PEOPLE-DRIVEN CONSTITUTION-MAKING

by

Professor Issa G. Shivji
University of Dar es Salaam

This is the text of a Keynote Address delivered by the author to the 5th Plenary Session of Kenya's National Convention Assembly (NCA) held in Nairobi on January 19th, 2001. Some 600 delegates from grass-root organisations attended it. NCA was established sometime in 1997 in a meeting attended by some 510 delegates from a whole spectrum and different sectors of the Kenyan society.

Introductory

Let me say that this is not only a great honour but also a great opportunity you have given me to participate in, what you rightly and proudly call, a people-driven constitutional process. I sincerely and humbly thank you.

With great humility, too, I wish to make a small contribution from the little - much less people driven, I must say - experience from your neighbour. The message and lessons to be drawn from that experience may not equally apply here, but they may still teach by negative example. Allow me to share those lessons with you.

The Message from Here and Near

In March 1983, a group of intellectuals met on the Campus of the University of Dar es Salaam in a *Symposium on Marxism* on the occasion of the centenary of Karl Marx's death. The symposium offered an opportunity to take stock of almost three decades of independence movement. During that period we had moved from *Uhuru na Umoja*, through *Uhuru na Kazi*, *Uhuru na Maendeleo* to *Uhuru na Ujamaa*. A series of papers, as the vocation of intellectuals dictates, were read. As progressive, people-oriented intellectuals we were then, - a caste increasingly threatened with extinction these days! - we produced varied critiques of *umoja*, *maendeleo* and *ujamaa.* The resounding conclusion was: **"The central question of the African Revolution today is Democracy"**. This was at least ten years before democracy became fashionable and a swear word of even rabid reactionaries.

The debate on democracy had begun. Issues were joined. The discourse deepened. In 1985, some young progressive intellectuals at the Hill produced a small volume called *The State and the Working People in Tanzania* deepening their analysis of one-party authoritarianism and positing the re-awakening of mass politics as the next impending stage. On the pan-African level, progressive African intellectuals were summing up the experiences of other African countries. One such fine volume is called *Popular Struggles for Democracy in Africa* edited by your compatriot Anyang' Nyongo. Another is *Democratisation Processes in Africa* edited by Eshetu Chole and Jibrin Ibrahim. The experiences analysed and narrated in these volumes brought home one point: *there is democracy and democracy*. Perspectives on democracy are profoundly contradictory and that the neo-liberal perspective on democracy is alien to the social and political project of the working people.

What is then the people's perspective on democracy? Only people themselves could answer, nay, forge the answer in the crucible of struggles. Progressive intellectuals could only articulate a space for such struggles. That is precisely what the debate that preceded the introduction of multi-party system in Tanzania tried to do.

In 1989 the Berlin wall fell. The low-intensity ideological assault from the West in the form of SAPs that had begun in the early 1980s now became an onslaught. Nyerere, an astute politician, saw the writings on the wall. In June 1990, Mwalimu declared that it was no longer a "sin" to discuss multi-party system. Progressive intelligentsia through University fora and professional organisations seized the opportunity. Horns were once again locked on the question of democracy. Many an intellectual who had subscribed ten years ago to the thesis that the central question of the African Revolution is democracy saw democracy round the corner in the form of multi-party. They, together with proto-party leaders, jumped on the bandwagon of multi-partyism: 'multi-party tomorrow' became the slogan.

A minority voice - very much a minority, I must confess - argued for a protracted process of transition from single-party to multi-party involving a national debate to

crystallise a new national consensus and a new democratic constitutional order. The process would open with freedom to form mass organisations and freedom of expression while multi-party would be the end result under the new constitution. The proposal was stillborn. The mood was "multi-party *now"*. The state short-circuited the debate by appointing a commission under the then Chief Justice Mr. Nyalali. The commission went round the country asking the people whether they wanted one-party or multi-party.

80 per cent of Nyalali's respondents wanted one-party yet an overwhelming majority of them demanded major changes in the economy, polity, governance and accountability structures of the country. The reaction of one elderly villager says it all. After 45 minutes of narrating his problems - from lack of medicines in dispensary, through everyday tyranny of village and district bureaucrats to alienation of his ancestral lands without consultation, - *Mzee Mkulima* paused: *Mheshemiwa,* you asked us what do we want: one-party or multi-party. Of course one-party! With single party we have so many problems, what with multi-party ….. ? We'll have double the problems!

The Commission's recommendation that Tanzania should go multi-party and the Government's acceptance of the recommendation were a foregone conclusion. But the reactions of the people were most revealing. Contradictory perspectives on democracy were starkly expressed. 80 per cent of the Nyalali sample wanted one-party yet an overwhelming majority of them demanded their right to control their lives, livelihoods, and resources. This demand was even more clearly and profoundly expressed by rural folks in response to the other Presidential commission, the Commission on Land, which was making the rounds of the country around the same time. *"Hatukushirikishwa"* was their major grievance. "We-were-not -involved-or-we-were-not-consulted-on-the-fate-of-our-land", was their major complaint. Meaningful participation in the decision-making processes over their resources was their main demand.

