

The however has been accelerated by lack of legal education Among the prisoners concerning the basic constitutional right such as rights to participate in national election and fears as well as lack of learners among prisoners to take the matter to the court of law unlike those Africa <sup>48</sup>

Moreover, section13(1) of BRDEA is still hindrance towards attainment of the basic constitutional right of that person to be invalid or unconstitutional where the infringement involves government or authority the BRDEA provided that

The law made or action taken by the government or other authorities or abridged the basic rights freedom and duties conferred or imposed by the Article 12 to 29 of the constitution of the High Court it satisfied that

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<sup>46</sup> Section 14(1) of the basic rights and duties enforcement Act.

<sup>47</sup> Article 12 to 29 of constitution of the united republic of Tanzania 1977

<sup>48</sup> Vincent boniface (citizen interviewed on 20 January 2024)

the law or action concerned to extend the contraventions is valid or unconstitutional then the High Court shall instead of declaring the law or action to be invalid or constitutional then unconstitutional has the power and discretion I appreciate case to allow parliament or other legislative authorities or government or authority concerning as a case may to be collected any defect in the impugned law or action within specific period subject to such conditions as may be specified by it and the law or the limit set by the High Court whichever be the shorter be deemed to be valid <sup>49</sup>

#### 4.5 Conclusive remarks

The domestic legal framework governing national elections in Tanzania should be amended to suit the international standards provided in the regional and international instruments such as African (Banjul charter) on human and people rights 1981 and universal declaration of human rights 1948 and international covenant On civil and political rights 1966 accessed by Tanzania On 11 June 1976 therefore the governing

Such as the constitution of united republic of Tanzania 1977 as amended time to time

Limit the franchise of prisoners by allowing the parliament to enact A law imposing condition restricting citizen from exercising the right to vote by reason of being convicted of certain specific crime specified criminal offence <sup>50</sup>.and such this kind of laws should be amended.

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<sup>49</sup> Section 13 (1) of the basic rights and duties enforcement

<sup>50</sup> Article 5(1) of the constitution of the united republic of Tanzania 1977 as amended time to time

Other include the national election Act 1985 ( cap 343.R.E 2015 and local authorities (election Act)1979 which were enacted in effecting the provision Article 5(2) of the constitution of the united republic of Tanzania 1977 the prisoners Act and basic rights and duties enforcement Act which under 13(2) hinders the attainment of the basic constitutional rights which have been infringed as it limits the power of the High Court by nor allowing the court to declare any laws or action infringed one right to be Invalid or unconstitutional where the infringement involve the government or other authorities the kind of law should be amended.

## CHAPTER FIVE

### RESEARCH FINDINGS AND ANALYSIS

#### 5.0 Introduction

Under this chapter a critical analysis of reaching findings is done in order to examine if Tanzanian laws governing national elections violate the right of Tanzanian prisoners to participate in national elections compared with Lesotho. The research findings involve various interviews with local people, as well as from various people advocating human rights and the public at large and in which the data were collected by way of oral structured and unstructured interview with prison officers, prisoners, ex-prisoners and the public at large.

The data which obtained were two types, is those which assert that, prisoners should be allowed to participate in national elections were observed from the research findings and are hereby critically drawn and analyzed at both of them one after another as follows

#### 5.1 Prisoners should be allowed to participate in national elections

The research conducted reveals that those who assert that prisoners should be allowed to participate in national elections advance reasons such as reason of citizenship; the right to vote is one of democratic rights and one of the inherent human rights and determination of the prisoners future and future of their country in general which are hereby critically discussed underneath in details as follows.<sup>51</sup>

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<https://www.quora.com> (accessed 16 April 2024)..

### 5.1.1 Citizenship and right to vote.

Prisoners and other human rights activities asserted that it is important for the prisoners to vote since they are citizen just like other normal citizens hence they are entitled to vote by virtue of their citizenship despite being prisoners does not waive one citizenship <sup>52</sup> they still remain Tanzanian citizens despite their imprisonment and by not voting they lose their constitution right and freedom of participating fully in this process leading to decision on matters affecting them their wellbeing or the nation as provided under article 21[2] of the constitution of the united republic of Tanzania 1977 <sup>53</sup>.

Examples are given to people imprisoned for life arguing that these prisoners might not exercise their voting rights for the rest of their lives if this right is abrogated or denied as their term of imprisonment is for the whole of their remaining life on the earth.

