

National debates and people's participation prize open democratic spaces for struggles and organizations of the oppressed and exploited classes – and people become the main defenders of 'their' constitution.

A SYMPOSIUM ON THE CONSTITUTION OF THE UNITED REPUBLIC OF TANZANIA.

Presentation By:

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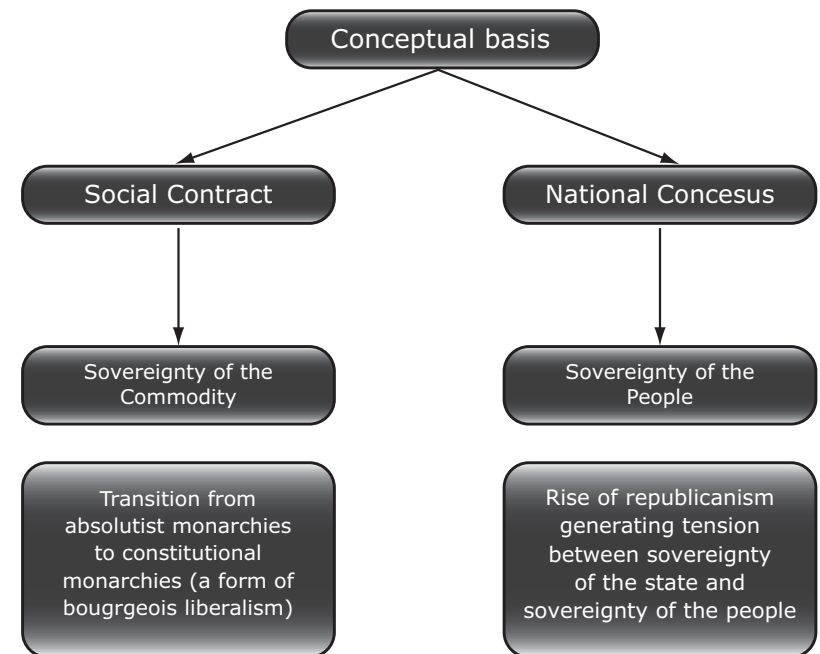
TOPIC: Constitution-making in Tanzania: Historical and Contemporary Processes.

OUTLINE:

Framework of analysis

- i. 50 years of making Tanganyika and Zanzibar constitutions
- ii. Proposal for a people-centered, civil society-based process in making the new constitution
- iii. The role of teachers in the national debate.

FRAMEWORK OF ANALYSIS: CENCEPTUAL BASIS



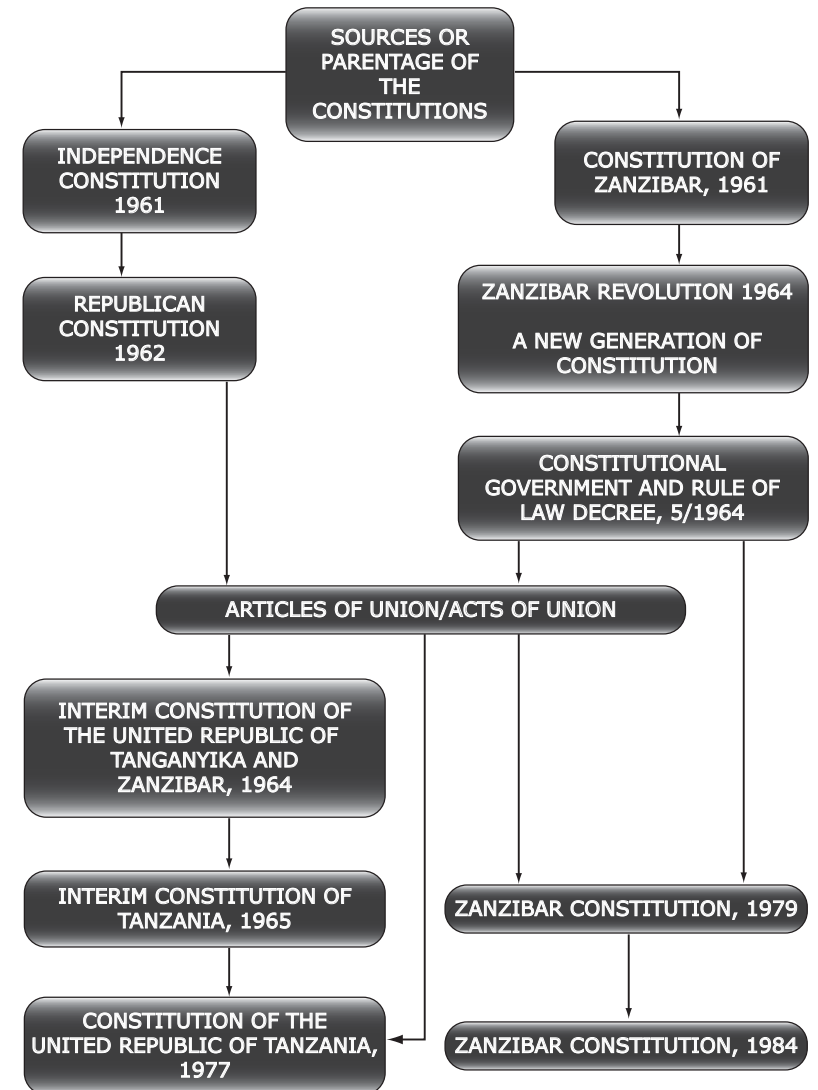
Framework of Analysis: Political Legitimacy and Legal Authority

