

## **Revisiting the Plight of the Union: Why Still Embracing Pragmatism and Political Expediency?**

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### **Abstract**

*One issue that has featured prominently since the beginning of the Tanzanian constitutional making process has been the 'Union question'. Dozens of written works have in the past dealt with this theme but the current article focuses on two volumes, which have in recent years re-energized the Union debate. The analysis reveals that even the position of a leading legal scholar, Issa G. Shivji, has been changing overtime on the structure of the Union. It appears analytical stance on this issue has also been informed by pragmatism and political expediency in the same way as the politicians who have been put on spot. The argument of prohibitive costs of running a fully-fledged federation has incessantly been featuring in the Union debate. Reliable figures are yet to be unveiled on the actual costs of running the Union. Meanwhile, some of the academicians have jumped into the politicians' rhetoric ship just to instil the fear of the unknown.*

### **Introduction**

As this article is being drafted, the United Republic of Tanzania, which came into existence fifty years ago, is going through a very important but also delicate phase in its history. It is a very critical phase because for the first time there is a great possibility that Tanzanians of all walks of life will be involved in determining the type as well as the content of a new constitution. We say "great possibility" because the constitutional making process is yet to be finalised. It has however reached a crucial stage whereby a Constituent Assembly is set to conduct potentially intense deliberations on a second draft constitution ahead of a national-wide referendum. It is also a delicate period for the entire country as we are really not sure of the final outcome of the whole process: whether delegates gathered in Dodoma (with the selection of two-hundred and one delegates receiving at best mixed reactions from the ordinary citizens, not least

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a quizzical response from a sizeable section of the academia) will amicably scrutinize the draft tabled before them without tearing it apart to the extent that the endorsed draft appears as a completely new document. It is plausible to predict that if the latter scenario becomes a reality, then it is very likely to invite the wrath of Tanzanians who turned up in large numbers to meet members of the Constitutional Review Commission and who thronged *Mabaraza ya Katiba* (Constitution Forums) to air their opinions on a draft constitution. We need not to be so pessimistic but at the same time we ought to be wary of a situation whereby Tanzanians lose appetite to go out and vote in a scheduled referendum simply because they feel deceived and dejected.

One issue that has featured prominently since the beginning of the constitutional making process has been the “Union question”. As rightly remarked by a renowned law scholar, the Union (between Tanganyika and Zanzibar) is the soul of our constitution or any constitutional making process in our country since it accommodates important issues of a democratic and social system. The structure of the union is currently narrowly being viewed as something to do with the numerical number of governments. It is an issue, sensitive as it is, that has to do with our democratic dispensation. We accordingly speak of the “Union question” to embrace all pertinent issues surrounding the beleaguered Union, ranging from motivating factors that led to its creation; constitutionalism, democracy and the legitimacy question; to the envisaged structure itself and proposed alternatives, among others. Dozens of written works have in the past dealt with this theme but the current article will narrow its focus on a few which have in recent years re-energized the Union debate. These are a 2008 background study by Issa G. Shiviji titled *Pan-Africanism or Pragmatism? Lessons of Tanganyika-Zanzibar Union*, and a book titled *Muungano wa Tanzania: Mafanikio, Matatizo yake na Jinsi ya Kuuimarisha* (*The Union of Tanzania: Successes, Failures and the Way to Consolidate It*) which is a compilation of papers presented during a 2006 workshop in Zanzibar. We supplement this article with a critical review of a very recent lecture delivered at the iconic Nkrumah Hall of the University of Dar es Salaam that not only drew the attention of the academia but also further stimulated the debate on the Union question. The lecture delivered by the then Mwalimu Nyerere Professorial Chair in Pan-African Studies, and which appears in a 43-page booklet, has deliberately been included in an attempt to establish whether there is consistency in the author’s argument on the union question overtime. For easy follow up, the article is organized into thematic sections in which case analysis of the aforementioned publications does not follow a particular order. In the next section we commence our review by revisiting the vastly debated

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'pull and push' factors that influenced the speedy creation of the union; the roles and motives of the erstwhile leading personalities who have continued to receive accolades for bringing Tanzania into the world map of independent nations; ratification of the Articles of Union, and the list of union matters.

#### **Formation and Continued Existence of the Union**

Shivji asserts in his 2008 volume that the Tanganyika-Zanzibar Union has often been presented as an example of Pan-African unity. He, however, finds the Union short of Pan-African ethos whose cornerstones were African nationalism, anti-imperialism and democracy.<sup>1</sup> To him, the Zanzibar revolution of 1964 threatened the survival of the Tanganyika government under Mwalimu Nyerere who was at the time undergoing "a deep sense of insecurity" and severe pressure from Western governments to check the spread of communism in the neighbouring twin islands. As can be deduced from the following passage Nyerere had very little room to manoeuvre after the collapse the East African Federation project:

The Mutiny<sup>2</sup> together with the earlier events in the Congo culminating in the murder of Patrice Lumumba and the assassination of President Olympio of Togo left Nyerere with a deep sense of insecurity. Survival became his major concern, at least during those early years of independence.<sup>3</sup> The Zanzibar revolution further endangered the survival of the mainland government, as it threatened to invite Cold War conflict to its doorstep... Nyerere came under severe pressure from Western governments as they relentlessly cajoled him to do something about communism next door. As a nationalist, he probably resented being told by the former colonial power what to do, though as a politician, he must have realised that he had little choice...<sup>4</sup>

Citing Cold War fears as part of the factors that played a significant role in bringing the Union has been vehemently denied by the country's long serving ruling party leadership (Chama cha Mapinduzi-CCM) and one of the prominent legal scholars, Harrison Mwakyembe. In the REDET 2007 volume referred to above, Harrison Mwakyembe and Jaka Mwambi<sup>5</sup> dismissed the Cold War factor for influencing the creation of the Tanganyika-Zanzibar Union.<sup>6</sup> In separate chapters, they pose more or less a similar question: If the Cold War influenced the formation of the Union, how come the Union did not collapse with the end of the Cold War in the 1990s?<sup>7</sup> Mwakyembe further inquired, if the CIA (the American Central Intelligence Agency) had power of foresight, why could they not thwart the (Zanzibar) revolution?<sup>8</sup> He in fact chided scholars who associate

the Union with the Cold War as brainwashed by what is referred to as the *black face myth*.<sup>9</sup>

