TANGANYIKA LAW SOCIETY

SEMINAR ON

DEMOCRACY AND THE RULE OF LAW DURING AND AFTER MAGEUZI
22 & 23 APRIL 1992

FIASCO AT LAW: COMMENTS ON BILLS FOR THE EIGHTH CONSTITUTIONAL AMENDMENT, 1992 AND THE POLITICAL PARTIES ACT, 1992

by

Issa G. Shivji
Professor of Law
Department of Legal Theory
University of Dar es Salaam

Advocate

FIASCO AT LAW: COMMENTS ON BILLS FOR THE EIGHTH CONSTITUTIONAL AMENDMENT ACT, 1992 AND THE POLITICAL PARTIES ACT, 1992

by

Issa G. Shivji

The Context

The proposed Bills being presented to the National Assembly at the end of this month following the adoption of multi-party system raise a number of issues. The first issue is the context and the circumstances under which these Bills are being presented to the Assembly. It is not clear from the Bills or the political statements made by various leaders whether what is proposed in them constitutes interim measures for a transition to a new multi-party constitution or that these proposals are indeed what would be the final shape of the multi-party democracy in Tanzania. Lack of clarity on this issue arises primarily because the Government has so far issued no statement, let alone a White Paper, on their attitude to the Nyalali Report.

The Nyalali Report is now public. The public also deserves to know which of the recommendations have been accepted by the Government; which have been rejected, reasons for acceptance and rejection and how the Government proposes to implement those recommendations it has accepted. In short, the public is entitled to a Government White Paper on the Report. It is only in the context of this information that the public can meaningfully discuss the proposed Bills.

But in spite of this dereliction of duty on the part of the powers-that-be it behoves on us to give a critical look at the Bills (which incidentally have not been widely circulated).

This paper raises some of the issues which arise from the proposed Bills, in particular the Eighth Amendment to the Constitution and the Political Parties Act, 1992.

The first section of the paper will look at the proposed constitutional amendments; the second section will examine the Political Parties Act and the third section will touch briefly on other proposed amendments. In the conclusion I will summarise my suggestions for the benefit particularly of our Honourable Members of Parliament.

Constitutional Amendments

Fundamental Objectives and Directive Principles of State Policy
Article 3 which declares Tanzania to be a `democratic and socialist state with one political party' is amended by replacing the words `one political party' with `a multi-party system'. Clauses 2 and 3 which establish the supremacy and final authority of Chama cha Mapinduzi are repealed. A new clause provides for the registration and operation of political parties in accordance with the constitution and any law which may be passed by the Parliament in that behalf.

Article 10 which appears in Part II of the Constitution giving CCM a monopoly of all political activities is repealed. There is what may look like a minor but quite significant change in article 9. Article 9, among other things, obligates `state authority and all its agencies' to `direct all their policy and business towards securing' inter alia -

(j) that the economic system is not operated in such a manner as to permit the concentration of wealth or the means of production and exchange in the hands of few individuals, and that the Government owns or controls the major means of production;

(k) that the country is governed in compliance with the principles of democracy and socialism.

The underlined words have been repealed presumably as part of the drive towards liberalisation and privatisation. But the first part of the same clause, clause (k) and various other references to socialism in the Constitution have been retained. Does this mean that Ujamaa continues to be, at least in the Constitution, the state ideology?

The Nyalali Report recommended that all references to Ujamaa as an ideology of the country/state should be removed because that would be the matter for the programmes of particular political parties [pp.123-125] For this writer, the crucial issue is not so much whether matters of ideological orientation and broad economic policy are for party programmes or the state constitution but whether there is a democratically arrived at national consensus on it. If there is, such matters can very well be included in a constitution without doing violence to any legal propriety.

Since we do not know if there is any longer national consensus on Ujamaa and self-reliance, or for that matter even on democracy (what type?) proclaimed in the constitution, the retention of these `labels' in the Constitution is an eyewash at best and politically divisive at worst. Indeed, quite conceivably, it can give rise to severe constitutional problems affecting political stability. Let me give an hypothetical example.

Under article 7(2) of the Constitution, the fundamental objectives and directive principles of state policy are not justiciable, that is to say no party, aggrieved or otherwise, can resort to a court of law to enforce them. Nonetheless, in terms of clause (1) of the same article, `it shall be the duty and responsibility of the government, all its organs and all persons or authorities exercising executive, legislative or judicial functions to take cognizance of, observe and apply all the provisions' of the objectives

and principles. Under this it is not inconceivable for the registrar of political parties (to be discussed below) to refuse or cancel registration of a party advocating capitalism (for example, the re-formed, liberalised CCM) on the grounds that the economic policy it advocates would `permit the concentration of wealth or the means of production and exchange in the hands of few individuals' (contrary to article 9(j) of the Constitution) and that it is unlikely to govern the country in compliance with the `principles of ... socialism' contrary to article 9(k).

Be that as it may, the point is that directive principles, like many other provisions in the Constitution, are the result of a particular political system under the rule of CCM and cannot be thrusted upon a multi-party polity in different circumstances. Trying to adapt the one-party 1977 Constitution to multi-party system in 1992 is like asking the post-Zanzibar-Resolution CCM to demonstrate against the IMF! It would amount to wishful thinking in both cases.

