

Bottlenecks to New Constitution Making Process in Tanzania

By James Jesse*

Introduction

This paper is about the process of making a new constitution in Tanzania. It is based on the data and information gathered with a view to making an initial assessment of the constitutional making process in the country which started in 2012. The overall aim is explore challenges or bottlenecks facing the process.

The process of constitution making in Tanzania is now in the stage of discussion of the Draft Constitution by the Constituent Assembly (CA). It is well known that the CA was adjourned on Friday 25th April 2014 to pave the way for the parliamentary budget sitting. The second round of CA is expected to resume in early August. Before the CA was adjourned there was a serious stalemate brought about by the structure of the Union between Tanganyika and Zanzibar. The Constitutional Review Commission (CRC) under the chairmanship of Justice Joseph Sindi Warioba (rtd) prepared a Draft Constitution of the United Republic of Tanzania (*Rasimu ya Katiba*) which proposed a three-tier government system instead of the existing two tiers. That is to say, it proposed the adoption of a federal structure whereby there will be the government of Tanganyika for non- union matter pertaining to Mainland Tanzania (or Tanganyika) and the government of Zanzibar which will be responsible for non-union matters pertaining to Zanzibar. Then there will be the union government responsible for the proposed seven (7) union matters between Tanganyika and Zanzibar.

While presenting the first Draft Constitution on 3rd June 2013 at Karimjee Hall in Dar es Salaam to the Vice President of the United Republic of Tanzania, Dr. Gharib Mohammed Bilal, the Commission Chairperson, Judge Joseph Warioba stated some salient features of the Draft. He said that majority of people recommended a three-tier government structure instead of the currently two-tier system.¹ He said “we weighed the pros and cons and arrived at the conclusion that the three-government structure was the best.”² Again, when presenting the second Draft Constitution to the President of the United Republic of Tanzania, Dr. Jakaya Mrisho Kikwete on 30th December 2013 at Karimjee Hall, Judge Warioba said that “after

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¹ See, the Speech by the Chairman of the Constitutional Review Commission on launching a Draft Constitution, on 3rd June 2013.

²Ibid.

listening to what people have said about the Union and weighing them, we have settled for three governments”. He said, this reflected the position of the majority of people who gave their opinion to the CRC.³ According to the Commission, more than 61 per cent of Tanzanians from the Mainland favoured a three-tier union, 13 per cent wanted one government and 24 opted for the current two-tier system. In Zanzibar, 34 per cent of people who gave their views said the current system should be retained, 0.1 per cent proposed a single government and 60 per cent preferred a treaty-based union (*muungano wa mkataba*). Judge Warioba concluded that—

“after getting these statistics we reviewed some studies on Union matters, including the 1999 Nyalali Commission report and the position of the G55 group of MPs who proposed a three-tier government system...we confirmed that reasons given for a review of the union system were the same as those raised by people who aired their views”.⁴

The Commission argued that this was the best way to cure the union problems which have been chronic for 50 years since the inception of the Union in 1964. Apparently, if we are to discuss about the bottlenecks of the constitutional review process and in particular asking why such stalemate occurred, this is the starting point. On the one hand, the ruling party Chama cha Mapinduzi (CCM) strongly opposed the proposal for a three-tier system while on the other hand the main opposition political parties supported Warioba Commission’s proposal for adoption of the federal system with three governments. The main argument of the ruling party is that the three-tier government structure proposed by the Commission was not only expensive to run but it might break the Union. Quite unfortunately, when the President was inaugurating the Constituent Assembly (CA) in Dodoma on Friday 21st March 2014 he made a speech which strongly opposed the proposed three-tier system and thus made a clear position to the effect that the ruling party was not ready to accept a federal government structure.

Majority of members of the CA are members of the National Assembly (Union Parliament) and House of Representatives from Zanzibar. These are also members of the ruling CCM and opposition parties, Civic United Front (CUF) and Chama cha Demokrasia na Maendeleo

³<http://www.thecitizen.co.tz/News/Warioba--Why-we-have-proposed-3-govts-again--/1840392/2130038/-/gd0klf/-/index.html>

⁴ Ibid.

(CHADEMA). It follows therefore that in case of any difference of opinion between members of the ruling party and those from the main opposition political parties it requires extra-ordinary efforts to resolve that difference.