We find the line of argument advanced by Mwakyembe and Mwambi very weak. One cannot dismiss external factors simply because the Union outlasted the Cold War. As it has come to be uncovered by Shivji and other analysts the Union has survived for some fifty years owing to some internal mechanisms orchestrated by the Union partners themselves but these alone do not discount other historical facts. Political structures, whether inter-governmental or not, assume life cycles of their own depending on both intramural and extraneous factors which might not have essentially been the causal influences. It will surely sound absurd to state that German unification will disintegrate if the Cold War starts afresh today! The end of the Cold War cannot sufficiently be used to explain why East and West German reunited. There is definitely more to the story symbolised by the tearing down of the Berlin Wall. It follows that Mwakyembe and Mwambi's rejection altogether of the security dimension of the creation of the Union would require a more convincing argument than a mere rhetorical question.

The roles and real motives of the two architects of the Union have also come under close scrutiny in the aforementioned publications. Shivji daringly treaded through uncharted waters in an attempt to trace the role played by Mwalimu Nyerere and his Isles counterpart, Karume. He categorically states that the two founders of the Union "prepared in great secrecy the Articles of the Union, without consulting members of the revolutionary council"<sup>10</sup>. The author goes on to present Nyerere as a leader who was caught in a difficult situation: between becoming a strong Tanzanian nationalist and a Pan-Africanist nationalist. In his summation, Shivji notes that Nyerere sacrificed his long-established Pan-Africanist principles in the interest of the Union. Nyerere became so keenly obsessed to maintain the Union at any cost "so much so that he failed to acknowledge the continued tension between Zanzibarian and Tanganyikan 'nationalisms' and abiding hostility between cultural and racial nationalisms in Zanzibar."<sup>11</sup>

According to Shivji, the intensity of such obsession further clouded Nyerere's reading of the "pollution of the political atmosphere" during Jumbe's administration, which he could not view as an expression of Zanzibar's territorial nationalism. Nyerere, "Instead of addressing the nationalist message *democratically*, he got rid of the messenger. Jumbe was forced to resign."<sup>12</sup> To Shivji who has compiled his study with an advantage of hindsight, this was a

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missed opportunity to exercise democracy in addressing a Union crisis. Nonetheless, it is the author here who is missing the point. The way Jumbe's case was dealt with within the only party at the time was CCM's and Nyerereists' version of democracy. To this group, the act of summoning the flag-bearer of Zanzibar's territorial nationalist claims and giving him an opportunity to respond to 'treasonous charges' was an act of natural justice enough to qualify as an exercise of "internal party democracy". As the author recounts, Jumbe's own defence struck his political death knell. We also support the view that perhaps the situation could have been handled differently but to Nyerere and those who surrounded him at the time, it was the preferred if not the only option, which helped them to peacefully manage the crisis and without forgetting the fact that they were dealing with, as interpreted in their own terms, a "treason case"!

It has for sometime been argued that both people of Tanganyika and Zanzibar were consulted in the process of creating the Union between the two countries. At least this is the position of the ruling elite. In the REDET<sup>13</sup> volume, for instance, the then President of Zanzibar, Amani Abeid Karume, maintains that the Union received endorsement of the people and was duly ratified by both sides of the Union.<sup>14</sup> Mwambi holds the same position.<sup>15</sup> As alluded to earlier, Shivji maintains that even members of the Revolutionary Council were kept in the dark on the Articles of the Union. In his study Shivji did not find evidence to show that the consent of the people was sought in constituting the new state.<sup>16</sup> Mgongo-Fimbo concludes that ordinary people were not consulted in drafting the constitution of the United Republic of Tanzania.<sup>17</sup> Struggling to present concrete evidence to support the claim that the creation of the Union had people's consent Mwambi turns to the narration by the late Sheikh Thabit Kombo Jecha. Mwambi cites a passage from Kombo's chronicle, which merits a direct quotation:

...Kwa Tanganyika na Zanzibar ahadi ya Muungano ni ahadi ya wanachama wenyewe waliyokuwa wameitoa katika mikutano yao yote...Kwa hiyo, kauli ya Muungano ilikuwa kauli ya umma wa Zanzibar, na kauli ya Afro-Shirazi, iliyokuwa ikitawala wakati huo, ni ridhaa ya watu wenyewe wa Tanganyika na Zanzibar. Hiyo ndiyo sababu mara baada ya Mapinduzi ikaja hamu kubwa, hasa kwa upande wa Zanzibar, kukamilisha ndoto ya kuungana. Na Sheikh Karume alikuwa hodari wa kupima mahitajio ya wananchi, akaamua kukamilisha Muungano kwa niaba yao.<sup>18</sup> [*Trans. by author*]: For Tanganyika and Zanzibar the Union is a promise pronounced by

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members themselves in their meetings...Therefore, the Union was a declaration of Zanzibar people, of Afro-Shirazi, which was ruling at the time, it was the consent of the people of Tanganyika and Zanzibar. That is the reason after the revolution there was a huge desire, especially from Zanzibar, to realize the Union dream. And Sheikh Karume was skilful in assessing peoples' demands, he decided to conclude the Union on their behalf.

