

**CONSTITUTION-MAKING IN TANZANIA:  
THE ROLE OF THE PEOPLE IN THE PROCESS**

**Prof. Chris Maina Peter**  
Faculty of Law,  
University of Dar es Salaam,  
P.O. Box 35093,  
Dar es Salaam,  
TANZANIA

*August, 2000*

## **CONSTITUTION-MAKING IN TANZANIA:**

### **THE ROLE OF THE PEOPLE IN THE PROCESS**

#### **Outline**

#### **I. Introduction: The Constitution and Constitution-Making**

**II. Struggle for Independence: The Role Played by the People through Civil Organisations**

#### **III. Independence and Parting of Company Between the Leaders and the Led**

#### **IV. Major Constitutional Changes in the Country**

**(a). From Multi-party to One-party Democracy**

**(b). The Interim Constitution of 1965**

**(c). The Permanent Constitution of the United Republic of Tanzania of 1977**

**(d). The 1983 Constitutional Debate**

#### **V. The Nyalali Commission on One-party or Multi-party**

#### **VI. The White Paper: The Work of the Kisanga Committee**

#### **VII. The 13<sup>th</sup> Amendment to the Constitution of April, 2000**

#### **VIII. Conclusions and Observations**

#### **IX. Selected Bibliography**

## CONSTITUTION- MAKING PROCESS IN TANZANIA:

### THE ROLE OF CIVIL ORGANISATIONS

No one person has the right to say, “I am the People.” No Tanzanian has the right to say, “I know what is good for Tanzania and others must do it.” All Tanzanians have to make the decisions for Tanzania.

Julius Kambarage Nyerere<sup>[1]</sup>

#### *1. Introduction: The Constitution and Constitution-Making*

The Constitution of a country is the most important legal document. It is the supreme law on which all other laws are based. At times it is referred to as a social contract between the rulers and the ruled. It is also the consensus amongst the people themselves. The Constitution is therefore more than just a document. It embodies the wishes and aspirations of the country. All the laws, by-laws, rules and regulations derive their legitimacy from the Constitution.

Constitutions take various forms. There are written and unwritten Constitutions. Great Britain for instance, has no written Constitution. It is guided by traditions developed over the years. However, most countries and particularly those in the developing world have written Constitutions. Most of these Constitutions have been developed and shaped by their colonial past. Some were negotiated with the leaving colonial powers. They were or are compromises between the interests of the leaving rulers and the ruled who were taking over power. Yet others are outcomes of protracted independence struggle – mostly armed.

Some of these developing countries have gone beyond the so-called independent Constitution to a more home-grown Constitution. They have nevertheless retained the tradition of the former rulers. For instance, Constitutions of most of the former British colonies will retain the Westminster tradition with clear separation of powers, independence of the judiciary and generally existence of checks and balances. Others have tilted the balance in favour of a strong executive and a very weak judiciary and a rubber-stamping legislature.

This paper examines the role played by the people in the constitution making process in Tanzania. The work begins by examining the struggle for independence and the movement towards the very first constitution of the country – the Independence Constitution of 1961.

Later on we look at the process of constitution making after independence. The focal point is the role of the people in this process. This area covers struggles of over thirty years. We conclude by a prognoses on what the future holds for the people of Tanzania in the constitution making in the country.

## *II. Struggle for Independence: The Role Played by the People through Civil Organisations*

Tanzania was formally under the British as a mandate under the League of Nations and later as a Trustee Territory under the United Nations.<sup>[2]</sup> Its independence Constitution was negotiated with the former rulers. In these negotiations the departing British had an upper hand. The nationalists and the people on the other hand, did not have a clear say in the process of framing the coming independence Constitution. One known concession made by the British was to allow the then Tanganyika to become independent with a Constitution that did not contain a Bill of Rights.<sup>[3]</sup> That was important as far as the nationalists were concerned as they no longer had a duty to protect the properties of the subjects of the departing rulers.

During the struggle for independence and particularly in 1940s and 1950s, there was a very close relationship between the nationalist leaders and their people organised in civil organisations which the colonial regime allowed to exist. It was almost impossible to separate the politicians and these civic groups.<sup>[4]</sup>

The peasants in their co-operative movements and the working people in their various trade unions provided the nationalist leaders with a forum through which they could address the public “legally” without having to go through the rigours of getting the required permits for meetings from the authorities. It is on record that even social organisations of the people such as football clubs like *Young Africans Sports Club* popularly known as *Yanga* and Taarab Clubs such as *Egyptian Musical Club* in Dar es Salaam were civil groups which assisted the nationalist movement in its struggle for the independence of the country.

Therefore, the role of the people during the colonial period can not be underestimated. They were very effective in their various organisations. Worth noting, as indicated above, were the co-operative movement and the trade unions. This very amicable and supportive relationship was to change very much at after independence .

## **III. Independence and Parting of Company Between the Leaders and the Led**

At independence the very close relationship between the politicians and the people in their various organisation came gradually to an end. This was due to the differences in perception of what the political independence meant for the people of Tanzania. As for the co-operative movement things were much easier. The top brass in the major co-operative societies were co-opted easily into the new government. In the forefront were the leaders of co-operative societies from Lake Victoria area. Paul Bomani from Victoria Federation in Mwanza, a strong cotton growing zone and George Kahama from Bukoba where there was a strong coffee growing area and there were others. This co-option did not mean freedom to co-operative movement. It is still placed under the tight control of

the government with the Minister responsible for Agriculture keeping an open eye on their operations.<sup>[5]</sup>

The problem was the trade unions. There was a sharp division and divergence of views among the leadership. Some wanted to join the new government and get into politics proper. Others wanted to maintain their positions in the trade unions and continue with the struggle for the improvement of the welfare of the working people. Yet others joined the government for a short while and later left. There were serious repercussions to follow for the trade union movement in the country.<sup>[6]</sup>

Therefore, people like Michael Kamaliza and Alfred Tandau joined the new Government and were given cabinet posts. Other union leaders like Christopher Kasanga Tumbo joined the government for a short time and then left.<sup>[7]</sup> For those who insisted on continuing the trade union tradition of fighting for the rights of workers and their welfare the government was losing patience.<sup>[8]</sup> Tanganyika Federation of Labour (TFL) was outlawed and the leadership banished to remote areas of the Country. One of the top leaders of the movement, Victor Mkello was deported to the remote town of Sumbawanga.<sup>[9]</sup> TFL was replaced by a State-sponsored and supported National Union of Tanzania Workers (NUTA) which was affiliated to the ruling Party. For many years to follow, the Secretary-General of this “trade union” was always a cabinet minister responsible for labour. That development marked the end of the struggle between the people in their organisations on the one hand, and the government on the other, over the destiny of the country.