In my paper published in January 1991 I had suggested a constitutional conference to crystalise national consensus which would be the basis for a New Democratic Constitution. The Nyalali Report accepts that there is a need for a new constitution and recommends a constitutional commission to draft one followed by a constituent assembly to adopt it [p.159]. But the CCM Government has stubbornly stuck to its guns. It seems it only wants to do the minimum in the direction of democracy. This should not surprise us.

CCM as a state-party is used to propagate and believe that it embodies `national consensus'. (Usurpation of national consensus is not the same thing as embodying it, though). As such it has no need to test it through a constitutional conference. Some repair work [`viraka'] on the existing constitution is all it can tolerate. This is a grave error. One hopes that eventually broad national interest will prevail over narrow party prejudices.

If by its own claim CCM has undertaken to oversee the transition to multi-party democracy, it should rise above party interests at least during the transition. I would suggest therefore that -

(1) the Government should publish a White Paper on the Nyalali Report (which would include its position on the adoption or otherwise of a new constitution) giving its own programme for the transition and its version of the final constitutional shape of the country;
(2) invite and facilitate a public debate on both the Nyalali Report and the White Paper.

Meanwhile, the forthcoming session of the National Assembly would be as good an occasion as any for the leader of Government business in the House to make a statement on (1) and (2).

Presidential Powers and Party Politics
One of the important features of the Tanzanian polity observed by many social scientists - and now affirmed by the Nyalali Report [passim] - is the extreme concentration of power in the office of the President. This power includes the power of

appointment to numerous government (including all three branches: legislative, executive and judicial), parastatal, party and non-party organisational positions. This was often ideologised as the bounty of a patriarch where the President is seen as a father caring, cajoling and often chastising his children (the nation). This style of all-powerful presidency described by one African writer as `imperial presidency' may have worked in an authoritarian, one-party system. But with multi-party, the president is no more than a candidate of a political party in the boxing ring of political fray. In short, he is a partisan person. For this reason he cannot at the same time be counted upon to oversee, supervise or judge as a referee the battle between political parties. It is for this reason that certain organs and institutions of the Government which are directly involved in setting and operationalising the rules of party contest cannot, and should not be seen to be, under the President.

In the proposed amendments this argument seems to have escaped the notice of the draftsmen. Or maybe - which is more likely - CCM stalwarts continue to believe that they and their presidential candidate will be in power for quite some time; hence minimal changes in the power of the president. For the purposes of this paper I wish to draw attention to presidential powers in relation to four offices/organs which by the very nature of their functions ought to be above the contest of political parties. These are: the office of the Attorney General; the Electoral Commission; the Permanent Commission of Enquiry and the Registrar of Political Parties.

Attorney General

The office of the Attorney General, together with that of the Director of Public Prosecutions and the Chief Parliamentary Draftsman which fall under it, is a crucial lynchpin in the maintenance of the rule of law. It is often forgotten that state organs are potentially and in practice the greatest violators of law. Again it is even more difficult to make them accountable through courts. In the circumstances, prevention is better than cure. A strong, independent office of the Attorney General can play a vital role in ensuring that government organs operate within the four walls of law and the constitution. Therefore, in my submission, the office of the Attorney General should be insulated from political pressures. It should not be a political appointment nor should he be a party person. Rather he should be seen as a senior civil servant on the same level as a minister in terms of hierarchy.

Under the proposed amendments, the ATTORNEY GENERAL as before is appointed by the president who can also remove him. He is a non-voting member of the cabinet and ex-officio member of the National Assembly. I have no quarrel with the last two. However, I suggest that the ATTORNEY GENERAL should be appointed by an independent body, say the Judicial Service Commission, and should have security of tenure. With the multi-party system, it is crucial that the ATTORNEY GENERAL should be answerable to law rather than to a political partisan.

Electoral Commission

The Electoral Commission is the main body for organising and supervising elections. It is obvious that it cannot be a politically partisan body. Under the amendments, the commissioners, including the chairman and the vice-chairman, are appointed by the President although they have security of tenure during their five year term. This leaves open the possibility for the president to "pack" the commission with persons who will

be favourable to his party. For these reasons, I suggest that the appointments to the Electoral Commission should be by an independent non-political body and that the commissioners should enjoy security of tenure for a definite term.

One of the important functions of the Electoral Commission is to demarcate constituencies. Under the amendment (cl.21) it demarcates with the approval of the president. It is curious to allow the leader of a political party - albeit ruling - to have a say in the number and demarcation of constituencies. I therefore recommend that the requirement of approval by the President be deleted.

Permanent Commission of Enquiry

The PCE is retained with its jurisdiction to investigate extended to `viongozi wote wa vyama vya siasa wanaoshughulikia mambo ya umma' [all leaders of political parties involved in public affairs] (art.129). Other provisions on PCE are retained. The PCE is appointed by the President and it is directly under him. The President can require it to investigate all those persons - now including leaders of political parties - in public office for abuse of power. The findings of the Commission are secret and reported to the President who has the discretion to use them as he wishes.