The foregoing passage does not provide the slightest hint of what kind of meetings were held and who participated and whether they were under the auspices of the Revolutionary government or the Afro-Shirazi Party (ASP). A casual interpretation of the passage is that it reflects the thinking of a party cadre that Afro-Shirazi spoke for all Zanzibaris since it was the de facto ruling party. We cannot say with great certainty after reading this passage that the consent of the Zanzibar people was granted. In fact, the last sentence runs quite contrary to Mwambi's position. Literally translated as, "...And Sheikh Karume was skilful in assessing peoples' demands, *he decided to conclude the Union on their behalf*".<sup>19</sup> Well, Karume acted on behalf of the people, it could be presumed, but we are not told how their demands were articulated, aggregated and assessed. We are sure of one thing, and that is the process leading to the final act, i.e. signing of the Articles of Union, was an *exclusive show*.

Another issue that has sparked the Union debate is the list of Union matters. Mgongo-Fimbo poses an important question on this: *Is the increase in the list of union matters strengthening or diminishing Zanzibar's autonomy?*<sup>20</sup> Shivji provides an answer to this question. He holds that increasing the original eleven items<sup>21</sup> on the list of Union matters to twenty-two has actually eroded the autonomy of Zanzibar. In his opinion, this practice has incrementally absorbed Zanzibar, but again without genuine public involvement. Reacting to the first constitutional draft which cut down the list to seven items, interestingly Shivji queries the inclusion of human rights in the draft constitution and the omission of the police in the list of Union matters. His argument is that human rights is not a Union matter and the federal constitution does not reign supreme over constituent units. Henceforth, indeed it will be awkward and there will be uncertainty if the respective constitutions of the constituent states lack human rights clauses or have them but are written differently and thus give different interpretations from provisions of the federal constitution.<sup>22</sup>

On the internal security issue, the first constitutional draft struck off the police from the list of Union matters. Our reading of Shivji's position on this exclusion

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is that it is not ideal, if not possible, to have more than one police force with more or less similar mandates and operating in the same areas of jurisdiction. This is tantamount to inviting inter-forces conflicts. Borrowing a leaf from other countries with federal and state police departments, such as the United States, one can see merit in his argument. The Federal Bureau of Investigation (FBI) has frequently been on collision course with states' police departments. But this does not obscure the fact that the FBI and the NYPD (New York Police Department) have clearly stipulated lines of operations.<sup>23</sup> The fact that the former may occasionally and forcefully encroach the latter's jurisdiction in the name of 'national security' is an entirely different matter. The existence of both agencies is essential in their own right. We still believe a convenient framework to suit our context can still be worked out. Mindful of this, and may be after having read Shivji's critical appraisal of the first draft, the police has still been left out of the list of Union matters and still has a separate clause in the second constitutional draft.<sup>24</sup> The draft thus establishes one Police Force for the envisaged Federal Republic.<sup>25</sup> Let us now turn to the question of the Union structure which has aroused great excitement and mixed emotions across a wide section of Tanzanians.

### **The Union Structure**

Shivji's position on the sensitive issue of the Union structure has been changing overtime. Firstly, it appears his analytical stance on this issue has also been influenced by pragmatism in the same way as the politicians he has put on spot on the formation and maintenance of the Union. Amusingly, writing in the early 1990s Shivji classified the Tanganyika-Zanzibar constitutional set-up as federal.<sup>26</sup> This classification was based on the argument that the federal principle is omnipresent in the current Union.<sup>27</sup> This had previously been objected by Haroub Othman for lack of visible federal features in the current set up.<sup>28</sup> Puzzlingly, in his recent reaction to the first Constitutional draft Shivji strongly contests the proposition for a three-tier federal set-up on account that the Articles of Union and the Acts of Union provided for *two governments* which were united in one Sovereign Republic.<sup>29</sup> Even with a very crude legal knowledge one cannot help but wonder how can we describe the current Union as a federal framework of two governments and go further to chastise members of the CRC for proposing a federal structure but of three governments?<sup>30</sup> Secondly, Shivji (of 2013) posits that he is firmly convinced that it was not the intention of the Warioba Commission (hereafter referred to as the Commission),<sup>31</sup> which he says was not short of experienced and distinguished lawyers, to accord legal status to the Articles of Union.<sup>32</sup> In his view, this is actually what article 1(3) of the Draft Constitution does.<sup>33</sup> Nonetheless, in his

2008 masterpiece, Shivji clarifies the legal status of the Articles of Union as follows:

The Articles of Union became part of the domestic law of the two constituent units through their ratifying laws, that is, the Acts of Union. (No doubt already raised, in the case of Zanzibar, we can only say a **purported** law). The legal status of the Acts of Union is that of a constitution because they *constituted* the Union and gave power to the President to amend and modify the pre-existing Constitution of Tanganyika to accommodate the union and extend the laws of Tanganyika to Zanzibar on union matters.<sup>34</sup>

It is this latter position that Shivji pronounces with insistence that it has been judicially noticed by the Zanzibar High Court and the High Court of Tanzania at Dar es Salaam.<sup>35</sup> Yet he is taking the Commission to task for merely restating a historical fact. Surely, something must have influenced the distinguished law specialist to take different analytical positions on the Union debate in the last two decades. We at least needed to know what informed these contradictory views especially on the structure of the Union. This is ostensibly missing in his 2008 and 2013 writings.

In the REDET volume, the topic of the union structure has extensively been dealt by Samuel Mushi.<sup>36</sup> Mushi explores pros and cons of mainly three forms of the union set-up, namely one government, two governments and three governments. In a nutshell, he echoes Nyerere's justification for adopting the current two government structure: the fear of the larger Tanganyika swallowing or annexing the Isles because of huge differences in size, among other aspects, without heaping on the "former the burden of running two Governments of comparable weight.<sup>37</sup> Mushi speaks euphemistically of a large fish swallowing small ones.<sup>38</sup> He, however, makes an important point that union structures undergo modifications as situations change and as long as stakeholders demand reforms. In Mushi's viewpoint, no union can last by holding on to the original agreement which no longer offers benefits.<sup>39</sup>

Conversely, his argument that the current two-government structure is responsible for relatively reducing nationalistic forces, which have led to secessionist movements elsewhere, cannot pass without scrutiny. This is highly objectionable given the rapid resurgence of territorial, racial and cultural nationalisms in the country as attested by Shivji's historical-legal treatise.<sup>40</sup> Furthermore, incidences of secessions in the cited cases (Eritrea, East Timor and



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Indonesia) were attributed to factors other than the set-up of governing structures, which unfortunately are not referred to in Mushi's chapter.