Historical Background of the Legal Framework

The main challenge or bottleneck to the constitutional making process in Tanzania traces its origin from the stages of preparing the legal framework which controls the entire process and the framework itself. *The Constitutional Review Act, Cap. 83 (CRA)* was not enacted under smooth environment. It was enacted and continued to be amended under stiff opposition, struggles and through personal interventions by the President. Following President Kikwete's promise to review the current Constitution in his speech to welcome the New Year on 31st December 2010, the Government through the Ministry for Constitutional and Legal Affairs drafted a Constitutional Review Bill of 2011.⁵ The Bill was first read in the National Assembly on 5th April, 2011 under certificate of urgency.⁶ It was highly opposed by Members of Parliament (MPs) firstly because it was brought under certificate of urgency and secondly, the public had not been given time to air their views on the draft Bill. Due to these reasons the Bill was not discussed, instead the Speaker referred it to the appropriate Standing Committee for consideration.

The Parliamentary Standing Committee on Constitutional, Legal and Administration scheduled public hearings in Dar es Salaam, Dodoma and Zanzibar to collect public opinions on the Bill. During this stage there was a notable nationwide resistance. Some MPs and other people demanded the publication of the Bill in Kiswahili to enable more people who cannot read and understand English to participate.⁷ In Dar es Salaam public hearing was conducted at Karimjee Hall on 7-9 April 2011. The hearing did not end peacefully because of eruption of violence. Apart from demanding the draft Bill written in Kiswahili people opposed various provisions. Some people were denied chances to air their views. This caused among other things, physical and verbal confrontations. The chaos forced the Chairperson of the Standing Committee, Hon. Pindi Chana to adjourn the public hearing to 8th day of April 2011.

⁵ The Bill was published on 11th day of March 2011. It was published as a Special Bill Supplement No.1 of 2011. It appeared on the Government Gazette No.1 Vol.92 of 2011.

⁶ United Republic of Tanzania, National Assembly Hansard, 5th April, 2011.

⁷ See recommendations of the Jukwaa la Katiba, Asasi za Kiraia na Taasisi za Dini together with Tanganyika Law Society Recommendations regarding the Constitutional Review Bill, 2011.

In Dodoma public hearing on the Bill was also conducted on 7th April, 2011 at Msekwa Hall. The hearing turned into violence because the Hall was not enough to accommodate many residents of Dodoma who wanted to air their views. In Zanzibar the situation was even worse. In the public hearing which was chaired by the Minister for East African Community Affairs, Hon. Samuel Sitta some people tear away the draft Bill forcing him to stop the hearing.⁸ On 16th April 2011 the Speaker of the National Assembly received report of public hearings.⁹ The Speaker, Hon. Anna Makinda, informed Parliament that the public hearings in Dodoma, Dar es Salaam and Zanzibar were marred by exchange of bitter words and chaos forcing the Police to intervene. She said the Bill was criticized as unfriendly and undemocratic, pointing out that the Committee recommended drafting of a Kiswahili version of the Bill. This would allow more citizens to understand the contents of the Bill. Another recommendation was that the Bill should be published in newspapers and other media to enhance public awareness of the document. Basing on the public hearing report, the Speaker said the Bill should be re-worked and presented in the next parliamentary meeting for discussions and subsequent endorsement.

It is important to note that prior to withdrawal of the Bill, CHADEMA had planned a countrywide demonstration against such Bill.¹⁰ After the Speaker's decision, the opposition leader and CHADEMA Chairman, Freeman Mbowe announced that the demonstration has been suspended because the government has listened to the public outcry on the draft Bill.

Following this directive from the Speaker the new Bill was drafted.¹¹ The draft Bill was in two versions, English and Kiswahili. The Government presented it before Parliament for the purpose of second and third reading on 14th November 2011.¹² However, opposition MPs from CHADEMA opposed the second reading of the revised Constitutional Review Bill. Their contention was that the Bill should be read for the first time because it had fundamental changes or amendments from the previous version while the same had not been presented to

⁸ For detail information about all stages of the process see the Report by the Legal and Human Rights Centre entitled, "A Report on the Ongoing Constitutional Review Process, March 2014".

⁹ See the Parliament Hansard of 16th April, 2011.

¹⁰ Visit <http://www.shout-africa.com/politics/tanzania-finally-withdrawals-controversial-constitution-review-bill/>.

¹¹ It was published as a Bill Supplement No. 4, dated 14th October, 2011. It appeared on the Government Gazette No.41 Vol. 92 of 2011.

