

The Union of Tanganyika and Zanzibar: In search of a viable structure

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Abstract

The question of the structure of the union between Tanganyika and Zanzibar is at the core of the constitution making process. In fact, it will be a determining factor of the final outcome of the envisaged constitution. The debate on the union structure has revolved around a one government system, two governments system, three governments system and a confederation. Expected of a debate on a political issue of this stature are inevitably misunderstandings and distortions on what the proposed options entail. This article surveys different models of union in order to shed some light on the proposed three-tier government structure by the Constitution Review Commission as the most viable option which is likely to address some of the critical problems that have confronted the union in its past fifty years of existence.

Introduction

When two or more countries unite they form a complex state regardless of how their union is designed. The complexity of the state is a function of the requirement of creating structures which maintain the “stateness” of the created state while at the same time managing the almost perpetual desire amongst union partners to safeguard their identities and autonomy. Moreover, the complexity of the state tends to be manifested by the struggle between centrifugal and centripetal forces inherent in any union state. In fact, examining the arc of life for every union between once autonomous individual states inevitably reveals struggles between such forces. In that regard, the union structure tends to be the epicentre around which politics of a given country revolves. The complexity of the state differs from one country to another and even within the same country from one epoch to another and largely depends on the nature of political forces at play in space and time. Thus, the union structure may change from time to time due to

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change in the balance of forces in the theatre of politics. In any case, a sustainable structure for the union is the one which is a product of general consensus of major political forces in the country.

The United Republic of Tanzania (henceforth referred to as URT) is a union between the former Republic of Tanganyika and the then People's Republic of Zanzibar. Like all unions, the structure of this Union has been at the centerstage of national politics in Tanzania since the formation of the URT in 1964. The URT has faced some turbulent waves since its formation, largely due to the struggle between proponents of either a two or a three government structure. Other voices, albeit relatively minute, have demanded for a one government system. Also, the ongoing constitution making process towards its reformation has unleashed forces pushing for a confederation or *Muungano wa Mkataba* in Kiswahili as an alternative union structure.

This article interrogates this heated debate on the suitable structure for the URT. It starts by highlighting some theoretical insights on the structure of the union. It then proceeds by arguing and showing that the one government system and confederate structures are untenable and non-viable alternatives structures for Tanzania. The article then scrutinises the existing two-government system and some "nuisances" it faces. Finally, the article discusses the federation and its potential as a more viable and realistic option for grappling with the challenges presently confronting the Union of Tanzania.

Theoretical Frameworks

The union of two or more countries may take the form of a unitary system, a federation or a confederation. However, these traditional typologies of unions may vary from one case to another depending on the political forces at play. Moreover, polities which are products of unions of independent states may have some common features although each one may be unique from the other due to the uniqueness of political forces in every context. This section highlights the basic features of traditional typologies of union polities that facilitate the understanding of the subsequent discussion on Tanzania's intricate union in the article.

Unitary system

One way of structuring the state which emerges from a union of states is to form one government with all governmental powers centralised. This form of Union is normatively referred to as the unitary system. In this system, the

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central government may devolve some powers to sub-national governments made up of formerly independent states, if at all they are allowed to continue existing under the unitary system. Moreover, in a unitary system, the union government retains the power to revoke powers conferred upon the governments of the union partners, and hence in expressive terms can be described thusly:

...when we label a polity unitary we are saying that constitutional authority—sovereignty—is vested in the central (national) government, not that all decision-making occurs at the centre or all money is raised or spent at the centre. The crucial distinction is that power delegated from national to sub-national bodies in a unitary polity may be retrieved (Gerring et. al, 2006: 3).

Dikshit (1971: 99) observed that due to the power of the union government to retrieve powers of sub-national governments as it deems fit, in unitary system, sub-national governments “exist at the mercy of the central government.” The United Kingdom (of Great Britain and Northern Ireland) is a classic example of a unitary system. The Acts of the Union united England and Wales in 1536, England and Scotland in 1707 to form Great Britain. In 1801, Great Britain (England, Wales and Scotland) united with Northern Ireland to form the United Kingdom of Great Britain and Northern Ireland (The Central Intelligence Agency, 2007). Northern Ireland, first obtained its self-rule in 1920, through Government of Ireland Act of 1920 which partitioned Ireland into Southern Ireland (later named as Irish Republic) and Northern Ireland. Northern Ireland self-government was abolished by the Union Government in 1973 due to conflicts usually referred to as “The Troubles” (Munck, 1992). The abolition was in effect until 1998 when laws were enacted for the establishment of self-governments in Scotland, Wales and Northern Ireland. The respective laws that made this possible are the Scotland Act of 1998, the Government of Wales Act of 1998, the Government of Wales Act of 2006, and the Northern Ireland Act of 1998. These changes allowed Scotland to have its own self-government after about 300 years, and Wales for the first time in its history and Northern Ireland after 26 years of direct rule from the central government (Laffin and Thomas, 1999). England, the major partner, has never had self-government and, just like Tanganyika (whose name has been superseded by Tanzania with the addition of the qualifier mainland under the present government system) its affairs are governed by the union government.

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The governments of Wales, Scotland and Northern Ireland have only devolved powers, meaning that, ultimately governmental powers reside in the Union Government. In that regard, the union government may revoke such powers as it deems fit. As it was noted earlier, the Union Government abolished the government of Northern Ireland in 1973, which then was the only self-government in the United Kingdom. The abolishment, which was sustained up to 1998, was renewed in 2002 until 2007 when the union government suspended on its fiat the Northern Ireland government due to failure of the peace process.