The people who had overwhelmingly rejected multi-party were overwhelmingly

demanding democracy; not only democracy but also democracy which would give them a fundamental say over the control of their lives and resources.

The Nyalali Commission unanimously recommended 'multi-party'. The annual conference of the ruling party voted 100 per cent for multi-party. Article 3 of the Constitution which declared Tanzania to be one-party democracy was amended to read 'multi-party' democracy and article 10 which gave CCM (*Chama cha Mapinduzi*) the monopoly of politics was dropped. We entered the era of marketisation of politics and commoditisation of political choices. The debate on democracy was nipped in the bud. Democracy was strangled! The progressive Hill intellectuals of yesteryears (barring a few dinosaurs!) have been overnight converted to the neo-liberal faith and become its catechists with the high priests located in western embassies and NGOs. Today we talk market, teach management, practice consultancy and invite clownish ambassadors from super-power embassies to launch our literary and academic journals.

Be that as it may. Let me return to my topic.

I have no doubt that this narration has many parallels in your own country. While details may differ, fundamental lessons and the message may have echoes. Let me try to sum up these.

The message and the lessons

First, democracy is a contested terrain. There are contradictory perspectives on democracy. The market democracy of the neo-liberal variety centring on multi-party and electoral politics has little or no resonance among the large majority of the working people. It is clear, though, that people have their own perspective on democracy rooted in their real life-conditions. For lack of a better term let us provisionally call this 'popular democracy'.

Secondly, whether neo-liberal and popular democracy are mutually exclusive, or Siamese twins or one is a necessary condition for the other is not a legal, logical or biological question. Rather it is a concrete question demanding concrete answer in

specific social space and historical conjuncture. One thing, however, is clear. Neither liberal nor popular democracy in themselves constitute a vision or a mission. They are the conditions of political existence through which a human agency attempts to realise its vision or mission.

Thirdly, I would like to submit that the project of national liberation which was placed squarely on the African agenda during the post-Second World War period is unfinished. Similarly, the social project of human emancipation is still on the agenda. If the period from 1950s to the fall of the Berlin wall represented a wave in the transformation of human society, then the present period represents a trough. It is hard to tell how long will this trough last but, meanwhile, the forces of progress everywhere are on the defensive; perhaps defeated but certainly not demolished.

Finally, to survive through this period of trough and foresee and prepare for the next wave, the forces of progress have to weave together a New Vision, a New Ideology. Contrary to neo-liberal pundits, neither history nor ideologies have ended so long as human beings have not ceased *acting* and *thinking*. I want to suggest that one of the fundamental causes which aborted the liberatory and emancipatory projects was lack of continued rootedness of the progressive vision in the working, exploited and oppressed people themselves. In other words, lack of popular democracy, through which to realise and actualise the struggle for liberation and emancipation, bears a great responsibility for the current defeat of the historical projects.

A New Vision of Transformation

From these few remarks, I am suggesting that the New Vision for African Transformation may be weaved around and based on three main elements: *popular livelihoods, popular participation and popular power.* I use popular in three senses.

First, popular is used in the sense of being ***anti-imperialist***. This is well captured in the people's own perception of what is called Second Independence. Imperialist domination called *globalisation* today is more blatant than ever before. I cannot see how a New Vision around popular livelihoods can be constructed without addressing

the issue of liberation from globalisation, which is the anti-thesis of both 'national' and 'democratic' projects.

Globalisation is based on globalising capital, gobbling up nations, marginalising people, feminising poverty and devalorising labour. *Globalisers*, with the help of their local commission agents called *glocalisers*, continue to bleed Africa. Our glocalisers fall over each other in wooing the so-called investments and begging for debt relief and aid. And yet what do they get? Pittance! In 1995 and 1996, sub-Saharan Africa received $4.8 billion in direct foreign investment. During the same years, the MNCs siphoned off profits worth $8.6. And these two years are not exceptional. Again during these same two years sub-Saharan Africa lost $22.9 billion in trade deficit. Between 1980 and 1996, the external debt of sub-Saharan Africa trebled although its had paid $170 billion in debt-servicing. And yet we applaud and become ever grateful if we get promoted into the group of HIPCs (highly indebted poor countries) so as to get less than 1 per cent of debts cancelled as happened in 1995! (Toussaint, E., *Your Money or Your Life*, 1999, pp.196-199). Sub-Saharan Africa pays four times more in debt servicing than what it spends on healthcare and education combined. The global Shylock takes not only more than his pound of flesh but cuts it in the heart of our humanity and dignity - our children.

The second meaning in which popular is used here refers to the social basis of the project. The core forces of the transformation are the working people - those who labour whether on land, in factories or in services and whose labour, land and skills are daily pillaged. And then there are the friends of transformation who are oppressed and crushed by the steamroller of globalising machine: middle and small businesspersons and entrepreneurs, patriotic bureaucrats, intelligentsia, etc. While its exact composition will of course differ, in many African countries the land based producer classes and the urban poor together with lower middle classes would constitute the 'masses'. This is where, to use Lenin's phrase, 'serious politics begin' - 'not where there are thousands, but where there are millions'.

