THE ELECTRONIC TRANSACTIONS ACT, 2015

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THE UNITED REPUBLIC OF TANZANIA



NO.13 OF 2015

l ASSENT,

President

as Amil 2015

An Act to provide for the legal recognition of electronic transactions, e-Government services, the use of Information and Communication Technologies in collection of evidence, admissibility of electronic evidence, to provide for the facilitation of use of secure electronic signatures; and to provide for other related matters.

ENACTED by Parliament of the United Republic of Tanzania.

PART I PRELIMINARY PROVISIONS

Short title and commencement This Act may be cited as the Electronic Transactions Act, 2015 and shall come into operation on such date as the Minister may, by notice published in the Gazette, appoint.

Application

Save for Part III, this Act shall apply to Tanzania Mainland as well as Tanzania Zanzibar.

Interpretation

- 3. In this Act, unless the context requires otherwise -
- "access" in relation to any computer system, means to gain entry to, instruct, communicate with, store data in, retrieve data from, or otherwise make use of any of the resources of the computer system or network or data storage medium;

"addressee" means a person or party who is intended by the originator to receive an electronic communication, but does not include a party acting as an intermediary in respect of that electronic communication;

"computer system" means a device or combination of devices, including network, input and output devices capable of being used in conjunction with external files which contain computer programmes, electronic instructions, input data and output data that perform logic, arithmetic data storage and retrieval communication control and other functions;

"consumer" means any person who enters or intends to enter into an electronic transaction with a supplier as the end user of goods or services offered by the supplier;

"cryptography" means the art of protecting information by transforming it into an unreadable format;

" data" means any information presented in an electronic form;

" data message" means data generated, communicated, received or stored by electronic, magnetic optical or

other means in a computer system or for transmission from one computer system to another;

"clectronic communication" means any transfer of sign, signal, or computer data of any nature transmitted in whole or in part by a wire, redio, electromagnetic, photoelectronic, photo optical or in any other similar form;

"electronic Gazette" means the Gazette referred to under section 16;

"electronic record" means a record stored in an electronic form;

"electronic signature" means data, including an electronic sound, symbol or process, executed or adopted to identify a party, to indicate that party's approval or intention in respect of the information contained in the electronic communication and which is attached to or logically associated with such electronic communication;

"electronic transaction" means a transaction, action or set of transactions of a commercial or non-commercial nature, that takes place electronically;

"interactive message system" means an automated system, or other pre-programmed system, used to, initiate an action, respond to electronic communications, or generate other performances in whole or in part without review or intervention by a party each time an action is initiated or a response is generated by the system;

"Minister" means the Minister responsible for Information and Communication Technology;

"originator" means a person from whom the electronic communication purports to have been sent or generated;

"place of business" means any place where a party maintains a non-transitory establishment to pursue an economic activity other than the temporary provision of goods or services out of a specific location.

PART II RECOGNITION AND EFFECTS OF ELECTRONIC TRANSACTIONS

Recognition of data message A data message shall not be denied legal effect, validity or enforceability on the ground that it is in electronic format.

Validity of transaction in electronic form

- 5.-(1) Where a law requires information or transaction to be in a prescribed non-electronic form or in writing, such requirement shall be met by an information or a transaction entered in electronic form that is -
 - (a) organised in the same or substantially the same way as the prescribed non-electronic form;
 - (b) accessible to the other person for subsequent reference; and
 - (c) capable to be retained by the other person.
- (2) Subsection (1) shall apply whether the requirement is in a form of an obligation or where the law only provides consequences for the information which is not in writing.

Electronic signature

- 6.-(1) Where a law requires the signature of a person to be entered, that requirement shall be met by a secure electronic signature made under this Act.
- (2) The requirement for an electronic signature made under subsection (1) shall be met if-
 - (a) the method is used to identify the person and to indicate the intention of that person in relation

with information communicated; and

- (b) at the time the method was used, that method was reliable and appropriate for the purposes for which the information was communicated.
- (3) Parties to a contract may agree to use a particular method of electronic signature as they deem appropriate unless it is otherwise provided by law.