The one government system has the advantage of enhancing efficiency in the business of governing the state as only one supreme power in all affairs of the state exists. Having one government system may enable the country to avoid inefficiencies and quagmires which tend to be associated with the existence of multiple centres of autonomous powers at different levels of the state. The system may also facilitate a uniform development process due to the possibility of implementing homogenous policies throughout the country. Moreover, the system has the potential of promoting the unity of the country and eliminating political squabbles which often rear their ugly heads when different autonomous centres of powers exist in various layers of the state. Crosskey quoted in Vose (1955) observes that the unitary system allows the development of uniform laws in the country and it is efficient due to a few limitations.

On the other hand, the unitary system tends to be imbued with internal strife due to inherent struggles between centrifugal and centripetal forces in the union. Such troubles may particularly arise in heterogeneous polities. The nationalistic movements in Scotland, Northern Ireland, and Wales, which led to self-governments, may be attributed to such a Union structure. There is also a rise of nationalism in England for the demand of self-government in what is usually referred to as the Lothian Question after the 1970s debate in the UK Parliament initiated by a Member of Parliament (MP) from West Lothian questioning the rationality for non-English MPs' participation in the legislation process for England's non-union matters (since those from Scotland, Wales and Northern Ireland had their own). The question for England's self-government is "unlikely to disappear" (Laffin and Thomas, 1999: 98). In fact, the absence of the government of England may be a source of future union troubles. In addition, attempts to promote unity and conformity with the dictates of the centralised authority make the unitary system "impose [...] rigidities and unnecessary regulation" of policies

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throughout the state (Bristow, 1985). Such rigidity denies union partners flexibility in dealing with peculiar socio-economic needs. In this regard, a unitary system can hardly work without causing conflicts in a situation where union partners fiercely cling on to their peculiar identities and cherish the need to have powers bestowed upon them to deal with local issues on their own volition.

Federation

A federation is a system of government, on the other hand, in which power is constitutionally divided between two levels of the government with each level having constitutional guarantees against usurping of such powers by the other level of government. In this regard, a federal polity is a polar opposite of a unitary system of government. In a federation, “there is some guarantee (even though merely a statement in the constitution) of the autonomy of each government in its own sphere” (William Riker quoted in Gerring et al, 2006: 3). Under such an arrangement, sovereign powers are vested in the hands of the Union government. Other residual powers are divided between the Union government and union partners. Conferring of constitutional powers upon constituent parts of the unions stems from the realisation of the need to maintain unity in diversity. In other words, the adoption of the federal system rests “on the psychology of the peoples of the political units involved desiring union without desiring unity” (Dicey quoted in Dikshit, 1971: 101). Federal systems of government allow union partners to address desires, demands and felt-needs of their respective peoples. It is for such reasons that the federal systems became a preferred system in the US, India, Canada, Switzerland and Germany, particularly as a means of handling conflicts amongst diverse groups. Moreover, a federal system tends to be more democratic as it brings power closer to the people to cherish their destiny as they deem fit in view of their aspirations and particular needs of the localities. In this regard, federations function as a safety valve in situations where there are strong forces for the realisation of unique cultural and political desires of some groups (Dodd, 1999). Federal structure thus may be helpful in averting tensions between the central government and union partners.

Nevertheless, a federal system, like all types of unions, is not devoid of problems. First, the federal arrangement may promote nationalistic feelings amongst union partners’ residents, erode national cohesion and unity and may simplify activities of secessionist movements, in addition to fomenting instability. Thus, if not properly instituted, the federal system may lead to the

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disintegration of the Union itself. However, it must be borne in mind that the federation in itself cannot be the cause of secessionism. In most cases, such movements are produced by factors such as contested citizenship amongst the people of a country which tend to lead to discriminate use of power in favour of or against particular groups in the country. Second, the existence of a dual system of government may lead to “nightmare of inefficiency” in decision-making as exemplified by an “agonising slow manner” in which laws are made in the US as compared to the UK (Vose, 1955: 449). The slow manner in the decision-making processes usually stems from existence of several veto points in the country’s governance system.

Confederation

The third type of union system is a confederation, which is a coming together of countries without necessarily losing their sovereignty. It is a loose union of sovereign states through an international treaty designed to deal with issues of common interests. It differs from other forms of unions in that union partners retain the right to pull out of the union whenever they deem it fit. This is possible because such a union confers upon the composite body functional powers on defined matters without necessarily conferring upon it sovereign powers (Dodd, 1999). In a confederation, the union partners, under this setup “agree to the joint exercise of power in a number of defined areas of governmental activity as, for instance, in trade or defence andpolicies are made and decisions are taken jointly in these areas, unanimity is the natural rule.” Moreover, in a confederation “secession is a right” (Dodd, 1999: 5).

A confederation has been criticized as “a system so radically vicious and unsound that “an entire change in its leading figures and characters” is required (Hamilton in Federalist Papers quoted by Song, 2000: 181). Indeed, the system is unsound in addressing most political questions due to lack of central sovereign authority. Moreover, the tendency by sovereign states to jealously protect their sovereignty puts the union in perpetual danger of collapsing. In fact, failure to reach a consensus on a decision may move a union partner to pull out of the union and hence the demise of the union.

