

Between Confusion and Clarity: Rethinking the Union of Tanganyika and Zanzibar after 50 Years

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Abstract

In spite of its endurance for fifty years, one of the defining features of the Tanganyika-Zanzibar union is confusion attributable to both its structure and modus operandi. This state of confusion cuts across a wide range of actors including the founding fathers themselves and their close associates, ordinary citizens, politicians, foreigners and intellectuals. In the context of the ongoing process of writing a new constitution, it is imperative to revisit the union with the aim of seeking for more clarity on the proposed federal structure of three-governments in the Draft Constitution of 2013. The main argument of this article is that the current two-tier government structure as laid down in the Articles of Union of 1964 inherently leads to confusion. Whereas the proposed union structure may not be a panacea to problems of confusion, it may, with some refinement, be instrumental in addressing various dimensions of confusion and in generating clearly defined institutions and jurisdictions.

Introduction

On 26 April 2014 the union between Tanganyika (a vast hinterland) and Zanzibar (a tiny archipelago in the Indian Ocean) will mark its 50 years anniversary as the only surviving example of a union between two sovereign states on the African continent. One thing that is crystal clear, however, is the fact that after 50 years of the union, Tanzania is neither a unitary state nor is it heading towards that direction. The earlier presumption that the merger of the two nationalist parties, namely the Tanganyika African National Union (TANU) of the Mainland and the Afro-Shiraz Party (ASP) of the Isles in 1977 accompanied with the expansion of the list of union matters from the original

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11 to over 20 matters would accelerate the process towards a truly unitary nation is now seriously questioned. Throughout the 50 years, the union has survived under a unitary system of a two-government structure. The Government of the United Republic has been responsible for union and non-union matters under Tanganyika's jurisdiction. Zanzibar government has continued to exist within the union arrangement and it deals with non-union matters in its jurisdiction. There has been a lot of controversy on the nature of the union among scholars as well as politicians ever since its inception. After 50 years, analysts, politicians and common people alike are still asking themselves what was exactly envisaged by the Articles of Union signed in 1964. In other words, whether the union treaty envisaged a federal structure or unitary form of government has remained a persistent issue of serious contestation and confusion. The purpose of this article is twofold. First is to distil the confusion that is largely being caused by the current two-tier government structure of the union. Second, it examines the extent to which the proposed three tier-government structure of the union in the Draft Constitution, 2013 has addressed such confusion.

Why the Union in 1964?

There is voluminous literature on the factors leading to the union between Tanganyika and Zanzibar in 1964. Tanzanians (Mainlanders and Zanzibaris) and foreign writers have extensively contributed to the production of knowledge accounting for the causes of the union, both historical and proximate. However, in spite of the abundant literature on the subject, the union is one of the areas that has caused a lot of controversy and confusion particularly with regard to the primacy of the causes versus those that are considered as secondary. In this section, we shall attempt to briefly review some of the salient causes as explained in the literature.

The first cause which was very much amplified by nationalist leaders from both TANU and ASP was that the union between Tanganyika and Zanzibar was a logical outcome given the long and extensive historical ties between Tanganyika and Zanzibar "in a wide range of respects including blood ties, trade, culture, common language and close political cooperation particularly between TANU and ASP" (Bakari, 2000: 133). The close historical ties between Tanganyika and Zanzibar date back to the time immemorial. This is evidenced by the origin of the people of the two countries. Quite a large fraction of the people of Zanzibar is of Mainland origin. These include not only recent immigrants from the Mainland countries (Tanganyika, Kenya, Mozambique, Malawi, Congo, etc) but also the Mainland origin is evident

Confusion and Clarity of the Union after 50 Years

among quite a large number of indigenous Zanzibaris (Watumbatu, Wahadimu and Wapemba) whose forefathers have been living on the islands for centuries. Zanzibar was an important commercial centre among the city states in the East African coast since around 10th century following the coming of the Persians and other explorers and merchants around the time (Chittick, 1965: 275-94). Subsequently, the Arab rulers who established their settlement in East Africa made Zanzibar their commercial and administrative capital in the 19th century (Bennett, 1978: 79). It is estimated that “[b]y 1776, some 300 Omanis had settled at or near this site [Shangani], a number that would soon multiply (Glassman, 2011: 29). In the 19th century, Zanzibar town developed into a metropolitan centre where the Arab rule by the Busaidi dynasty extended their rule to the entire coast of East Africa. That is to say approximately for 58 years (from 1832 when Seyyid Said, the ruler of Oman transferred his capital from Muscat to Zanzibar to 1890 when Zanzibar became a British Protectorate); the entire East African coast was under effective political control by the Sultan of Zanzibar (Bennett, 1978).

During the era of the slave trade “thousands of people captured on the Mainland were sent to be sold in Zanzibar before they were shipped to Mauritius, Reunion, Arabia and other places as slave labour” (Othman, 2006: 35). When the clove plantation economy gradually replaced slave trade as the main economic activity, slave labour in clove plantations was in high demand for clearing of land and planting of clove trees. Apart from those who came to Zanzibar as slaves to work in clove and coconut plantations, there were also a large number of freemen and women from the Mainland who flocked to Zanzibar for seasonal employment in clove picking; and a substantial number of them ultimately settled on the islands. The movement or migration of people from pre-colonial to colonial times was largely from the Mainland to Zanzibar but by no means was a one-way traffic. There were also quite a significant number of people who moved from Zanzibar to the Mainland especially towards the end of the 19th century, when Sultan Seyyid Barghash encouraged business people mainly of Asian origin to move from Zanzibar to Dar es Salaam and other parts on the Mainland in search of new economic activities and a broader market (Voigt-Graf, 1998; Hollingsworth, 1960).

In the population census conducted in 1948, for example, 19.5% of the people of Zanzibar identified themselves as Africans, 56.2% as Shirazis, 16.9% as Arabs and 5.8% as Asians (Middleton and Campbell, 1965; Lofchie, 1965). Apart from the Africans who unquestionably have a mainland origin, all the

M. Bakari & A.B. Makulilo

Shirazi and a large percentage of Zanzibaris of Arab origin have a mainland origin as well. This kind of social intermingling is also evident on the Mainland particularly among the coastal communities. It has to be recalled that the Anglo-German Agreement of 29 October 1886 acknowledged the Sultan's authority over the islands of Zanzibar, Pemba, Mafia and Lamu as well as a coastal strip of about 700 miles long and 10 miles wide stretching from Sofala, Mozambique up to the Tana River and some towns on the Somali coast.

The second factor that is often cited by nationalist leaders and political analysts is the spirit of Pan-Africanism. Even before independence, it was argued that most of the prominent nationalist leaders in Africa including Julius Nyerere had an ambition of African unity. They differed however in terms of the approach to be used to realize that ambition. Nyerere, unlike Kwame Nkrumah, was an advocate of a gradual approach towards African unity starting with regional federations. After consultation with the leadership of Pan African movement for East and Central Africa (PAFMECA), Nyerere issued a statement to the Conference of Independent States in Addis Ababa in 1960:

Many of us agree without argument that the Federation of East African States would be a good thing. If we have said and rightly so, that the boundaries which divide our countries were made by imperialists, not by us, and that we must not allow them to be used against our unity...We must confront the Colonial Office with a demand and for the freedom of Tanganyika and then of Kenya, and Uganda and then Zanzibar, but with a demand for the freedom of East Africa as one political unit (*Tanganyika Standard*, 16.11.1964).

The spirit of Pan -Africanism and regional integration continued in the early 1960s after Tanganyika got her independence in 1961, Uganda in 1962, and Kenya and Zanzibar in 1963. On 5 June 1963, for example, the Heads of State of Kenya and Uganda and the Prime Minister of Kenya's Internal Self-Government issued a joint statement following their talks on federation in Nairobi. The declaration stated that the leaders of East African on behalf of their peoples had committed themselves to the political federation of East Africa under the spirit of Pan-Africanism.

Confusion and Clarity of the Union after 50 Years

As a follow-up to the earlier initiatives, at the time of the Zanzibar revolution (12 January 1964), the Heads of State of the three East African countries, Julius Nyerere, Milton Obote, and Jomo Kenyatta were in Kenya attending a meeting of the envisaged East African Federation which would involve Zanzibar, though not represented then. However, what emerged from those discussions between the three Heads of State proved that the establishment of the political federation was not feasible (Bakari, 2000: 134).