The argument of prohibitive costs of running a fully-fledged three-tier federal government has incessantly been featuring in several debates on the Union. In the current list of reviewed publications, Shivji, Mushi, and Mwambi all discourage a three-government set-up on the ground of cost implications. But none (even among local politicians who have invested their time and energy to trumpet this 'song') has provided a compelling case that, for instance, clearly desegregates what were the initial costs during the inception of the Union and to date when over twenty-two sectoral issues have found their way into the list of Union Matters. The current constitutional draft proposes a cut down of the Union matters to seven but it does not necessarily imply there will be a massive relief in running the Union budget. Reliable figures are yet to be unveiled on the actual costs of running the current structure.<sup>41</sup> Academicians have jumped into the politicians' ship just to instil the fear of the unknown. We at least deserve to be furnished with verified statistical facts on this issue. On his part Hamad (in the REDET volume) maintains that in the current two-government set-up there are in fact three budget allocations namely budget for the Revolutionary Government of Zanzibar for non-union matters, budget for the Union government for Union matters, and another budget quota for Tanganyika for non-union matters.<sup>42</sup> Thus, without misreading his interpretation of the current practice, we are already operating on a three-way financial formula that suggests a third government is tenable and manageable.

It follows, thus, instead of fixing our minds on unwarranted fear, it is imperative upon us not only to argue with facts but also explore experiences on this issue of sharing costs and revenue in a federal set-up. Within Sub-Saharan Africa, Nigeria, Ethiopia and South Africa are considered to be functioning constitutional federal systems.<sup>43</sup> For the sake of space, we will only draw a leaf albeit briefly from Nigeria. This West African country entrenched in its constitution a *Federation Account* that constituted deposits of revenues collected by the federal government. Specific constitutional procedures were set to cater for constituent states from which such resources were extracted. The procedures set the minimum requirement of 13% of the revenue accruable to the Federation Account from natural resources extracted from any state should be returned to that state.<sup>44</sup>

This arrangement was called 'derivation principle'. Truly, it is not known to what extent the principle has been implemented. But suffice to say at this

juncture that there are always alternative routes to a solution and that the optimal decision is the one made after careful assessment of all other options. The two governments, however, will act swiftly to experts' recommended formulas if they match their pre-determined positions. This is a disturbing trend, which is not peculiar to Tanzania. African policy-makers will not be moved to make compromises on controversies regarding distribution of revenues even after receiving informed opinion from an external expert whom they commissioned to clear the dispute in the first place. Several scholars, Shivji included, who have been critical of the present Union structure, have at least pondered a way out of the current mess by proposing some alternatives. Some of those proposals are the subject of the next section.

#### **An Alternative Structure?**

In contemplating an alternative structure, one will observe that scholars and analysts alike have recently been dancing to the politicians' tunes, and have thus been made to believe that we can successfully address the plight of the Union by just reverting to the original list of Union matters whilst retaining the current two government structure. Shivji has come up with an interesting but equally perplexing proposal which he thinks suits the country's unique context. He recommends two fully autonomous governments of Zanzibar and the Union.<sup>45</sup> The Union parliament will have bicameral legislative bodies, i.e. *Baraza la Wananchi* (Peoples' Council) and *Baraza la Nchi* (National Council).<sup>46</sup> He further proposes adoption of three lists- one on *Union matters*, another on *Concurrent matters* and lastly on what he calls *Joint interest*.

A cursory assessment of the foregoing proposal is that it may appear as a novel solution to the current conundrum, but with all due respect, it does not offer much comfort and assurances that the suggested arrangement will not be a source of more frictions and endless complaints. For instance, the process of creating three separate lists is taken for granted. Given the emerging anti-pan Africanist ethos in Tanzania, which he adeptly documented in his 2008 volume, the process of even agreeing on the lists may just be deadlocked before it even starts. We are effortlessly made to believe that consensus on the lists will be a straight-forward affair and accordingly a long-lasting panacea to the Union question. Strangely, in his concluding remarks during the 2013 lecture, Shivji slated the Constitutional Commission for proposing a federal structure on the account that what has come to be designated as 'union problems' (*kero za muungano*) will persist and this time around will flow from both sides of the Union! Does he mean that in the fifty years of Union's turbulent existence the *kero za muungano* have emanated from one side only? Indeed, we cannot assume

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that one side of the Union has been behaving like a 'prodigal son', and thus, it has supposedly become a constant nuisance to the other. Interviews with just a few Members of the Union Parliament from Mainland Tanzania and Members of the Zanzibar House of Representatives will point to the fact that both sides of the Union have treaded accusations of unconstitutionality and past opinion survey revealed that both sides are at fault for the current state of affairs.<sup>47</sup>

Haroub Othman, another accomplished legal expert, once proposed a principle of separation of personnel in relation to operations of parliament when dealing with bills on non-union matters in and for Mainland Tanzania which is very much akin to the one in use in the state of Bremen of Federal Republic of Germany.<sup>48</sup> According to Haule, the Bremen union set-up, which has the same type of Union structure, has not generated serious conflicts calling the constitutional order into question. Since the structure of Bremen is touted as the closest in set-up to that of Tanzania then it is important to revisit its features albeit briefly:

The state of Bremen is composed of two constituent parts namely the city of Bremen and Bremerhaven. The latter is much smaller in size and population than the former. Under the Constitution of the State of Bremen of 1947 (*Landesverfassung der Freien Hansestadt Bremen*) legislative power is vested in the state Parliament which consists of 100 members. According to Bremen election law (*Bremisches Wahlgesetz*) 80 members of the State Parliament have to be elected from the City of Bremen and the remaining 20 members from Bremerhaven. The smaller constituent part - Bremerhaven has its own constitution (*Verfassung für die Stadt Bremerhaven*) and their legislature deals with matters in and for Bremerhaven. But the other constituent part, the City of Bremen, does not have a separate legislature. The same legislature for the State of Bremen becomes the legislature for the city of Bremen when it sits without the 20 parliamentarians from Bremerhaven. The same preservation of Bremerhaven's autonomy exists with regard to the other organs of government, and the same careful demarcation of the roles of the centre when it acts for the State of Bremen as a whole or for the City of Bremen alone.<sup>49</sup>

It ought to be noted here that we are not making a conclusion that the Bremen model is the best for Tanzania and therefore it should be adopted in its totality. We have highlighted the Bremen model to make a point that there are several alternative structures, some very similar to and others fundamentally different from ours. The choice of which model or structure to adopt shall have to be made after reaching a national consensus. Unfortunately, no interest has been

shown to pursue this route. We have, however, tasked the Commission with able and reputable members to undertake the task of collecting, analysing peoples' views on the same and accordingly propose an ideal structure in the new constitution. It is our strong belief that all possible alternatives (including Shivji's bicameral Union Parliament, Othman's principle of separation of personnel in relation to the Parliament, the Bremen model, and others) were all considered. Had many of Tanzanians who expressed their views on the Union issue favoured retaining a two-governments structure then the Commission could have been on the spot for 'dismissing' the majority view. We need not to shy away from this fundamental question: can the Bremen model and other 'alternative structures' proposed above help us to resolve many, if not all, of the Union problems we are facing currently? Against the backdrop of the aforementioned territorial, regional, and racial nationalisms coupled with unrivalled obsession for power on a wide cross-section of the political elite, we are afraid the answer is not in the affirmative.

#### **Conflict Resolution**

As rightly intimated by Mwambi, it is a social principle that when people come together in a union, disagreements between them are inevitable.<sup>50</sup> Any union of people is bound to face difficulties of some sort. Once again Shivji has taken a swipe at the proposed Inter-governmental Relations and Coordination Commission (*Tume ya Uhusiano na Uratibu wa Serikali*) which appears in Article 102(1) of the first Draft Constitution.<sup>51</sup> To him, the Commission whose main objective will be to oversee and ensure a pleasant atmosphere exists for conducting relations and resolving conflicts between the three governments is not fundamentally different from the Shelukindo's and previous committees on Union problems.<sup>52</sup> Shivji focuses his critical analysis of this Commission on such areas as its composition, chair of the commission, political equality, and consensual decision-making, among others. In sum, his main argument is that this commission is not an executive organ and henceforth, will be unable to make binding decisions on all interested parties. As rightly commented by Shivji, in the first Constitutional Draft, the Inter-governmental Relations and Coordination Commission appears not to be the first level for resolving conflicts. Disputing parties may refer their case to the Commission or a court. It is also correct to speculate that the Commission's chair will not enjoy a smooth ride in overseeing the operations of this organ in the presence of presidents of Tanganyika and Zanzibar. This is because our leaders care so much about protocol.

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Nevertheless, perhaps having realized such possible challenges the Commission proposed in the second draft that the Union parliament *shall* enact laws (a) to guide the conduct and coordination of relations among the three governments, and (b) to lay out procedures for resolving conflicts.<sup>53</sup> The word 'linaweza', a conditional word which literally means 'may', has deliberately been dropped in the second draft probably to make it imperative upon the Union parliament to enact laws to that effect. But what has the experience been thus far? The Constitution of the United Republic of Tanzania (URT) of 1977, and the amended 2005 edition, provide for a constitutional court whose function would be to resolve all disputes with regard to the interpretation of the constitution and disagreements between the Union government and the Revolutionary government of Zanzibar. The court had never been established even in the aftermath of the 'pollution of the political atmosphere' in Zanzibar in 1984. Mgongo-Fimbo notes that drafters of the URT Constitution were solely thinking about the state at the expense of citizens.<sup>54</sup> He further observes that the constitution does not incorporate (or rather anticipate) three forms of possible disputes, namely: (i) dispute on the interpretation of the constitution between citizens and the Union government or (ii) dispute between citizens and government of Zanzibar or (iii) dispute between citizens of Zanzibar and citizens of Tanzania Mainland.<sup>55</sup> On the issue of conflict resolution, it seems the current constitutional draft also focuses more on the three top structures of the proposed federation rather than the people who give the governments mandate to govern. There is need to anticipate disputes between and among citizens of Zanzibar and Tanganyika and the Union government.

It ought to be recalled that on 14 November 2000, while addressing the Union parliament, the then President Benjamin Mkapa promised to address problems afflicting the Union within sixty days. Whether it was a realistic ambition or a usual sweet talk aimed at drawing attention at the national assembly's podium by appealing to popular sentiments, union problems continue to this date. In separate chapters of the REDET book, Ali Rajabu Juma and Seif S. Hamad mention dozens of committees that were set up at different times in the past in attempt to address various union problems.<sup>56</sup> One cannot help but inquire: have these committees not 'eaten up' a sizeable portion of the national coffers? It is high time that a permanent structure is established to just address all union concerns and the Warioba Commission proposal is a decent starting point.

### **Conclusion**

Shivji has aptly reiterated the fact that the Union question is not to be narrowly viewed as a matter of how many governments we need but a question of

democracy. Along this line of argument Shivji was spot on when he asserted, “A demand for a three-government federation, greater autonomy for Zanzibar, reduction in Union matters, from Zanzibar, was a right to self-determination, a **democratic demand.**”<sup>57</sup> One may now wonder why has he suddenly distanced himself from his early standpoint and instead has become so sceptical of how the Commission came to the conclusion that the majority of those who had aired their views want a federation of three governments? Surely the Commission has records of all opinion gathering public meetings in both print and electronic forms.