Union Structure: Choices for Tanzania

The debate on the union structure for the URT has reached a critical point in the ongoing constitution reform process, which may ultimately strengthen or break the Union. In fact, the constitution-making process revolves around the union question, particularly its structure. The Constitutional Review

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Commission (CRC) has clarified that the views on the union structure formed part of the dominant views when it was collecting views of the people for the re-making of the country's constitution [Tume ya Mabadiliko ya Katiba, 2013(c)]. Out of the 47,820 people who gave their views to the CRC on the union structure through different channels, 19,351 were from the Zanzibar archipelago and 26,625 from Tanzania Mainland. Their views diversely zeroed on the following union structures: One government system, two government systems, a federation of three governments, a confederate union and a federation of four government systems [Tume ya Mabadiliko ya Katiba, 2013(c): 67].

Offering his take on the suitable structure for the Union, Mwalimu Nyerere, the country's first president, noted: "The structure of the Union, although we do not want to be frequently changed, is a matter of policy, not something ordained by God" (Nyerere, 1995: 48). Though different people can have different views on the best structure for the Union, what matters ultimately is the general consensus amongst the people regarding the path for the nation-state to adopt in the Constitution of the country.

One Government System

From the views gathered by the CRC on the people's union structure preferences on Tanzania Mainland, 3,564 (13.4 %) supported the adoption of a one government system whereas only 25 people (0.1%) from Zanzibar saw this as a viable option [Tume ya Mabadiliko ya Katiba, 2013(c): 67]. Those in support of the one government structure want the Government of Zanzibar to be relinquished for the country to remain with only one government for the whole country – the Government of the United Republic of Tanzania [Tume ya Mabadiliko ya Katiba, 2013(a): 6]. Notably, this is not the first time the issue of the one government system was being touted as an alternative system for Tanzania. In fact, this proposal is as old as the 1964 union itself. Mwalimu Julius Nyerere, one of the founders of the Union, stated that the option – viable as it may sound – was not adopted because:

A Union with One Government would give the impression that Tanganyika [the bigger fish] had swallowed Zanzibar [the smaller fish]. We had been fighting for the Independence and Unity of Africa; we did not want it to be thought, even erroneously, that we were introducing a new form of imperialism! For that reason I opposed a One Government Structure (Nyerere, 1995: 34).

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The perceived swallowing of Zanzibar by Tanganyika would come due to immense asymmetry of the two union partners. During the time of the Union in 1964, Tanganyika had 12 million people and Zanzibar had 300, 000 people (Nyerere, 1995: 34). Currently, Tanzania Mainland has about 44 million people whereas Zanzibar has only about 1.3 million people. This population and even spatial gap reinforces the need to protect the identity of Zanzibar in the Union, hence making the one government system an unattractive proposition for the united republic. Indeed, the facts on the ground indicate that Zanzibaris cherish their identity and jealously guard it. Moreover, centralisation of power is increasingly becoming out of fashion in the world where most people are inclined towards having governmental powers close to them so that they can participate effectively in governmental processes. In this regard, the one government system is not viable for the URT.

Confederation

Whereas support for the one government system from Zanzibar was understandably almost non-existent in the views collected by the CRC, support for the confederate structure was supported by the majority in the archipelago. Indeed, 11,657(60.2%) of the Zanzibaris indicated that they preferred a confederate structure. Conversely, only 264 (1.0%) from the Tanzania Mainland preferred this type of union [Tume ya Mabadiliko ya Katiba, 2013(c): 67]. The proponents of this type of union defined it as a system where union partners become sovereign countries united by each other through an international treaty. In a confederation, Zanzibar and Tanganyika could become sovereign countries with a right to walk out of the union if they deemed it necessary [Tume ya Mabadiliko ya Katiba, 2013(a): 6-8, 11; Baraza la Katiba Zanzibar, 2012]. Issa Shivji, a renowned law Professor in Tanzania, in his public lecture delivered in Kiswahili on the draft constitution, called for the formation of two sovereign states within the union: “...nilipendekeza dola kamili mbili, la Zanzibar na la Muungano” (Shivji, 2013: 40). [Trans. by author]: I had suggested the formation of two sovereign states, that of Zanzibar and that of the Union. He similarly made such a presentation before the Zanzibar House of Representatives. In the latter presentation, which he delivered on 17 January 2013, Shivji offered a pictographic presentation which indicated that the two sovereign states with equal status can be united only by a few matters of common interests. Under this formulation, Shivji seems to equate the Union Government with the Tanganyika Government. Under his formulation, Shivji though suggests a two government system; the sovereign nature of the two proposed governments underscored the significance of the confederate union structure

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in his formulation. Unlike the present setup, where there are two governments, one for Zanzibar (with no sovereign powers) and the Union government for the URT (with sovereign powers), under the proposed structure there would be two sovereign states in the union. The proposed structure is thus a confederation par excellence.

Shivji (2013) defended and justified confederacy by arguing for the right to self-determination of the people from the partner countries, especially to avoid what he termed as the suffocation of Zanzibar by the Union (Shivji, 2013: 8). Shivji's stand is not surprising as he once declared the Union illegal from both the international law and constitutional perspectives due to what he termed as lack of ratification of the union treaty by Zanzibar (Shivji, 2008). Subsequently, Shivji's claim has been used as an inspiration and an intellectual authority by advocates of a confederation union. However, the ratification argument is largely immaterial since in essence ratification or not by conduct and practical acquiescence, Zanzibaris and Tanganyikans have accepted the legitimacy and validity of the Union. In fact, the facts on the ground show that after the Union in 1964, citizens of the former republics of Tanganyika and Zanzibar became citizens of Tanzania and enjoyed citizens' rights and submitted themselves to the sovereign powers of the United Republic of Tanzania; they sought and acquired leadership positions in the Union Government, and they were loyal to the URT. Hence, by their conduct and acquiescence Zanzibaris, like their counterparts in the former Tanganyika, have generally accepted the Union as a legitimate fact of their national and political life. It is on this ground that federated states which were brought into a union by conquest such as Bavaria in the Federal Republic of Germany or those which were purchased such as Louisiana in the United States (from the French) do not demand for a union treaty for them to feel that they are bona fide members of their respective unions.