Secure electronic signature

- 7. An electronic signature shall be deemed to be secure if it-
 - (a) is unique for the purpose for which it is used;
 - (b) can be used to identify the person who signs the electronic communication;
 - (c) is created and affixed to the electronic communication by the signer;
 - (d) is under control of the person who signs; and
 - (e) is created and linked to the electronic communication to which it relates in a manner such that any changes in the electronic communication would be revealed.

Application of secure electronic signature

- A secure electronic signature shall be deemed to have been applied if it is-
 - (a) applied by the holder of the secure electronic signature; and
 - (b) affixed by the holder with the intention of signing or approving the electronic communication.

Electronic record keeping 9,-(1) Where a written law requires that certain information or document be retained or kept, that requirement is deemed to have been met by electronic record keeping provided that-

- (a) the information contained in that record is in electronic form;
- (b) the electronic record is retained or kept in a format in which it was generated, sent or received, or in a format which can be demonstrated to represent that information accurately; and
- (c) such electronic record is retained or kept in a form that enables the identification of the origin and destination of an electronic record or electronic communication and the date and time when it was first generated, sent, received or retained.
- (2) An obligation to retain or keep a document, record or information in accordance with subsection (1) shall not extend to any information of which the sole purpose is to enable the message to be sent or received.

Notarisation, acknowledge ment and certification 10. Where the law requires-

(a) a signature, statement or a document to be notarized, acknowledged, verified or made under oath, that requirement shall be deemed to be met if the electronic signature of the person authorized to perform those acts is attached to, incorporated in or logically associated with an electronic signature or a data message; or

(b) a person to provide a certified copy of a document and that document exists in an electronic form, the requirement shall be met if the person provides a certified print-out of the

document.

Other requirements

11.-(1) Where the law requires -

- (a) submission of multiple copies of a document to a single addressee at the same time, that requirement is met by submission of a single electronic communication that is capable of being reproduced by that addressee;
- (b) a seal to be affixed and signature to a document and that law does not prescribe the method or form by which such a document may be sealed by electronic means, that requirement shall be met if the document is sealed and signed electronically by a person who was required to seal and sign that document; or
- (c) a person to send an information or a document by post or a similar service, that requirement shall be met if that information or document is sent in an electronic form.
- (2) An expression in a written law, including the terms "document", "record", "file", "submit", "lodge", "deliver", "issue", "publish", "write in", "print" or words or expressions of similar effect, shall be interpreted so as to include or permit such form, format or action in relation to an electronic communication unless it is otherwise provided for in this Act.

Conduct of person relying on electronic signature

- 12. A person who relies on an electronic signature shall bear the legal consequence of failure to take reasonable steps to verify the-
 - (a) authenticity of a electronic signature; or
 - (b) validity of a certificate or observe any limitation with respect to the certificate where an electronic signature is supported by a certificate.

PART III E-GOVERNMENT SERVICES

Recognition of e-Government services

- 13.-(1) Without prejudice to any other law, where a public institution has power to deal with an information or a document or issue services, it may deal with that information or document or issue such services in electronic form in accordance with this Act.
- (2) A requirement that information or document shall be made or given in writing or signed, does not in itself constitute an express prohibition of the use of electronic means.
- (3) A public institution may take or receive payment in electronic form in a prescribed manner.
- (4) For the purpose of subsection (1) the Minister may, in consultation with the Minister responsible for e-Government, by notice published in the Gazette, issue guidelines specifying-
 - (a) the manner and format in which the electronic transaction shall be made;
 - (b) the type of electronic signature required, in cases where an electronic transaction has to be signed;
 - (e) the manner and format in which the electronic signature may be attached or associated with an electronic transaction;
 - (d) control processes and procedures to ensure integrity, security and confidentiality of the information;
 - (e) the identity of or criteria to be met by an authentication service provider for e-government services;

- (f) the appropriate control process and procedure to ensure adequate integrity, security and confidentiality of an electronic transaction or an electronic payments; and
- (g) any other requirements that relates to electronic transaction.
- (5) Notwithstanding subsection (4), any authorized public institution may adopt such other authentication procedures.
- (6) For the purpose of this Part, "e-Government Services" means any Government services provided through the use of Information and Communication Technologies.

Service by electronic means

- 14.-(1) Where the law requires a document to be served, that requirement is met if the document is served in an electronic form.
- (2) Subsection (1) shall apply where there is an information processing system which can-
 - (a) identify the origin, destination, time and date of service, sending or delivery; and
 - (b) acknowledge receipt of the document.