Therefore, for most the post-independence period the civil society, through which the people were organised and thus could express themselves was submerged within the ruling party. This was in the form of what were referred to as mass organisations of the ruling party. These were of the youth, the parents, the workers, women and peasants (co-operatives).<sup>[10]</sup> As a result of this co-option by the State, these civil groups could not contribute meaningfully to the advancement of the struggle towards a progressive and democratic country. This applies to the contribution in the betterment of the Constitution as the main law of the country governing the relations between people and their government and among themselves.

#### **IV. Major Constitutional Changes in the Country**

The major constitutional changes that followed after independence point at one common thing. That is an attempt to by the ruling party and its government to show to the rest of the world that there was democracy in the country and that the people were fully involved in the constitutional process. That is quite understandable as even the most autocratic system does not own up to being autocratic. It would assert that it is democratic. And to be democratic or to be seen to be democratic you have to be seen consulting the people. That is what has been happening in Tanzania. An attempt to indicate that the party and its government were consulting the people – while in fact they were not consulting anybody at all.

To prove our assertion, we look at various ways through which the constitutional process has taken from independence to the present. We examine the way from multi-party to mono-party; consolidation of one-party system to its supremacy and back to multiparty again. We end with an examination of the most recent constitutional amendment – the 13<sup>th</sup> Amendment of 2000 which followed the controversial *White Paper* debate.

### **(a) From Multi-party to One-party Democracy**

Tanzania, then known as Tanganyika, was a vibrant multi-party democracy at independence. The Independence Constitution of 1961 provided a legal and constitutional framework for that. Apart from the Tanganyika National National Union (TANU) which was dominant there were two other political parties. These were the United Tanganyika Party (UTP) formed in 1958 and backed by the landed section of white settlers in the country to counter the influence of TANU; and the African National Congress (ANC) which was also formed in 1958 by Zuberi Mtemvu after leaving TANU over disagreements over the position to be taken at elections.

After independence other new parties emerged. These include the Peoples Democratic Party (PDP) of Christopher Kasanga Tumbo; the Peoples Convention Party (PCP) led by Samson Mshala; the Nationalist Enterprise Party (NEP) of Hussein Yahaya; All Muslim Nationalist Union of Tanganyika (AMNUT); and later came the African Independence Movement (AIM) which was a merger between PCP and NEP.<sup>[11]</sup> In this multiparty democracy there was a clear consensus that the Parliament was the supreme organ of the people. This was conceded by the former President of the United Republic of Tanzania, the late Mwalimu Julius K. Nyerere in a speech made on 25<sup>th</sup> April, 1964 to the National Assembly asking it to ratify the Union between Tanganyika and Zanzibar. In this speech Mwalimu said:

*The Parliament is the supreme organ of the people of Tanganyika. No important constitutional issues or important matter concerning state agreement or concerning the laws of this country, can be finally decided by anyone or any group of persons other than this Assembly. All such matters must be brought before this house, and it is entirely at your discretion to approve them or reject them. Today, I am submitting to you for consideration a draft agreement for the Union of Tanganyika and Zanzibar. (emphasis added)*<sup>[12]</sup>

This was to change very soon. First, other political parties had to go in order to pave way for a one political party political system. According to Professor Cranford Pratt, a Canadian Political Scientist and the first Principal of the University College at Dar es Salaam:

In Tanzania the several tiny parties which appeared in 1962 were harassed out of existence, their leadership deported or detained and their rights to register and hold meetings severely restricted.<sup>[13]</sup>

With other parties out of the way, time was ripe to declare a one-party political system. The argument for this came from the Party President himself. In a speech to the TANU National Conference in 1963 he argued:

Where there is one party, and that party is identified with the nation as a whole, the foundations of democracy are firmer than they can ever be where you have two or more parties, each representing only a section of the community.

What followed was a decision of the Party's National Executive Committee (NEC) to turn Tanganyika into a one party state. This party decision was to be given legal backing two years later vide the Interim Constitution of 1965.

There was no attempt to involve the people in the decision-making. The party had decided for them. Therefore, even when the President of the country formed a Commission on One-Party State he was very clear on their limited mandate:

In order to avoid misunderstanding, I think I should emphasise that it is not the task of this Commission to consider whether Tanganyika should be a one-party state. *The decision has already been taken.* Their task is to say what kind of one party state we should have in the context of our own national ethic and in accordance with the principles I have instructed the Commission to observe.[\[14\]](#) (emphasis added)

The next step was to declare the sole party supreme. Again, the first person to hint at party supremacy was Mwalimu Nyerere. When conveying fraternal greetings to the conference of the Uganda Peoples Congress (UPC) on 7<sup>th</sup> June, 1968, the President of TANU argued a case for party supremacy very articulately:

For the truth is that it is not the party which is the instrument of the government. It is the government which is the instrument through which the party tries to implement the wishes of the people and serve their interests.[\[15\]](#)

Party supremacy was officially entrenched into the Constitution of the country in 1975.[\[16\]](#)

The party leadership at the same time controlled the government. This gave them control over both ideological and coercive state apparatus. It was the same people making decisions in the party and then overseeing their implementation in the government. Changing hats took place depending on the seat – party president or country president. Already by 1971 the system of checks and balances between the organs of the State had been completely dismantled. The parliament and the judiciary had completely lost the war with the executive. The President was so confident as to tell the British Broadcasting Corporation (BBC) in an interview that “I have powers under the Constitution to be a dictator.”[\[17\]](#)

### **(b) The Interim Constitution of 1965**

The Interim Constitution of the United Republic of Tanzania is taken as the third Constitution – following the Independence and the Republican constitutions of 1961 and 1962 respectively. Its enactment indicates the



new power of the single ruling party and total disregard of constitutional process. No Constituent Assembly was ever convened to pass this Constitution. It was adopted by the parliament in its constituent capacity as if it was amending an existing constitution.