As the Nyalali Report correctly observes, PCE as an Ombudsman is an important institution [p.139]. The report further recommends that it should be made an independent body appointed by the Parliament and responsible to the Parliament; its reports should be public and it should have power to institute prosecutions in relevant cases for abuse of office. These are very important recommendations. But the amendment Bill has ignored them with the consequence that PCE, as it stands, could easily become a pawn in a political game.

To give an extreme but not implausible example. The President as a party person can use the instrument of PCE to investigate his political opponents both within his own party and other parties. Clearly, even during the transition period - probably even more so - national interest and fairness require that there be an independent, open and transparent Ombudsman which can investigate public complaints of abuse of office publicly. The Nyalali recommendation on this should have been immediately implemented.

Registrar of Political Parties

The Registrar of Political Parties under the Bill for `Political Parties Act, 1992' is appointed by the President. Assistant registrars and various officers in his office are to be appointed by the Minister. The registrar performs his various functions under the Act in consultation with the Minister responsible for legal affairs who himself/herself would be a political appointee of the President.

As we shall see in the next section of the paper, the registrar has enormous powers of making and ruining political parties. How can he then be a direct appointee of the president who himself would be a leader of the ruling political party?

This is a clear example, if one was needed, of CCM failing to rise above its narrow party interests. The first registrar would be an appointee of the CCM chairperson to

midwife the birth of new parties. One would not be surprised then if there was a high infant mortality rate as a number of them are still-born. Even if that does not happen, such a scheme certainly cannot be seen to be fair and does not inspire confidence. It smacks of bad faith, to say the least.

We would suggest that the office of the Registrar should be an independent civil service post possibly under the Electoral Commission as recommended by the Nyalali Report [p.142] or under the Attorney General provided these two organs themselves are re-constituted as suggested in this paper.

Appointments to the National Assembly
Under the proposed amendments, article 66 is amended to provide for fifteen women members to be elected by the constituent members from among nominations submitted by political parties. Currently such names are nominated by the women's organisation i.e. the Umoja wa Wanawake, UWT. Fifteen members who are nominated by CCM's mass organisations are now to be nominated by political parties and elected by members of the National Assembly. It is not clear in what proportion the political parties are to nominate their candidates for these seats and whether all registered parties can do so or only those who win a certain number of seats (how many?) in the National Assembly. Whatever be the case, not much thought seems to have been given to this matter.

If indeed these categories (of national members, as they are called) were to be retained, then it is far more democratic to give direct representation to the organisations concerned. For example, fifteen women members could be elected by all women's organisations (whether affiliated to political parties or not) and the other fifteen could be elected by civil organisations or NGOs excluding registered parties. To allow political parties to nominate these categories and then the very members of the same parties in the Assembly to elect them is simply to give the parties more seats in addition to those they won at the polls. For the majority party it simply means it further augments its preponderance in the Assembly.

As a matter of fact, the majority party gets a third bite at the cherry as the President retains his power to nominate another fifteen members to the Assembly. This has really no rationale. Why should the representation law be so partial to political parties and in particular the majority party beats my imagination. It certainly does not augment democracy; it simply enhances the power and preponderance of the ruling party to be able to rule without powerful challenges. Is that really the aim of enhanced democracy?

In our submission, the category of presidential appointees (art.66(1)(f) should be repealed.

This issue ties up with the other one to be discussed below.

Freedom of Association and the Role of Independents
The amendments provide that one of the qualifications for a presidential and parliamentary candidates is that (1) they are members of a registered political party and (2) have been put up by their respective parties. Thus there is absolutely no role for independent candidates.

This is a fundamental breach of the fundamental freedoms - the freedom of association and the freedom of participation in the government - which were fought for under the demand for multi-party in the first place. Let me explain. What was the basic argument against the monopoly of CCM? The argument was that it denied a citizen (a) to associate freely in a political organisation other than CCM (b) to participate in his government and (c) indirectly forced him to associate with CCM if he wanted to play a political role. There was thus inequality and discrimination between CCM citizens and non-CCM citizens.

Freedom of association, we all know, includes freedom not to associate. Under the amendments, freedom not to associate does not exist. If you want to participate in politics you have to be a member of a political party. Thus citizens as members of political parties and citizens as non-members are treated unequally. They do not have equal rights. All have the right to vote but only the former can be voted for, the latter can't. From CCM to ccms! Some may consider this a step forward in the march towards democracy. For me, it is only a millipede's - whether forward or backward only politics will tell.

My reading of the Nyalali Report [p.158] suggests that they too did not provide for independents except during the transition period. Admittedly, I fail to understand the distinction drawn by the Nyalali Commission between the transition period and the eventual system so far as the role of independents is concerned.

In my view the multi-party system is not the alter ego of democracy and even the representative parliamentary system falls short of democratic decision-making. One of the possible experiments worth keeping the door open for would have been to permit independents. This is how, in my understanding, social movements like the Greens in Western Europe originally entered parliament.

