



## Party rules: Consolidating power through constitutional reform in Tanzania



The basic law – *katiba* in Swahili – has been the subject of persistent controversy and contestation since the creation of the United Republic of Tanzania in 1964. Despite being presented at the outset with a seemingly unsustainable constitutional settlement, a strong executive has repeatedly deferred and obstructed a radical overhaul of the *katiba*. The imperative to preserve national unity has often been cited as the pretext. Successive presidents have carefully directed popular participation in reform, restricting it to the confines of the dominant party. The recommendations of legal experts have been routinely ignored, resulting in a series of incoherent, disjointed and sometimes even contradictory constitutional amendments that have failed to address the concerns of citizens and the key issue of the distribution of power. This Briefing Note summarises the history of constitutional reform in Tanzania – a history that renders unsurprising the ruling party's steadfast response to contemporary demands for a fundamental overhaul of governance.

### Two governments, one state

Pressure for constitutional reform in Tanzania has been primarily driven by – and repeatedly failed to address – tensions between the nation's two constituent parts, mainland Tanganyika and the Zanzibar Isles. The 1964 Articles of Union provided for a stopgap constitution modelled on that adopted by Tanganyika in 1962, but required the president to initiate a constitutional review and establish a constituent assembly to debate the draft *katiba* within one year.

The Union was governed by an “imperial presidency”, with the executive pre-eminent over the legislature. As part of the ostensibly temporary arrangements, it had a dual-government structure rather than being a fully-fledged federation. Julius Nyerere became president of the new United Republic; as president of Zanzibar, Abeid Karume was automatically vice-president. A national assembly, or *Bunge*, was empowered to enact legislation relating to 11 “Union matters” for both the mainland and the Isles. Zanzibar retained its own executive, legislature, and judicial system for all non-Union matters.

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In March 1965, an act of parliament granted the president discretion to commence the constitutional review “at such times as shall be opportune”, overriding the requirement of the Articles of Union. In the meantime, an interim constitution was adopted that formalised a dual-government but single-party system – led by the Tanganyika African National Union (TANU) on the mainland and the Afro-Shirazi Party (ASP) in Zanzibar. President Nyerere prioritised the

promotion of national unity and self-reliance over a new *katiba*, despite this violating his promise upon forming the Union.

### The party of the revolution, subordination and protest

In March 1974, faced with popular unrest caused by rising food prices, Nyerere tasked TANU and ASP executive committees with incorporating the doctrines of national unity and self-reliance into the interim constitution. This was the first of many episodes of “hesitant and disjointed”<sup>1</sup> constitutional tinkering, characterised by the application of patches to the basic law as a means of perpetuating the political status quo and consolidating power in the hands of a single party.<sup>2</sup> Debate was restricted to a joint party conference.

In June 1975, parliament unanimously approved the amendment despite the fact that it made *Bunge*, the national assembly, subordinate to the executive committees of TANU and ASP. By law, all political activities from then on were to be “conducted by or under the auspices of the party”. The following year, when a national debate on constitutional reform was launched, TANU and ASP local branches ensured that popular participation in the debate was vigilantly overseen and directed. Co-operation between the parties continued at a further joint conference to agree the draft text for a new national constitution and culminated in a merger to form *Chama Cha Mapinduzi* (CCM), the “party of the revolution”.

In March 1977, Nyerere mandated a 20-person CCM committee to act as the constitutional review commission. *Bunge* was transformed into a constituent assembly to endorse the new constitution. Twelve years after the adoption of the interim constitution, the imperial presidency and dual-government within a single-party state were

enshrined in law. In 1979, Zanzibar adopted a first permanent constitution of its own, based on the new Union model. It provided for a partially-elected House of Representatives, reducing the influence of the Revolutionary Council, an appointed cabinet that had ruled by decree since 1964. It also stipulated that the president of Zanzibar be elected, albeit with a single name on the ballot.

In promulgating the new constitution, Zanzibaris lost their bill of rights, which predated the establishment of the Union. By the early 1980s, calls for a new *katiba* and a national bill of rights became increasingly voluble and widespread. Popular interest in human rights was fuelled by the language used to mobilise public opinion during the war with neighbouring Uganda in 1978-9; the invasion was justified after the event by accusations of abuses by the regime of Idi Amin. Tanzania was closely involved with the preparation of the 1981 African (Banjul) Charter on Human and People's Rights. CCM responded by announcing a series of constitutional amendments. Party activists were again deployed to manage popular reactions and debate. The party dictated that the reform process would focus only on the powers of the president; the authority and representative nature of parliament; consolidating the union; and the power of the people.