This Constitution recognised the changes brought about by the Union and also adopted most of the proposals made by the One Party Commission. The most significant being the rejection of a Bill of Rights and placing of fundamental rights and freedoms in the preamble. In addition, the Constitution of the ruling party TANU was also made part of the Constitution of the land by being appended as a schedule to this Constitution of the country. It is not clear why it was decided to append the Constitution of one party only – TANU and exclude that of the ASP while in fact the two parties existed simultaneously in the country.

It is worth noting that in the process of bringing this new Constitution into operation the people had been clearly and deliberately by-passed. No attempt was made to involve them. It was party leaders who were busy preparing documents and using the state machinery to see them through the legal processes in order to avoid criticism. Little effort was taken to ensure the legitimacy of the new constitution.

This Constitution was *interim*. According to the Articles of the Union of Zanzibar and Tanganyika of 1964, a new permanent Constitution was supposed to be adopted within *one year* after the commencement of the Union.[\[18\]](#) This time frame was extended almost indefinitely and the Interim Constitution was to last for twelve years until the permanent Constitution was eventually adopted in 1977.[\[19\]](#)

### **(c). The Permanent Constitution of the United Republic of Tanzania of 1977**

On 5<sup>th</sup> February 1977 the two existing political parties in the country – Tanganyika African National Union (TANU) and Afro Shirazi Party (ASP) merged to form *Chama Cha Mapinduzi* (CCM). This new party was proclaimed at Amani Stadium in Zanzibar. This followed approval by the joint General Congress of TANU and ASP held on 21<sup>st</sup> January 1977.

What is interesting is the fact that it is the same committee which had been appointed back in October, 1976 to prepare a constitution for a new party which was assigned to prepare the new constitution for the country. On 16<sup>th</sup> March 1977 the President of the United Republic of Tanzania appointed this 20-person committee headed by the late Thabit Kombo to make proposals for a Constitution for the United Republic.[\[20\]](#)

Strangely, on the same date i.e. 16<sup>th</sup> March, 1977 the President appointed and summoned the Constituent Assembly to discuss and enact the new Constitution of the United Republic.[\[21\]](#) According to Professor Issa G. Shivji:

The Commission had started working on the Constitution even before it was formally appointed as the Constitution Commission. It submitted its proposals to the National Executive Committee [of the new Party CCM] which adopted them in camera in a one day meeting. These proposal were then published in the form of a Bill and within seven days submitted to the Constituent Assembly.

*The Constituent Assembly the new Constitution within three hours.*[\[22\]](#) (emphasis added)

Thus in the making of this Constitution there was no consultation or debate. Everything was forced through the throat by the powerful ruling party. Yet this was the permanent Constitution of the country.

#### **(d) The 1983 Constitutional Debate**

Notwithstanding the tight grip of the party over the country and curtailing of the various rights and freedoms, the members of the public never gave up their right to contribute to the welfare of their society. Whenever an opportunity is offered or offers itself tended to grab and utilise it to the full.

One such opportunity came with the desire by the ruling party to effect changes to the Constitution of the United Republic of Tanzania of 1977 in 1983. There was a serious debate on the Constitution and the people almost hijacked it and contributed effectively to this debate. The ruling party, being supreme under the Constitution, declared the areas it desired to be changed. These areas were:

1. The Powers of the President;
2. Consolidation of the Authority of the Parliament;
3. Strengthening the Representative Character of the National Assembly;
4. Consolidation of the Union; and
5. Consolidation of the Peoples Power.[\[23\]](#)

The debate began slowly with the people, due to the long suppression under one-party rule, wanting to remain within the dictates of the party. That is, to restrict their views only to the areas indicated by the party as wanting to be looked into. However, as the debate picked tempo, members of the public began making comments on the whole Constitution and indicating the various weaknesses in this supreme document. [\[24\]](#)

Leading in this crusade was the society of advocates and lawyers in the country, the Tanganyika Law Society (TLS). This society has a long and chequered history. Over the years it has evolved from a conservative lawyers' club to force to reckon with in constitutional issues. According to Tambila:

Most NGOs, as part of Tanzanian civil society, kept a very low profile during the years of demobilisation of civil society with the notable exceptions of Tanganyika Law Society, the University of Dar es Salaam Academic Staff Assembly (UDASA) and CHAKIWATA[\[25\]](#). From 1983 the Tanganyika Law Society became very vocal on

issues concerning the Constitution and actually led the debate on democracy in the late 1980s and early 1990s.[\[26\]](#)

Therefore, whenever the issue of the rights of the citizens has been placed on the agenda, the society has been very clear in expressing the views of the majority of its members. For instance, when the President of the United Republic of Tanzania appointed the Commission on One-party State and this commission was going around the country collecting people's views, TLS sent a well considered memorandum to the Commission in which it indicated that it was necessary to have a Bill of Rights in the Constitution of the country if that Constitution is to get respectability from the members of the international community.[\[27\]](#) The recommendation was ignored by the Commission but the point had been made.

The 1983 debate was another opportunity for the Law Society to make its mark on the Constitutional map of the country. As the debate progressed, the society organised a three-day seminar on the Constitution. Among the contributors to this seminar was Wolfgang Dourado, the former Attorney-General of Zanzibar, who wrote a paper on the Union between Tanganyika and Zanzibar and advocating for a three-government system instead of the current two. During the seminar, participants openly argued for introduction of a multi-party democracy in the country and doing away with the one-party system and party supremacy. It was also insisted that time has come for the Bill of Rights to be entrenched into the Constitution of the country. Also, participants argued that those who did not belong to the sole political party should be allowed to form their own political parties or join political parties of their own choice.

The government of the day was not happy with the issues raised in the seminar. While closing it, the then Attorney-General and Minister for Justice Hon. Joseph Warioba indicated clearly that it was important for the lawyers to adhere to the guidance given by the party on the areas which desired changes in the Constitution if they were to be relevant to the country.