The drive towards a confederation gained monumental status in Zanzibar due to the propaganda of Zanzibar autonomy activists, here-in-after referred to as Zanzibar autonomists, who sought to arouse the rage of Zanzibaris against the Union by creating the impression that the Union is solely responsible for all of Zanzibar economic and political problems. The propaganda particularly from Zanzibar autonomists dubbed as *wanauamsho* in Kiswahili succeeded in fanning anger among a sizeable portion of Zanzibaris against the Union and, hence, the calls for the dismemberment of the union to pave way for a confederate structure.

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Thus, the prerequisite for adopting this form of the confederate union structure is dismemberment of the state. This implies that opting for this structure under this line of thought concomitantly entails also grappling with high socio-economic and political costs which inevitably come with splintering the state into fragments. After all, there is no guarantee that resultant states with their bestowed sovereignty will retain the union idea. In fact, the divorce process may be so painful that former union partners may turn out to be foes. This form of Union under these circumstances appears unsuitable for Tanzania.

Two Government Structure and the “Nuisances” (*kero*) of the Union

The Union between Tanganyika and Zanzibar is the only surviving political experiment which modified the boundaries arbitrarily drawn at the 1884-85 Berlin Conference during the infamous “Scramble for Africa” among European powers. The Articles of the Union were drafted by the then Attorney General of Tanganyika, Roland Brown, in the mould of the Union of Great Britain and Northern Ireland. The Articles of the Union were ratified through the Union of Tanganyika and Zanzibar Act of 1964 for Tanganyika and the Union of Zanzibar and Tanganyika Law of 1964 for Zanzibar. Section 5 of these laws provides for the existence of the Union Government which would, at the same time, deal with matters of Tanzania Mainland and Zanzibar and Zanzibar Government with exclusive authority on matters specific to Zanzibar, or non-union matters. Such a position was also adopted by the Interim Constitution of the URT. The two-government system was maintained in the Constitution of the United Republic of Tanzania of 1977.

This two government system, however, does not directly fall into the three ideal types of union structures discussed earlier. The union of Tanganyika and Zanzibar is a hybrid of unitary and federal union systems. The Union when viewed from the standpoint of Tanganyika, which is now simply referred to as Tanzania Mainland, this amounts to a unitary union since what could have been a government for Tanganyika is invisible under Union government, which takes care of all Union matters plus those for the Mainland. From the Zanzibar standpoint, on the other hand, the union has the face of a federation since the Constitution allows it to have a separate government with powers to decide on and administer non-union matters with the Union Government restricted from assuming such powers without prior constitutional changes. The ruling Chama cha Mapinduzi (CCM) or

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Revolutionary Party clarified the two government structure in the following words:

“...kwa upande wa Tanzania Visiwani, Serikali ya Muungano inayo madaraka juu ya mambo yale tu yanayoitwa ya Muungano, ambayo yameorodheshwa katika Katiba. Lakini kwa upande wa Tanzania Bara, Serikali ya Muungano inayo madaraka kamili kuhusu mambo yote. Hakuna jambo hata moja la kiserikali ambalo liko nje ya madaraka ya Serikali ya Muungano. Kwa hiyo, kwa mujibu wa katiba, Wizara zote zilizoko Tanzania Bara ni Wizara za Muungano, na Mawaziri wake wote ni mawaziri wa Muungano, ndiyo maana waziri anaweza kuteuliwa kutoka upande wowote wa Muungano kuongoza Wizara yoyote ile iliyoko Tanzania Bara, kwa sababu zote ni Wizara za Muungano. Kwa hiyo, kwa kuwa Tanzania Bara ilikwisha kukabidhi mambo yake yote kwa Serikali ya Muungano, maana halisi ya kuwa na orodha ya mambo ya Muungano katika Katiba ni kuonyesha mambo ya Serikali ya Zanzibar yaliyokabidhiwa kwa Serikali ya Muungano; na maana halisi ya kuongeza mambo mengine katika orodha hiyo, kama ambavyo tumekuzwa tukifanya mara kwa mara, ni kukabidhi mambo zaidi ya Serikali ya Zanzibar kwa Serikali ya Muungano” (CCM, 1983: 16-7).

[Trans. by author]...in relation to Tanzania Isles, the Union Government has powers only on matters listed and designated in the Constitution as union matters but for Tanzania Mainland, the Union Government has full mandate on all matters. There is not even a single governmental matter which is not within the mandate of the Union Government. In that regard, according to the Constitution, all ministries in Tanzania Mainland are Union Ministries and all its Ministers are Union Ministers. As such, a minister can be appointed from any part of the Union to serve in any ministry in Tanzania Mainland as all ministries are Union ministries. Thus, because Tanzania Mainland had surrendered all governmental matters to the Union Government, the real meaning of having the list of Union matters in the Constitution is to indicate matters surrendered by the Zanzibar Government to the Union Government; and the real meaning of increasing Union matters to that list, as we have been doing from time to time, is to bestow upon the Union Government more matters of the Zanzibar Government.