The Zanzibar revolution happened exactly at a time when Julius Nyerere was highly upset by the futile talks on the East African Federation. The Zanzibar revolution appeared to have consoled Nyerere and other nationalist leaders on the Mainland for it had brought to power the ASP government which was perceived to have a very cordial relationship with Tanganyika. But that consolation was short-lived for it also created a sense of insecurity in Tanganyika's political leadership. There was a perception that in the aftermath of the revolution, Zanzibar was prone to foreign invasion and influence; and that given her geographical proximity to the Mainland, i.e., just some 20 miles apart, the security of Tanganyika could be threatened. Apparently, this perception of insecurity on the part of Tanganyika was also partly influenced by the seemingly contagious effect of the Zanzibar revolution when the army mutinies spread throughout East Africa immediately after the revolution (Bakari, 2000: 134-5).

External influence constitutes another causal factor that has received quite a considerable attention among scholars. Immediately, after the Zanzibar revolution, the Western powers, particularly the US and Britain realized that the revolution was not yet secure. Part of the concern was due to the fact that the Revolutionary Government was not that stable and cohesive – for it was constituted by two distinct political factions, the ASP under Abeid Karume and the radical leftist elements of the *Umma* Party under Abdulrahman Babu. This created a sense of apprehension that the radical leftist group could attempt to undermine and ultimately replace the Karume faction and place the country under the hegemony of the communist bloc. In addition to that perception of threat, there were also fears that the forces of the deposed government could attempt to reorganize themselves within the country, and with external assistance particularly from the Arab countries, to stage a counter-coup. At a time when the Cold War was at its peak, the Western powers resolutely encouraged Nyerere to unite with Zanzibar. Following the failure of the East African Federation project this alternative was viewed as the most appropriate way of containing Zanzibar and protecting it from

drifting to either radical leftist direction or towards the Arab-Islam influence particularly from Gamal Abdel Nasser's Egypt which had established close ties with the deposed government in Zanzibar (Al Barwani, 1997; Wilson, 1989). Just like the security threat that was apparent among Mainland leaders, the Revolutionary Government in Zanzibar, and particularly the Karume faction, had more or less similar security concerns. Apart from fearing a counter-coup by the forces of the deposed regime, Karume was also apprehensive of his own colleagues within the Revolutionary Government, particularly the leftist elements and the intellectuals (Othman, 2006: 47-50).

Now, given that brief review of the causal factors both historical and proximate, how could the controversy and confusion over the primacy of factors be resolved? In other words, what was the most important causal factor or a set of factors that led to the Union? We do not intend to demean any of the stated factors. Indeed, all of them were relevant. But if an attempt is made to isolate them for analytical purposes, posing a few questions could shed some light on the most important cause of the union in 1964. Some of these questions are: (i) suppose there were no revolution; could Tanganyika and Zanzibar ever unite? (ii) Is there any documented evidence proving that any of the political parties or nationalist leaders based in Zanzibar ever held any kind of informal consultation with their Tanganyika counterparts that after independence they would unite their two countries? As a response to the first question, which sounds highly hypothetical, is that most probably, they would never unite, save for the kind of contemplated unity within the broader East African Federation. This proposition is squarely congruent with the assertion by Mason (2014: 36) that the circumstances which brought the union into existence "may be seen as an accident of history". As a response to the second question, no documented evidence has so far been revealed proving that there were some kind of initial talks and ambition of uniting the two polities into one sovereign state, notwithstanding the existence of evidence showing very close working relationship between the two main nationalist parties, namely Tanganyika's TANU and Zanzibar's ASP (Othman, 2006: 67). What is indisputable therefore is the fact that there was a multiplicity of factors that had coalesced including historical ties, social integration, commercial co-operation, long-standing political cooperation between TANU and ASP during the nationalist struggles, Pan Africanism, and security concerns. However, it is plausible to conclude that the most prominent factor was a perception of fear which generated security and strategic interests. This was evidently a common factor then shared by all the three major actors, namely the Zanzibar Revolutionary Government and

Confusion and Clarity of the Union after 50 Years

particularly the Karume faction, the Tanganyika political leadership and the Western interests, particularly the Americans and the British (Wilson, 1989).

How was the Union brought into being?

Uniting two sovereign states into a unitary state, federation, confederation or even economic community is a major political decision, which would require not only the political will of the Heads of State, but also some representation if not from the general public under democratic arrangements, at least a considerable degree of collective consent by the ruling elites when it is under undemocratic political settings like that obtained in Zanzibar in 1964. Apart from collective consent, adequate preparations and a firm legal basis for the union were necessary for its consolidation and sustainability. In the case of the Tanganyika-Zanzibar union, however, all those key ingredients were missing (Bakari, 2000: 136).

Immediately after the revolution, Nyerere sent two successive delegations to Zanzibar to persuade Karume into the union. The first was led by Oscar Kambona, Foreign Minister and Bibi Titi Mohamed, a cabinet minister; and the second one was led by Tewa Said Tewa and Job Lusinde, both cabinet ministers. Karume responded that he still needed time to put things in order (Jumbe, 1994: 15). Later, on 21 April 1964, Karume went to Dar es Salaam following his telephone conversation with his counterpart, Julius Nyerere. Karume's perception was that they were going to discuss about the presence of Tanganyika's police force then stationed in Zanzibar. Thus, he was only accompanied by his security officers and his personal assistant and secretary, Ali Mwinyigogo. According to Colin Legum, Nyerere had threatened to withdraw his 300 policemen deployed in Zanzibar (Legum in the Observer, cited in Wilson, 1989: 74; see also Smith, 1973: 129). The following day, on 22 April 1964 Nyerere arrived in Zanzibar with a Draft Agreement written in English. The Agreement was signed by the two presidents the same day. Nyerere testified that it was basically the two individuals who had been actively involved in the process: "We sent our police to Zanzibar. After overcoming various problems, we united. We ourselves voluntarily agreed on a union. Karume and I met. Only two of us met" (Nyerere, 1967: 300).

The above quotation is quite instructive although Nyerere did not elaborate what it actually meant. The first sentence "[we] sent our police to Zanzibar" might imply one of the two embedded motives. One that the act of dispatching the police force to Zanzibar was a good-will gesture aimed at stabilizing the political situation in Zanzibar. Alternatively, that act might

mean a trap that was used to blackmail Karume into accepting the union as a forced merger by a bigger brother, i.e. Tanganyika believing that the latter's continued military assistance was only possible if he accepted the union. Thus, whereas there is no doubt that Nyerere acted out of his own conviction, of course with some external influence, there is no evidence yet that Karume was actually acting out of his own conviction and whether he knew the nature and implication of the union into which he had entered (Shivji, 2008; Dourado, 2006). But the second sentence, "after overcoming various problems, we united", raises more questions. In his book, Nyerere did not provide any explanation on which problems they had overcome. Would it suggest that there was some resistance from any of the two sides or both? Could it mean that Karume was forced to accept the deal by Nyerere lest the Tanganyikan troops stationed in Zanzibar would be withdrawn and make Karume's government insecure? Whatever could be the right answer to those puzzles, what is evident is that to date, that issue is still beset with uncertainties and doubts of what were actually the motives of the two leaders, i.e., whether they had the same motive or they had different motives on the nature and structure of the union that was formed in 1964.