Payment of money and issuance of receipt in electronic form

- Where the law requires –
- (a) payment to be made, that requirement shall be met if payment is made by an electronic means and complies with any conditions imposed by other relevant laws.
- (b) the issuance of any receipt of payment, that requirement shall be met if the receipt is in the form of an electronic message and the electronic message is accessible and intelligible so as to be usable for subsequent reference.

Publication of document

16. Where a written law provides that a document be published in the Gazette, such requirement shall be deemed to have been met if such document is published in an electronic Gazette.

Document in electronic form not mandatory 17. This Act shall not confer a right upon any person to insist that any public institution shall deal with any document in electronic form.

PART IV ADMISSIBILITY OF ELECTRONIC EVIDENCE

Admissibility of data message

- 18.-(1) In any legal proceedings, nothing in the rules of evidence shall apply so as to deny the admissibility of data message on ground that it is a data message.
- (2) In determining admissibility and evidential weight of a data message, the following shall be considered-
 - (a) the reliability of the manner in which the data message was generated, stored or communicated;
 - (b) the reliability of the manner in which the integrity of the data message was maintained;
 - (c) the manner in which its originator was identified;
 and
 - (d) any other factor that may be relevant in assessing the weight of evidence.
- (3) The authenticity of an electronic records system in which an electronic record is recorded or stored shall, in the absence of evidence to the contrary, be presumed where-
 - (a) there is evidence that supports a finding that at all material times the computer system or other similar device was operating properly or, if it

was not, the fact of its not operating properly did not affect the integrity of an electronic record and there are no other reasonable grounds on which to doubt the authenticity of the electronic records system:

(b) it is established that the electronic record was recorded or stored by a party to the proceedings who is adverse in interest to the party seeking to

introduce it; or

- (c) it is established that an electronic record was recorded or stored in the usual and ordinary course of business by a person who is not a party to the proceedings and who did not record or store it under the control of the party seeking to introduce the record.
- (4) For purposes of determining whether an electronic record is admissible under this section, an evidence may be presented in respect of any set standard, procedure, usage or practice on how electronic records are to be recorded or stored, with regard to the type of business or endeavours that used, recorded or stored the electronic record and the nature and purpose of the electronic record.

Attribution of electronic communication An electronic communication shall be treated to be from originator if it is sent by-

(a) the originator;

(b) a person who is duly authorised by the originator to communicate in electronic form in respect of that data message; or

(c) computer system programmed by or on behalf of the originator to operate automatically. Production of original document in electronic form

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- 20.-(1) Where a written law requires a person to produce a document or information, that requirement is met if—
 - (a) the person produces, by means of an electronic communication, an electronic form of that document or information;
 - (b) considering all the relevant circumstances, at the time that an electronic communication was sent, the method of generating the electronic form of the document provided a reliable means of assuring the maintenance of integrity of the information contained in the document; and
 - (c) at the time that an electronic communication is sent, it is reasonable to expect that an information contained in the document or information would be readily accessible so as to be usable for subsequent reference.
- (2) For the purposes of subsection (1), the integrity of the information contained in a document is maintained if the information has remained complete and unaltered, except for-

(a) the addition of any endorsement; or

(b) any immaterial change, which arises in the normal course of communication, storage or display.

PART V RECOGNITION OF ELECTRONIC CONTRACTS

Recognition of electronic contracts

- 21.-(1) For avoidance of doubt, a contract may be formed electronically unless otherwise agreed by the parties.
- (2) Where an electronic record is used in the formation of a contract, that contract shall not be denied

validity or enforceability on the ground that an electronic record was used for that purpose.

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Time of dispatch and receipt of electronic communicati un

- 22.-(1) Information in electronic form is dispatched when it enters a computer system outside the control of the originator or of the person who sent the electronic communication on behalf of the originator.
- (2) Where the originator and the addressee are in the same computer system, information in electronic form is communicated when it is capable of being retrieved by the addressee.
- (3) If the addressee has designated a computer system for the purpose of receiving electronic communication, that information is received at the time when the electronic communication enters the designated computer system.