In another sentence of the same passage, Shivji writes “...Nyerere, true to his pragmatic approach, wanted the Union to remain a party affair to be resolved within the chambers of the party *in camera* under his control...”<sup>58</sup> Are we witnessing anything markedly different from the afore-mentioned approach, especially with regard to the constitutional development process so far? It is quite clear that the ruling establishment, “confident” of a clear majority in the Constituent Assembly, is keenly set to ‘control the camera’ as implied by Shivji and to see to it that a full-fledged federation becomes a pipe-dream. And that eventuality will certainly go contrary to one of the lessons as pointed by Shivji: *unity must be founded on democracy, must be bottom up rather than statist, top down.*<sup>59</sup> It must be anchored on democracy. When officiating the 2006 REDET workshop on the Union, the then President of Zanzibar Amani Abeid Karume, underscored that constitutional amendments with regard to the Union ought to be undertaken from time to time but with a view to strengthen the Union itself which will in turn bring economic development to its people.<sup>60</sup>

It is one thing to take a very critical stance against the content of the draft constitution, but it is out of bounds and really benefits no one to question intentions of members who were sworn in to serve in the Commission. For someone who was accorded the privilege to meet the Commission as a prominent constitutional expert and being in the group of those who are in the forefront in calling for a national consensus on such sensitive issues as the Union, it is quiet indefensible to attach ‘name tags’ (of those who wanted a *two-governments Union* and those who favoured a *Treaty-based Union*) to members of the constitutional Commission merely because they proposed a formula that does not meet ones’ taste.<sup>61</sup> It is quiet unfair to describe the decision by the Commission on the Union structure as a *compromise*: could it be construed as a prudent move to take a vote on such a sensitive national issue like what transpired inside the Nyalali Commission on the same issue? We bet not!

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## Notes

1. Shivji, Issa G., (2008), *Pan-Africanism or Pragmatism: Lessons of Tanganyika-Zanzibar Union*, Mkuki and Nyota Publishers & OSSREA: Dar es Salaam, p. 241.
2. The army mutiny of January 1964 in Tanganyika.
3. This argument has been advanced by Clapham, Christopher, (1996), *Africa and the International System: The Politics of State Survival*, Cambridge: Cambridge University Press, See chapter one: Fragile States and the International System, p. 3-26.
4. Shivji op. cit. p. 243.
5. By then he was serving as CCM's Deputy Secretary-General.
6. See Mwakyembe, Harrison, (2007), "Mapinduzi na Muungano", in *Muungano wa Tanzania: Mafanikio, Matatizo Yake na Jinsi ya Kuumarisha*, REDET: Dar es Salaam, p. 11- 30; Mwambi, Jaka, (2007), "Kero za Muungano na Utatuzi Wake: Mtazamo wa CCM", in *Muungano wa Tanzania: Mafanikio, Matatizo Yake na Jinsi ya Kuumarisha*, REDET: Dar es Salaam, pp. 144-156.
7. This is an official paraphrased translation of the original Swahili text. The Swahili version read like this: "Jambo la Kuuliza hapa ni, je iwapo vita baridi ndiyo iliyoleta Muungano, mbona vita baridi ilipoisha miaka ya 90, Muungano haukuisha? Kama CIA walikuwa na uwezo huo mkubwa wa kuona mbali, walikuwa wapi basi kuyazuia mapinduzi yasitokee? See Mwakyembe (2007), p. 14.
8. Ibid.
9. To explain this Mwakyembe briefly quotes a literature professor, Diawara, from University of New York, who once wrote: "Every black face is a statement of social imperfection, inferiority, and mimicry that is placed in isolation with an absent whiteness as its ideal opposite." See Mwakyembe (2007), p. 13.
10. Shivji, op. cit. p.243.

11. Ibid. p. 245.
12. Ibid. p. 246
13. REDET stands for Research and Education for Democracy in Tanzania.
14. Karume, Amani A., (2007), "Hotuba ya Rais wa Zanzibar na Mwenyekiti wa Baraza la Mapinduzi", in *Muungano wa Tanzania: Mafanikio, Matatizo Yake na Jinsi ya Kuumarisha*, REDET: Dar es Salaam, p. 5.
15. Mwambi, op. cit. p. 147.
16. Shivji, op. cit. p. 249.
17. Mgongo Fimbo, G., (2007), "Katiba ya Muungano na Uboreshaji wake Katika Miongo Mitatu", in *Muungano wa Tanzania: Mafanikio, Matatizo Yake na Jinsi ya Kuumarisha*, REDET: Dar es Salaam, p. 71.
18. Mdundo, Minael Hossanna (1999), *Masimulizi ya Sheikh Thabiti Kombo Jecha*, Dar es Salaam University Press: Dar es Salaam, p. 138.
19. Italicized to show emphasis.
20. The italicized sentence is a literal translation of the original swahili version which reads: *Je ongezeko la mambo ya muungano linaimarisha au linadhoofisha mamlaka ya Zanzibar?*). See Mgongo-Fimbo, op. cit. p. 63.
21. The original eleven items were i) the Constitution and the Government of the United Republic; ii) External Affairs; iii) Defence; iv) Police; v) Emergency powers; vi) Citizenship; vii) immigration; viii) External trade and borrowing; ix) The public service of the United Republic; x) Income tax, corporation tax, customs and excise; xi) harbours, civil aviation, posts and telegraphs.
22. See Shivji, Issa G. (2013), *Utatanishi na Ukimya katika Rasimu ya Katiba Mpya, Mhadhara wa Kuaga Kigoda cha Mwalimu, Kigoda cha Taaluma cha Mwalimu Nyerere Chuo Kikuu cha Dar es Salaam*, p. 18.
23. The FBI is an intelligence-driven and threat-focused national security organization within the U.S. Department of Justice with both intelligence and law enforcement responsibilities. The FBI shares concurrent jurisdiction with



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the ICE (Immigration and Customs Enforcement). Local (City), County and State police are not subordinate to the FBI. Other law enforcement agencies under the same department are the DEA (Drug Enforcement Administration) and ATF (the Bureau of Alcohol, Tobacco, Firearms and Explosives). For further details see [www.fbi.gov/](http://www.fbi.gov/).