The entire process leading to the union was characterized by secrecy, hastiness and unpreparedness. It was treated as a matter of high secrecy known to only a handful of individuals on the Mainland, and more so, on the Islands. There has been unresolved controversy over the legality of the union from 1964 to-date. Under the British common law system inherited by both Tanganyika and Zanzibar, the Articles of Union as an international treaty had to be ratified by the legislative bodies of the respective states. Whereas on 25 April 1964, just a day before the Union, the Tanganyika legislature ratified the Articles of Union¹, in Zanzibar there is no evidence that the same legal procedure was followed. Wolfgang Dourado, the then Attorney General of Zanzibar testifies that no law of ratifying the Articles of Union exists on the Statute Books of Zanzibar (Dourado, 1983). Jumbe (1994) also provides a similar explanation. Issa Shivji, a prominent Tanzanian legal scholar who testified that he had gone through all copies of the Zanzibar Government Gazette, including supplements of two calendar years, 1964 and 1965 confirms that no law ratifying the Articles of Union was ever published in the Zanzibar Gazette. In his earlier work of 1990, he presumed that the Articles were ratified by the Revolutionary Council. His presumption was based on the existence of the General Notice No. 243 of 1 May 1964 appearing in the Tanganyika Gazette stating that a law ratifying the Articles had been enacted on 25 April 1964 by the Revolutionary Council in

Confusion and Clarity of the Union after 50 Years

conjunction with the Cabinet Ministers (Shivji, 1990). What is instructive to note, however, is the fact that the Tanganyika Gazette did not cite any authentic authority such as the Zanzibar Gazette. In his latest work, Shivji (2008: 82-99), after uncovering compelling evidence, has abandoned his earlier presumption.

A critical analysis of the various sources so far about the legality of the Articles of Union seems to suggest that the argument that the Articles were not ratified by the Zanzibar legislature is supported by stronger evidence compared to the counter argument which claims that it was ratified (see, e.g. Othman, 2006: 51-2). Based on the mystery of the process of ratification by the Zanzibar legislature there has been endless controversy and confusion with regard to its legality. There are three competing positions - those claiming that it was legal for it was ratified by both sides; those who claim that it is illegal since it was not ratified by one side (recent case in High Court of Zanzibar - those claiming to be shown an original copy); and the those who believe it is legal based on acquiescence, i.e. "giving a quiet passive assent...neglect a legal action for such a time as to imply the abandonment of legal rights" (Bakary, 2006: 9). Over time, however, it appears the issue of legality seems to have waned. The centre of controversy instead has largely remained in connection to its perceived associated benefits and costs to each of the constituent states.

The Structure of the Union and its Confusion

The Articles of Union: 1+1 = 2 or 3?

In the course of the discussion between leaders of both sides (Tanganyika and Zanzibar), one of the difficult issues was to determine the form of the union. Options which were considered included a unitary state or a federation, loose or strong. Ultimately, a novel form of union (apparently influenced by Roland Brown who was the Tanganyika Attorney General might have been informed by the British system and its relations with Scotland, Wales and Northern Ireland) which is neither typically unitary nor federal and non confederal (Srivastava, 1978; Shivji, 1990; Shivji, 2008; Bakari, 2000).

To minimize fears that a tiny partner would be completely swallowed by a giant partner, or simply made a regional government, Zanzibar was left with some autonomy and residual powers for non-union matters and retained the key institutions which nominally look like parallel institutions of a central government - namely, the president, the legislature and the judiciary up to

the level of the High Court under its own Chief Justice. Tanganyika, by contrast, was completely subsumed within the Union government, and hence nominally ceased to exist as a country with its own internal government. This quite obviously created a lot of confusion right from the beginning for there were non-union matters which fell directly under the exclusive jurisdiction of Tanganyika, just as was the case with those under the exclusive jurisdiction of Zanzibar. Whereas in Zanzibar, it is easy in practice to delineate what are union and what are non-union matters including revenue collection, in the case of Tanganyika, now referred to as Tanzania Mainland, everything (union and non-union) was put into one basket, a unitary process of collection and only one basket where the collections are kept. The same applies for the expenditure – it is not clear whether the expenditure committed is a union or non-union matter. Likewise, there is confusion on the personnel employed. It is not clear whether a person is working for the union government or working for the Mainland government. A good example would be the Prime Minister of Tanzania. Whereas it is known that the President of Tanzania or the Minister for Foreign Affairs and International Cooperation are for the entire United Republic, *in practice* it is not clear whether the same applies for the Prime Minister – whether he is the Prime Minister of Tanzania Mainland or the Prime Minister of the United Republic of Tanzania.² To put it simply, one of the glaring awkward features of the Tanzanian union is the existence of three exclusive jurisdictions under two governments. Thus, one fails to characterize it in terms of whether it is a unitary or federal arrangement. Apparently, this is one of the major areas of confusion.

According to the Articles of Union 1964, the Union commenced with 11 matters. All other matters that were not stipulated in the Articles of Union were to remain under the *exclusive* jurisdictions of Tanganyika and Zanzibar. This in essence meant that Tanganyika and Zanzibar as distinct from the United Republic would exercise some sovereignty and unfettered autonomy over all non-union matters. To put it differently, the Zanzibar and the *invisible* Tanganyika government were not supposed to be subordinate to the Union government in non-union matters. It was not supposed to be a sort of central-local government relationship whereby a local government does not have inherent exclusive powers except delegated powers subject to recall and scrutiny by the central government. In contrast, according to the Articles of Union, the Union government and the constituent governments had coordinate powers. Each was supposed to be supreme in its own exclusive domain, which is one of the basic features of federal arrangements as

Confusion and Clarity of the Union after 50 Years

opposed to unitary arrangements. The ambiguity and confusion was cemented under the Interim Constitution of 1965 (which lasted until 1977 when a new constitution was adopted) by inserting a provision (Art. 49) which provided that: "Legislative power with respect to all Union matters in and for the United Republic and with respect to all other matters in and for Tanganyika is vested in Parliament".

Thus, whereas the Articles of Union placed non-union matters under their respective jurisdictions, the above constitutional provision abrogated that exclusive right to Tanganyika. Zanzibar Members of Parliament (MPs) have all along been sitting in the Union Parliament and legislate over *exclusive* Tanganyika affairs.³ Jumbe (1994: 31) correctly argued that the power of the Union Parliament to legislate over Tanganyika affairs was provided by the Articles of Union as an interim measure of just one year pending the introduction of a permanent Union Constitution. Surprisingly, however, the so called Interim Constitution became "permanent" so to speak (1965 - 1977). And, even when the 1977 Permanent Constitution was adopted that anomaly was retained - apparently, with the assumption that with the merger of the two parties, TANU and ASP into one party, *Chama cha Mapinduzi* (CCM) and within the framework of party supremacy⁴ the Union would ultimately evolve into a clear unitary system of one government.

Abreast with party, the constitutional entrenchment of party supremacy in 1977 was the extension of union matters from the original 11 to the current 22 matters. A twelfth matter, foreign exchange (including currency, coinage, legal tender, banks, and foreign exchange control) was added into the list in 1965 following the dissolution of the East African Community Currency Board. Subsequently in 1977, following the dissolution of the East African Community, matters previously handled by it, were transferred to the Union government. The list of additional matters included industrial licensing and statistics, higher education, natural gas and oil exploration, civil aviation, research, meteorology, court of appeal, etc. Zanzibar has been expressing serious reservations regarding the later additions claiming that such matters were added to the list without proper consultation between the partners and that such additions were against the spirit of the 1964 Articles of Union. Some scholars (Dourado, 1983; Shivji, 1990), among others, argue that the subsequent transfer of additional matters from Zanzibar to the Union government is illegal for it can lead to destruction of the essence of the federal principles envisaged in the Articles of Union and thereby increase the confusion.

It is noteworthy that even President Nyerere himself seemed to be aware of the confusion caused by the structure of the Union. Addressing the National Assembly on 6 July 1970 he said:

Without any question, the manner and the implications of the union between Tanganyika and Zanzibar *is the most misunderstood aspect of Tanzania's political development*. It may not matter very much when foreigners get confused, but unfortunately there are many times when Tanzanians themselves appear to misunderstand it⁵ [*emphasis added*].

That has been the situation of the union from the very early days of its existence. Even Ministers on the Mainland did not seem to understand the nature of the union. Dourado (2006: 77) recounts an occasion when the then Minister of Finance, Amir Jamal went to Zanzibar to discuss the imposition of a Sales Tax, which is not a union matter, and Zanzibar refused to accept the tax in question. Whereas Mainland leaders including Nyerere himself apparently thought that the arrangement was unitary and that Zanzibar only enjoyed a kind of regional autonomy on non-union matters, Zanzibar leaders including Karume himself thought that it was a federal arrangement as testified by Dourado (2006: 78) who once asked Karume about the manner in which the Union was created and he responded: "Don't worry, we have the right to be represented on their National Assembly but they don't have the right to be on our Revolutionary Council." In another striking statement Karume was quoted as saying: "The Union is a coat, I put it on when it is cold; otherwise I take it off" (Shivji, 2006: 104).