The above excerpt means that the Union Government only has powers on all Union matters for both Zanzibar and Tanzania Mainland but the full mandate for all Mainland governmental issues. Moreover, the passage

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reveals that the Union matters are those surrendered by Zanzibar to the Union Government since all matters pertaining to Tanzania Mainland are union matters (but not all matters relating to Zanzibar). Thus, all the ministries from Tanzania Mainland are Union Ministries and for that reason a minister can be appointed from any part of the Union to lead any ministry on Tanzania Mainland. For example, at the time of writing this article the Minister for Health, which is not one of the union ministerial portfolios, Dr. Hussein Mwinyi, was an MP from Zanzibar. Increasing union matters, therefore, actually means ceding more of Zanzibar matters to the Union Government.

On the one hand, the two government system, as presently constructed, has succeeded in maintaining the union for half a century. On the other hand, the union has also been beset by some turbulent waves, mostly emanating from its structure. In fact, as expected, the CRC has established complaints from both parts of the union. The CRC listed 43 areas of union “nuisances” from both parts of the Union. These areas include the distribution of resources and liabilities between the Union Government and the Revolutionary Government of Zanzibar, the identity of Union Partners [Tume ya Mabadiliko ya Katiba, 2013(b): 31-5]. These union nuisances have also previously been identified by the Nyalali Commission, Kisanga Committee, Shellukindo Committee and the Parliament of the URT, which were all mandated by the URT to find a lasting solution to the vexing union nuisances (literally called *Kero za Muungano*). The union nuisances from the Zanzibar point of view include:-

- 1) The perception that the Tanganyika government has turned itself into Tanzania and Tanganyikans are now Tanzanians whereas Zanzibaris have remained Zanzibaris. As the Nyalali Commission reports, “*kumejengeka fikra potofu kuwa iliyokuwa Tanganyika ndiyo sasa Tanzania, na waliokuwa Watanganyika ndio Watanzania, na Wazanzibari wamebaki kuwa Wazanzibari*” (Jamhuri ya Muungano wa Tanzania, 1991: 117). [Trans. by author]: There are misconceptions that what had been Tanganyika is now Tanzania and those who were Tanganyikans have become Tanzanians, and the Zanzibaris have remained as Zanzibaris. The sentiment circulating among Zanzibaris is that Tanganyikans have annexed Zanzibar. It is such sentiments that prompted Zanzibar to declare itself unilaterally a state by amending its 1984 Constitution in 2010.

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- 2) Also, Zanzibaris complain that the Union Government uses its (union) sovereign powers for the benefit of Tanganyikans to foster non-union matters at the expense of Zanzibaris. Towards this end, the Zanzibaris tend to believe that their resources in the union government are being used for the benefit of Tanganyikans at the expense of Zanzibaris. The Kisanga Committee reported their sentiments thusly:-

Kwa kuwa Serikali ya Jamhuri ya Muungano ndiyo yenye Mamlaka ya Utaifa (Sovereignty), imekabidhiwa mamlaka juu ya shughuli za Mambo ya Muungano. Aidha, Serikali ya Muungano imekabidhiwa mamlaka juu ya shughuli za Tanzania Bara za mambo yasiyo ya Muungano. Shughuli zote hizo zinafanywa sambamba. Kwa sababu hiyo, imejengeka hisia miongoni mwa Watanzania hasa wa Zanzibar, kwamba Serikali ya Jamhuri ya Muungano ni Serikali ya Tanzania Bara inayotumia "Sovereignty" kwa manufaa ya Tanzania Bara kwa shughuli ambazo siyo za Muungano (Jamhuri ya Muungano wa Tanzania, 1999: 45). [Trans. by author]: As the Union Government is the one with sovereignty, it has been given the authority to oversee Union matters. Moreover, the Union government has been given the mandate over non-Union issues. However, both Union and non-Union activities are executed simultaneously by the same government. In consequence, there are evolving sentiments among Zanzibaris that the Union Government is (ab)using that sovereignty to foster non-Union matters.

- 3) The Union Government does not provide Zanzibar with an adequate share of resources from the Union institutions and union activities. The Union also limits the ability of Zanzibar to engage in international co-operation affairs to promote its interests.
- 4) Increase in Union matters has muzzled the autonomy of Zanzibar and suppresses its identity.

On Tanzania Mainland, on the other hand, the vexing union issues include the following:-

- 1) Zanzibar has not only retained its autonomy and identity but also been encroaching upon the powers of the Union Government. For example, in the 2010 amendment of its Constitution of 1984, Zanzibar

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declared itself a country and usurped powers of the union president of dividing the archipelago into regions. On the other hand, Tanganyika has both vanished from political map and lost its historical identity.

- 2) Although the Parliament is also composed of members from Zanzibar, its legislations cannot be enforced in Zanzibar unless they are ratified by the House of Representatives. As article 132 of the Zanzibar Constitution affirms:-

132(1) Hakuna Sheria yoyote itakayopitishwa na Bunge la Muungano ambayo itatumika Zanzibar mpaka Sheria hiyo iwe ni kwa ajili ya mambo ya Muungano tu na ipitishwe kulingana na maelekezo yaliyo chini ya vifungu vya Katiba ya Jamhuri ya Muungano. [Trans. by author]: No law passed by the Union Parliament will apply to Zanzibar serve for Union matters until after it has been ratified by the Zanzibar House of Representatives. (2) Sheria kama hiyo lazima ipelekwe mbele ya Baraza la Wawakilishi na Waziri anayehusika. [Trans. by author]: This law must be tabled before the House of Representative by the minister responsible for it to gain legitimacy in Zanzibar.