24. See Article 243 of the 2nd Draft Constitution of 31<sup>st</sup> December 2013.
25. Shivji observes sarcastically that “Kama busara ingetumika, basi ‘polisi’ ingewek(w)a katika orodha ya mambo ya muungano na lingeundwa jeshi moja la polisi la Jamhuri ya Muungano”. See Shivji (2013), op. cit. p. 25.
26. Shivji, Issa G., (1990), *The Legal Foundations of the Union*, Dar es Salaam: Dar es Salaam University Press, p. 43.
27. Bjørn Møller describes Tanzania as federation, albeit of a very asymmetrical nature. See Møller (2010), “Pan-Africanism and Federalism, Perspectives on Federalism”, Vol. 2, Issue 3, pp. 46-47.
28. Othman, Haroub, (1993), *Tanzania: The Withering Away of the Union?* Issue No. 3 of Centre for Development Studies, University of Bergen, p. 23.
29. Shivji, (2013), op.cit. p.8.
30. See Shivji (2013), *ibid.* p. 8 & 19.
31. The Commission established for purposes of coordination and collection of public opinions on constitutional review in accordance with article 1(3) of the Constitutional Review Act Cap. 83, 31<sup>st</sup> December 2013 edition.
32. Shivji op. cit., p. 8.
33. The article reads, “Hati ya Makubaliano iliyorejewa 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.” See *Rasimu ya Katiba ya Jamhuri ya Muungano wa Tanzania, Jamhuri ya Muungano wa Tanzania*, Dar es Salaam: Mpiga Chapa Mkuu, 4th June 2013, p. 3.

34. Shivji, (2008), op.cit. p. 95-96. The italics and bold font are not ours. They appear in the original text.
35. Session Case No. 7 of 1999- S.M.Z. v. Machano Khamis Ali and 17 Others, and Civil Case No. 2 of 1995-Mtumwa Said Haji & 49 Others v. The Attorney General, respectively.
36. Mushi, Samuel S., (2007), "Faida na Hasara za Muungano", in *Muungano wa Tanzania: Mafanikio, Matatizo Yake na Jinsi ya Kuumarisha*, REDET: Dar es Salaam, pp. 31-43.
37. See Nyerere, Julius K., (1995), *Our Leadership and the Destiny of Tanzania*, Harare: African Publishing Group, pp. 34-35.
38. Mushi, op. cit. p. 33.
39. The original swahili statement reads "...miundo ya muungano hufanyiwa marekebisho kadri hali zinavobadilika na kadri wadau wanavyodai mabadiliko. Hakuna muungano unaoweza kuendelea kuishi kwa kushikilia makubaliano ya awali iwapo hayana masilahi". See Mushi, ibid. p. 35.
40. Shivji, (2008), op.cit.
41. According to Maalim Seif Sherrif Hamad, a joint financial commission was set up to prepare a report on a workable formular for making contributions to the Union budget. The joint commission in turn commissioned Price Waterhouse Coopers. The report has not been made public. See Hamad, Seif S., (2007), "Kero za Muungano na Jinsi ya Kuzitatua: Mtazamo wa CUF", in *Muungano wa Tanzania: Mafanikio, Matatizo Yake na Jinsi ya Kuumarisha*, REDET: Dar es Salaam, pp. 127-143.
42. Ibid.
43. According to the Forum of Federations 24 of the world's 193 countries are federations. These are Argentina, Australia, Austria, Belgium, Bosnia and Herzegovina, Brazil, Canada, The Comoros, Ethiopia, Germany, India, Malaysia, Mexico, Micronesia, Nepal, Nigeria, Pakistan, Russia, St. Kitts and Nevis, South Africa, Spain, Switzerland, United Arab Emirates, the USA and Venezuela. See Forum of Federations, 2010, *Federalism by Country*, at

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[www.forumfed.org/federalism\\_by\\_country/index.php](http://www.forumfed.org/federalism_by_country/index.php), retrieved December 21, 2013.

44. See Burgess, Michael, (2012), *Federalism in Africa: An Essay on the Impacts of Cultural Diversity, Development and Democracy*, The Federal Idea: A Quebec Think Tank on Federalism, p. 15.
45. Shivji, (2013), *op.cit.* p. 40-41.
46. *Ibid.*
47. In the opinion poll that was conducted in September 2004 respondents (with their percentages in parentheses) from both sides of the Tanganyika-Zanzibar Union cited the following as 'Union problems': Existence of the Zanzibar flag (20.4%); multiparty conflicts (5.4%); the Union Structure (4.7%); bad leadership (3.3%); Zanzibar's attempt to secede (2.7%); unfair revenue distribution (0.8%); Tanganyika government (0.8%); Zanzibar's interests (1.4%); the issue of indigenous Zanzibari (4.2%) and others (0.7%). For further details see Killian, Bernadeta & Ndumbaro, Laurean, (2007), "Maoni ya Watanzania Kuhusu Muungano," in *Muungano wa Tanzania: Mafanikio, Matatizo Yake na Jinsi ya Kuumarisha*, REDET: Dar es Salaam, pp. 171-143181. One can also recall the move by the G-55 (i.e. Members of Parliament who signed a motion demanding the establishment of a government of Tanganyika) was an expression by a section of mainland lawmakers of their reservations about the Union. The debate for the 1993/94 budget estimates was tense following Zanzibar decision to join the Organization of Islamic Conference (OIC) and the subsequent Union Parliamentary (Marmo) Enquiry.
48. See Othman, *op. cit.* p. 29.
49. Extracted from Haule, Romuald R., (2006), "Torturing the Union? An Examination of the Union of Tanzania and Its Constitutionality," *ZaöR V* 66, pp. 228.
50. Mwambi, (2007), *op.cit.* p. 147.
51. In the Constitutional Draft II of 31st December 2013, this organ is provided in Articles 109 & 110.