In any case, there is no good reason why citizens who prefer, for example, a person of integrity to a pompous party programme should be deprived of voting for him/her. We would suggest that independent candidates be permitted to stand both for presidential and parliamentary elections.

As a footnote, I must draw attention to two new qualifications introduced for presidential and parliamentary candidates lest they slip through unnoticed. First, the candidates must be literate (`anajua kusoma na kuandika'). The law does not say literate in what language. It could be any one from one's mother tongue to official (Kiswahili) or semi-official (English) languages. In principle, I have no objection to this.

Secondly, the presidential candidate must be an automatic citizen (`raia wa kuzaliwa') as opposed to a naturalized one. For the first time as far as I know discrimination among citizens in terms of the type of their citizenship is being introduced. This is a serious matter of principle and the least it demands is a public discussion. What motivated the introduction of this distinction after thirty years of independence is not clear. The statement of `objects and reasons' appended to the Bill does not make any reference to it. In absence of any good reason and debate on it, I believe it should be dropped.

The Leadership Code and Declarations of Property
Qualifications for presidential and parliamentary candidates based on the Arusha Declaration leadership code have been dropped. And the Commission for the Enforcement of the Leadership Code has also been abolished. The Leadership Code was Mwalimu's legacy. The `Zanzibar-Resolution' CCM leadership, I guess, must have been only too happy to shrug off that package from their shoulders. For Tanzanians, they have been rid of what had become an hypocrisy.

Maybe it is not yet time for Tanzanian workers and peasants to expect their leaders to be property-less. But surely they at least have a right to know what property their leaders own and how they acquired it. This brings in article 70 of the Constitution under which a parliamentary candidate is required to file a statement of his/her and spouse's property with the Speaker who transmits a copy to the chairperson of the Leadership Commission.

Curiously, article 70(3) provides for utmost secrecy over these declarations. The Nyalali Report [pp.131-2] recommended its retention. Article 70 has thus been retained without any change.

If the rationale of retaining the article is for the citizens to know `namna ya hali yake [ya Mbunge/Mwakilishi] ya maisha yalivyo, kazi yake, kipato au utajiri wake' as the Nyalali Report [pp.131-2] asserts, then the declarations on property ought to be public and not simply to be filed away in the Speaker's office surrounded by utmost secrecy.

I would therefore suggest that article 70 be repealed and replaced by a re-drafted one (a) removing all references to the Leadership Commission which is proposed to be abolished and (b) making it mandatory on the Speaker to publish for public knowledge MPs' and president's declarations of ownership, and methods of acquisition, of property.

Unity, Autonomy and the Union
The question of the union between Zanzibar and Tanganyika is another of CCM's sacred cows. There has been intense debate and writing on this issue and I shall not go over that ground again. The Nyalali Report (the majority) recommended three governments [passim]. This set of recommendations need to be publicly debated. But one would have to await the Government White Paper to know what exactly is the Government's position on it.

Meanwhile, the proposed amendments retain the two-government system. As a matter of fact, further salt has been rubbed into the wound by adding yet another item to the list of union matters. Item 22 now stipulates `registration of political parties and allied matters', a union matter. Even the Nyalali Commission in its wisdom did not recommend that political parties be a union matter although they - rather limply one must add - recommended that political parties must be national meaning related to both parts of the union [pp.113-4].

I have dealt at great length elsewhere with the history and the ignominious saga of how the original eleven union matters became erstwhile twenty-one (including one composite, `defence and security') in a period of twenty years. The constitutional validity and political legitimacy of these additions/alterations are themselves in question. Rather than dealing with the matter squarely, openly and democratically we find one further addition is being proposed. We do not see any wisdom in this, not even during the transitional period if that was how it was sought to be justified. I would suggest, this issue should await the larger discussion on the Nyalali Report which addresses the question candidly and pretty comprehensively. Meanwhile, it is in every one's interest that item 22 in the union list be dropped.

We now turn to the Bill on the Political Parties Act, 1992.

Political Parties Act, 1992

Appointment and Powers of the Registrar
The registrar wields enormous powers of registration, cancellation and financial supervision over political parties. He should therefore be above political contest. As already suggested he should be a high civil servant appointed by an independent body and accountable to law - which means eventually to the judicial process. Neither the president nor the minister should have any power over the registrar.

Decisions of the registrar on refusal to register a political party, or cancellation or other decisions involving rights of the members of public should be appeallable to the High Court as of right. Under the proposed law, the registrar's decisions are final.

The registrar should also be required to make his decisions, particularly on applications for registration, within specified time otherwise he could sit on them indefinitely.

Registration and qualifications of political parties.

The two stage procedure for this is fair. But otherwise the registration provisions have a number of serious technical and political flaws.

Firstly, CCM is not required to register. It is deemed to have been registered. What is the rationale behind this? Why should CCM, as a political party, receive a differential treatment at law in breach of the fundamental right to equality proclaimed in the Constitution? As a matter of fact, it undermines CCM's own claim to oversee the transitional process with fairness while maintaining political stability and tranquillity. One cannot possibly have tranquillity while at the same time one continues to arrogate to oneself greater and unequal status. This is the behaviour of a state-party, not a political party.