The legitimacy of the one-party state was openly challenged in some constitutional debates. After Wolfgang Dourado, former attorney general of Zanzibar, questioned the dual-government structure at a seminar organised by the Tanganyika Law Society, he spent 100 days in custody.<sup>3</sup> In January 1985, the constitutional amendments were enacted. The presidential mandate was restricted to two terms and a system of two vice-presidents was introduced, one being the president of Zanzibar and the other the prime minister of Tanzania. Article 47 stipulated that the president of the United Republic and the first vice-president should come from different parts of the Union. The new provisions came into effect in the run-up to a general election, at which Nyerere stood down in favour of his chosen successor, Ali Hassan Mwinyi.

“The main stumbling block – as ever – was the structure of the Union”

### Nyalali's challenge

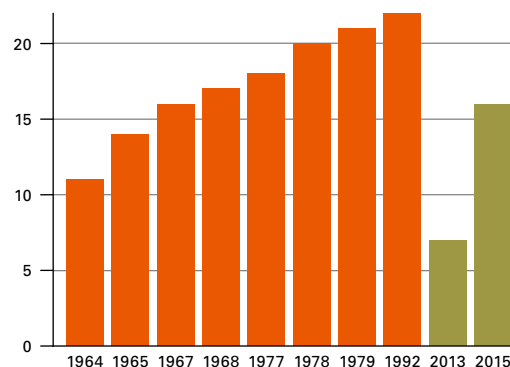
In 1990, the year Nyerere retired as chairman of CCM, he delivered a series of speeches about political change and multi-party democracy that launched a further national debate under the auspices of CCM. President Mwinyi established a steering committee for constitutional reform and a commission, chaired by Chief Justice Francis Nyalali, was charged with assessing how Tanzania might implement multi-party democracy. The commission's consultative meetings, of which more than 1,000 were held nationwide, attracted genuine popular interest and participation.

In his report to the president and CCM leadership,

Nyalali called for a repeal of the 1977 constitution as well as 40 laws identified as being contrary to democratic principles and human rights. He recommended that a constitutional commission draft a new *katiba* with considerably reduced presidential powers; that this document be subject to a free and open public debate and a popular referendum; and that Tanzania embark upon a major public education programme on multi-party politics and democracy. However, parliament was not allowed to debate the Nyalali Commission report, and the executive largely ignored its recommendations. Instead, in February 1992 a CCM conference decided which of Nyalali's proposals were acceptable. Among the laws the party failed to repeal was the 1962 Preventive Detention Act, a favoured tool of the Nyerere state.

Constitutional amendments were drafted with a view to entrenching CCM's dominance in the multi-party era. For example, CCM was exempted from new rules regarding the registration of political parties.<sup>4</sup> Party leaders were given the power to dismiss elected representatives in parliament and replace them at will, strengthening the authority of the political parties at the expense of the United Republic's institutions. Before the first multi-party elections could be held, the High Court ruled that preventing independent candidates from standing for election to the presidency, parliament and local councils violated constitutional provisions for freedom of association and political participation. In response, parliament passed an amendment stipulating that political participation had to be through a political party. Measures were also

Power of the Union Government as represented by the number of 'Union Matters' in the schedule of the Tanzanian constitution



Year	Number of 'Union Matters'	Event or Legal Amendment
1964	11	Articles of Union
1965	14	Interim Constitution promulgated
1967	16	East African Community established
1968	17	Oil, petroleum, and natural gas added
1977	18	Permanent constitution adds examinations
1978	20	Collapse of East African Community
1979	21	Collapse of East African Court of Appeals
1992	22	Registration of political parties added
2013	7	Warioba Commission draft constitution
2015	16	Referendum on proposed constitution

taken to mitigate the possibility of a "cohabitation" government, whereby a CCM president of the Union could be deputised by an opposition leader from Zanzibar. This was a genuine risk, underscored by closely contested elections in the Isles in October

1995 that saw the opposition Civic United Front (CUF) come very close to clinching victory.

## From Kisanga to Warioba

In July 1998, Tanzania's third president, Benjamin Mkapa, appointed a new constitutional reform committee, chaired by appeal court judge Robert Kisanga. Mkapa failed to consult the political opposition or civil society on the scope of the review, but gave Kisanga the mandate to consider a wider range of issues than Nyalali. These included the structure of the Union; powers of the executive; the voting system; independent candidacy; and human rights. The committee sought the views of more than half a million Tanzanians from across the country, but the ruling party was again active in "organising opinion they favoured".<sup>5</sup>

CCM's efforts did not prevent Kisanga's 800-page report from including a recommendation that the United Republic should have three governments – for Union matters, the mainland and the Isles. President Mkapa was the first to publicly attack this counsel and insisted that it would have to be approved by CCM committees before being debated in the National Assembly. A 13th amendment to the 1977 constitution implemented some of Kisanga's recommendations. The number of special seats reserved for women and minorities was increased, but so too was the authority of the president.