- **Political legitimacy:** accepted and respected by the people.
- **Legal authority:** deriving from effective legal process and organs.
- Terrain of building political legitimacy is not always legal/constitution. During Mwalimu's time, it was the party/ideological.
- What is legitimate may not always be legal and what is legal may not always be legitimate. Only when legality and legitimacy coincides, that is when you get hegemony.



A welcome speech by CETA Director

LEGAL SOURCES OF THE CONSTITUTION OF THE UNITED REPUBLIC OF TANGANYIKA AND ZANZIBAR



YEAR	NAME	MADE BY	MAIN FEATURES
1963	Independence Constitution	Constituent Assembly (under British tutelage)	Mornachy under the Constitution with the Sultan as the Head of State with some Executive Power exercised on advice of the Cabinet. Parliamentary Executive headed by the Prime Minister.
1964	Republican Constitutional Decrees	Revolutionary Council	A number of Decrees giving the Revolutionary Council legislative and executive powers as an interim measure pending appointment of the Constituent Assembly of the People of Zanzibar within one year. This was indefinitely postponed & constitutionalism and rule of law abandoned.
1979	First Constitution (after the revolution)	Revolutionary Council + Central Committee of CCM	Modeled on 1977 Union Constitution with Executive presidency (directly elected) and House of Representatives with indirect representation through

YEAR	NAME	MADE BY	MAIN FEATURES
1962	Republican Constitution	National Assembly converted into Constituent Assembly	Executive Presidency, Head of State and Head of Government - President
1964	Interim Constitution of the United Republic	President	Two Government Union
1965	One Party Constitution	Parliament Act of Parliament (NO. 43/65)	One Party System. TANU on Mainland & ASP in Zanzibar, TANU (party constitution) made part of the State Constitution.
1977	Union Constitution	Constituent Assembly under	Imperial Presidency Two

Political Legitimacy and Legal Authority of the Constitution- Making Process so far in Doubt

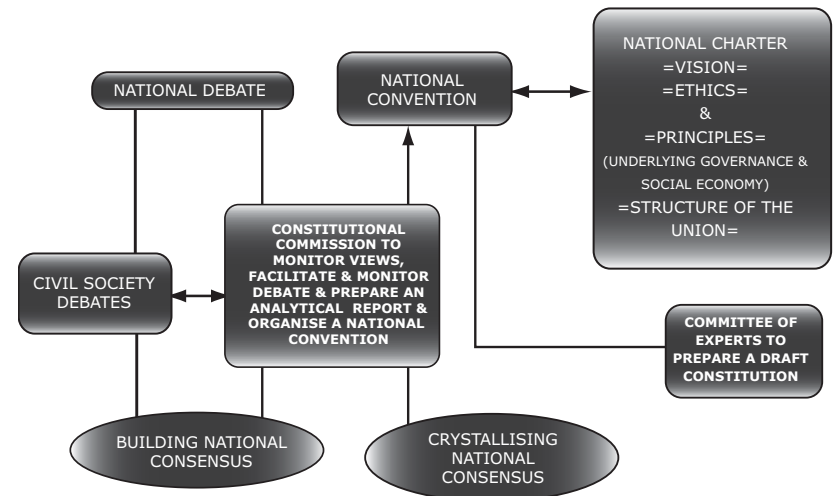
- Constitutional processes so far have lacked meaningful people’s participation, and has put its legal authority in doubt.
- Therefore: Lacks political legitimacy and legal authority and genuine ‘ownership’ of ‘WE THE PEOPLE’, particularly in relation to the Union question . Hence the weak link of our constitution has been a Union concern.
- The reasons why it worked so far relatively smoothly with the exception of the Union, are:
 - (a) Mwalimu’s leadership – popular, trusted and dedicated;