This seminar had two opposite results. One positive and the other negative. On the negative side, two of the ideas raised and developed in the course of the seminar were summarily rejected. These were those on the introduction of multi-party political system in the country and re-organisation of the two-government union to a three-government federation. To add salt to injury one of the proponents of these ideas, lawyer Wolfgang Dourado was immediately after the seminar detained under the notorious Preventive Detention Act, 1962. He was to spend over a hundred days in custody. This detention was triggered by what he had said in his paper at the seminar.[\[28\]](#) On the positive side, the seminar opened way for the incorporation of a Bill of Rights into the Constitution of the United Republic of Tanzania of 1977.[\[29\]](#) This is because the lawyers at the seminar were able to articulate and crystallise the wishes of the majority of the people of Tanzania as expressed in various forums in a variety of ways. Interestingly, the question of incorporating a Bill of Rights in the Constitution was outside the purview of the five issues decreed by the ruling party as open for debate.

This was a development that raised the morale of not only the lawyers in the Society, but the members of the public and in the NGO fraternity. It indicated that with a spirited and concerted effort, members of the public could effect change on the Constitution and other areas of public life that affect them in their daily life. The important lesson was that everything had to be fought for inch after inch.

#### **V. The Nyalali Commission on One-party or Multi-party**

The events in 1983 did not deter those who wanted change in the Constitution of the country to continue with their agitation. Whenever an opportunity presented itself, it was thoroughly utilised. At the end of the 1980s, the Eastern Block of socialist countries was slowly disintegrating. It began with the Union of Soviet Socialist Republics (USSR) which disintegrated into several republics. Later, the formidable Berlin Wall separating the Federal Republic of Germany (FRG) and German Democratic Republic (GDR) fell and thus leading to the re-integration of Germany into a single country.

These changes are well illustrated by Tambila who says:

External influences included ... the dramatic changes taking place in Eastern Europe and the now defunct Soviet Union, starting with the 1985 accession to power of Mikhail Gorbachev who initiated change and openness under the banner of *perestroika* and *glasnost*. The events included the collapse of the Stalinist regimes in East Germany, Bulgaria and the violent collapse of the communist regime in Rumania; the changes were epitomised by the fall of the Berlin Wall and the ignominious deaths of Nikolae and Yelena Ceaucescu of Rumania.[\[30\]](#)

These and other developments in the world had their effects on democracy and democratisation in Tanzania.

Thus, in 1991 the then second phase President Ali Hassan Mwinyi appointed a commission under the Chairmanship of the then Chief Justice of the United Republic of Tanzania Hon. Mr. Justice Francis Nyalali to collect views of the people on what type of political system they would like. That is whether to remain with the one-party system or to adopt multi-party political system and advise the government accordingly.[\[31\]](#) The Commission was given one year to complete its work.[\[32\]](#)

During the debates introduced by the Commission all over the country, lawyers again in their society took almost a central role. The society under the presidency of advocate Bob Makani organised a very successful conference at the historical Institute of Finance Management Hall. Papers on constitutionalism were presented and at the end of the conference the participants “voted” for a multi-party political system of government.[\[33\]](#) This “voting” was not received well in the ruling party and government with the then Party Secretary-General Rashid Kawawa saying that the lawyers were on their way to mislead the people again.

Yet, when the time came to make decisions on the recommendations of the Nyalali Commission, the government adopted the multi-party political system.<sup>[34]</sup> This is what the Tanganyika Law Society had been advocating for over the years. A hard struggle had to be waged for the government to give in to this demand.<sup>[35]</sup>

## **VI. The White Paper: The Work of the Kisanga Committee**

For a long time, the members of the public have been critical of the way the ruling party and its government have been handling changes in the Constitution of the country. Since its adoption in 1977, there has been over thirteen amendments touching on various issues. Lawyers and pro-democracy movement in the country have been calling these amendments patches (*viraka*) which have not managed to bring about any serious changes. They have maintained and consolidated the *status quo*. This has led to agitation over time for a formulation of a new Constitution. This is a Constitution which will take into account the interests of all stakeholders in the country. That is, people of all works of life – peasants, workers, students, religious groups, professionals etc. These interest groups can only be brought together in a National Conference in which they can jointly write a completely new social contract to govern the relationship among themselves and their relationship with their government.<sup>[36]</sup>

Instead of addressing the issues being raised, the ruling party has remained adamant. It has argued and continues to argue that the current Constitution is both legal and legitimate and therefore the question of writing of a new Constitution does not arise.

In order to reduce the mounting pressure, in 1998 the government came up with the bright idea of floating a *White Paper*<sup>[37]</sup> on the constitutional change. The White Paper is basically a British method of trying to know the views of the public on a particular issue of national importance. The system of White Paper goes hand in hand with what is called a Green Paper. In the Green Paper the government of the day raises issues which it desires the public to discuss and then releases these issues to the public. On receipt of the reactions from the public, the government then adds its own views to those of the people and then comes out with a White Paper. Therefore, essentially a White Paper contains both the summarised views of the public and those of the government. In Tanzania, as usual, the government is fond of copying things half way. Its version of a White Paper was strange. It contained both issues and the views of the government on those issues. The public was expected to add if they have “any other view.” This was technically pre-emptying debate on these issues.

A Committee of 16 members was appointed led by a respectable member of the legal fraternity Hon. Mr. Justice Robert Kisanga of the Court of Appeal of Tanzania. The Committee visited all districts of the country and presented its huge report, which is in four volumes covering over 800 pages to the President of the United Republic of Tanzania.

As the report was being presented, the government made it categorically clear that it will disregard the recommendations of the Committee where they are in conflict with the views of the “people.” This was a strange position because in the past there are precedents of the same government, where there has been good reasons, adopting views of past commissions “against” those of the “people.”

The government kept its work, in an unprecedented fashion, after reading the report for a month and without releasing it to the public, the President decided to blast the Kisanga Committee for going beyond its mandate by making recommendations which were not in conformity with the views of the people [read here views of the government]. On his side, the Chairman of the Committee informed the press that he would not enter into a debate with the President and that the President was entitled to his own views and could pick whatever he found useful in the report. With this the whole momentum built through the work of the Committee was lost. That meant that another opportunity to meaningfully better the Constitution of the country was lost.