(4) When the electronic communication is sent to an information system of the addressee that is not the designated computer system, that information is

communicated -

- (a) at the time when the electronic communication is capable of being retrieved by the addressee at that address; and
- (b) the addressec becomes aware that the electronic communication has been sent to that address.
- (5) Where the addressee has not designated an information system, receipt occurs when the electronic communication is retrieved by the addressee, or should reasonably have been retrieved by the addressee.

Acknowledgement of 23.-(1) Acknowledgement of receipt of an electronic communication may, where the originator has not agreed

receipt

with the addressee on the form or method, be given by-

- (a) any electronic communication by the addressee, automated or otherwise; or
- (b) any act of the addressee, sufficient to indicate to the originator that the electronic communication has been received.
- (2) Where the originator has stipulated that an electronic communication shall be binding only on receipt of an acknowledgment, and the acknowledgment has not been received, the originator shall -
 - (a) within the time specified or agreed or, if no time has been specified or agreed to within a reasonable time, then the originator may give notice to the addressee stating that no acknowledgment has been received by him and specifying reasonable time by which the acknowledgment shall be received by him;
 - (b) within the aforesaid time limit, he may after giving notice to the addressee, treat the electronic communication as though it has never been sent.

Place of dispatch and receipt of electronic communication

- 24.-(1) Unless otherwise agreed between the originator and the addressee, an electronic communication is deemed to be dispatched at the place where the originator has its place of business and is deemed to be received at the place where the addressee has its place of business.
 - (2) Subsection (1) shall apply-
 - (a) even if the originator or addressee was not at his usual place of business; and
 - (b) to determine the place where a contract was concluded for the purposes of taxation.
- (3) For the purpose of subsection (1), if the originator or the addressec-

- (a) has more than one place of business, the place of business is:
 - that which has the closest relationship to the underlying transaction having regard to the circumstances known or contemplated by the parties at any time before or at the conclusion of the contract; or
 - (ii) where there is no underlying transaction, the principal place of business.
- (b) does not have a place of business, the place of business shall be his habitual residence.
- (4) If a body corporate does not have a place of business, the place of business shall be the business address of the body corporate or the place where it is incorporated or otherwise legally constituted.
- (5) This section shall apply notwithstanding that a place where a computer system supporting an electronic address is located is different from the place where the electronic communication is deemed to be dispatched or received.

Time and place of contract formation

- 25.-(1) Where parties conclude a contract electronically, that contract shall be formed at the time and place where acceptance of the offer becomes effective.
- (2) An offer in the form of an electronic communication becomes effective at the time it is received by the offeree.

Contracts with interactive systems 26.-(1) A contract formed by the interaction of an interactive system and a person, or by interaction of interactive systems, shall not be denied legal effect, on the

ground that no person reviewed each of the individual actions carried out by the interactive systems.

- (2) An interactive system shall provide an opportunity for a person to correct an input error made in an electronic communication exchanged with the interactive system of another party.
- (3) Where a person makes an input error in an electronic communication exchanged with the interactive system of another party and an interactive system does not provide the person with an opportunity to correct the error, that person has the right to withdraw the electronic communication in which the input error was made if the person-
 - (a) notifies the other party of the error as soon as practicable after having learned of the error and intends to cancel the contract or cancel the input error;
 - (b) takes reasonable steps, to comply with instruction by the other part to return the goods or services received as a result of the error, or to destroy the goods or services, or to cancel the input error; and
 - (c) has not used or received any material benefit or value from the goods or services, or the input error, from the other party.
- (4) A person who has paid for goods or services prior to exercising a right under subsection (1), is entitled to a full refund of such payment within thirty days upon cancellation of the transaction.
- (5) Nothing in this section shall affect the application of any law that may govern the consequences of any errors made during formation or performance of the type of contract in question other than an input error that occurs in the circumstances under subsection (3).

Online auction 27. Where a written law requires a contract of sale by auction, the requirement of the fall of hammer is met in an online auction using the time at which an electronic communication was received as the time limit as the means of selecting the last bidder.