What we have in CCM is a state-party. The Nyalali Report admits it quite candidly [pp.97-8]. Now that CCM has decided to separate itself from the state and transform itself into a political party, it is being re-born as a political party. And its birth should be registered like any other birth. Let us get rid of the Orwellian equality from our political culture where some are more equal than others - even at law. Indeed in my opinion the proposed clause of the Bill (cl.7(2)) deeming CCM to have been registered could be successfully challenged in courts as unconstitutional, to every one's embarrassment. It should be deleted.

Clause 9(2) provides a number of things which would disqualify a party from registration. A party shall not be registered if by its constitution or policy it advocates or furthers the interests of a religious, ethnic, racial, tribal, factional or particular geographical group or area. It is not clear what is meant by factional. All political parties are factional. This is essentially a political term and its translation into law is likely to sow unnecessary confusion. I do not think any thing is lost by deleting it.

Curiously, gender is not mentioned in this list. Is it deliberate or simply an oversight? What if a political party advocates the interests of only one gender?

With respect, I believe, this is the furthest law can go in advocating political parties based on different policies/programmes rather than religious, ethnic etc. basis. The rest depends on the development of political culture and social struggles.

There are two other disqualifications which are directly related to the question of the Union. Paragraphs (b) and (d) disqualify a party from registration if it advocates the breaking of the Union or aims at carrying on its political activities only in one part of the Union. This matter, as argued earlier, is in issue. The union question cannot once more be shoved under the carpet (whether by threats, intimidation or deception) in a surreptitious manner. I would suggest these paragraphs be deleted pending a broader discussion and consensus on the wider question of the structure of the Union.

Paragraphs (b) and (c) follow the Nyalali recommendation in requiring the parties to have their membership drawn from at least ten regions of the country at least two of which should be from Zanzibar, being one region each from Zanzibar and Pemba. And the `national leadership' of the party must be drawn from both Tanzania Zanzibar and Tanzania Mainland.

These paragraphs are unfortunate. They are a classical example of a draftsman trying to translate political sentiments or speech into legal language. These paragraphs no wonder are so imprecise and vague that they are virtually incapable of enforcement at best, and pregnant with endless litigation at worst.

First, what is meant by two hundred members from ten regions. Should these members be born in those regions; or residents of that region or registered voters of that region? The law does not provide any guidance. Presumably it refers to registered voters. But this defeats the original rationale of the provision as I will show in a moment.

Secondly, what is meant by `national leadership' in clause (c): chairperson, secretary, members of an executive committee or central committee or a politburo, etc? So much will depend on the structure of a political party which could vary from party to party. How can the law take account of these variables without doing the undesirable - i.e. imposing a uniform structure on political parties?

Thirdly, when can it be said that the national leadership is drawn from both parts of the Union? How many members should come from each part to satisfy this condition?

Let us look at the rationale. Presumably, the rationale was the same that one finds in 9(2). Whereas under 9(2) a party shall not be particularistic in terms of its constitution and policy, under 10(b) and (c) it shall not be particularistic in terms of its membership and leadership. If that is the aim, I submit, it is not achieved by these conditions. It is quite conceivable for a party to recruit 200 members of one particular ethnic etc. group who are registered voters and/or residents in ten regions. Thus a party whose membership is drawn from one ethnic group residing and/or voting in ten regions would qualify for registration but a party whose membership is drawn from different ethnic groups all of whom reside and or vote, say, in Dar es Salaam would not qualify.

There are so many permutations and combinations possible in real life to satisfy these conditions while at the same time almost totally failing to achieve the original aim that it is not worth having such provisions in law. Ultimately, a party whose membership is ethnic would hopefully be weeded out at the polls. It is therefore a matter of political culture, sophistication of the voting public, the performance and practices of a party rather than a matter for legal criteria. I would suggest that clause 10 does not add anything new and ought to be deleted.

Funds and Resources of political parties

With respect, the public ought to know the sources of the funds of political parties including their statements of income and expenditure. This is what is required under the proposed Bill. However, while it is mandatory on the registrar to publish in the official Gazette `an annual report on the audited accounts of every party', he may, at his discretion publish `any matter relating to funds, resources or property of any party or the use of such funds, resources or property'. This is a strange and can be a dangerous discretion. It can be used by the Registrar selectively and discriminatorily thus depriving the public of full information and adversely or favourably projecting the image of particular parties. We would suggest that all information on funds, property etc. of political parties should be published mandatorily in the official Gazette and at least one mass circulation newspaper.

Power to make Regulations.
The Minister for Legal Affairs has been given powers under clause 18 to make regulations to give effect to the provisions of the Act. For reasons we have already given such powers ought not be vested in the hands of a partisan politician. The power to make regulations should be vested in the Registrar with the approval of the Attorney General or the Electoral Commission depending where his office falls.

Village Democracy
Under the amendments proposed for local government there are interesting provisions which need to be discussed at some length. Unfortunately, because of pressure of time, we cannot do it in this paper. However, it is to be welcomed that the village chairmen will be elected by the Village Assembly; that women have a stipulated representation on the village government and that at number of levels elected leaders can be re-called by a majority vote.