Parallel to the Kisanga Committee Tanganyika Law Society initiated its own programme of seeking people’s views on the Constitution. It held public meetings in various parts of the country and people were able to give their views on what they wanted to see in their Constitution. The work of the society was completely ignored by the government. No comment was made of this valuable task and the legislation that followed including the 13<sup>th</sup> Amendment to the Constitution never referred to the work of TLS.

### ***VII. The 13<sup>th</sup> Amendment to the Constitution of April, 2000***

True to its word, the government prepared the 13<sup>th</sup> Amendment to the Constitution of the United Republic of Tanzania<sup>[38]</sup> on the basis of its own views as indicated in the White paper. The amendment has in fact taken the country back instead of advancing its democratic tradition. A lot of ground gained in the struggle for change for the better has been lost through this amendment. Illustration of these changes will drive the point home.

Firstly, before this amendment for a person to be declared president of the United Republic, such a person needed more than 50% of votes in the presidential elections. Now, this has been done away with. A candidate for the office of the President needs only to win by *simple majority* to be declared President.<sup>[39]</sup> It is alleged that this amendment was meant to avoid presidential elections re-runs, which are said to be expensive. However, at what cost? The president is a symbol of the country and hence should indicate a pan-territorial acceptability. This is no longer necessary. It thus means that a single tribe or merger of related ethnic groups

can "sponsor" a presidential candidate and succeed. The same could be said for a religion. One of the major religions can identify a presidential candidate and "work" for his or her success in the elections. A President by *simple majority* is a liability rather than a blessing and this is a negative development in the democratic process in the country.

Secondly, before this amendment, all Members of Parliament save for the Attorney General, women in the special seats and those representing the Zanzibar House of Representatives, all other members of the House were elected from the constituencies. The President did not have power to nominate anybody to Parliament. The 13<sup>th</sup> Amendment changes this and takes us back to the one-party era in which the Parliament was dominated by those who had entered the House through the back door i.e. through nomination or holding certain constitutional offices such as Regional Commissioners etc. This Amendment now allows the President to nominate up to *ten Members of Parliament*.<sup>[40]</sup> As a justification, we are told that this is meant to give the President opportunity to appoint some "experts" to parliament. These are "experts" who are good but shy away from active competitive politics of elections.

One may wish to note that the Parliament is a representative body. All citizens cannot sit together to make laws and other rules to regulate their affairs. They have delegated this duty to their representatives in Parliament. Therefore, one goes to Parliament to *represent* and not to exercise a certain expertise. Therefore, the legitimacy of being in Parliament is derived from this task of representing others. Experts can always be called to assist the Parliament to clarify complicated issues. However, they need not belong to the Parliament, as they represent nobody. If the President is interested in experts, he can always hire them as permanent secretaries, presidential advisers etc. These will be normal bureaucrats doing their duties to the nation. Therefore, the argument of filling the Parliament with "experts" who enter the house by the back door has little logic. The net result is to give the executive arm of the government more weight so as to enable it to push unpopular decisions in Parliament with ease. This was the case in the one-party parliament which had a majority of nominated members. Therefore, to revert back to nominations is definitely retrogressive.

One positive element in the 13<sup>th</sup> Amendment is the increase of the number of the special seats for women. The number of MPs in this category will increase from the current 15% to 20% plus depending on the declaration by the National Electoral Commission from time to time after obtaining the consent of the President.<sup>[41]</sup> This is a welcome development given the small number of female MPs in the current Parliament.

### ***VIII. Conclusions and Observations***

From what has been covered above, it is obvious that the people of Tanzania have never been genuinely involved by the government in the constitution-making process since independence. There have been half-hearted efforts involve the people in this process. However, these have not been genuine. These are attempts

aimed at showing the rest of the world that this is a democratic country and people are involved in their own governance. However, when one looks deeper into these efforts it is easy to discover their hollowness. A clear example is the whole White Paper process. Here, the government prepared issues, which in its opinion were important for the country. Instead of letting the people discuss them, the same government gave a position on all of them and then asked the people to add any other comments if they felt it was necessary. And this was termed a consultation and involvement of the people in the constitutional process.



### *IX. Selected Bibliography*

- CHIDZERO, Bernard T.G., *Tanganyika and International Trusteeship*, London: Oxford University Press, 1961.
- COLE, J.S.R. and DENISON, W.N., *Tanganyika: The Development of Its Laws and Constitution*, London: Stevens & Sons, 1964.
- COULSON, Andrew (ed.), *African Socialism in Practice: The Tanzanian Experience*, Nottingham: Spokesman, 1979.
- COULSON, Andrew, *Tanzania: A Political Economy*, Oxford: Clarendon Press, 1982.
- CRANENBURGH, Oda van, *The Widening Gyre: The Tanzania One-Party State and Policy Towards Rural Co-operatives*, Delft, The Netherlands: Eburon Publishers, 1990.
- FIMBO, G. Mgongo, *Constitution Making and Courts in Tanzania*, Dar es Salaam: Faculty of Law, 1992.
- FORTMANN, Louise, *Peasants, Officials and Participation in Rural Tanzania: Experience with Villagisation and Decentralisation*, Ithaca, New York: Rural Development Committee of the Centre for International Studies of the Cornell University, 1980.
- FREYHOLD, Michaela von, *Ujamaa Villages in Tanzania: Analysis of a Social Experiment*, London/ Ibadan and Nairobi: Heinemann Educational Books Ltd, 1979.
- Friedland, William H., *VUTA KAMBA: The Development of Trade Unions in Tanganyika*, Stanford, California: Stanford University and Hoover Institution Press, 1969.
- GOVERNMENT OF THE UNITED REPUBLIC OF TANZANIA, *Report of the Presidential Commission on the Establishment of a Democratic One Party State*, Dar es Salaam: Government Printer, Dar es Salaam, 1968.
- GOVERNMENT OF THE UNITED REPUBLIC OF TANZANIA, *The Report and Recommendations of the Presidential Commission on Single Party or Multiparty System in Tanzania, 1991 on the Democratic System in Tanzania*, Dar es Salaam: Dar es Salaam University Press, 1992.
- HAVNEVIK, Kjell J., *Tanzania: The Limits to Development from Above*, Uppsala: The Scandinavian Institute of African Studies and Dar es Salaam: Mkuki na Nyota Publishers, 1993.
- HOPKINS, Raymond F., *Political Roles in a New State: Tanzania's First Decade*, New Haven and London: Yale University Press, 1971.
- HYDEN, Goran, *Beyond Ujamaa in Tanzania: Underdevelopment and an Uncaptured Peasantry*, Berkeley and Los Angeles: University of California Press, 1980.
- KIBWANA, Kivutha, Chris Maina Peter and Joseph Oloka-Onyango (eds.), *In Search of Freedom and Prosperity: Constitutional Reform in East Africa*, Nairobi: Claripress, 1966.
- LEGUM, Colin and Geoffrey Mmari (eds.), *MWALIMU: The Influence of Nyerere*, London/ Dar es Salaam/ Trenton: James Currey/ Mkuki na Nyota and Africa World Press, 1995.
- LISTOWEL, Judith, *Making of Tanganyika*, Chatto and Windus, London 1965.
- MAPOLU, Henry (ed.), *Workers and Management*, Dar es Salaam: Tanzania Publishing House, 1976.
- MAPOLU, Henry and Issa G. Shivji, *Vuguvugu la Wafanyakazi Nchini Tanzania*, Kampala: East Africa URM Contact Group, 1984.
- Martin, Robert, *Personal Freedom in Tanzania: A Study of Socialist State Administration*, Nairobi: Oxford University Press, 1976.
- MIHYO, Paschal B., *Industrial Conflict and Change in Tanzania*, Dar es Salaam: Tanzania Publishing House, 1983.

