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## INTRODUCTION

The Department of Political Science and Public Administration, University of Dar es Salaam hosted a seminar on the Constitution on June 27-28, 1994. The seminar was held at the Kilimanjaro Hotel and it was attended by 60 participants. The main objective of this seminar was to provide a forum in which the ruling party (CCM) and leading government officials could discuss constitutional and related issues with representatives of opposition parties, influential mass organizations (e.g. workers' and peasants' organizations) influential people in the growing private sector, etc., so as to build the necessary national consensus on the basic parameters and procedures of constitution making during the transition.

A total of seven papers were presented, four in the first day and three in the second. The papers dealt with issues in the following areas:

- The process of Constitution making;
- Separation and combination of powers;
- Merits and demerits of alternative Electoral system;
- Civil and Political Rights in Tanzania;
- The Union of Tanzania;
- The 1984 Zanzibar Constitution; and
- Centre-local Issues in the Process of Governance.

At the end of the second day seminar participants discussed and agreed on the following:

### **On the Process of Constitution Making**

That the current constitution is deficient in some areas and these need to be rectified. There is a need to call for a Constitutional Conference which will include all members of society as represented by such groups as religious, professional, student, labour and others. The consequence of lack of popular participation in the constitution making process is lack of political legitimacy of the constitution itself.

### **On Separation and Combination of Powers**

That the Union Constitution pays lip service to independence of the Judiciary and a preponderance of rules churned out by the National Assembly undermine independence of the Judiciary. That to resolve the problem of separation of powers between and among the three branches of government there is need to look at other forms of government, e.g., parliamentary system. Emphasized that independence of the Judiciary has to go hand in hand with independence of the Executive. This calls also for the Executive to respect the independence of the Court.

### **On Merits and Demerits of Alternative Electoral Systems**

That there are many approaches and mechanisms for modifying electoral systems. Thus, the electoral systems should not be imported and employed in wholesale terms. Observed that the Proportional Representation System (PRS) seem to be more appropriate and appealing than other systems in the African context. It has been applied in Benin, South Africa and has been proposed to be adopted in Zimbabwe. The PRS appear to be relevant to the formation of governments of national unity character. This system, if well employed and managed, tend to minimize possibilities of (i) anarchical and unrest political situations, (ii) one party dominated parliament, and (iii) a tribalized electoral process in general and parliament in particular. The "winner-take-all" system should thus be avoided.

### **On Civil and Political Rights**

That human rights are universal, hence they should be looked at in a wider pers-

pective and with a broad focus. That civil and political rights are pillars of a democratic society. They are significant because they inhibit the abuse and misuse of power and they act as safeguards against authoritarianism. Civil and political rights should therefore be enshrined in the country's constitution rather than including them in a preamble, which is not part of constitutions. In that regard organs and mechanisms should be created to enforce a Bill of Rights. In tandem with a nation-wide educational program should be launched to educate the people about their civil, human and political rights.

### **On the Union of Tanzania**

That the current union and its subsequent arrangements do not have the desired consent of the people. Some of its problems emanate from the fact that the said arrangements are based on historical past realities which do not reflect present conditions. That there are several principles that need to be observed to make any union work and last. These include:

- clarify and specificity of union goals and objectives;
- shared expectations by all parties;- surrender of some sovereignties
- that unions are necessarily political in character, hence presuppose a political will;
- good, open and honest government are essential ingredients;
- popular constitution / contract which define power boundaries; and
- a universally agreed upon model for union structures / arrangements.

That the union, like all human affairs, is a conflict-ridden phenomenon. Therefore, conflict management approaches should be employed which should also take into account other national problems.

### On the 1984 Zanzibar Constitution

That the 1984 Zanzibar Constitution is clearly an improvement over the 1979 constitution. The improvement is in the areas pertaining to Bill of Rights, election of the President of Zanzibar, civil and political rights, and powers of the three branches of government.

Observed that there are power inequalities between the Zanzibar and Union Government; that there is a over concentration of powers in the Executive branch; and that currently the Political Parties Act is not observed as required. It is therefore pertinent to call for further constitutional changes with a view to making the Zanzibar Constitution more responsive to the needs and aspirations of the people.

### On Centre-local issues in the Process of Governance

That institutions of local governance are tightly controlled by the Central government through various provisions, e.g., the Local Government (Finance) Act, 1982. That similar acts were passed by the state-party to consolidate itself and its stranglehold on government and society. There is, therefore, the need to review the centre-local relationship with a view to increasing not only the powers and autonomy of local authorities but also redefine their role, ensure local participation and enhance democracy at the grassroots level.

These observations and recommendations were tabled at the Second State of Politics Conference and were adopted as part and parcel of the resolutions. The State of Politics Conference was held on July 4th — 6th, 1994 at the Kilimanjaro Hotel, Dar es Salaam.

The seven papers form the main part of this issue. In addition to these, there are two more articles by Dr. Athuman Liviga and Dr. Mohabe Nyirabu, both of which are closely related to the chosen theme of the Tanzanian Constitution and the current political changes in the country.

## THE PROCESS OF CONSTITUTION MAKING IN TANZANIA

By

*Hamid Nassoro*

### INTRODUCTION

The debate on the form and content of Tanzania constitution has been on the agenda throughout the three decades of independence, and it seems that the importance and the urgency of the debate tend to increase with time. Up to mid 1980's the pressure for changes in the constitution was largely internal in that the effect of the inadequacies and shortcomings of the constitutional form and content was largely felt by the main actors in the political game — the executives. Thus the change from the Independence Constitution of Tanganyika<sup>1</sup> to the Republican Constitution of 1962 was not only based on the need to sever links with the former colonial masters but also to create the kind of framework within which the regime in power would realise itself.<sup>2</sup> One of the basic intentions was for those in power to strengthen their positions. This was achieved by the establishment of executive presidency and the corresponding emasculation of the Parliament. Likewise, the 1965 constitutional changes<sup>3</sup> were largely a response to internal change in circumstances: the Revolution in Zanzibar and the consequent union between the Revolutionary Government and the Republic of Tanganyika. Similarly internal factors accounted for the enactment of the Constitution of the United Republic of Tanzania 1977 (hereinafter referred to as the 1977); for instance, the merger of the sole political parties Afro Shirazi Party (A.S.P.) and Tanganyika African National Union (TANU).

From then onwards, the influence of external factors on the form and content of constitutional changes has become more noticeable.