This kind of confusion was also apparent in the mind of the main architect of the Union, Mwalimu Julius Nyerere. In 1984 while reacting to the Jumbe's plan of instituting a case for a clear federal structure of three governments, he [Nyerere] expressed his surprise that those who were advancing a demand for a three government structure had had their arithmetic wrong, that is, $1+1 = 3$. To him $1+1 = 2$, meaning that there were only two governments, the Union government and the Zanzibar government, and not three as some people "suggested". Apparently, Nyerere himself got confused on this issue. The actual argument by those people was that since there were three separate jurisdictions, namely exclusive matters for Tanganyika, exclusive matters for Zanzibar and Union matters, it was logical that there ought to be three separate organs (governments), each dealing with its

Confusion and Clarity of the Union after 50 Years

respective matters. Again, in demonstration of his endless confusion with regard to the structure of the Union, in 1993, Nyerere went to Parliament to defend the current structure of the Union against the motion by the G55 arguing that a three-government federal structure was not a policy of CCM, and that whoever wanted to pursue that policy had to look for another party to join. Logically, the structure of the Union cannot be defended on the basis of a party policy – the logical argument would be why the two-government structure was relevant in 1964 and why was it still relevant in 1993 and beyond, something which he could not justify.

TANU + ASP = CCM or Union?

It should be noted that before 1994, the current two-tier government structure of the Union was simply a commitment made by CCM to be defended and implemented. It was not a policy. However, it was CCM which in trying to counter the G55 phenomenon and the resolution of the National Assembly in favour of establishing Tanganyika conducted a referendum throughout its members and branches. The outcome of this referendum was that the majority said that they wanted a Union of two governments. Hence, this became the CCM policy towards the Union. With this outcome, CCM went back to the Parliament to withdraw the resolution (Msekwa, 2006: 59-63). This process was retrospective. One may ask: Is the Union a CCM's property and that it is the only one to have the final say on its reform? Hon. Pius Msekwa, one of the longest CCM leaders and the then Speaker of the National Assembly responds to this question:

Because of that policy, the CCM door was now regarded as firmly closed to any ideas for changing the structure of the Union...Similarly, the Bunge Resolution calling for a three-government structure could not be implemented without first changing the said two-government CCM policy. It is for this reason that CCM decided to hold internal discussions within the Party, starting from the branch level to the highest level of the Party's National Executive Committee, to see if the party could change its two-governments policy, in order to open the door for either a one-government union structure; or a three-government structure to be put in place; for the purpose of strengthening the Union of Tanganyika and Zanzibar (Msekwa, 2006: 61).

If CCM believes that it is the one which should open the door for any change of the union structure, what could be the implication of this in the current

M. Bakari & A.B. Makulilo

multiparty politics? It is certain that the proposal for three tier-government structure by the Constitution Review Commission (CRC) had never sought for the “doors to be opened” by CCM. In any case, one would have expected a national referendum to find out whether Tanzanians would in the first place see the union as something relevant or otherwise; and if relevant, then which form should it take. This did not happen. The implication here is simple. It means the union is sustained by parochial interests of a political party. The change of the party in power or rather the change of its policy is the only way to reform the union. In 2006, the then Chairman of CCM, Mr. Benjamin William Mkapa gave the secrecy and fear of CCM with regard to the union:-

Kielelezo kikubwa cha Uhai wa Chama chetu ni Uendelevu wa Muungano wetu. Muungano wa Jamhuri ya Tanganyika na Jamhuri ya Watu wa Zanzibar, kuunda Jamhuri ya Muungano wa Tanzania, uliasisiwa na vyama vya TANU na ASP, ambavyo baadaye vikaamua kuungana na kuunda Chama Cha Mapinduzi. Ni dhahiri basi kuwa ustawi wa Muungano ni pima-joto ya uhai wa CCM. Nawashukuru WanaCCM kwa ari yenu kubwa ya kudumisha Muungano na kustawisha wananchi wake.⁶

The most outstanding indicator of the survival of our party is the continuation of our Union. The Union of the Republic of Tanganyika and the Peoples’ Republic of Zanzibar to form the United Republic of Tanzania, was founded by our parties, TANU and ASP, which ultimately decided to unite and form Chama cha Mapinduzi (CCM). It is therefore obvious that the wellbeing of the Union is a litmus test for the survival of CCM. I thank CCM members for your immense zeal to sustain the Union and promote the wellbeing of its people [*Trans. by authors*].

It is important to understand that if TANU and ASP are considered the foundation of the Union, and that the two parties merged to form CCM, it would be assumed by the same logic that CCM claims to be the custodian of the Union. Interestingly, Mr. Mkapa’s view about the causality of the Union and co-existence of CCM and the Union would suggest that it is ultimately CCM which has the final say on the direction and survival of the Union. That is why in its 2010 Manifesto, CCM stated categorically that: “In order to face the challenges of protecting, sustaining and consolidating our Union, CCM’s policies of 2010-2015 will continue to emphasize and oversee the implementation of...To maintain the existing two-tier government structure

Confusion and Clarity of the Union after 50 Years

and promote good relations between the two governments”⁷ [*Trans. by authors*].

In 1991, the Nyalali Commission proposed a federal system of a three-tier government structure. It noted that the fundamental problem of the union lies in its inherent structure. To be sure, it stated: “The biggest and most apparent problem is the fear of Zanzibar being ‘swallowed’” (URT, 1991). The Commission noted the main weakness of the Union resides in its structure: the Union Government (which also governs the Mainland) has been given powers on Union Affairs in Zanzibar. This structure has generated a few problems: (1) the fear that Zanzibar is being ‘swallowed’ (2) an erroneous view that what was then Tanganyika is currently Tanzania and Zanzibar remained Zanzibar; (3) the impression that the Government of ‘Mainland Tanzania’ has been using the powers of the Union Government to increase the benefits of the Mainland; (4) the impression that Zanzibar financially supports the Government without a say on the Union matters; (5) Zanzibar does not receive its share of revenue accruing from Union corporations; and (6) it has given rise to complaints by some Mainlanders that Zanzibar has been exploiting them. The Commission therefore recommended for the adoption of a federal structure that is a union with three governments (Tanganyika which disappeared in 1964, Zanzibar and the Union government). This was resisted by the CCM government which strongly stands for the current structure of the union. Similarly, the Kisanga Committee of 1999 proposed a federal system. The logic behind their conclusion was not essentially based on the number of people who expressed their preference for a two-tier government structure, but went beyond to analyze the nature and its associated problems. For example, the Kisanga Committee found that 88.87% of Tanzanians still wanted a two-tier government structure of the Union, implying that CCM continues to enjoy the support from defenders of the two-government policy of the union.⁸

Things got worse as opposition parties came to identify themselves with a three-tier government structure of a federal type. If they believe that this might weaken CCM, again the ruling party will not easily afford to give in. Probably this informs also why the 2014 Constituent Assembly is composed of Members of the Parliament and the House of Representatives who together constitute the majority in the Assembly. Worse still, it is presumed that quite a large fraction, if not the majority, of the 201 additional members seem to come from CCM though with disguised portfolios such as Non-Governmental Organisations, special groups, to mention a few. By far, the

number of CCM supporters evidently outweighs that of the opposition and those without party affiliation. The risk here is that if the Union issue is approached from party policy perspectives, it is more likely that the politics of numbers in party-caucuses will determine the final outcome. This will in itself be a serious pitfall in the constitution making process.