¹² See the Parliament Hansard of 15th November 2011.

the public for comments. CHADEMA warned that it would publicly campaign against the Bill if Parliament would decide to discuss and approve it. After the speech by the Chairperson for Parliamentary Standing Committee responsible for Constitutional affairs which was to the effect that the Committee had concluded its consideration of the Bill, the Speaker ordered the Bill to be entered on the Order Paper for the second reading¹³. Thereafter, the then Minister for Constitutional and Legal Affairs, Hon. Celina Kombani moved a motion that the Bill be read for the second time. The opposition MPs from CHADEMA and NCCR-Mageuzi walked out of Parliamentary debating chamber in protest against the second reading of the Bill.¹⁴

While CHADEMA and NCCR Mageuzi MPs walk out, other MPs from CUF, CCM and TLP continued with the debate. The Chairman of CHADEMA and leader of official opposition in Parliament, Hon. Freeman Mbowe said that his MPs and those from NCCR-Mageuzi would not participate in the debate.¹⁵ He said they would instead take the matter back to the public. He accused the Speaker for siding with the government by suppressing the views of opposition. The absence of CHADEMA and NCCR-Mageuzi MPs did not bar the National Assembly dominated by the ruling party-CCM to proceed with the debate on the Constitutional Review Bill.¹⁶ The debate continued for four days. It was then read for the third time as required by the Parliamentary Standing Orders and finally passed on 18th November 2011.¹⁷ The passing of the Bill was not welcomed by many people. Various organisations, particularly Civil Society Organisations (CSOs) opposed the Bill on the ground that the Bill was not supposed to be read for the second and third time and wanted to demonstrate to pressurize the President not to assent to the Bill.¹⁸ On 22nd November 2011 the Police in Dar es Salaam banned the planned demonstrations by CSOs led by *Jukwaa la Katiba* which was scheduled to be conducted on 24th November, 2011.¹⁹ However, on the other hand, the CCM youth wing—Umoja wa Vijana Chama Cha Mapinduzi (UVCCM), wanted to conduct a countrywide demonstration to oppose the opposition and CSOs.²⁰ Similarly, CCM women's wing—UWT wanted to demonstrate in support of President Jakaya

¹³ *Ibid.*

¹⁴ Visit <http://www.ippmedia.com/frontend/index.php/2main/?l=35397> as accessed on 22nd August, 2013.

¹⁵ *Ibid.*

¹⁶ See the Parliament Hansards of 14th, 15th, 16th, 17th and 18th November 2011.

¹⁷ Visit <http://www.ippmedia.com/frontend/index.php/2main/?l=35397> as accessed on 22nd August 2013.

¹⁸ See Tanzania: Police Says No to Constitutional Related Demos, found at <http://allafrica.com/stories/201111250062.html?page=1> as accessed on 24th August 2013.

¹⁹ *Ibid.*

²⁰ *Ibid.*

Kikwete's speech that he delivered to the elders in Dar es Salaam.²¹ The President said among other things, that the procedures with regard to the drafting of the Bill and tabling it before Parliament were properly followed and therefore the Bill was properly passed by Parliament.²²

The Police announced that given the volatile situation whereby everybody wanted to air their views through demonstrations, they were of the view that there was possibility of confrontations. For that reason, the Police Force banned all demonstrations which were planned to be conducted by different groups including CHADEMA for and against the Bill. The Police advised all organisations to find alternative means of voicing their concerns and not by way of demonstrations.²³ On 22nd November 2011, after his speech to the elders of Dar es Salaam the President agreed to meet with the delegation of opposition party-CHADEMA.²⁴ And on 27th November 2011 CHADEMA team met with the President at the State House.²⁵ The Government and the opposition-CHADEMA agreed in principle that the *Constitutional Review Act 2011* needed major amendments. A joint statement was issued by the two sides at the end of two days of consultations. Principally, the agreement was that the Act should be improved so as build a national consensus as well as cohesion.²⁶

Soon after the meeting with CHADEMA delegates, on 29th November 2011, which was only eleven days after the Bill was passed by the National Assembly and two days since the President met the CHADEMA delegates, the President assented to the Bill.²⁷ Thereafter it became an Act of Parliament ready to be implemented. It was known as the *Constitutional*

²¹ See the Speech by His Excellency the President of the United Republic of Tanzania Addressing Elders in Dar es Salaam on 17th November 2011.

²² *Ibid.*

²³ For example, speaking in Parliament CHADEMA National Chairman Freeman Mbowe said his party planned to conduct demonstrations countrywide to press the government to halt the fast tracking approach to the constitutional review process. "If the government suspends endorsement of the Draft, CHADEMA would also suspend the planned demonstrations. The fate of over 44 million Tanzanians could not be decided by a few people in Zanzibar, Dodoma and Dar es Salaam". Quoted and found at <http://www.tzaffairs.org/2011/05/> on 29th August, 2013.