The principle of re-call is a fundamental aspect of democracy. It is strange therefore that it has not been provided for in the case of members of parliament as well. Further, the village chairman can be re-called by two-thirds majority of the members of the village council but apparently not by the village assembly. We suggest that village chairmen should also be subject to recall by a simple majority of the village assembly and any proposal for recall of the chairman by the village council should be subject to ratification by a simple majority of the village assembly.

Ultimately the whole structure of local government needs a wider debate to discuss real grass-root democracy. This should await the Government White Paper.

By way of conclusion
Our quick review and discussion of the proposed Bills demonstrate a great need for a re-look at the Constitution and a debate on the Nyalali Report. It is clear that the 1977 Constitution cannot simply be repaired; it needs to be overhauled. And this is the historic opportunity to do so even if that exercise is preceded by a considerable period of an orderly and systematic public debate and discussion. It is in this context that I have made suggestions in this paper on changes in the proposed Bills treating these Bills as essentially inaugurating a healthy and democratic transition towards a democratic polity.

For ease of reference I set out below the suggestions made in the paper for the changes in the Bills.

1. The Government should publish a White Paper on the Nyalali Report (which would include its position on the adoption or otherwise of a new constitution) giving its own programme for the transition and its version of the final constitutional shape of the country.

2. The Government should invite and facilitate a public debate on both the Nyalali Report and the White Paper.

3. In the forthcoming session of the National Assembly the leader of Government business in the House may want to take the opportunity to make a statement on (1) and (2) to clear the atmosphere.

4. The Attorney General should be a civil service appointment appointed by an independent body, say, the Judicial Service Commission and he should have security of tenure.

5. The appointments to the Electoral Commission should be by an independent non-political body and the commissioners should enjoy security of tenure for a definite term.

6. In the performance of its function of demarcating constituencies the Electoral Commission need not require approval from any other body or person.

7. The Permanent Commission of Enquiry should be an independent body whose membership is appointed by the Parliament and is accountable to the Parliament. Its work and reports should be public and it should have power to institute prosecutions against those who abuse public office. [see Nyalali Report]

8. The office of the Registrar of Political Parties should be a high civil service post independent and free from political organs or persons. It could be under the Electoral Commission, as recommended by the Nyalali Report, or under the Attorney General provided these two organs themselves are re-constituted as suggested.

9. The category of fifteen women members to the National Assembly should be elected by all women's organisations (whether affiliated to political parties or not).

10. Other fifteen national members to the National Assembly should be elected by civil organisations or NGOs excluding registered parties.

11. The category of presidential appointees (art.66(1)(f) should be repealed.

12. Independent candidates should be permitted to stand both for presidential and parliamentary elections.

13. The qualification that a presidential candidate must be an automatic citizen be dropped.

14. Article 70 which deals with declaration of ownership of property by members of parliament should be repealed and replaced so as to (a) remove all references to the Leadership Commission which is proposed to be abolished and (b) make it mandatory on the Speaker to publish for public knowledge MPs' and president's declarations of ownership, and methods of acquisition, of property.

15. The addition of item 22 to the list of Union matters making registration of political parties a union matter should be dropped.

16. Decisions of the registrar of political parties involving rights should be appeallable to the High Court as of right. Such decisions should be made within specified time.

17. The provision deeming CCM to have been registered as a political party should be deleted.

18. The term `factional' in clause 9(2)(a)(ii) of the Political Parties Act should be deleted.

19. Paragraphs 9(2)(b) and (d) on disqualifying a party which advocates breaking the union or whose political activities are confined to one part of the union should be deleted.

20. Clause 10 requiring political parties to have at least 200 of their members drawn from at least 10 regions each and their leadership from both parts of the union should be deleted.

21. It should be mandatory on the registrar of political parties to publish the sources and funds as well the accounts of political parties in the official gazette as well as at least one newspaper with mass circulation.

22. The Minister should have no power to make regulations under the Political Parties Act. Such regulations be made by the registrar.

23. A simple majority of constituents should be able to re-call their member of parliament.

24. A simple majority of members of a village assembly should be able to re-call their village chairman.

*****

Besides the Constitutional Amendment Bill and the Political Parties Bill, the National Assembly is also considering the Bills for the Constitutional (Consequential, Transitional and Temporary Provisions) Act, 1992; Local Authorities (Elections) (Amendment) Act, 1992; Elections (Amendment) Act, 1992 and Local Government Laws (Amendment) Act, 1992. My comments are restricted to the Constitutional and Political Parties Bills since there is not enough time to discuss the other Bills.

`Tume ya Rais ya Mfumo wa Chama Kimoja au Vyama Vingi vya Siasa Tanzania, 1991: Taarifa na Mapendekezo ya Tume kuhusu Mfumo wa Siasa Nchini Tanzania'. The Report is in three volumes. In my opinion it is one of the most candid reports to come out from a government-appointed commission since independence and ought to be discussed and debated widely. Regrettably, so far there is very little public discussion on the Report and even less reference to it by government and party leaders.

The English translation includes 'or controls' while the Kiswahili original only mentions 'owns'.