Complaints from Zanzibar

Granted, all types of union are bound to have problems and challenges causing complaints from the constituent parts or states. This is also true with the Union between Tanganyika and Zanzibar which is viewed by many as a case of a success story on the African continent. That, all other initiatives of uniting two or more sovereign states failed but the Union between Tanganyika and Zanzibar has survived for a half a century (1964 - 2014) and that it is still “kicking” despite the challenges it has been facing in its lifetime. Over the years, a special terminology has been invented to explain a sense of dissatisfaction with the way the Union is structured or run. This popular terminology is *kero za muungano* (problems of the union). *Kero* is a Kiswahili word meaning “something that irritates or annoys” but actually it does seem to have a direct English translation. After many years of dissatisfaction some extreme voices in Zanzibar have gone to the extent of claiming that it is understatement to suggest that there are simply *kero* (irritants) of the Union, but rather the Union itself is a *kero* meaning that it is something undesirable. Whatever terms used to express the feelings of dissatisfaction, the bottom line is that there are significant problems and challenges, which if not squarely addressed in time, might eventually lead to the break-up of the union.

It is very difficult to satisfactorily catalogue a set of demands and complaints from both sides given the limitation of space. The briefing by the former Union Vice-President, the late Dr. Omar Ali Juma, could offer a reasonable outline of Zanzibar’s complaints and demands.⁹ Zanzibar claims that it had surrendered its sovereignty to the United Republic of Tanzania but does not satisfactorily benefit from the joint sovereignty as does the Mainland, the senior major partner. Some of the tangible benefits cited in this regard include distribution of foreign aid, grant and loans coming in the name of the United Republic but enjoyed mainly by the Mainland. Before 1994, for example, when a 4.5% share of foreign assistance was agreed following the recommendation by Shelukindo Report, the Zanzibar government was getting less than 3%. Related to this, is the argument that Zanzibar is not allowed to interact with nation-states and join international and regional

Confusion and Clarity of the Union after 50 Years

organizations for all transactions involving sovereignty. Again related to the issue of sovereignty, Zanzibaris claim that since the Articles of Union and the Union Constitution recognize the existence of the Zanzibar government and its president, the two would allow Zanzibar to be internationally recognized with state symbols such as the flag, national anthem, coat of arms, a 21-gun salute, etc.¹⁰

The second complaint is that Zanzibar's autonomy in managing its economy is seriously affected by its relations with the Union government. The Union government usually makes changes in monetary and fiscal policies such as devaluation and interest rates fluctuations without consulting the Zanzibar government. This has led to serious problems in budgeting and economic planning. Besides, Zanzibar claims that it does not benefit from the Union institutions such as union corporations and the Central Bank of Tanzania. Thirdly, Zanzibaris complain that they are not given adequate representation in the union government institutions, foreign missions, international organizations, etc. Moreover, Zanzibar complains that since the affairs of the Tanganyika government are managed by the Union government, Zanzibar has to shoulder financial commitments in running the affairs of Tanganyika government which have nothing to do with union matters.

Zanzibar's demands fall into two main categories - those of autonomy character and those of sovereignty character. These two types of demands are inextricably linked. If only demands of autonomy character are granted, for example, those related to fair representation in union institutions, the impact of monetary and fiscal policies and getting benefits from union corporations then there is a likelihood of endless complaints of sovereignty character. But if some sovereignty is granted, demands of autonomy character would be automatically realized. Given the nature of demands Zanzibar places on the Union government, it is very unlikely that they could be met under the present set-up of the union however extensively it may be reformed.

Complaints from the Mainland

Mainlanders are complaining that Zanzibar often places demands of sovereignty character, a tendency which is claimed to be against the Articles of Union and the Union Constitution and which threatens the survival of the union. Zanzibar is therefore accused of frequently violating the Union Constitution in various respects including incorporating provisions in the Zanzibar Constitution which violate the Union Constitution, for example, establishing Zanzibar Special Brigades (*vikosi maalum*) with military features;

receiving foreign leaders and saluting them with 21 guns; joining the Organization of Islamic Conference (OIC), and the like.¹¹ Whereas the group of 55 MPs (G55)¹² which demanded for the formation of the Tanganyika government in Parliament in 1993 was very much agitated by the Zanzibar's decision to join the OIC, the current momentum in support of a three-tier federal structure on the Mainland has been partly influenced by the recent constitutional developments in Zanzibar which declared Zanzibar to be a country (*nchi*) within the United Republic of Tanzania with its own territorial boundaries¹³, and with the president who could divide the Zanzibar territory and appoint district and regional commissioners.¹⁴

In economic relations, the Union government (i.e., the Mainland) accuses the Zanzibar government of being reluctant to undertake economic reforms when required to do so since the economy is not a union matter, hence causing incompatibility and lack of harmonization in economic and fiscal policies between the two governments. Regarding the benefits of the Central Bank, the Union government claims that the Zanzibar government is yet to transfer its accounts to the Central Bank and that it can only benefit from the bank after it has become its client as is the case with the Union government. Besides, the Union government accuses the Zanzibar government of unduly politicizing implementation problems of the Union matters whereas most issues particularly related to economics, finance, and banking would require expert advice. Moreover, there are complaints that Mainlanders are exploited by Zanzibaris in different areas including claims that the Zanzibar Government does not give its financial contributions in running Union affairs, and that at times, Zanzibaris are employed in purely non-union institutions, something which is not reciprocated by the Zanzibar government. According to Kamanga (2014: 349), there is a perception by Mainlanders "that Zanzibar is engaging in 'double-dipping' by drawing from its independent sources and the Union coffers towards which it does not contribute, while the Mainland is not in a similar privileged situation." Related to that, there are claims that whereas Zanzibaris are free to own land throughout the United Republic, Mainlanders do not have that access in Zanzibar.

Pro-two Governments Advocates in Defense of Confusion

Three Government = more Costs; Two Governments = Less Costs!

The issue of cost frequently surfaces when the current two-tier government structure is being defended. The simple argument is that three governments are more expensive to run than two governments. Surprisingly, there is no

Confusion and Clarity of the Union after 50 Years

one who has come up with concrete and reliable data in connection to the cost of running the present Union from 1964 to 2014 or the proposed three-tier government set up. Therefore, the most common argument relies on the number of governments which could make sense to a layperson. However, if examined critically it does not seem convincing. One would like to know, if the fear of cost was a genuine claim, why is it that such Union matters increased to 22 without critically reviewing the cost implications? By any logic, the expansion of the list of the Union matters would mean an increase in cost. The draft constitution ostensibly provides for seven (7) Union matters. Can it not be argued that the decrease of Union matters from 22 to 7 implies reduction of costs? Nehemiah Osoro, a renowned Professor of Economics at the University of Dar es Salaam correctly responds to this question:

The immediate thing that comes to most people's minds is that a three government Union would be more costly to run than a two government one. However, the former may not be necessarily costly to run than the latter. The final outcome will depend on the Union's structure. For instance, if the Union government has a lean cabinet and bureaucracy, it may not be costly to run. The CRC is proposing such a cabinet for the federal government. If this is accepted and implemented, then a three government union may not be expensive (Osoro, 2014: 224-5).

The above paragraph suggests that the issue of cost is not inherent to a particular structure of a union government. It is however a function of how the union is structured and designed. Hence, it is not always the case that the cost of running three governments will be prohibitively higher. This argument defeats those who maintain that the increase in governments means additional cost to run the union. It should be noted that in the proposed new union structure, Tanganyika and Zanzibar will each be responsible to run its own government. That is to say all non-union matters will be attended to by those governments and not otherwise. Similarly, there are monetary costs that are easily susceptible to quantitative measurements; they can hardly be included in any estimates that may be undertaken. These include a series of meetings with associated costs (time in terms of opportunity cost, per diem, allowances and transport costs), for example, those from Zanzibar to Dar es Salaam and Dodoma and the other way round. Besides, there are also costs associated with inertia and delays in decision making. In managerial sciences, it is well established that inertia and delays

in decision making often negatively affect organizations, not only business organizations but even governmental and non-governmental ones, as Eisenhardt (1993: 121 cited in Payne, Bettman and Luce, 1996: 131) aptly puts it that: “[I]n particular, delay in deciding can “result in failure as...windows of opportunity close.” Under the current set up of the Union which would require bargaining and compromise on a long list of Union and non-Union matters, it may be plausible to assert that there have been excessive delays and inertia in making critical decisions by both governments, something which has had negative repercussions to both sides.

Two Governments = Resilience of the Union; Three Governments = Break-up of the Union!