²⁴ See JK, CHADEMA Talks: The way forward, found at <http://www.thecitizen.co.tz/News/-/1840406/1810952/-/abxgc4/-/index.html> as accessed on 21st August 2013.

²⁵ *Ibid.*

²⁶ Visit <http://www.thecitizen.co.tz/News/-/1840406/1810952/-/abxgc4/-/index.html>, as accessed on 21st August 2013.

²⁷ See Kikwete Clears Way for Constitution Review, found at <http://www.ibn-tv.com/2011/11/kikwete-clears-way-for-review-of-constitution/n> as accessed on 20th August 2013.

Review Act, No. 8 of 2011. The President said that everyone who wanted to comment on the law was free to do so and amendments would be done to rectify any anomaly.

In responding to various public calls regarding the amendment of the Act, the Government drafted a Bill to amend the *Constitutional Review Act*. This Bill was published as Bill Supplement No.8 of 2011 on 23rd December 2011²⁸. It was tabled before Parliament on 9th of February 2012. It was hotly debated for two consecutive days. It was finally passed by Parliament on 10th day of February 2012 and assented by the President on 20th February 2012.²⁹ The government reprinted the new version of the Act which included amendments. This version was reprinted as *The Constitutional Review Act*, [Cap. 83 R.E 2012]. After this, the President announced the names of the appointed members of the CRC on 6th April 2012 before a well-attended press conference at the State House.³⁰ All members of the Commission were sworn by the President on 13th April 2012³¹ and the Commission was officially inaugurated. The Commission officially started its work on 2nd May 2012.³² The work of the Commission was expected to run for a period of 18 months. Thus by October 2013 the Commission was expected to complete its works by presenting the final Draft Constitution to the Constituent Assembly.³³ The President stressed that a new constitution was expected to be launched on 24th April 2014 when the Nation will be marking its 50 years anniversary of the Union between Tanganyika and Zanzibar.³⁴

Responding to further requests for amendments of the Act, in June 2013 the government prepared another amendment and publishes it.³⁵ Following this publication, as usual, the Parliamentary Standing Committee for Constitutional Affairs organized meetings with selected stakeholders in Dar es Salaam sometimes in July and August 2013 to collect their views on the proposed Bill. This Bill Supplement had six sections which proposed

²⁸ See the Constitutional Review (Amendment) Act Bill, 2011. It appears on the Government Gazette No.51 vol. 92 of 2011.

²⁹ See the Constitutional Review (Amendment) Act, Act No.2 of 2012.

³⁰ See Warioba named Head of the Constitution Commission, an article found at <http://www.ippmedia.com/frontend/index.php?l=40270/> as accessed on 23rd August 2013.

³¹ Found at www.katiba.go.tz as accessed on 31st August, 2013

³² Visit <http://www.ippmedia.com/frontend/?l=55497> as accessed on 18th August 2013.

³³ *Ibid.*

³⁴ See Tanzania Constitutional Reform Process Begins, an article found at http://sabahionline.com/en_GB/articles/hoa/articles/features/2012/03/26/feature-02 as accessed on 19th August 2013.

³⁵ This was through the Constitutional Review (Amendment Act) 2013, Bill Supplement No. 3 of 7th June 2013 which was published in the Government Gazette No 23 vol. 94 of 7th June 2013.

amendments to sections 3, 22, 23, 24, 27 and 28 of the Act. The main amendment was in respect of the appointment of members of the Constituent Assembly drawn from groups specified under sub-section (i)(c) of section 22 of the Act who were 166 members. The amendment proposed that the President shall invite each group to submit to him a list of not more than three names of persons for appointment as members of the Constituent Assembly and thereafter the President shall appoint the required number of 166 members. On 5th September 2013, the Bill was tabled in Parliament for the second and third reading so that it could be debated and passed into law. When the opposition spokesperson on matters for Constitutional and Legal Affairs, Hon. Tundu Lissu was given the floor to present the views of the official opposition he raised objection arguing that the Parliamentary Standing Committee never consulted stakeholders from Zanzibar. Besides, he stated that the opposition camp was against the President of the United Republic of Tanzania being given mandate to appoint the 166 members of the Constituent Assembly. After the speech from the opposition, Mkanyageni legislator Hon. Habib Mohamed Mnyaa (CUF) requested for the Deputy Speaker's guidance as to what was the logic of debating the proposed Bill which had not incorporated the views of Zanzibar stakeholders. The argument was that it was unfair for having failed to consult stakeholders from Zanzibar as partners in the Union. The Deputy speaker who was presiding over the session said that he will issue guidance later, but meanwhile he directed the discussion of the Bill to continue. As a result of this, members of the opposition walked out of the debating chamber protesting against the discussion of the Bill while a serious objection had been raised.