- MOHIDDIN, Ahmed, *African Socialism in Two Countries*, London and Totowa, New Jersey: Croom Helm and Barnes & Noble Books, 1981.
- MSEKWA, Pius, *The Transition to Multiparty Democracy*, Dar es Salaam: Tema Publishers Company Ltd and Tanzania Publishing House, 1995.
- Msekwa, Pius, *Towards Party Supremacy*, Arusha: Eastern Africa Publications Ltd, 1977.
- MTAKI, Cornel K. and Michael Okema (eds.), *Constitutional Reforms and Democratic Governance in Tanzania*, Dar es Salaam: Friedrich Naumann Stiftung, 1994.
- MUKURASI, L., *Post Abolished: One Woman's Struggle for Employment Rights in Tanzania*, London: The Women's Press, 1991.
- MVUNGI, Sengondo E.A., *Constitutionalism and the Status of the Legislature in a One Party System: The Case of Tanzania*, LL.M Thesis, University of Hamburg, Federal Republic of Germany, 1991.
- MVUNGI, Sengondo E.A., *Impact of Party Supremacy Doctrine on the Democratic Process of Government in Tanzania: A Constitutional and Administrative Law Perspective*, LL.M Dissertation, Faculty of Law, University of Dar es Salaam, 1986.
- MWANSASU, Bismarck and Cranford Pratt (eds.), *Towards Socialism in Tanzania*, Dar es Salaam: Tanzania Publishing House, 1979.
- NYALALI, Francis L., *Aspects of Industrial Conflict: A Case Study of Trade Disputes in Tanzania 1967-1973*, Nairobi: East Africa Literature Bureau, 1975.
- NYERERE, Julius K., *Freedom and Development*, Dar es Salaam: Oxford University Press, 1967.
- NYERERE, Julius K., *Freedom and Socialism*, Dar es Salaam: Oxford University Press, 1968.
- NYERERE, Julius K., *Freedom and Unity*, Dar es Salaam: Oxford University Press, 1966.
- OKEMA, Michael and Jwani T. Mwaikusa (eds.), *Constitutions and Opposition in Africa*, Dar es Salaam: Friedrich Ebert Stiftung, 1992.
- OLOKA-ONYANGO, Joseph; Kivutha Kibwana and Chris Maina Peter (eds.), *The Law and the Struggle for Democracy in East Africa*, Nairobi: Claripress, 1996.
- O'NEILL, Norman and Kemal Mustafa (eds.), *Capitalism, Socialism and the Development Crisis in Tanzania*, Aldershot, Avebury: Gower Publishing Company, 1990.
- PETER, Chris Maina, *Human Rights in Tanzania: Selected Cases and Materials*, Cologne: Rudiger Koppe Verlag, 1997.
- PRATT, Cranford, *The Critical Phase in Tanzania 1945-1968: Nyerere and the Emergence of a Socialist Strategy*, Cambridge: Cambridge University Press, 1976.
- RESNICK, Idrian N., *The Long Transition: Building Socialism in Tanzania*, New York and London: Monthly Review Press, 1981.
- SEATON, Earl E. and Kirilo Japhet, *The Meru Land Case*, Nairobi: East African Publishing House, 1967.
- SHIVJI, Issa G. (ed.), *The State and the Working People in Tanzania*, London: CODESRIA, 1985.
- Shivji, Issa G., *Law, State and the Working Class in Tanzania*, London: James Currey, 1986.
- SWANTZ, Marja L., *Women in Development: A Creative Role Denied? The Case of Tanzania*, London: Hurst, 1985.
- VUORELA, Ulla, *The Women's Question and the Modes of Human Reproduction: An Analysis of a Tanzanian Village*, Helsinki: The Finish Society for Development Studies and Finish Anthropological Society, 1987.

#### **Articles**

- BIENEFELD, M.A., "Trade Unions, the Labour Process, and the Tanzanian State," Volume 17 No. 4 *Journal of Modern African Studies*, 1979, p. 553.
- BIENEN, Henry, "The Ruling Party in the African One-Party State: TANU in Tanzania," Volume 5, 1967. *Journal of Commonwealth Political Studies*, 1967, p. 214.