52. Shivji, (2013), op.cit. p. 20-22.
53. In accordance with article 110 (3) of the second draft of December 2013.
54. Mgongo-Fimbo, (2007), op.cit. p. 70-71.
55. Ibid.
56. According to Juma (2007: 98), besides committees, as of 2006 over 80 joint meetings between Union government and the Revolutionary Government of Zanzibar were held. See Juma, Ali R., (2007), "Biashara, Uchumi na Uwekezaji katika Muungano wa Tanzania", in *Muungano wa Tanzania: Mafanikio, Matatizo Yake na Jinsi ya Kuumarisha*, REDET: Dar es Salaam, pp. 91-103; See Hamad (2007), op.cit., pp. 129-130; and also Tume ya Mabadiliko ya Katiba, Utafiti Kuhusu Masuala ya Muungano wa Tanganyika na Zanzibar, Desemba 2013, pp. 34-35.
57. Shivji (2008), op.cit. p.250. Bolded to make emphasis.
58. Ibid.
59. Ibid, p. 252. Italicized for emphasis.
60. Karume, Amani A., (2007), op.cit., p. 6.
61. See Shivji (2013), op.cit. p.37. Professor Issa G. Shivji is one of the eleven experts who was consulted by the Commission on 13th August 2012, see Viambatisho vya Ripoti ya Tume ya Mabadiliko ya Katiba, Desemba 2013.

## **References**

- Burgess, M. 2012. *Federalism in Africa: An Essay on the Impacts of Cultural Diversity, Development and Democracy*, The Federal Idea: A Quebec Think Tank on Federalism.
- Clapham, C. 1996. *Africa and the International System: The Politics of State Survival*, Cambridge: Cambridge University Press.

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- Hamad, S. S. 2007. "Kero za Muungano na Jinsi ya Kuzitatua: Mtazamo wa CUF", in *Muungano wa Tanzania: Mafanikio, Matatizo Yake na Jinsi ya Kuumarisha*, Research and Education for Democracy in Tanzania (REDET): Dar es Salaam.
- Haule, R. R. 2006. "Torturing the Union? An Examination of the Union of Tanzania and Its Constitutionality," *ZaöR V 66*: 215-33.
- Juma, A. R. 2007. "Biashara, Uchumi na Uwekezaji katika Muungano wa Tanzania", in *Muungano wa Tanzania: Mafanikio, Matatizo Yake na Jinsi ya Kuumarisha*, REDET: Dar es Salaam.
- Karume, A. A. 2007. "Hotuba ya Rais wa Zanzibar na Mwenyekiti wa Baraza la Mapinduzi", in *Muungano wa Tanzania: Mafanikio, Matatizo Yake na Jinsi ya Kuumarisha*, REDET: Dar es Salaam.
- Killian, B. and Ndumbaro, L. 2007. "Maoni ya Watanzania Kuhusu Muungano," in *Muungano wa Tanzania: Mafanikio, Matatizo Yake na Jinsi ya Kuumarisha*, REDET: Dar es Salaam.
- Mdundo, M. H. 1999. *Masimulizi ya Sheikh Thabiti Kombo Jecha*, Dar es Salaam: Dar es Salaam University Press.
- Mgongo, F. G. 2007. "Katiba ya Muungano na Uboreshaji wake Katika Miongo Mitatu" in *Muungano wa Tanzania: Mafanikio, Matatizo Yake na Jinsi ya Kuumarisha*, REDET: Dar es Salaam.
- Møller, B. 2010. "Pan-Africanism and Federalism, Perspectives on Federalism", 2(3): 46-47.
- Mushi, S. S. 2007. "Faida na Hasara za Muungano", in *Muungano wa Tanzania: Mafanikio, Matatizo Yake na Jinsi ya Kuumarisha*, REDET: Dar es Salaam.
- Mwakyembe, H. 2007. "Mapinduzi na Muungano", in *Muungano wa Tanzania: Mafanikio, Matatizo Yake na Jinsi ya Kuumarisha*, REDET: Dar es Salaam.
- Mwambi, J. 2007. "Kero za Muungano na Utatuzi Wake: Mtazamo wa CCM", in *Muungano wa Tanzania: Mafanikio, Matatizo Yake na Jinsi ya Kuumarisha*, REDET: Dar es Salaam.

*Revisiting the Plight of the Union*

- Nyerere, J. K. 1995. *Our Leadership and the Destiny of Tanzania*, Harare: African Publishing Group.
- Othman, H. 1993. *Tanzania: The Withering Away of the Union?* Centre for Development Studies, University of Bergen.
- Rasimu ya Katiba ya Jamhuri ya Muungano wa Tanzania, 2013. *Jamhuri ya Muungano wa Tanzania*, Dar es Salaam: Mpiga Chapa Mkuu wa Serikali.
- Shivji, I. G. 1990. *The Legal Foundations of the Union in Tanzania's Union and Zanzibar Constitutions*, Dar es Salaam: Dar es Salaam University Press.
- Shivji, I. G. 2008. *Pan-Africanism or Pragmatism: Lessons of Tanganyika-Zanzibar Union*, Dar es Salaam: Mkuki and Nyota Publishers & OSSREA.
- Shivji, I. G. 2013. *Utatanishi na Ukimya katika Rasimu ya Katiba Mpya*, Mhadhara wa Kuaga Kigoda cha Mwalimu, Kigoda cha Taaluma cha Mwalimu Nyerere Chuo Kikuu cha Dar es Salaam.
- Tume ya Mabadiliko ya Katiba, 2013. *Utafiti Kuhusu Masuala ya Muungano wa Tanganyika na Zanzibar*.