In 2011, Jakaya Kikwete, Tanzania's fourth president, announced his intention to emulate his predecessors with a constitutional review. The diplomatic corps, assembled at the annual New Year Sherry Party, were told by the president that "the people of Tanzania will be fully involved in the process and ultimately, they will be the one to decide."<sup>6</sup> Fifteen months later he appointed a 30-member Constitutional Review Commission (CRC), chaired by Joseph Warioba, a former prime minister and attorney general of Tanzania. Between July and December 2012, the CRC visited all districts in the United Republic, held 1,773 meetings and received the opinions of 1.4 million citizens as well as civil society organisations and international experts.<sup>7</sup>

Further popular consultation was organised at ward level through constitutional councils, or *baraza*. On the mainland, CCM maintained its control over the process by using its dominance of ward development committees (WDCs) to screen those applying to join the councils. Civil society was permitted to convene its own meetings, although some observers noted restrictions on individuals and organisations. Despite the machinations of the ruling party, ever keen to preserve the status quo, the majority of those consulted on the mainland maintained that they should have an assembly and government of their own, as Zanzibar does.

## Dividing lines

The commission released its final draft in December 2013, for consideration by a constituent assembly. Chaired by Samuel Sitta, former Speaker of *Bunge*, the assembly comprised 640 members: all 357 members of the Union

parliament, 82 members of the Zanzibar House of Representatives and 201 civil society delegates. Endorsement of a constitutional text required a two-thirds majority among delegates from both Zanzibar and the mainland before the text could be put to a popular referendum. CCM representatives occupied just under half of the seats.

After scrutinising the draft, delegates promptly agreed that a new constitution must provide for an independent electoral commission and permit legal challenges to presidential election results. There was no consensus regarding the percentage of votes required for victory by presidential aspirants or permitting independent candidates to compete for the highest office. Similarly, opinion was divided over the CRC's proposals to restrict MPs to serving three five-year terms and provide for their recall from parliament by the electorate in the event of malfeasance.

## “ Politics has become increasingly polarised ”

The main stumbling block – as ever – was the structure of the Union. CCM members steadfastly defended the status quo; opposition party members supported the CRC's recommendation for a three-tier federal government. To advance their agenda, representatives of the three largest opposition parties – *Chama Cha Demokrasia Na Maendeleo* (Chadema), CUF, and the National Convention for Construction and Reform (NCCR) joined with delegates from civil society to form the Coalition of Defenders of the People's Constitution, or *Umoja wa Katiba ya Wananchi* (Ukawa). In March 2014, Ukawa's secretary claimed a membership of 286 delegates – a number high enough to enable the opposition to block approval of a constitution that failed to reform the government structure.

In April 2014, Ukawa announced that it was boycotting the constituent assembly until its grievances about the apparent rejection of key recommendations of the CRC were heard. Deadlock ensued until September, when President Kikwete met with opposition parties and promised that the assembly would be suspended on 4 October. However, Samuel Sitta, the assembly's chairman, determined that it should press on with its business despite the pending suspension. Legislative provisions were amended to permit electronic voting by absent delegates, and provisions for a secret ballot were removed, thereby ensuring that CCM elected representatives towed the party line or risked losing their parliamentary seats.<sup>8</sup> With the October deadline just days away, Sitta presided over a final sitting of the assembly that voted to adopt the draft constitution.

Outraged members of the opposition disputed the legality of the assembly's proceedings, questioning the vote among delegates from Zanzibar in particular. The deputy clerk, Dr Thomas Kashililah, countered that 147 Zanzibar delegates had voted in favour – a single vote more than the two-thirds majority required. Ambar Khamis, an opposition politician from Zanzibar, claimed that a "yes" vote had been recorded for him despite



his absence from the assembly since April. Zazia Meghji, a former finance minister who held a mainland seat, was listed as a representative of Zanzibar. Ukawa stalwarts accused CCM of bribing delegates to vote for a constitution that safeguarded continuity rather than promising change in the structure of the Union.

In Zanzibar, Attorney general Othman Masoud Othman was summarily dismissed for voting against three chapters of the draft constitution, including the one enshrining changes to the structure of the Union – a sacking that threatened to destabilise Zanzibar’s Government of National Unity, formed in 2010. Minister for Constitutional Affairs and Justice Abubakar Khamis Abubakar opposed the move to amend the Isles’ constitution to bring it into line with the proposed Union constitution.

## Towards a popular referendum

Despite opposition protest, the government scheduled a referendum on adopting the new constitution for 30 April 2015, with one month of campaigning permitted. This contravened the advice of the National Electoral Commission (NEC), which maintained that the timeframe was overly ambitious. The NEC is legally obliged to educate the public about the draft constitution and the significance of the vote, yet copies of the text only began circulating in February 2015.