- HOPKINS, Raymond F., "The Role of the M.P. in Tanzania," Volume 64 No. 3 American Political Science Review, 1970, p. 754.
- Kapinga, Wilbert B.L., "State Control of the Working Class Through Labour Legislation," in SHIVJI, Issa G. (ed.), *The State and the Working People in Tanzania*, London: CODESRIA, 1985, p. 87.
- KJEKSHUS, Helge, "Parliament in a One-Party State - The Bunge of Tanzania, 1965-70," Volume 12 No. 1 Journal of Modern African Studies, 1974, p. 19.
- MWALUSANYA, James L., "Conditions for Functioning of a Democratic Constitution," in MTAKI, Cornel K. and Michael Okema (eds.), *Constitutional Reforms and Governance in Tanzania*, Dar es Salaam: Friedrich Naumann Stiftung, 1994, p.
- MWAPACHU, Juma Volter, "Operation Planned Villages in Rural Tanzania: A Revolutionary Strategy for Development," in COULSON, Andrew (ed.), *African Socialism in Practice: The Tanzanian Experience*, Nottingham: Spokesman, 1979, p. 114.
- PETER, Chris Maina, "Determining the Pace of Change: The Law on Pluralism in Tanzania," in OLOKA-ONYANGO, Joseph et al (eds.), *Law and the Struggle for Democracy in East Africa*, Nairobi: Claripress, 1996, p. 511.
- RABL, Kurt, "Constitutional Development and the Law of the United Republic of Tanzania: An Outline," Volume 16 Jahrbuch des Öffentlichen Rechts der Gegenwart, 1967, p. 567.
- Seaton, Earl E. and Joseph S. Warioba, "The Constitution of Tanzania: An Overview," Volumes 11-14 Eastern Africa Law Review, 1978-1981 p. 35.
- Shivji, Issa G., "The Role of Law and Ujamaa in the Ideological Formation of Tanzania," Volume 4 Social & Legal Studies, 1995, p.
- Shivji, Issa G., "The State of the Constitution and the Constitution of the State in Tanzania" Volumes 11-14 Eastern Africa Law Review, 1978-81, p. 1.
- SHIVJI, Issa G., "Problems of Constitution-Making as Consensus-Building: The Tanzanian Experience," in SICHONE, Owen (ed.), *The State and Constitutionalism*, Harare: Sapes Books, 1998, p. 23.
- SRIVASTAVA, B.P., *The Constitution of the United Republic of Tanzania 1977 - Some Salient Features - Some Riddles*, Dar es Salaam: Dar es Salaam University Press, 1983. (See also Volumes 11-14 Eastern Africa Law Review, 1978-1981, p. 73.
- TAMBILA, Kapepwa I., "The Transition to Multiparty Democracy in Tanzania: Some History and Missed Opportunities," Volume 28 No. 4 *Verfassung und Recht in Übersee*, 1995, p. 468.
- TENGA, Nakazael and Chris Maina Peter, "The Right to Organise as Mother of All Rights: The Experience of Women Organisation in Tanzania," Volume 34 No. 1 Journal of Modern African Studies, March, 1996, p. 143.
- TORDOFF, William and Ali A. Mazrui, "The Left and the Super-Left in Tanzania, Volume 10 No. 3 Journal of Modern African Studies, 1972, p. 427.
- TORDOFF, William, "Parliament in Tanzania," Volume 3 Journal of Commonwealth Political Studies, 1965, p. 85.
- TRIPP, Aili Mari, "Local Organisations, Participation, and the State in Urban Tanzania," in HYDEN, Goran and Michael Bratton (eds.), *Governance and Politics in Africa*, Boulder & London: Lynne Rienner Publishers, 1992, p. 221.
- WELCH, Claude E., Jr., "The Right of Association in Ghana and Tanzania," Volume 16 No. 4 Journal of Modern African Studies, 1978, p.
- WESTERLUND, David, "Freedom of Religion under Socialist Rule in Tanzania - 1961-1977," Volume 24 No. 1 Journal of Church and State, 1982, p. 87.
- Williams, David V., "State Coercion Against Peasant Farmers: The Tanzania Case," Volume 20 Journal of Legal Pluralism, 1982, p. 95.

- 
- [1] See NYERERE, Julius K., *Freedom and Development*, Dar es Salaam: Oxford University Press, 1973, p. 70.
- [2] See CHIDZERO, Bernard T.G., *Tanganyika and International Trusteeship*, London: Oxford University Press, 1961.
- [3] See READ, James s., "Bills of Rights in the Third World: Some Commonwealth Experiences," Volume 6 *Verfassung und Recht in Ubersee*, 1973, p. 21; and MARTIN, Robert, *Personal Freedom and the Law in Tanzania: A Study of Socialist State Administration*, Nairobi: Oxford University Press, 1974, p. 38.
- [4] See FRIEDLAND, William H., *VUTA KAMBA: The Development of the Trade Unions in Tanganyika*, Stanford, California: Stanford University and Hoover Institution Press, 1969.
- [5] See NAALI, Shamshad, "State Control over Co-operative Societies and Agricultural Marketing Boards," in SHIVJI, Issa G. (ed.), *The State and the Working People in Tanzania*, London: CODESRIA, 1985, p. 132.
- [6] See Kapinga, Wilbert B.L., "State Control of the Working Class Through Labour Legislation," in SHIVJI, Issa G. (ed.), *The State and the Working People in Tanzania*, London: CODESRIA, 1985, p. 87.
- [7] Kasanga Tumbo was appointed Tanzanian High Commission to the Court of St. James (Britain) and resigned after a short time.
- [8] See PRATI, Cranford, *The Critical Phase in Tanzania 1945-1968: Nyerere and the Emergence of a Socialist Strategy*, Nairobi: Oxford University Press, 1978, p. 123.
- [9] This was done under the Deportation Ordinance, 1921 (Chapter 38 of the Revised Laws of Tanzania).
- [10] See SAID, Mohamed, "Has the Present Tanzania Labour Movement Abdicated a Political Role?" Volume 2 Nos. 8 and 9 *Change*, August September, 1994, p. 50
- [11] See MLIMUKA, A.K. and KABUDI, P.J., "The State and the Party," in SHIVJI, I.G. (ed.), *The State and the Working People in Tanzania*, Dakar, Senegal: CODESRIA Book Series, 1985, p. 57 at 62.
- [12] See MSEKWA, Pius, *Towards Party Supremacy*, Arusha: Eastern Africa Publications Limited, 1977, p. 22.
- [13] See PRATI, Cranford, *The Critical Phase in Tanzania 1945-1966: Nyerere and the Emergence of Socialist Strategy*, Cambridge: Cambridge University Press, 1974, p. 187.
- [14] See GOVERNMENT OF THE UNITED REPUBLIC OF TANZANIA, *Report of the Presidential Commission on the Establishment of a Democratic One-Party State*, Dar es Salaam: Government Printer, 1968, p. 2 paragraph 8.
- [15] See NYERERE, Julius K., "The Party Must Speak for the People." In NYERERE, Julius K., *Freedom and Development*, Dar es Salaam: Oxford University Press, 1973, p. 30 at pp. 32-33.
- [16] This was done through Act No. 8 of 1975 which declared that "All political activities in Tanzania shall be conducted by or under the auspices of the Party."
- [17] He is quoted in HOPKINS, Raymond F., *Political Roles in a New State: Tanzania's First Decade*, New Haven and London: Yale University Press, 1971, p. 26.
- [18] See Article 7 of the Articles of the Union. The Articles of the Union and other relevant documents on the Constitution are reproduced in Volume 3 of the Report of the Kisanga White Paper Committee.
- [19] This extension was done vide the Constituent Assembly Act, 1965 (Act No. 18 of 1965).