This reason is supported by writing of others authors such as Julius K. Nyerere in his book title our leaderships and the destiny of Tanzania <sup>54</sup>.who said that the right to vote and the right to stand for electives officers are rights of citizenship . And the ruling given by Ghanaian supreme court in the two cases of *A humah ocansey v electrol commission; Central for human rights and civil liberties ( churchil) v attorney General and electrol commission (consolidated)*<sup>55</sup>. Which gave a judgment that allowing the prisoners to vote as a way a also citizens of Ghana provides that they are at least 18 years old and there of sound mind as provided under Article 142 of the 1992

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<sup>53</sup> Article 21[2] of the constitution of the united republic of Tanzania 1977 .

<sup>54</sup> JK Nyerere , our leadership and the destiny of Tanzania, African publishing group , harare, 1995 9-10

<sup>55</sup> SCGLR 575

fourth republican Ghanaian Constitution <sup>56</sup>. As well as the ruling given by the Kenyan high court which allowing the prisoners to vote in Kenya during the referendum of new constitution in August 2010 by virtue of their citizenship where Kenyan prisoners who were estimated to be 50,000 voted during the time of referendum of new constitution.

### 5.1.2 Rights to vote as democratic right and an inherent human right.

The public and other human rights activists asserted that it is important for the prisoners to participate in national elections since voting is the democratic rights an inherent human rights of every citizen <sup>57</sup> this reason are supported by the writings of other authors such as Chambua, et al in their book titled multiparty election and corruption in Tanzania <sup>58</sup> Who argue that in order to maintain democracy an important process of election should be conducted that is why voting is one of the democratic right of each and every citizen without which other fundamental democratic and constitutional right be at great risk of being violated.

Additionally *Mclachilne C. j in sauce v canada (chief electoral officer)*<sup>59</sup>.warn that a government that the strict the franchise to select portion of citizen is a government that weakens its ability to function legitimate representative of the included citizen. Jeopardizes its claim to representative's democracy and erodes the basis of its rights to convict and to punish lawbreakers further more Masanche J points out in *Prince bagenda v Wilson masilingi and another*. <sup>60</sup>quoting Lugakingila J in Joseph since walioba

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<sup>56</sup> Article 142 of fourth republican Ghanaian Constitution .

<sup>58</sup> S.E.chambula et al ;multiparty election and corruption in tanzania ,prevention of corruption bereeau and the institute of development studies,dar es salam 2002, 27

<sup>59</sup> 2002 s.c.c 68.

<sup>60</sup> 1997 TLR 220.



case that the franchise is very right democracy and is one right phepas more than any other upon this right depend for their effective protection when this right is denied abrogated democracy and in any state the right freedom fail

Therefore ,for there to be true democracy the right to vote should be given constitutional recognition and be effectively exercised and vested according to all citizens without any isolation less than democracy effective protection of other constitutional right and freedom will fail on top of that the South Africa constitution in the case of *ministers of home affairs v national institutions for crime prevention* (NICRO)<sup>61</sup> gave a judgment which cemented inter alia on the fact that the right to vote with the fundamental rights to human dignity. This there for means that the right to vote is also 9n of the fundamental human right enshrined in the constitution.

This is further supported by Foster in His book *human rights and civil liberties*<sup>62</sup>

### **5.1.3 Determination of prisoner's future and future of their country**

Prisoners and other human right activist assert it is important for the prisoners to vote since voting help them in determining their future and their future of their country as any person who will be elected lead even the prisoners and the country in general .therefore ,if any things goes wrongs or well it is because of the bad or good leadership of the elected leader in this regard therefore, disregarding prisoners right to participate in national election entails total exclusion of prisoners from determining their own future and the future of their country something which affects them directly

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<sup>61</sup> 2004(5) BCLR 445 (CC)

<sup>62</sup> S.foster human rights and civil liberties

Addition to that an elected leader might be different from one whom the prisoners might have chosen and this in turn deprive the prisoners from enjoying their democracy rights of election <sup>63</sup>.this prisoners argument is further support by Maina ,in his book titled human rights in Tanzania; selected cases and materials<sup>64</sup>who argues that for any democracy to work it is important for a person to have a realistic say in what it is taking place .this is democratic rights of and every citizen however it is easily said than implemented in most of the developing countries the majority of the people are not all involved in the main affairs of their countries “

In the line of the foregoing argument the researcher hereby concurs by prisoner reason they advance since excluding prisoners from participating in national elections implies the total and privation of their democratic rights to vote making them unable to determine their further and the future of their country.

Apart from those who asserted that prisoners should be allowed to participate in national election there are those who also asserted that prisoners should not be allowed to participate in national election as described hereunder as follows.