This issue points to the most critical question: why do some Union governments endure while others collapse? Certainly, there is no single explanation which can suffice to understand this state of affairs. However, it is logical to assume that two governments or three governments by themselves cannot automatically lead to endurance or break-up of a union. For example, the way the current two-tier government structure of the Union was conceived and subsequently, the increase of the Union matters from 11 in 1964 to 22 by now may be a factor that can lead to the break-up of the union. For Zanzibar, such an increase is popularly interpreted as further erosion of its autonomy. Even the proposal by the opinion collected by the CRC is clear about this and hence a larger fraction of Zanzibaris (61%) would want a Union founded on a ‘Treaty’ [*Mkatoba*] which would guarantee them a sovereign state. The interpretation of “*Mkatoba*” by the CRC is that if that is guaranteed, it would automatically lead to the break-up of the Union. Similarly, from Tanzania Mainland, the majority (60%) of those who expressed their views with regard to the structure of the Union said that they would want a three-tier government structure. In any case, we just wanted to show the probability that the Union may even disintegrate within the present set up of two governments. The critical issue is: What are the forces at play at a particular time and space? The USA, for example, has persisted in a federal form with 51 states. How can this be explained? It has to be mentioned that a union which is founded under a unitary system is usually sustained by coercion. If it is highly centralized (Killian, 2014) it becomes worse. This would mean that more resources are being used for massive deployment of armies and other security officers to sustain the union. It is not surprising that CCM is extremely sceptical to see that Zanzibar is led by an opposition party. That is why during every general election in Zanzibar, there is massive deployment of security forces unlike in Tanzania mainland.

Confusion and Clarity of the Union after 50 Years

This provides relevance to the question we posited earlier that ASP+TANU=CCM or Union. One would have imagined a situation, in the present Union arrangement, if an opposition party happens to win in Zanzibar. If CCM and the opposition party in Zanzibar have different policies towards the Union what would have happened? In light of this backdrop, it was easier for CCM to allow a Government of National Unity (GNU) after bloodshed in the previous general elections of 1995, 2000, and 2005. In contrast, if a federal system of union is founded on devolution, it allows wider participation by the citizens (Killian, 2014). This union is founded on consensus. People are free to discuss and agree on mutual terms. The current Union is different. Even the first draft of the Constitution Review Act did not allow people to discuss about the Union. This is a typical example of an authoritarian regime. No scientific research has ever been conducted and come up with potential forces that may lead to the break-up of the Union under a clear federal arrangement. Hence the current fear is largely built on speculation and propaganda.

Change of the Structure of the Union: A minority or majority decision?

One of the critical questions which have currently emerged in the Union debate is how the Constitutional Review Commission (CRC) based its conclusion on the structure of the Union. It was Sabato Nyamsenda who started to go public questioning the statistics given by the CRC claiming that such statistical data do not warrant the conclusion drawn by the CRC that the majority of those who expressed their views on the question of the "Union structure" favoured a three-tier government. He maintained that 86% of all who appeared before the Commission did not dwell at all on the question of the "Union structure." He concludes that since those who favoured a "three-tier government structure" and a "Union by contract" (*Muungano wa Mkataba*) represented a mere 8%, and therefore, in his view, it is a distortion of reality to present a three-tier government structure as the choice of the majority (Kamanga, 2014; *Mwananchi*, 08.03.2014). Professor Issa Shivji has apparently repeated a similar argument (*Raia Mwema*, 11.03.2014). Interestingly, a thorough review we have conducted of different reports by the CRC has not shown anywhere that the Commission relied on the majority opinion of those who gave their views on any issue to draw its conclusion. If one reads the Terms of Reference (ToRs) to the CRC one will discover that the CRC was required to collect peoples' opinion and proceed to analyse the same. Otherwise, if it was the question of "majority opinion", then only a referendum on the structure of the Union could be the best option, or alternatively to a lesser degree, a nation-wide scientific survey

M. Bakari & A.B. Makulilo

based on random sampling. Hence, taking the number of those who gave opinion as the “only basis” or the “main basis” for the CRC’s proposal for three tier-government structure is not only unfounded but also misplacement of the debate. The CRC knew this problem of misconception to be common to those who gave their opinion. It states: *“Kujengeka dhana kwa wananchi kuwa uamuzi wa mwisho kuhusu Katiba Mpya utatokana na wingi wa maoni kuhusu jambo fulani na siyo uzito wa hoja.”*¹⁵ [Trans. by authors]: “There was misconception among citizens that the final decision on the new constitution will be determined by the majority opinion on a certain issue and not on the weight of the argument itself.”

It was owing to that fact therefore that in some of the critical issues like the Union, the CRC decided to conduct a separate research for deeper understanding. Indeed, the CRC had a 177-page report out of its research findings on the Union. This report explains the origin of the Union, its structure, institutions, operations and problems that have confronted it since its formation in 1964. The report is quite rich in terms of the literature it surveyed including previous reports on the Union such as the Nyalali Commission (1991), Shelukindo Committee (1994), Bomani Committee (1995), and Kisanga Committee (1999). Moreover, the report has different models on union formation as well as experiences from other regions.¹⁶ Hence, the proposal of a federal structure of three governments was evidently beyond “numbers”. The CRC states categorically that: *“Baada ya kuzingatia maoni ya wananchi, sababu za maoni na kupitia aina, sifa na changamoto mbalimbali za Muungano pamoja na mapendekezo ya Tume na Kamati mbalimbali, Tume inapendekeza Muungano wa serikali tatu.”*¹⁷ [Trans. by authors]: “After taking into account people’s opinion and their grounds; advantages and disadvantages of different models of Union as well as recommendations made by previous Commissions and Committees; the Commission recommends the Union of three a tier-government structure.” One wonders (a) why didn’t our scholars appreciate the extensive research on the union issue as well as the basis of the conclusion by the CRC? (b) Was it by default or design? If these scholars were able to find the report by the CRC on statistics of those who gave their opinion; why didn’t they bother to read and review the report on the Union issue? That said, from the scholarly point of view, it is not fair to advance criticisms without taking into account the broad context of a social phenomenon. Likewise, the scholars either by design or default misinterpreted the statistical findings by the CRC.

Confusion and Clarity of the Union after 50 Years

The CRC provided ten (10) key areas and their respective percentages indicating the issue which was leading according to those who gave their opinion: human rights (13.7%), Union (10.4%), Water (8.2%), Union president (7.8%), local governments (7.3%), Judiciary (6.9%), national resources (5.8%), representative organs (5.4%), ministers (3.9%), electoral commission (3.3%), others (27.3%).¹⁸ The CRC noted that the union was the second issue which attracted more opinion. It is important to understand that the “majority opinion” on the issue of the “structure of the union” should be limited to only those who gave their opinion on that specific issue and not otherwise. The CRC was smart in this statistical computation.

Yet, we need to emphasize once again that if one is so fascinated by “numbers” then some of the major decisions in this country were taken based on the minority opinion. For example, the decision to shift from one party to a multiparty system in 1992 was on the surface supported by only 20% of those who gave their opinion before the Nyalali Commission. About 80% in the same report wanted the single party system to remain; but quite a large fraction of them put some conditions that it had to be reformed. However, the Nyalali Commission proceeded to recommend for the adoption of a multiparty system based on the analysis of the literature, opinions, and circumstances of the time. Interestingly, the same scholars who dispute the findings and recommendations of the CRC forget to cite this historical fact in the struggle for democracy. Similarly, even the decision to form the Union in 1964 was largely informed by only two persons (not the majority of Tanganyikans and Zanzibaris). Indeed, the scholars who emphasize “the majority opinion” deliberately decide to skip a discussion on the “*kero za Muungano*” which is central to the Union debate. Thus, rather than challenging the argument on the basis of empirical evidence and logical reasoning, such scholars end up misplacing the central argument raised.

A Proposed Federal Arrangement by the CRC: More Confusion or Clarity?