PART VI CONSUMER PROTECTION

Duties of suppliers to online consumers 28.-(1) A supplier offering goods or services for sale, hire or for exchange electronically, shall provide the following information to consumers-

(a) full name, legal status and place of business;

- (b) contact details including physical address, telephone and e-mail addresses;
- (c) a full description of the goods or services offered;

(d) the price of the goods or services;

(e) information on the payment mechanisim that complies with other written laws; and

(f) any other relevant information.

- (2) Before a consumer places an order, the supplier shall provide the consumer with an opportunity to-
 - (a) review the entire electronic transaction;
 - (b) correct any mistake; and

(c) withdraw from the transaction.

(3) Where a supplier contravenes this section, the consumer may, within fourteen days of receiving the goods or services, cancel the transaction.

Time for execution of order 29.-(1) Unless the parties have agreed otherwise, the supplier shall execute the order within thirty days from the day on which the supplier received the order.

- (2) Where a supplier fails to execute the order within time specified under subsection (1), the consumer may cancel the agreement by giving a seven days notice.
- (3) Where a supplier is unable to perform the contract on the grounds that goods or services ordered are unavailable, the supplier shall within thirty days notify the consumer and the supplier shall refund any payment that has been made.

Cancellation right

- 30.-(1) Without prejudice to any other law, a consumer may, within seven days or longer period specified in the agreement, after receiving the goods or conclusion of the agreement and the consumer has not received any material benefit from the transaction, cancel the agreement for supply of goods or provision of service.
- (2) Where a consumer has cancelled the agreement under subsection (1), he shall pay direct cost of returning the goods.
- (3) Where a consumer has paid for the goods or services prior to exercising a right under subsection (1) the consumer is entitled to a refund.
- (4) The refund under subsection (3) shall be made within thirty days after the date of cancellation of transaction.
- (5) This section shall not apply to electronic transactions-
 - (a) for financial services;
 - (b) by way of an auction;
 - (c) for the supply of foodstuffs, beverages or other goods intended for daily consumption;
 - (d) for services which began with the consent by the consumer before expiration of the seven-day period;

(e) where the price for the supply of goods or services is dependent on fluctuations in the financial markets and which cannot be controlled by the supplier;

(f) where the goods-

(i) are made to the consumer's specifications;

(ii) are clearly personalised;

- (iii) by their nature, cannot be returned; or
- (iv) are likely to deteriorate or expire rapidly;
- (g) where audio or video recordings or computer software were downloaded or unscaled by the consumer;
- (h) for the sale of newspapers, periodicals, magazines and books;
- (i) for the provision of gaming and lottery services;

(i) for online gambling;

- (k) for the provision of accommodation, transport, catering; and
- any other transactions as the Minister may, by notice published in the Gazette prescribe.
- (6) For the purpose of this section "direct costs" means, costs incurred and include transport costs or postage when returning goods or services but exclude any handling fees.

Particulars to be provided in an electronic communicati on

- 31. A person who offers goods or services electronically shall provide the addressee with-
 - (a) an identity of the originator and contact details;
 - (b) a valid and operational opt-out facility from receiving similar communications in future; and
 - (c) the particulars of the source from which the originator obtained the personal information of the addressee.

Unsolicited goods, services or communications

- 32.-(1) A person shall not send unsolicited commercial communication on goods or service unless-
 - (a) the consumer consents to the communication;
 - (b) at the beginning of the communication, the communication discloses the identity of sender and its purpose; and
 - (c) that communication gives an opt-out option to reject further communication.
- (2) The consent requirement is deemed to have been met where-
 - (a) the contact of the addressee and other personal information were collected by the originator of the message in the course of a sale or negotiations for a sale;
 - (b) the originator only sends promotional messages relating to its similar products and services to the addressee:
 - (c) the originator offered the addressee the opportunity to opt-out and the addressee declined to opt-out;
 and
 - (d) an opportunity to opt-out is provided by the originator to the addressee with every subsequent message.
- (3) An originator who contravenes this section commits an offence and shall, upon conviction, be liable to a fine of not less than ten million shillings or to imprisonment for a term not less than one year or to both.

PART VII CRYPTOGRAPHIC AND CERTIFICATION SERVICE PROVIDERS

Cryptographic and certification services 33. The Minister may, by notice published in the Gazette, designate a government institution under the Ministry responsible for Information and Communication Technology to be a regulator of Cryptographic and Certification Services.