## **5.2 Prisoners should not be allowed to participate in national election.**

The research conducted reveals that those who assert that prisoners should not be participate in national election advanced reason such as disenfranchisement should serve as a part of punishment; prisoners are untrustworthy; costs delay in announcing

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<sup>63</sup> Joshua devid and baraka mbwilo and others citizen interviewees from njombe region ]interviewed on 12 september 2023

<sup>64</sup> C.P. Maina ,human rights in tanzania ;selected cases and material ,Richarz publication –service ,sank august 1997 657

election result and not all prisoners will vote and some prisoners might be on the side of the elected leader which are hereby critically discussed below in details as follow;

### **5.2.1 Prisoners disenfranchisement as an aspect of penalty**

Prisoners officers and other people assert that prisoners should not be participate in national elections because their disenfranchisement should serve as a part of punishment so as to make them that committing crime is not acceptable at all in Tanzanian society <sup>65</sup> therefore according to them prisoners should be disenfranchised in order to serve as an extra punishment .

### **5.2.2 Prisoners are untrustworthy**

Prisoners officers and other people assert that prisoners should not be allowed to participate in national election since they are untrustworthy since they breach the laws and therefore should not be in a position to determine the laws that governing Tanzanian society. example roger clog comment that people who commit serious crime have shown that they are not trustworthy and as to equity if you're not willing to follow the rules yourself you should not be able to make rule for everyone else and that once a person is criminal will always be criminal<sup>66</sup>.

This is totally untrue because this people forget about the essence of punishment that is punishment is given for various among the reasons being the reformation and social rehabilitation of the prisoner as provided under Article ( 10(3) of the international covenant on the civil and political rights 1966<sup>67</sup>

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<sup>65</sup> Edina sanga prisoners officers from njombe prison interviewed on 12 september 2023

<sup>66</sup> M. mauer , voting behind bar ;an argument voting by prisoners, 54 howard law journal 3 2011]557.

<sup>67</sup> Article 10(3) of the international covenant on civil and political rights 1966.

### 5.2.3 costs

prisoners officers and other people assert the prisoner should not be allowed to participate in national election by arguing that prisoners to participate in national election will add costs on the part of government because electoral laws such as national election Act 1985 and local authorities(election Act) no 4 of 1979 section 13(1) which required a person who is registered in any polling district to be entitled to vote in any election in that polling stations located to him in that polling district an section 38 respectively which required every person who is 8 as a voter in voter register role to vote at a ward in which he/she registered as a vote for purpose of election but not elsewhere<sup>68</sup>.

Therefore, these persons argue that allowing prisoners to participate in national election will add monetary costs on the side of the government since the government will be required to transport to the place where is registered. Furthermore, apart from being. Costful on the side of the government it also time consuming since the prisoners come from different parts of our country.

Additional they argue that even some other arrangement such as of amending the draconian provision contained in electrol law such as (provisions of election Act and local authorities (election Act). Which impact harsh conditions of requiring people to vote in place where they were registered so as to insurers prisoners to participate in national elections still it was Costful and time consuming at the government bearing in mind that there a lot of prisoners and prison in Tanzania.

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<sup>68</sup> Section 13(1) of national election Act 1985 and section 38 of the local authorities (election) Act 1979.

#### 5.2.4 Delaying in announcing election results

Prisoners officers and other people asserted that prisoners should not be allowed in national elections arguing that allowing prisoners will cause delays in Tanzania and hence more on announcing the national election since there are lots of prisoners time will be needed in continuing vote and supervising the established polling stations <sup>69</sup>

This is not acceptable at all because it does not consider the aspect of human right and provides in international instruments such as the universal declaration of human rights 1948 and the international covenant on civil and political rights 1966 which set out the standard of which should be observed by state parties in protection fundamental of human rights to their citizens including prisoners.

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<sup>69</sup> Edina sanga (prison officer on jombe prison interviewed on 12 september 2023).

## CHAPTER SIX

### RECOMMENDATION AND CONCLUSION

#### 6.1 Recommendations

Research make the following recommendation as described hereunder amendments should be done to the domestic laws governing national election in Tanzania , provision of education , the ruling party should stop accelerating disenfranchisement of prisoners in Tanzania ;prisoners ,disenfranchisement should not be taken as an extra punishment the Tanzanian government should be take the first responsibility to protect and to promote prisoners right to participate in national elections and last Tanzanian government should not fear cost of running national elections in case prisoners are involved .