The third meaning that I attach to popular is in the sense of popular perceptions,

custom, culture, and consciousness. Custom and culture, not in the vulgar sense of atrophied or unchanging tradition but rather in the sense of a living terrain of struggles where the old and the new, the progressive and the reactionary jostle and struggle to attain hegemony. Needless to say that culture and traditions constitute one of the most important ideological fronts. This is where the dominant culture demonises the cultures of resistance.

Popular participation addresses both the limits of parliamentary democracy and party politics while at the same time posits a new mode of politics. The notion of representative politics revolves around the state where both the parliament and (political) party are the institutions of the state. They relegate the issue of control and distribution of resources and differences in society to the sphere of civil society or economics. The dichotomy or the separation between the state and civil society, between politics and economics, is the linchpin of liberal ideologies. It needs to be turned on its head. The notions of popular participation and popular power thus posit a new mode of politics. Politics is not simply a politics of (state) power but rather the power of politics is where the masses are.

With the increasing domination of the footsoldiers of globalisers - the IMF, the World Bank and the World Trade Organisation - who dictate policies, party and parliamentary politics are rendered a caricature. What can elections mean to a people when they are financed by foreign countries; when your leaders seek legitimacy in the so-called "international community" not in their people; when puny little diplomats deliver sermons as to what is right and wrong, and choose friends and foes for you and demonise your own people as terrorists and fundamentalists. And then turn round and train your police and sell you arms to control and, if need be, kill the so-called terrorists or supply you with washable ink and other gadgets to rig elections to keep the so-called fundamentalists out of power! No wonder our leaders declare 'end of politics'. After recent elections in my country, we were told that with elections over, politics ended and people should concentrate on development! Presumably, politics begin with campaigning and end with voting.

Popular power is meant to draw attention to the issue of political legitimacy and institutional organisation of state power. The issue of legitimacy is central to the whole question of reconstituting the state to create spaces for the struggle for a new vision. The concept goes beyond the liberal constitutional constructs where legitimacy is supposedly derived every five years through casting of votes. As for the institutional organisation of the state, African political discourse seems to have been polarised in terms of either the colonial authoritarian "model" (concentration and centralisation of power) or the neo-liberal model of separation of powers in the three arms of the central state.

In positing popular power, I want us to raise the issue of whether the liberal and colonial models are the only available alternatives of the institutional set-up of the state. I am saying we need to rethink. And in this rethinking I am suggesting that the points of departure should not simply be at the centre but at where the people are - the villages and the neighbourhoods. The experience hitherto has been that where the liberal mode of separation of power is transposed - which is what we are indeed witnessing in the current constitutional reforms-, it scratches only the constitutional surface of the organisation of the state while the colonial fusion of power remains virtually intact at the local levels. In our debates in Tanzania, for example, some of us have argued that the village assembly should be the focal point of structuring power and authority, Thus the question of village democracy and the village as the site of politics becomes central and crucial. That brings me to the question of constitutional reconstruction in which your are centrally involved. I will restrict myself to a few remarks only.

Constitutional Reconstruction

Contradictory perspectives on democracy that I have discussed immediately suggest contradictory perspectives on constitution-making and constitutionalism. The neo-liberal project leads to constitutional engineering while the popular democratic project dictates reconstitution of the state so as to create spaces for the realisation of the popular democratic project. I submit that this involves making several conceptual shifts in constitutional jurisprudence. Some of these are:

(a) From constitution-making as a legal, legislative and a parliamentary project to constitution-making as a political, participatory and consensus-building process.

(b) From the sovereignty of the state to the sovereignty of the people.

(c) From parliamentary supremacy to constitutional supremacy.

(d) From the principles of separation of power and independence of the judiciary being applied to the institutions of the central state **only** to their application and operation at local/village level.

(e) From the right to participate in the government to participatory governance.

(f) From principles of natural justice to premises of social justice.

(g) From ideas of equality to notions of equity.

(h) From centralism to federalism.

(i) From concentration and fusion of power to devolution and diffusion of power.

(j) From the state as site of politics to village/neighbourhood as a political site.

(k) From political party as a site of struggle and participation to people's organisation, alliances of organisation or movements as sites of struggles.

Your own National Convention is no doubt a great invention and an innovation in the constitutional process. Something similar was suggested in my country ten years ago but it never came to fruition.

In the '60s and '70s, some of us observed that there seemed to be a neat division of labour among progressive forces in the three East African countries. Tanzania would lead in ideology, but mostly failed to give it an organisational form; Kenya organised but lagged behind in giving itself an ideological leadership. Uganda did not seek out either ideological leadership or organisational expression - it simply took to arms! Given that powers-that-be managed to keep us divided, our competencies did not become complimentary. Time has come to make them so. It is a great satisfaction that you are taking a lead in the people-driven constitutional process and setting a great example for the rest of us in the region.

May the National Convention truly become the harbinger of a New Vision and a Forum for Popular Democracy.

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