The CRC proposed a federation of three governments namely the government of Tanganyika, the government of Zanzibar and the Union government. At its face value, and depending on how it is designed, the federal arrangement would solve at least one fundamental problem, i.e., clarity of the structure of the union. In the proposed draft of the Constitution, there will be separate distinct entities, namely Tanganyika, Zanzibar and the Union. Prior to this proposal, Tanganyika was subsumed within the Union and hence did not have its own distinct existence. Thus, apart from relying on the “three jurisdictions” of Tanzania Mainland, Zanzibar and the Union in

the existing Constitution, the three political units (i.e. Tanganyika, Zanzibar and the Union) and their respective jurisdictions are made more visible in the draft Constitution. This would therefore be relatively considered as more clarity. However, the question we need to underscore is to what extent in terms of its design can it address the confusion that is inherently imbedded in the current set up of the Union? We attempt to respond to this question as follows:

The Articles of Union

Reference to the Articles of Union of 1964 is indeed problematic and simply means a continuation of the old order. For want of precision, let us cite here the provision to this effect: "*Hati ya Makubaliano ya Muungano iliyolejerewa katika ibara ndogo ya (1), ndio msingi mkuu wa Jamhuri ya Muungano wa Tanzania na Katiba hii, kwa kadri itakavyorekebishwa, itakuwa ni mwendelezo wa Makubaliano hayo.*"¹⁹ Literally, means "The Articles of Union, as referred to in sub-article (1), is the main foundation of the United Republic of Tanzania and this Constitution, to the extent that it will be amended, will be the continuation of that Agreement." Shivji (2013: 8) correctly criticizes the logic behind this provision. He advances two arguments: One, from a legal perspective, if the Articles of Union is the bedrock and foundation of the Union it means that the Articles of Union continues to have a legal force and hence a supreme law over the Constitution. Surprisingly, the Articles of Union are the ones which put the two governments that currently exist. How is it possible for the Draft Constitution which proposes three governments to be premised on a foundation of two governments? Two, a constitution that is tailored around three governments cannot at the same time be a continuation of the Articles of Union. This may suggest that the present Draft Constitution may simply undergo "*Ukarabati Mkubwa*" (Major Amendment) so that the Articles of Union retain their basic structure of the two governments. Alternatively, if the three governments' proposal sails through, will it end the confusion during implementation? It may be safe to conclude that the future debate, if the Draft Constitution is passed to allow three governments and retain the Articles of Union as suggested by the CRC, would be on the legal foundation of the Union.

Territoriality Claims

In recent years, the question of boundaries has been critical to African countries. It has to be noted that these boundaries were put in place by the colonial masters. However, they were inherited by the post-independence African countries. Tanzania, for example, has not yet resolved boundary

Confusion and Clarity of the Union after 50 Years

issues with Malawi and Mozambique. With the recent discoveries of oil and gas, the issue of territorial claim has intensified. Article 2 of the Draft Constitution provides that the area that is covered by the United Republic of Tanzania includes the whole of the entire area of Tanganyika and its territorial waters as well as the entire area of Zanzibar including its territorial waters. This provision is too general and does not specify clearly the territories of the two political units. It is not surprising that in its 10th Constitutional Amendments of 2010, Zanzibar attempted to define its territory. Article 1 thus states that the area of Zanzibar consists of the whole area of the Islands of Unguja and Pemba and all small Islands surrounding them and includes the territorial waters that before the Union formed the People's Republic of Zanzibar.

It has to be pointed out that the two sides of the Union have once been in tension over the issue of boundaries especially with regard to the territorial waters. The intensity of the tension has been exacerbated by the belief that the sea between Tanganyika and Zanzibar has a lot of resources including oil deposits. The Minister for Lands, Housing and Human Settlements Development, Hon. Professor Anna Tibaijuka sent an application to the United Nations to extend the area of the United Republic of Tanzania's territorial waters by 150 miles. This led to a Special Motion in the House of Representatives in Zanzibar by one member of the House to complain that: why the Zanzibar Minister supported this application.²⁰ If Article 119 will be passed in its current form it would further lead to tension on territoriality claims in future. It states, among other things that, the Parliament shall have no power to change Chapter One which also contains the issue of territory of the United Republic of Tanzania (Art. 2 of the Draft Constitution) until the same is supported, through a referendum by two-third (2/3) of votes from the citizens of each sides of the Union, i.e. Tanganyika and Zanzibar. This means that neither Tanganyika alone nor Zanzibar will have the power to claim for a territory. Technically, Article 1 of the Zanzibar Constitution which was brought about by the 10th Constitutional Amendments of 2010 to define Zanzibar's territorial boundaries will be rendered ineffective.

List of Union Matters

This issue has been problematic and subject of Zanzibar's autonomy. The original 11 Union matters in 1964 were increased to 22 thereby undermining the autonomy of Zanzibar. As such, the list has been a political issue. In the Draft Constitution, the list has been reduced to 7 matters (see Art. 63). This would imply that it has gone further down from the 1964 list. Two questions

should be raised here: which criteria are used to determine the matters and their respective quantity on the list? Does it matter to have a list of Union matters while the entire Constitution is wholly about the United Republic? We think that these questions are pertinent and central to this debate. We cannot pretend to know the criteria with regard to question one. If one reads the Constitution of the United Republic 1977, it would be discovered that there are a lot of issues which are not on the list, yet their legal status is equivalent to those on the list. For example, the National Electoral Commission is a "Union matter" though it also caters for non-Union matters for Tanzania Mainland. This is ostensibly confusion. Indeed, if one reads the Draft Constitution with a critical eye, it would be discovered that such reduction has been exaggerated to calm down the political tension. For example, Citizenship and Immigration which in the present Constitution of 1977 are separate matters on the list of the Union have been combined in the Draft Constitution and read as "Citizenship and Immigrations". Similarly, the Court of Appeal of the United Republic which used to be in the list of the Union matters in the current Constitution of 1977 is now found within the Draft Constitution (Art. 165) but with the same jurisdiction like the existing one; police which is on the list of the Union matters (see the Constitution 1977) has been omitted from the list but retained in Article 243 (draft Constitution); the Emergence Powers in the present Constitution of 1977 is in the Draft Constitution (Art. 85); and Service in the Government of the United Republic which is on the list in the present Constitution is found in Chapter Eleven of the Draft Constitution.

Likewise, Article 119 of the Draft Constitution provides for special conditions to change some specific provisions including (a) Chapter one (i.e. the area covered by the United Republic, National Symbols, National language, National Ethos, Sovereignty of the people, people and their government; constitution supremacy, custody of the Constitution) , Chapter two (goals, state functions and policy), and Chapter four (i.e. Human Rights, duties and state authority) of the Draft Constitution (b) Article 60 (i.e. the structure of the Union), (c) Article 79 (i.e. qualifications for election as President), (d) Union Matters, (e) the existence of the United Republic and (f) provisions of Article 119. It states that the Parliament will not have the power to change all the listed items above until those changes are supported by the citizens of the United Republic through a referendum and that the outcome be supported by two-third (2/3) of the votes from each side of the Union. Again, it is illogical to list Registration of Political Parties as a Union matter and leave

Confusion and Clarity of the Union after 50 Years

behind the Independent Electoral Commission which by Article 190 of the Draft Constitution is a Union institution.

Although one can go further to examine the reality of the Seven (7) matters, we can pose here and count them. From our preliminary analysis, they all give a total of 24 Union matters. If this Draft Constitution is passed without alteration of Article 119, it would imply that for an issue to be included in or excluded from the list of Union matters it should be determined by a vote through a referendum. The outcome of which should be 2/3 vote support from each side of the Union. This would easily answer our first question above. The second question was: does it matter for an issue to be in the list or not? Our observation is that it does not matter at all. If the first item in the list of the Union matters states that "The Constitution of Tanzania and the Government of the United Republic" is a Union matter, it follows logically that whatever is contained in the Constitution is a Union matter. The police, for example, which was formerly in the list of the Union matters (see Constitution 1977), is now found within Article 243 of the Draft Constitution. Its legal status has never changed. We are of the view that the Draft Constitution would make sense if its content would provide for non-Union matters for Tanganyika and Zanzibar, and then proceed to list Union matters. But this is not the case since Zanzibar has its own Constitution and will have to adjust it or write a new one if the federal structure is passed. Likewise, Tanganyika does not exist at the moment implying that with the same outcome it will have to write its constitution. Therefore, if non-Union matters are listed in the constitutions of partner states, it would be illogical to have a separate list of Union matters in the Constitution of the United Republic. However, in the present Constitution of 1977, having the list makes sense simply because the United Republic caters for both union matters as well as non-union matters for Tanzania Mainland.