##### 6.1.1 Amendment to the domestic laws governing national elections in Tanzania.

Domestic laws governing national election in Tanzania should be amended by the parliament so that they expressly provide the right of prisoners to participate in national elections in order to meet international standard provided in the regional and international instrument such as African [ Banjul] charter on human and people rights 1981, the universal declaration of human rights 1948, and international covenant on civil and political rights 1966 acceded by Tanzania on January 1979. governing laws such as the constitution of the united republic of Tanzania 1977 should be amended especially the provision of article 5[2] which limit the franchise to prisoners by allowing the parliament to enact a law imposing conditions restricting citizen from exercising the right to vote by a reason of being convicted of a certain specified criminal offence<sup>70</sup>

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<sup>70</sup> Article 5[2] of the constitution of the united republic of tanzania. Ad amended time to time.

Also national election Act 1985 and local authorities [election] Act of 1979 should also be amended specifically the provision of section 14 and section 16 which disqualify prisoners who is under sentenced of imprisonment exceeding six months to be registered as a voter or to qualify for registration.

## **6.2 Provision of education to the public and prisoners**

### **6.2.1 Adequate legal education should be provided to prisoners on the franchise**

Adequate legal education also be provided to the prisoners with the emphasis being put on the importance of the franchise this is because till now Tanzania no any prisoners who has been able to question on the issue of prisoners disenfranchisement in Tanzania despite the fact that the franchise is one of the most fundamental democratic as well as constitutional right upon which other democratic and constitutional rights depend for their effect protection <sup>71</sup>

This is without any hesitation attribute to lack of legal education on the side of prisoners concerning the way in which the fundamental rights such as franchise can be claimed as such making the very fearful on how they can initiate proceeding in court of law claiming for their rights of participating in national election in Tanzania as a part of Tanzanian citizen <sup>72</sup>

## **6.3 Prisoners disenfranchisement should not be taken as extra punishment.**

Prisoners disenfranchisement should not be taken as an extra punishment because the franchise is one of the inherent human rights as such it should not be taken away from person despite imprisonment contrary to that it will be against the basic human

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<sup>71</sup> <https://www.researchgate.net> (accessed 30 February 2024).

<sup>72</sup> <https://www.academia.edu> (accessed 30 February 2024)

right enshrine in the international instrument and it will be also contrary to the provision of article 10[1] and 3 of the ICCPR which provide the basic of treating a prisoner with humanity and with respect for the inherent of the human person and that imprisonment should be aimed at the reform and social rehabilitation of the prisoners<sup>73</sup>

#### **6.4 Conclusion**

Despite the fact that prisoners are condemned for having breach the law, still they cannot be isolated from the bound of human family and so other human being are equal and the same fundamental of human rights which are inhered o them as a members of human family despite their imprisonment and are entitled to participate in national elections as other citizen of Tanzania

In Tanzania domestic laws governing national election hinder the prisoners from enjoying the right to participate in national election unlike the Lesotho ones .hence the law governing the national in Tanzania are not in compatible with regional and international instrument such as African [Banjul] charter on human and people rights 198 universal declaration of human rights 1948 which provide international standard which should be adhered to by the state parties in observed human right such as the right to participate in national election

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<sup>73</sup> Article 10[1and3] of the international covenant on civil and political rights 1966



## BIBLIOGRAPHY

### BOOKS

Grace Mwakajila. Legal framework and international standards related to prisoners right to vote in Tanzania

G. Lopes. Critical analysis of the legal framework in Lesotho regarding prisoners right to vote

E.J Mjema, the right to Vote for Prisoners in Tanzania

J.M. Mwombeki; Cooperative Study of Prisoners

I.A. Mzee; The Legal Implications of Denying Prisoners the Right to Vote in Tanzania and Cape

F.A. Sareh. The intersection of human right and criminal justices

O .Hamid, The prisoner arcade publishing 2015.

JK Nyerere , our leadership and the destiny of Tanzania, African publishing group , harare, 1995 9-10

S.E.chambula et al ;multiparty election and corruption in tanzania ,prevention of corruption bereeau and the institute of development studies,dar es salam 2002, 27

### JOURNAL

C.P. Maina ,human rights in tanzania ;selected cases and material ,Richarz publication –service ,sank august 1997 657

M. mauer , voting behind bar ;an argument voting by prisoners, 54 howard law journal 3 2011]557.

**WEBSITE**

<http://www.electionaccess.org>

[http://www.penalreform.org\(26january](http://www.penalreform.org(26january)

<https://www.lawinsider.com>

<https://wwprisonersdictionary>

<https://www.lawtechers.net>

<https://aceproject.org>.

<https://www.esfsadc.org>

<https://www>.

<Http://Johnward.Ca>

<Https://www.tandfononline.com>

<www.newyorker.come>

<https://www.quora.com>

[https://www.reseachgate.net\(accessed](https://www.reseachgate.net(accessed)

[https://www.academia.edu\(accessed](https://www.academia.edu(accessed)