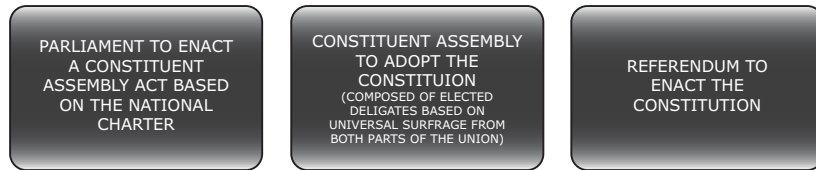
KAS personnel listening to students’ contributions

- (b) The terrain of building political legitimacy was not legal or constitutional, but ideological (Arusha Declaration);
- (c) One – Party System – With single party in both parts of the Union.
- These conditions don’t exist now Since 1983/84 in the case of the Union, and since 1995 with introduction of multi party system, we entered a situation of constitutional crisis.
- Hence we need to rebuild a national consensus and place the Union on a firm political and legal foundation.
- “The time is now - Tomorrow will be too late”

POLITICAL PROCESS



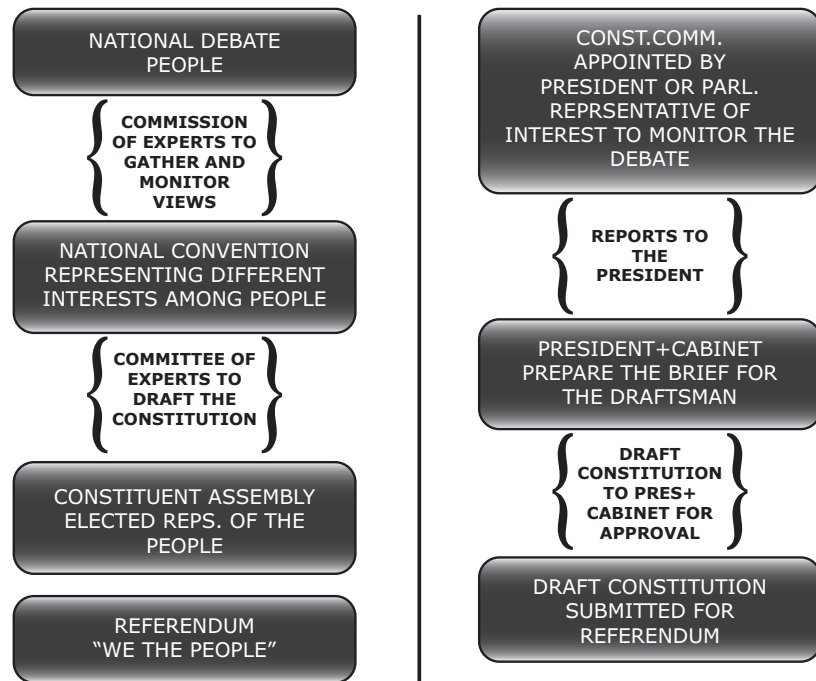
LEGAL PROCESS



Comparison of Salient Features

- Political process precedes and circumscribes the legal process-
- Legal process precedes controls and circumscribes the political process.

PEOPLE - CENTERED VS. POWER - CENTERED CONSTITUTION - MAKING



- National Debate and National Convention bring out in the open contestations in a transparent manner and consensus (compromises are made in the open)
- Contesting interests remain 'hidden' and compromises are reached behind closed doors of the commission and cabinet deliberations and behind the backs of the people.

- Open debates and people's participation helps to build National consciousness, pride and the sense of ownership of the constitution, as 'OUR' constitution made by 'WE THE PEOPLE'- and this is the only way to recast our Union on a firmer foundation.
- The end product remains alien to the people and it is unlikely to resolve the Union question.