Supremacy of the Constitution

Supremacy of the Constitution²¹ is provided for in Article 8 of the Draft Constitution. Article 64 further gives the powers of the Tanganyika and Zanzibar governments. When these provisions are read critically it would be discovered that the Union government is only supreme on the seven (7) matters of the Union (Shivji, 2013: 10-4). In countries like Australia the supremacy of the Constitution is very clearly provided in Article 109 and states "When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid." Article VI of the US Constitution does have a

similar attribute of being supreme over state constitutions. It declares the actions of the federal government supreme whenever its constitutional use of power clashes with the legitimate actions of the states. The Draft Constitution in Tanzania does not meet that standard of clarity. It is possible therefore that while the Union constitution will provide standards equivalent to the signed and ratified international treaties, its implementation by the partner states would be problematic in case their constitutions do not meet the Union standards. In the absence of a supreme law to force states to uphold the standards of the Union, it is highly likely that their implementation may discredit the Union government in the eyes of international law.

Conclusion

Federalism as a form of government or intergovernmental organization is gaining greater currency today more than any other time in the history of human kind (Calabresi, 1995: 752-6). This currency has been promoted by among other things the increasing realization that there is a logical relationship between the form of government - whether unitary or federal - and democratic status - whether it is a democratic government or authoritarian government. Whereas it is not plausible to conclude that unitary governments tend to be authoritarian or dictatorships and federal governments tend to be democratic, one feature that is well established from the history of modern states is that since the Westphalian Treaty of 1648 which defined the basic features of the modern state there is "no federation that has ever changed to a unitary state system except as the result of a totalitarian takeover" (Walker, 1999: 1). A striking example of this scenario was a move in Cameroon in 1972 from a federal state formed in 1961 consisting of the Francophone Cameroon and Anglophone Cameroon to a unitary one-party authoritarian state, the United Republic of Cameroon under Ahmadou Ahidjo. Currently, however, there is a strong movement demanding a return to a federal arrangement. In this article we have shown that the past fifty years of the Union between Tanganyika and Zanzibar have been fraught with confusion on both the structure and *modus operandi*. Evidently, this vindicates Jumba's thesis (1994) who wrote a book titled: *The Partner-Ship: Tanganyika-Zanzibar Union: Thirty Turbulent Years*. Fifty year down the road the "turbulence" is not yet over. It is high time that Tanzanians reflect on the past in order to fundamentally restructure the Union for its survival as well as for the promotion of the wellbeing of the people of the two partner states. The currently proposed three-tier government structure, if refined to allow more clarity, would be an appropriate institutional arrangement to address the underlying problems of

Confusion and Clarity of the Union after 50 Years

the Union or the so called “*kero za Muungano*.” It remains to be seen whether Tanzanians will make use of the ongoing constitution making process by opting for a union structure with more clarity or will continue to live with the structural and administrative confusion of the existing set up of the Union.

Notes

1. The Union of Tanganyika and Zanzibar Act, No. 22 of 1964 passed on 25 April 1964, published in Supplement No. 1 to the Tanganyika Gazette, Vol. XLV, No. 29 of 26 April 1964.
2. Article 51 (1) states that “[T]here shall be a Prime Minister of the United Republic who shall be appointed by the President in accordance with the provisions of this Article...”. Further, Article 52 (1) states that “The Prime Minister shall have authority over the control, supervision and execution of the day-to-day functions and affairs of the Government of the United Republic”.
3. Jamhuri ya Muungano wa Tanzania 1999. Kamati ya Kuratibu Maoni Kuhusu Katiba, Kitabu cha Kwanza: Maoni ya Wananchi na Ushauri wa Kamati, Dar es Salaam. This report is also popularly known as “Kisanga Committee Report”, named after its Chairman Judge Robert Kisanga.
4. Article 3 (1) of the 1977 Constitution stipulated that the “shall exercise final authority in respect of all matters”. Besides sub-article 2 and 3 specified that all political activity in Tanzania and all activities of all public institution shall be conducted by or under the auspices and control of the party.”
5. Hansard, United Republic of Tanzania, 6 July 1970.
6. Mkutano Mkuu wa CCM 2006: Hotuba ya Mwenyekiti ya Kung’atuka na Kuaga, Chimwaga 25 Juni 2006.
7. Ilani ya CCM 2010-2015, uk. 131.

M. Bakari & A.B. Makulilo

8. Jamhuri ya Muungano wa Tanzania 1999. Kamati ya Kuratibu Maoni Kuhusu Katiba, Kitabu cha Kwanza: Maoni ya Wananchi na Ushauri wa Kamati, Dar es Salaam.
9. Speech to Tanzanian ambassadors abroad by Dr. Omar Ali Juma, the Vice-President of the URT, 20 April 1999, White Sands Hotel, Dar es Salaam Tanzania.
10. In May 1995, for instance, Zanzibar raised its own flag, played its own national anthem and gave a 21-gun salute to visiting President Nelson Mandela of South Africa.
11. Speech to Tanzanian ambassadors abroad by Dr. Omar Ali Juma, the Vice-President of the URT, 20 April 1999, White Sands Hotel, Dar es Salaam Tanzania.
12. Given the scarcity of land in Zanzibar being a small island, there are legal restrictions to non-Zanzibaris. Mainlanders wishing to own land (i.e., lease rights or right of occupancy as opposed to free-hold) in Zanzibar are required to have stayed in Zanzibar for some time, usually about three to five years and acquire a residential status (Zan ID), or alternatively they can acquire land under conditions applied to foreign investors.
13. The Zanzibar Constitution Article 2 (1) defines the sea boundary between Zanzibar and the Mainland as: "including the territorial waters that before the Union formed the People's Republic of Zanzibar".
14. These issues have been interpreted by some politicians and analysts on the Mainland to be in contravention of the Constitution of the United Republic of Tanzania.
15. Jamhuri ya Muungano wa Tanzania, 2013. Ripoti ya Tume kuhusu mchakato wa mabadiliko ya Katiba ya Jamhuri ya Muungano wa Tanzania, Tume ya Mabadiliko ya Katiba, Dar es Salaam, uk. 88.
16. Jamhuri ya Muungano wa Tanzania, 2013. Utafiti kuhusu masuala yanayohusu Muungano wa Tanganyika na Zanzibar, Tume ya Mabadiliko ya Katiba, Dar es Salaam.

Confusion and Clarity of the Union after 50 Years

17. Jamhuri ya Muungano wa Tanzania, 2013. Maoni ya Wananchi kuhusu mabadiliko ya katiba ya Jamhuri ya Muungano wa Tanzania, Tume ya Mabadiliko ya Katiba, Dar es Salaam, uk. 15.
18. Jamhuri ya Muungano wa Tanzania, 2013. Takwimu za ukusanyaji wa maoni ya wananchi kuhusu mabadiliko ya Katiba ya Jamhuri ya Muungano wa Tanzania, Tume ya Mabadiliko ya Katiba, Dar es Salaam, uk. 57.
19. Ibara ya 1 (3): Jamhuri ya Muungano wa Tanzania, Tume ya Mabadiliko ya Katiba, Rasimu ya Katiba ya Jamhuri ya Muungano wa Tanzania, Desemba 2013, Mpiga Chapa Mkuu wa Serikali, Dar es Salaam.
20. http://zanzibariyetu.wordpress.com/2012/04/12/serikali-yatoa-tamko-kuhusu-eneo-la-bahari-kuu/?relatedposts_exclude=8378 (Accessed: 20.2.2014); See also Shivji (2013:9).
21. Supremacy of the Constitution in this respect should not be confused with the notion of sovereignty. The Draft Constitution in Tanzania (Article 6) clearly recognizes “*Wananchi*” (Citizens) to be the source of sovereignty in the United Republic. In other words, it denies sovereignty to both the national government and state governments and locates sovereignty in the hands of the People.

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M. Bakari & A.B. Makulilo

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