Functions of regulator

- 34. The functions of the regulator shall be to-
- (a) license and regulate cryptographic and certification services;
- (b) prescribe security standards for cryptography and electronic signatures;
- (c) determine standards to be maintained by certification authorities;
- (d) keep and maintain a register of cryptographic and certification service providers; and
- (e) do such other things necessary for the implementation of this Part.

Application for registration

- 35.-(1) A person who intends to offer cryptographic or certification services shall apply to the regulator.
- (2) The application made under subsection (1) shall consist of the following information-
 - (a) name and contact, including the physical address, telephone and e-mail;
 - (b) a description of the type of service to be provided;
 - (c) a description of the purpose to which the service will be applied;
 - (d) a description of the technology to be applied in the services; and

(e) any other relevant particulars as may be prescribed by the regulator.

Prohibition to provide cryptographic or certification services

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- 36.-(1) A person shall not provide cryptographic or certification services without a licence.
- (2) A person who contravenes subsection (1) commits an offence and shall, upon conviction be liable to a fine not less than ten million shillings or to imprisonment for a term not less than five years or to both.

PART VIII GENERAL PROVISIONS

Powers to make regulations 37. The Minister may make regulations generally for or with respect to any matter which by this Act is required to be prescribed or which is necessary for giving effect to this Act.

PART IX CONSEQUENTIAL AMENDMENTS (a) Amendment of the Law of Contract Act, Cap. 345

Construction Cap.345 38. This Part shall be read as one with the Law of Contract Act, hereinafter referred to as the "principal Act".

Amendment of section 10 39. The principal Act is amended in section 10 by inserting the words "or in electronic form" immediately after the words "in writing" appearing in the proviso of that section.

Amendment of section 25 40. The principal Act is amended in section 25, by -

the following:

"Agreement without consideration is void"

 (a) inserting the words "in electronic form" immediately after the word "writing" appearing in paragraph (a);

(b) inserting the words "or electronic form" immediately after the word "writing" appearing in

paragraph (c);

(b) Amendment of the Law of Evidence Act, Cap.6

Construction Cap. 6 41. This Part shall be read as one with the Law of Evidence Act, hereinafter referred to as the "principal Act".

Amendment of section 3 42. The principal Act is amended in section 3 by deleting the definition of the term "document" and substituting for it with the following: "document" means any writing, handwriting, typewriting, printing, Photostat, photography, computer data and every recording upon any tangible thing, any form of communication or representation including in electronic form, by letters, figures, marks or symbols or more than one of these means, which may be used for the purpose of recording any matter provided that recording is reasonably permanent and readable;

Amendment of section 19 43. Section 19 of the principal Act is amended by inserting the word "electronic" immediately after the word "oral":

Amendment of section 34 44. Section 34 of the principal Act is amended by inserting the word "electronic" immediately after the word "written": 28

Amendment of section 34B 45. Section 34B of the principal Act is amended by inserting the words "or electronic" between the words "written" and "statements" wherever" they appear in that section.

Addition of section 64A 46. The principal Act is amended by adding a new section 64A as follows:

"Admisibility of electronic evidence

- 64A.-(1) In any proceedings, electronic evidence shall be admissible.
- (2) The admissibility and weight of electronic evidence shall be determined in the manner prescribed under section 18 of the Electronic Transaction Act, 2015.
- (3) For the purpose of this section, "electronic evidence" means any data or information stored in electronic form or electronic media or retrieved from a computer system, which can be presented as evidence."

(c) Amendment of the Records and Archives Management Act, Cap.309

Construction Cap.309 47. This Part shall be read as one with the Records and Archives Management Act, hereinafter referred to as the "principal Act".

Amendment of section 2 48. The principal Act is amended in section 2 by inserting the words "or electronic" immediately after the word "recorded" appearing in the definition of the term "record".

(d) Amendment of the Banking and Financial Institutions Act, Cap. 342

Construction Cap.342 49. This Part shall be read as one with the Banking and Financial Institutions Act, hereinafter referred to as the "principal Act".

Amendment of section 8 50. The principal Act is amended in section 8 by inserting the words "or in electronic form" between the words "writing" and "and", appearing in subsection (1).

Passed in the National Assembly on the 1st day of April, 2015.

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Clerk of the National Assembly