- National debates and people's participation prize open democratic spaces for struggles and organizations of the oppressed and exploited classes – and people become the main defenders of 'their' constitution.
- Under the pretext of expert, representative bodies ruling elites and classes continue to dominate and circumscribe spaces for the expression of the lower classes while creating an illusion for proxy participation.

Role of Commission for Human Rights and Good Governance

- A constitution is a legal and political document. It is a national document and should not be captured by a particular section of a society, political or economic interest, or politicians and their parties.
- A constitution is an instrument which people can express their hopes, it is a guardian against rulers and organs of the state that are bent on usurping power.
- Therefore: The current move for a new constitution is very important for the people of Tanzania. It is an opportunity to put in place a document which reflects the wish of the majority.
- One of the major ways of ensuring this, is to have a national and meaningful debate on this issue. People's views must be taken abroad.
- Both teachers and students should be encouraged to participate in the debates. They are an important section of the entire society.



*KAS Resident Representative for Tanzania addressing the
Participants*

DISCUSSION

Participants' Responses

At the end of Prof. Shivji presentation, participants were invited to ask questions that the Professor was requested to respond to.

- A student said that the professor had at one time indicated that it was not necessary to have a new constitution, arguing that the old constitution could simply be amended. He asked for his current position on this matter.
- A teacher raised the issue of Article 46 (i) which says that all citizens were equal under the law, yet the President was not liable for prosecution. The participant wanted to know whether this was not a contradiction to the constitution.
- Another participant, Elias Mutagera, was of the view that debates on the new constitution should start immediately, rather than to wait for obvious turmoil such as what happened in Egypt and Tunisia.

Prof. Shivji's Responses

Responding to the comments and questions raised by the participants. Prof. Shivji clarified that the interview had dwelt on the discussion on the need of a new constitution, and his argument had focused on the fact that the current constitutions had their weaknesses.

On Article 46 (i) regarding suing a sitting President, Prof. Shivji said if a Head of State was required to serve a prison term, a government would not be able to function anymore and that is why it was not pragmatic to sue a sitting President.

On the Zanzibar question, Prof. Shivji said there was a need for cooperation between the mainland and the isles parties regarding the way forward on the formation of a new constitution.

More questions to Prof. Shivji:

- Student Endesha: Today's leaders appear to have run out of morals, is there any need for a constitution?
- Mr. Omani: As regards basic human rights, do the citizens have legal rights to sue the President under the current constitutional dispensation?



Giving a vote of thanks to the participants

- Ali Juma: (from Kawe Secondary School): Is the Child Labour issue addressed under the current constitution? If not, how could we ensure that it is adequately addressed in the proposed constitution.
- Rajab (a teacher): We have two constitutions, one for the United Republic of Tanzania another for the Isles: He proposed that if a new constitution is created, it should be the only legal document. Two constitutions are confusing.
- Another student proposed that constitutional matters should be taught in Civics Education and copies of the constitution be made available to all students.

Prof. Shivji's Responses:

On basic human rights and constitutionalism, Prof Shivji said basic human rights do not make sense in poor socio-economic situations like in Tanzania. For instance, he said, a poor peasant cannot sue the government. In short, he said, human rights are a process and constitutionalism cannot be addressed through the context of basic human rights.

Prof. Shivji said educational issues like curriculum, syllabus, language to be used as a medium of instruction and what direction the education sector should take could be resolved through the constitution. He cited a case in Kenya where their recently promulgated constitution had decided on the required number of cabinet ministers.

Remarks from Mr. Shaba

The KAS team participated in the symposium and Mr. Richard Shaba; a team leader gave his remarks about the ongoing debate on constitution.

Mr. Shaba was invited to address the participants. He said that the whole process of leadership and governance had been left to government bureaucrats, hence making it to lack people's participation and input.

He pointed out that people should be sensitized to know that all elected leaders like Councilors, members of parliament and other officials were elected by the people in order to serve them, not to serve themselves.

He called on participants in the symposium to remember the history, from selfless leaders like Mwl. Nyerere and Bibi Titi who had displayed true patriotism and noble service to the people.

He also urged participants to be aware of their constitutional rights and to know their roles in the government programs, like "Kilimo Kwanza".