- [20] Other members of this Committee were Pius Msekwa, Asia Amour, Kanali Seif Bakari, Nicodemus Banduka, Hamisi Hemed, Jackson Kaaya, Rajabu Kheri, Peter Kisumo, Basheikh Mikidai, Beatrice Mhango, Hassan Nassor Moyo, Hamdan Muhidin, Daudi Mwakawago, Ngombale Mwiru, Ali Mzee, Abdallah Natepe, Juma Salum, Lawi Sijaona, na Peter Siyovelwa. See Government Notice No. 38 of 25<sup>th</sup> March, 1977.
- [21] See Government Notice No. 39 of 25<sup>th</sup> March, 1977.
- [22] See SHIVJI, Issa G., "Problems of Constitution-making as a consensus-building: The Tanzanian Experience," in SICHONE, Owen (ed.), *The State and Constitutionalism*, Harare: Sapes Books, 1998, p. 23 at p. 31.
- [23] See CHAMA CHA MAPINDUZI, *1983 NEC Proposals for Changes in the Constitution of the United Republic and the Constitution of the Revolutionary Government of Zanzibar*, Dodoma: C.C.M. Department of Propaganda and Mass Mobilisation, 1983.
- [24] PETER, Chris Maina, *Human Rights in Tanzania: Selected Cases and Materials*, Cologne: Rudiger Koppe Verlag, 1997.
- [25] This is the *Chama cha Kitaaluma cha Waalimu Tanzania* – an independent professional teachers' organisation.
- [26] See TAMBILA, Kapepwa I., "The Transition to Multi-Party Democracy in Tanzania: From One State Party to Many State Parties," op. cit. at p. 41.
- [27] The views of Tanganyika Law Society were recorded in the Commission's report. See GOVERNMENT OF THE UNITED REPUBLIC OF TANZANIA, Report of the Presidential Commission on the Establishment of a Democratic One Party State, Dar es Salaam: Government Printer, Dar es Salaam, 1968.
- [28] Interestingly, after years in wilderness and notwithstanding his critical stance, lawyer Wolfgang Dourado is currently a Puisne Judge of the High Court of Zanzibar.
- [29] This was done through the Constitution (Fifth) (Amendment) Act, 1984 (Act No. 15 of 1984). On this see LUGAKINGIRA, K.S.K., "Personal Liberty and Judicial Attitude: The Tanzanian Case," Volume 17 *Eastern Africa Law Review*, 1990, p. 107; and PETER, Chris Maina, "Five Years of Bill of Rights in Tanzania: Drawing a Balance Sheet," Volume 18 *Eastern Africa Law Review*, 1991, p. 147.
- [30] See TAMBILA, Kapepwa I., "The Transition to Multi-Party Democracy in Tanzania: From One State Party to Many State Parties," op. cit.
- [31] See "Team on Political Debate Formed," *Sunday News* (Tanzania), 24<sup>th</sup> February, 1991, p. 1. Also relevant are the following works: TAMBILA, Kapepwa I., "The Transition to Multiparty Democracy in Tanzania: Some History and Missed Opportunities," Volume 28 No. 4 *Verfassung und Recht in Übersee*, 1995, p. 468; and PETER, Chris Maina, "Determining the Pace of Change: The Law on Pluralism in Tanzania," in OLOKA-ONYANGO, Joseph et al (eds.), *Law and the Struggle for Democracy in East Africa*, Nairobi: Claripress, 1996, p. 511.
- [32] See "One Year for Multi-Party Fact Finding," *Daily News* (Tanzania), 28<sup>th</sup> February, 1991, p. 1.
- [33] The conference is well covered in SHIVJI, Issa G., "Problems of Constitution-Making as Consensus-Building: The Tanzanian Experience," in SICHONE, Owen (ed.), *The State and Constitutionalism*, Harare: Sapes Books, 1998, p. 23 at p. 36.
- [34] The multi-party political system was adopted vide the Constitution (Eighth) (Amendment) Act, 1992 (Act No. 4 of 1992). This constitutional amendment was supplemented by the Political Parties Act, 1992 (Act No. 5 of 1992).
- [35] See KIMWAGA, John, "Tortuous Road to Multi-Partyism," in *Family Mirror* (Tanzania) First Issue December, 1992. Also reproduced in KIBWANA, Kivutha; Chris Maina Peter; and Joseph Oloka-Onyango (eds.), *In Search of Freedom and Prosperity: Constitutional Reform in East Africa*, Nairobi: Claripress, 1996, p. 55.

[36] See the editorial entitled “National Conference Needed Now,” in *Family Mirror* (Tanzania), First Issue December, 1993; and JUMA, Ibrahim H., “Constitution-Making in Tanzania: The Case for a National Conference,” in OLOKA-ONYANGO, Joseph; Kivutha Kibwana and Chris Maina Peter (eds.), *The Law and the Struggle for Democracy in East Africa*, Nairobi: Claripress, 1996, p. 393.

[37] The White Paper was Government Notice No. 1 of 1998.

[38] The 13<sup>th</sup> Amendment to the Constitution of the United Republic of Tanzania was effected through Act No. 3 of 2000 entitled *Sheria za Mabadiliko ya Kumi na Tatu Katika Katiba ya Nchi*.

[39] See Section 8 of Act No. 3 of 2000.

[40] See Section 11 of Act No. 3 of 2000.