There is considerable jurisprudence on Directive Principles of State Policy and the legal implication of their lack of justiciability developed by the Indian Supreme Court.

Daily News 7, 8 & 9 January, 1991. Also published in Review of African Political Economy, vol.50.

Actually the Nyalali Report recommends three constituent assemblies in keeping with its recommendation for three governments.

For a discussion see Issa G. Shivji `Electoral Politics, Liberalisation and Democracy' [forthcoming].

H. W. O. Okoth-Ogendo, `Constitutions without Constitutionalism' in Issa G. Shivji (ed.) State and Constitutionalism: An African Debate on Democracy, Harare: SAPES, 1991.

See Issa G. Shivji, Tanzania: Legal Foundations of the Union, Dar es Salaam: DUP, 1990.

ÜÜÜÜÜÜÜÜÜÜÜÜÜÜÜÜÜÜÜÜÜÜÜÜÜÜ€ þ x p t ê q ñ o
• l Ž i) g * ` s ^ t W ÿ U
R
P ÜÜ @

@

꿧꿨 뀟 18

D

b
x K

꿧꿨 꿧 19

v ‘

꿧꿨 뀟 20

q ’

꿧꿨 꿧 21

o “

h , f *f* _ ~] • V ¿ T À M
! K
@

@

꿧꿨 뀟 24

@

@

! 3! x ¶! v ¼! s i# q j# j É# h Ê# a (_ ²(Z
\. X r. S –2 Q
@

@

–

2 ·2 v 9 t 59 o ¼> m ã> h [G f • G c nJ a …J
^ gU \ ™U Y \ W ¿\ T

¿\ ¾] y Ä] v ua t va m d k $d h &d f Od c ¤g
a Ûg ^ Ò~ \ ü~ Y †, W ¢, T
@

¢, >„ y Q„ v ûˆ t ‰ q !œ o #œ ÿÿ$œ j

ž ÿÿ
ž e öŸ ÿÿ÷Ÿ ` \ ÿÿ] [
¡ ÿÿ @ @ @ @

ì

¡ v E¡ ÿÿh¡ s s¡ ÿÿt¡ n õ¡ ÿÿö¡ i _¢ ÿÿ`¢ d »¢ ÿÿ ö¢ a

£ ÿÿ £ \ %£ ÿÿ @ @ @
@ @

%£ M£ x j£ ÿÿh¡ s s¡ ÿÿt¡ n õ¡ ÿÿö¡ i _¢ ÿÿ`¢ d »¢ ÿÿö¢ a

£ ÿÿ £ \ %£ ÿÿ @ @ @
@ € , x „ x † x ê e ì X î X
ñ X € Cð € Cð € Cð ÿ• C -
€ Ch € Ch € Ch

< - h < - ð P < ñ } i •
\ • \ Ž O v B ÿ• CÈ
€ Ch € Ch € Ch ÿ• C -

꿧꿨 꿧 40

< - h

꿧꿨 뀟 41

< - h

< - h < - h v x n J n L
n n n – n ± n ÿ
n € Ch € Ch € Ch € Ch € Ch € Ch € C
h € Ch h < -

꿧꿨 뀟 43

< - h ÿ
n
n
n !
a b
a 7

꿧꿨 뀟 44

a 9

a ™
a € Ch € Ch € Ch € Ch
€ Ch € Ch € Ch

꿧꿨 뀟 46

< - h

< - h ™
›
n –

꿧꿨 꿧 48

e ~

꿧꿨 꿧 49

e ø

꿧꿨 뀟 50

e ú

X P X R X € Ch € Cð € Cð € Ch
€ Ch € Ch € C

꿧꿨 뀟 52

< - h < - Đ Đ

< - h R ‘ n “ n A n C n … n ‡
n W n Y n a n
€ Ch € Ch € Ch € Ch € Ch € Ch € Ch
Ð

< - h a c n - n !- n ä- n æ- n ñ n M
n O
n ! n € Ch € Ch € Ch € Ch € Ch € Ch €
Ch € Ch € Ch Ð

< - h ! ! n
! n 3! n

& n & n ž (n (n ²(n :, n € Ch € Ch € Ch € Ch

€ Ch € Ch € Ch € Ch Đ

< - h :, <, n X. n Z. n \. n r. n 1 n
1 n ’2 n ”2 n € Ch
€ Ch € Ch € Ch € Ch

€ Ch € Ch € Ch € Ch Ð

< - h ”2 –
2 n ·2 n ý4 n ÿ4 n 7 n 7 n 9 n 9 n 9 n
€ Ch € Ch
€ Ch € Ch
€ Ch € Ch
€ Ch € Ch € Ch Đ

< - h
9 59 n Ç: n É: n »; n ½; n ’= n ”= n º>
n ¼> n € Ch € Ch € Ch € Ch € Ch
€ Ch € Ch € Ch € Ch Ð

< - h
¼> ã> n ×A n ÙA n ®D n °D n ¹F n »F n
G n G n € Ch

€ Ch € Ch
€ Ch € Ch € Ch € Ch € Ch € Ch Đ

< - h
G YG n [G n • G n ¨H n ªH n K n K n
qM n sM n € Ch € Ch € Ch € Ch € Ch
€ Ch € Ch
€ Ch € Ch Ð