- 3) Complaints that Zanzibaris enjoy full citizens' rights on Tanzania Mainland whereas their counterparts from Tanzania Mainland have no such rights in Zanzibar, where they are often treated as outsiders (*Waabara*). The common complaint is that people from Tanzania Mainland do not have the right to own land in Zanzibar whereas their counterparts have the right to do so on Tanzania Mainland.
- 4) The Zanzibar Government has been refusing appointments of public servants from Tanzania Mainland to head Union Government institutions in Zanzibar. It has also been refusing transfer of public servants in the Union Government from Tanzania Mainland to Zanzibar and those from Zanzibar to be transferred to Tanzania Mainland.
- 5) Zanzibar exploits Tanzania Mainland by not contributing to the cost of running the Union Government. It is claimed that Zanzibaris have the right to be employed in public service in non-union

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ministries and governmental organisations whereas people from Tanzania Mainland are denied such rights in Zanzibar. Moreover, Mainlanders complain that Zanzibaris are over-represented in Union bodies such as the Parliament when they do not contribute to the cost of running the Union (Jamhuri ya Muungano wa Tanzania, 1991: 120).

- 6) The current Union structure has given powers to Zanzibaris to assume leadership positions and participate in making decisions on matters pertaining to Tanzania Mainland whereas people from Tanzania Mainland do not enjoy such rights. The Group of 55 Parliamentarians, who demanded in an unprecedented manner for the re-establishment of the Tanganyika Government, observed that the present two-government structure has given veto powers to Zanzibar on Tanzania Mainland matters since all fundamental decisions on issues pertaining to Tanzania Mainland must take cognisance of the potential reaction from Zanzibar. On the other hand, Tanzania Mainland is not even supposed to know what Zanzibar decides for itself. (Bunge la Jamhuri ya Muungano wa Tanzania, 1993).

The impasse on the Union reached a boiling point in 1984 because of what was termed as the destabilisation of the volatile political climate in Zanzibar, which resulted in the sacking of the then Zanzibar President and the Union First Vice-President, Aboud Jumbe. The other troubles emerged about a decade later in 1993 when a group of 55 Parliamentarians on Mainland Tanzania managed to convince the Union Parliament to endorse their proposal agitating for the formation of the Tanganyika Government within the Union.

Such seemingly intractable problems associated with the union are not a phenomenon endemic to Tanzania as they are a common feature in practically all unions; however when they threaten to torpedo the union of Tanzania itself, there is a need to diagnose the root-cause of the problems and provide an adequate remedy. The formation of the Nyalali Commission, the Kisanga Committee and the most recent one, the CRC, are all part of the Tanzania government's attempt to find a lasting solution to the thorny issues undermining the Union. All these agencies identified the two government system as the root-cause of the Union problems in Tanzania. In that regard, viability of the union under the two government system may be daunting

unless a serious political reengineering is done to address major concerns from both parts of the union.

One Country, Two Systems

The two government system could take a different shape from what exists in Tanzania today. The nine members, who offered a dissenting opinion in the Nyalali Commission report, recommended the adoption of a two government structure in the mould of Denmark and Greenland and the Faroe Islands, Finland and Aland islands (Jamhuri ya Muungano wa Tanzania, 1991: ii). These countries have adopted what has come to be known as “one country two systems.” Other countries which use this system include China and Macau, Taiwan and Hong Kong, New Zealand and Cook Islands. The “one country two systems” policy is a constitutional principle which allows smaller union partners to maintain economic and political systems different from those of their major partners in the Union. In this regard, the Union deals with core sovereign issues such as defence and foreign affairs.

The adoption of this system could allow Zanzibar to maintain its identity and pursue economic and political aspirations pertinent to addressing its unique challenges. Moreover, the system may remove many of the troubles rocking the Union boat. However, generally, this system is more relevant to territories that are dependent on their major partners. As the Union of between Zanzibar and Tanzania Mainland is touted as one of partners with equal status, this system would be a source of intrigue as it would cast the Zanzibar archipelago as dependent on its major partner, hence diluting its power and clout vis-à-vis the Mainland. Adopting this system, therefore, would require union partners to recognise their asymmetrical relations. The smaller partner in the Union in this regard has to accept its ‘smallness’ and the major partner to respect the status of its smaller partner and accept the responsibility of being a ‘bigger partner.’

Choosing Federalism

The Union troubles have influenced change in the political chemistry of the country, which in turn calls for the paradigm change in the structure of the union. Scrutiny of the Union’s problems indicates that the root-cause is its structure; hence the need to review it and ensure it fits the emerging demands. No wonder 61.3 % of the people who gave their views on the union structure from Tanzania Mainland recommended the adoption of a federal system as a solution to the union troubles. This recommendation was

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only supported by 5.0% of Zanzibaris. Conversely, more Zanzibaris (60.2%) supported a confederation than Mainlanders (a paltry 1.0%) [Tume ya Mabadiliko ya Katiba, 2013(c): 67]. The people, who recommended for adoption of federal system believe that, within the union, their demands can best be realised in a federal system. Their demands included the need for each union partner to have autonomy to deal with non-union matters, existence of a fair distribution of resources, ability to deal with union nuisances associated with the current structure, a government with adequate powers and mandates for each union partner to handle issues and remove confusion and ambiguities which come with the two-government system [Tume ya Mabadiliko ya Katiba, 2013(a): 7-10]. In fact, the recommendation for a three government federation system has been received positively by Zanzibar autonomists such as Maalim Seif Sharrif Hamad who had shown preference for a confederate system. The federation of three government system appears to be winning over even those who would rather support the two government system. For example, the Zanzibar House of Representatives recommended the establishment of a separate jurisdiction for Zanzibar and for Tanganyika with clear demarcation of powers and limitations [Jamhuri ya Muungano wa Tanzania, 2013(c):13].