The haste to stage the referendum has been interpreted as an attempt by President Kikwete to prevent any judicial challenge to the vote and gain decisive “leverage on the process – and perhaps even the outcome.”<sup>9</sup> Prime Minister Mizengo Pinda, eager for the president’s endorsement as his chosen successor, is also keen for Kikwete to leave a constitutional legacy. Meanwhile, uncertainty over the feasibility and outcome of the referendum is fuelling wider disquiet in the run-up to the general election in October 2015.

Politics has become increasingly polarised. In November 2014, youth aligned to CCM disrupted a public meeting where constitutional commissioners, including Justice Warioba, attempted to speak about the shortcomings of the proposed *katiba*. Intolerance of dissent has seemingly galvanised ties between the main opposition parties: Ukawa plans to field a single presidential candidate in October.

Drawing inspiration from the Orange Democratic Movement (ODM) formed during Kenya’s 2005 constitutional referendum, the opposition is first seeking to deprive the referendum of its legitimacy and President Kikwete of his legacy. Ukawa has criticised delays and shortcomings in the preparations to deploy biometric voter registration for the first time. A flawed registration process would disenfranchise voters and undermine the credibility of both the referendum and elections. As if recognising that fighting a referendum campaign and a general election within six months might overstretch its resources and stamina, Ukawa has threatened to boycott the referendum.

If the constitutional referendum goes ahead on 30

April, polling stations are unlikely to witness long queues of eager voters. Turnout for general elections fell from 72% in 2005 to 43% in 2010. Only 40% of the electorate registered for local government elections in December 2014. With the contents of the proposed constitution still unfamiliar to most citizens, the outcome could well be determined less by ordinary Tanzanians and more by the ability of the government and, if it participates, the opposition to mobilise their core supporters. With the *katiba* requiring a 50% popular endorsement on both the mainland and in Zanzibar to become law, the Isles could yet prove decisive. There, the House of Representatives must ratify any changes to the constitution by a two-thirds majority.<sup>10</sup> As CUF hold 31 of the 82 seats, this requirement poses a significant obstacle to CCM’s plans.

While a defeat of CCM in the October elections is highly unlikely, the handling of the constitutional review process has generated significant antagonism. Opposition parties have found common cause in denouncing the ruling party’s resolute defence of the political status quo. Even if the referendum proceeds, politicking will have undermined the stature and popular espousal of the new constitution. President Kikwete will claim a constitutional legacy regardless. If the referendum is postponed, and it is left to his successor to revisit the constitutional question, the widely acclaimed draft proposed by the Warioba Commission would be a sound start point for the task. In the meantime, the constitutional controversy will ensure that Tanzania’s general election is the most keenly contested since the restoration of multi-party politics in 1992.

**To view a timeline of constitutional reform in Tanzania, as well as articles about Tanzanian politics, please visit our website.**

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### SOURCES

1. Mwesiga Baregu, “Tanzania’s Hesitant and Disjointed Constitutional Reform Process”, Paper presented to conference on constitution-making processes, July 2000
2. Inconsequential constitutional amendments have been referred to as “patches” or *viraka*. See Chris Maina Peter, “Constitution Making Process in Tanzania: the Role of Civil Organisations – A Case Study prepared for the Civil Society and Governance in East Africa Project”, Dar es Salaam, December 1999, p.11
3. Chris Maina Peter, “Civil Society and Constitution Making in Tanzania: A Tall Order”, in *Civil Society and Constitutional Reform in Africa*, Mwengo, Harare, Zimbabwe (2014), p.109
4. Mohabe Nyirabu, “The Multiparty Reform Process in Tanzania: The Dominance of the Ruling Party”, *African Journal of Political Science*, Volume 7, Number 2 (2002), p.104
5. Mohammed A. Bakari, “The Union Between Tanganyika and Zanzibar Revisited”, in Ulf Engel, Gero Erdmann, and Andreas Mehler (eds.) *Tanzania Revisited: Political Stability, Aid Dependency, and Development Constraints*, Institute of African Affairs, Hamburg (2000), p.145
6. “The President’s Sherry Party speech”, Dar es Salaam, 7 January 2011
7. *Report of East African Consultative Theme on the Tanzania Constitutional Review Process*, Kituo Cha Katiba: Eastern Africa Centre for Constitutional Development, Kampala, Uganda (2013), pp.21-22
8. Pesa Times, “CA to use both open and secret ballot”, 29 March 2014
9. Salma Maoulidi, “Proposed Constitution: Jinx or Providence?”, *The Citizen*, 31 December 2014
10. See Article 80 (ii) of the Constitution of Zanzibar