< - h
sM ²N n ´N n 2P n 4P n SQ n UQ n üR n þR
n cU n € Ch € Ch € Ch € Ch € Ch € Ch €
Ch € Ch
€ Ch Ð

< - h
cU eU n gU n ™U n `W n bW n !Y n #Y n
âY n äY n € Ch € Ch € Ch € Ch € Ch € Ch
€ Ch € Ch € Ch Ð

< - h
äY B[n D[n ›\ n • \ n Ÿ\ n ¿\ n q^ n s^ n
• ` n € Ch € Ch € Ch € Ch € Ch € Ch
€ Ch
€ Ch Ð

< - h

• ` ‘` n Äc n Æc n d n d n d n $d a

€ Ch € Ch € Ch € Ch € Ch € Ch

€ Ch

꿧꿨 뀟 69

< - h

< - h $d &d n Od n çe n ée n îf n ðf n g n ¢g n ¤g n € Ch € Ch € Ch € Ch € Ch € Ch € Ch € Ch € Ch h

< - h
¤g Ûg n hh n jh n Öj n Øj n Qm n Sm n ^o
n `o n € Ch € Ch € Ch
€ Ch € Ch
€ Ch € Ch € Ch € Ch h

< - h
`o p n p n ýp n ÿp n Ws n Ys n ¾t n Àt
n ÷u n € Ch € Ch € Ch € Ch
€ Ch € Ch € Ch € Ch € Ch h

< - h
÷u ùu n Ow n Qw n Þx n àx n Šy n Œy n ˜|
n š| n € Ch € Ch € Ch € Ch € Ch € Ch € C
h

€ Ch € Ch h

< - h
š| Î~ n Ð~ n Ò~ n ü~ n ,, n „, n †, n ¢, n :„ n
€ Ch € Ch € Ch € Ch € Ch € Ch € Ch € Ch
€ Ch h

< - h
:„ <„ n >„ n Q„ n † n † n Zˆ n \ˆ n ùˆ
n ûˆ n € Ch € Ch € Ch € Ch € Ch
€ Ch € Ch € Ch € Ch h

< - h
û^ ‰ n |‹ n ~‹ n å‹ n ç‹ n ñŒ n óŒ n d•
n f• n € Ch
€ Ch € Ch € Ch € Ch € Ch € Ch € Ch € Ch h

< - h f• +Ž n -
Ž n ÛŽ n ÝŽ n ˆ• n Š• n !• n #• n T‘ n €
Ch € Ch € Ch € Ch € Ch € Ch € Ch € Ch € C
h h

< - h
T‘ V‘ n œ’ n □’ n D“ n F“ n Ò“ n Ô“ n #”
n %” n € Ch € Ch € Ch € Ch € Ch € Ch € C
h € Ch € Ch h

< - h %” ‘” n “” n ñ” n ó” n v– n x–
n ý– n ÿ– n ¯—
n € Ch € Ch € Ch € Ch € Ch € Ch € Ch
€ Ch € Ch h

< - h ¯— ±—
n ~ n ~ n r˜ n t˜ n '™ n)™ n ã™ n å™ n
€ Ch € Ch € Ch € Ch € Ch € Ch € Ch € Ch
€ Ch h

< - h
å™ Ãš n Åš n L› n N› n «› n -› n œ n œ
n € Ch € Ch € Ch € Ch € Ch € Ch € Ch
€ Ch € Ch € Ch h

< - h œ œ n !œ ÿÿ#œ ÿÿ

ž ` öŸ ` \ `
¡ ` s¡ `

N ' ` ð ð

< - h s¡ õ¡ m _¢ m

£ m j£ m k£ ÿÿ

N ' ` ð
N ' ` ð ð

© £› ó Œ•

vŸ ÜŸ þ • ? ó é" u¡ I# ß¡ õ` Ž ¢
ê¢ ê¢ ÜÜÜ
ÜÜÜÜÜ-Ò 09Ð/ÿÿ • 3 À!@ Ð `6Ð `6è ÜÜÜÜÜÜÜÜÜÜÜÜÜÜÜÜÜÜ
ÜÜÜ
ÜÜÜ
n ‡ ,
f ž ã I" 2(Q/ 6 ^< #C J ÓP •
W
\ ýb ah ƒo \v {} ¾ƒ Š G• ø• +› ê¢
þ l g
• E ˆ 8
~
´

꿧꿨 꿧 88

‰

-
I õ ú s
Ó ^ • …
ÜÜÜÜÜÜÜÜÜÜÜÜÜÜÜÜÜÜÜÜÜÜÜÜÜ
ÜÜÜ
ÜÜÜ
ÜÜÜÜ 꿧□가□가□가□□□□꿭

꿧□가□가□가□□□□꿭

꿧□가□가□가□□□□꿭

꿧□가□가□가□□□□꿭

가□가□가□가□□□□꿭

꿧□가□가□가□□□□꿭

꿧□가□가□가□□□□꿭

가□가□가□가□□□□꿭