The CRC observed that addressing the Union's structural problems would require a re-engineering of its structure. Hence the CRC's draft constitution recommends the adoption of a federal system as a remedial measure. Its proposed Article 60 of the draft constitution seeks to establish a federation with three governments—the Government of the United Republic of Tanzania, the Revolutionary Government of Zanzibar and the Government of Tanganyika. The CRC is convinced that the continuation of the two government system would require more than cosmetic repairs [Tume ya Mabadiliko ya Katiba, 2013(d): 12]. The federal solution was also recommended by the Nyalali Commission and the Kisanga Committee. Under this system, each of the union partners cedes some powers, especially those which relate with sovereignty to the Federal Government, while retaining other residual powers. A federal structure has prospects in sustaining the Union due to the following reasons:-

First, a federal system would remove the fear among Zanzibaris of being swallowed by the Union. Underscoring this view, the Nyalali Commission states:-

Manufaa makubwa tuliyoyaona ni kwamba mabadiliko hayo yataondosha hofu ya kumezwa Zanzibar, kwa kuweka waziwazi usawa wa nchi mbili

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zilizoungana kila moja ikiwa na serikali yake, halafu kunakuwa na serikali pekee ya shirikisho ambayo majukumu yake yatakuwa yameanishwa waziwazi kabisa (Jamhuri ya Muungano wa Tanzania, 1991: 120). [Trans. by author]: The significant change we envisage the federal government system would invalidate the fear of Zanzibar being swallowed by making the equality of the two union partners transparent, each with its own government with clearly defined responsibilities.

Second, a federal structure represents a clear and logical distribution of powers and resources between union partners. This clarity removes confusion inherent in the two government system on demarcation regarding the union government's dual mandates of dealing with union as well as Tanzania Mainland affairs.

Third, clarity on the union structure can lead to clarity on the cost of the union and contribution and benefits of each union partner. Doing so would dissuade Zanzibaris from believing that they were paying for undue costs of the Union government in handling union matters, and even non union matters. The clarity of the structure may also help to dismiss the false image that the Union government is synonymous with the Tanganyika government, hence the misconception that Zanzibar has been swallowed by Tanganyika. In addition, the structure could discourage those Mainlanders who believe that Zanzibaris benefit more from the union than Mainlanders. In that regard, a federal system is likely to contribute to building confidence among union partners into the Union and hence consolidate and make it more sustainable (Jamhuri ya Muungano wa Tanzania, 1991: 121).

On the other hand, there are fears associated with the CRC recommended three-government system. First, there are some people who fear that adopting a federal system implies splitting the state. Proponents of this view fail to realise that even now, Tanzania has a *de facto* three government system. The first is the Government of the URT, which is headed by the President of the United Republic. This government has mandate on a few matters known as union matters, mostly sovereign issues such as defence and security, foreign and home affairs. When the Parliament convenes to deal with issues it does so in its capacity as the Parliament of the URT. This Government has its judiciary which is the Court of Appeal of the United Republic. The second government is the government of Zanzibar under the President of Zanzibar. Zanzibar has its own judiciary and legislature known

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as the House of Representatives. The third government is the government of Tanzania Mainland which operates under the aegis of the Prime Minister. Although the Prime Minister is referred to as the Prime Minister of the URT, he has no jurisdiction in Zanzibar. In reality, the Prime Minister is the head of government for Tanzania Mainland. In addition, like Zanzibar, Tanzania Mainland has its own judiciary composed of the High Court and all its subordinate courts. The jurisdiction of the High Court and its subordinate courts is only limited to Tanzania Mainland. Moreover, the Parliament of the URT, though composed of members from Zanzibar is a *de facto* the Parliament for Tanzania Mainland. Apart from union matters, the parliament has no jurisdiction on matters of Zanzibar. Because union matters are few, the parliament spends most of its time and resources on matters pertaining to Tanzania Mainland. In essence, the proposed three-tier government under the federal system is already embedded in the present seemingly two government structure system but with more clearly defined rules of engagement, responsibilities and mandate.

Second, it is feared that the adoption of a federal structure may increase the cost of running the union. This argument is spurious as it pegs administrative costs to the number of governments. According to this view, one government system is cheaper than a two-government system which is also cheaper than the three-government system. However, the cost of running the government machinery depends much on how the government is organised and structured. The composition of the state informs unit costs involved in running the government machinery such as the number of ministries, administrative regions and districts as well as the extent of fiscal accountability. Thus, there are no guarantees that a one-government system will have fewer MPs and cabinet ministers than a federation with three or even more governments. In fact, the US which is a federation of fifty states has a leaner government than Tanzania with a two government system but with a bloated government. In any case, even the slight increase in the cost of running a government is nothing compared to the advantages a federal system has to sustain the Union (Jamhuri ya Muungano wa Tanzania, 1991). More significantly, the federal system would also help to disentangle non-union matters for Tanganyika from the Union Government under the present problematic two-government structure. Furthermore, the number of ministries and departments do not necessarily have to increase under the federal government system.

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Third, there are fears that the adoption of a federal system could lead to the disintegration of the Union itself. This fear is pegged on the assumption that there will be power struggle between the Union partners as separate entities and the Union Government. Experience from countries which have lived with a federal system for centuries such as the US and Switzerland indicate that the constitutional division of powers between the union government and governments of union partners requires adhering to the principles of the rule of law and punishment against infringing the Constitution by all persons, especially leaders of the country from both the Union government and government of union partners. In fact, Tanzania has since 1964 been abiding by this cardinal rule, hence the survival of the union to-date. On the whole, no union in any structure can survive when some people can violate the constitution of the country with impunity.

In addition, unless the union is imposed against the general will of the people, there is no correlation between the type of union structure and the disintegration of the state. For example, the unitary system in Somalia contributed to the disintegration of the Somali state despite the Somali people sharing a linguistic, cultural and religious heritage. In Somalia, power was centralised at the centre and since the system did not provide for opportunity for the clans to meet their local needs, they took arms against the central government, actions which culminated in the total disintegration of the state. In addition, the United Arab Republic which was a union between Egypt and Syria was a unitary system and lasted only from 1958 to 1961 when Syria seceded from it.

Fourth, opponents of a federal system argue that the adoption of the system can make the union government lose its legitimacy by shading most of its powers to the governments of union partners. Advocates of this view also envision the erosion of legitimacy as many people would identify themselves as either Tanganyikans or Zanzibaris rather than as Tanzanians. Here there are two issues to be sorted out. One, people can have multiple identities without losing their national identity. People in federal states such as India, the US, Germany and Belgium identify themselves both with their federated states and with their nationalities. Moreover, Tanzanians from Zanzibar even under the present setup identify themselves both as Zanzibaris and Tanzanians. In such cases, no one can claim that their loyalty to their country is diluted by their having multiple identities. In fact, almost all Tanzanians identify themselves with their ethnic groups as well as their other identities including their religious affiliation. In short, having multiple identities in a

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multi-cultural and multi-ethnic and multi-religious nation such as Tanzania does not in itself pose a threat to nation-hood, let alone national identity. Two, it is fallacious to link legitimacy with the structure of the union. In any case, the legitimacy of the government depends on the performance of a respective government in fulfilling its responsibilities. With the proposed federal system in the draft constitution, the core function of the Union government will be to maintain peace and security of the country. This core function of any state has a direct bearing on the daily lives of the people. The union government can derive its legitimacy from the way its functions just as the governments of the union partners will derive their legitimacy from performance of their given functions such as the provision of health services and education. In addition, this is how the present union government derives its legitimacy in Zanzibar since its powers are limited to sovereign functions such as maintaining peace and security.

Fifth, there are also fears that the union government would be subordinate to its partners by depending on resources from them. This argument highlights the need for ensuring existence of a reliable source of revenue for the Union government, usually a dedicated tax source. No country in the world has ever survived without a reliable source of tax revenue. It is in this regard, most federations have special federal taxes.

Sixth, there are also fears that the union government would be weaker in power than either of the partner government. Proponents of this argument appear to equate the powers of the union government with a number of matters under its jurisdictions. The implication is that the more matters are placed under the union government, the more powers it has and the stronger it becomes. For this argument to be valid the United States has to be the weakest nation on earth since it has only a few union matters; on the contrary, it is the strongest union government on earth. Those who fear weakening the union government in this regard end up underscoring the significance of vesting adequate powers in the union government to address the challenges likely to threaten the wellbeing of the union and sustain the federal structure. After all, no union can survive on goodwill alone. Indeed, no union of whatever structure can survive in the midst of appeasing defaulters and detractors of the constitution of the country. Thus, the centre must have adequate authority to hold the country together. Moreover, the union must create institutions which unite the people for both parties of the union and address tensions and safeguard the stability of the country. Sovereign powers must be held at the centre since splitting sovereign

functions amounts to splintering the state and, ultimately, allowing union partners to pull out of the Union. The draft constitution for Tanzania has placed sovereign powers in the union government as its schedule affirms to avoid sowing the seeds that would eventually undermine the union it is supposed to strengthen through its proposed three-tier federal structure.

Conclusion

The Union's structure is a vital factor for the survival of a Union; however it is important to also note that there is "no best union structure" as unions differ and depend on a given political context. More significantly, the structure of the union should reflect the solemn resolve of the people through general consensus on how power should be organised in the state. Any imposition of the union structure in the constitution contrary to the general will of the people risks rendering the union irrelevant to them and inviting a constitutional crisis for the country. In this regard, any dogmatic view on the structure of the union may lead to a crisis which may shake the very foundations of that union. The existing political currents and balance of political forces in Tanzania today appear to suggest that the current two-government system requires a major surgery for the Union forged since 1964 to be sustainable and appealing to members of both partners. However, given the country's intricate political context, especially the power configuration in the country, such a major surgery implies careful consideration since some of the options, as discussed, are unviable. In this regard, the federal government solution, though it may not be transcendent, provides both a pragmatic suitable solution to the union problems and intellectually-sound model for handling such problems in a complex state such as Tanzania. Moreover, a federal system is consistent with a global wave toward decentralisation of powers. In fact, this wave prompted one of the oldest unitary systems in the world—the United Kingdom—to start reversing its drive toward centralisation of power in 1998 in favour of giving self-governing powers to its union partners after centuries. The clarity of the system and prospects for unity in diversity stands a better chance of resolving union nuisances and the troubles currently dogging the two-government structure in Tanzania.

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