For the first time since the start of the 10th Parliament, the official opposition comprising of CHADEMA MPs enjoyed full support from CUF legislators who followed them out. While the opposition MPs were outside Parliament, the remaining members of the House from the ruling party, CCM and one MP from the opposition, Hon. Augustine Mrema (TLP) continued with the discussion. On the second day; that is 6th September 2013 the National Assembly sat to continue with the discussion of the Bill after the morning session of question and answer. When the debate was about to begin the opposition members of Parliament wanted the debate to be suspended until the alleged controversial issues were resolved. This proposal was defeated by a majority when the votes were cast (156 CCM MPs votes versus only 59 supporting votes from CHADEMA, CUF and NCCR- Mageuzi). After the votes were announced, the Deputy Speaker Hon. Job Ndugai called for the debate to proceed. It is at this

point when the leader of the opposition in the House, Hon. Freeman Mbowe stood up in protest and asked to say something when Ndugai ordered him to sit down. Mbowe refused to heed to the order. All opposition MPs (with exception of Mrema) joined their leader, and rose to their feet in defiance. Chaos soon ensued on the floor as other opposition MPs rushed to form a human shield around Mr. Mbowe to prevent the security men from throwing him out. Amidst verbal abuse, security officers applied physical force to push through the human shield made by the MPs in an attempt to get to Mbowe. The MPs' dramatic gestures led to chaotic outburst that lasted for an entire half an hour in which up to a dozen security officers attempted to remove Mbowe from the House while his supporters fought them off. At this point Mbowe opted to voluntarily walk out.

The Bill was debated and finally passed on 6th September 2013 without the participation of opposition MPs. A few days after Parliamentary session was over, leaders of the main opposition parties, CHADEMA, CUF and NCCR-Mageuzi formed an alliance to protest against the Bill. The members of the opposition went so far as to accuse the ruling party of "abducting" the constitutional review process. During a joint rally in Dar es Salaam on 21 September 2013 the three opposition parties again accused CCM of pushing the Bill unilaterally. In the public rally the three opposition parties planned to stage countrywide protests in October 10th against the Constitutional Review Bill. Apart from the Jangwani meeting which was conducted on 21st September 2013, the coalition of opposition parties conducted another meeting in Zanzibar on 26th September 2013. The meeting was conducted at Kibandamaiti.³⁶ Due to the increased tension between the coalition of opposition parties and the Government the President decided to call them and have some talks at the State House. The President invited leaders of the main oppositions to the State House for a meeting to discuss and resolve the ongoing tension. This meeting was conducted on 15th October 2013 at the State House. One among the provisions they were contesting was the provision giving the President the power to appoint the 166 members of the Constituent Assembly. Besides, they wanted this number raised. Also the opposition wanted the National Electoral Commission overhauled before a referendum on the proposed new constitution is conducted.³⁷ They were also demanding the full involvement of Zanzibaris in the

³⁶ <http://nurdidy.wordpress.com/2013/09/26/wapinzani-wawasha-moto-zanzibar/> as accessed on 22nd January 2014.

³⁷ *Ibid.*

constitutional review process.³⁸ Soon after the meeting with the President the Directorate of Communication at the State House issued a Statement that an agreement had been reached for the opposition to forward their views to the government on how best the law could be improved.³⁹

Leaders of political parties through the Tanzania Centre for Democracy (TCD) met on 22nd October 2013 and discuss about the amendments to be included. The chairman of TCD, Mr James Mbatia, and other leaders handed over to the government TCD recommendations for amendment of the CRA. On the 9th November 2013, the National Assembly approved another Constitutional Review Amendment Bill which incorporated some of the recommendations from TCD.⁴⁰ Briefly, the amendments focused on increasing participation of other people from the original number of 166 to 201. Finally, the Bill was passed into law and provided the manner of getting the 201 members and the number for each interest group. It provided that these members will be drawn from NGOs (20), Faith Based Organisations (20), fully registered political parties (42), higher learning institutions (20), people with special needs (20), trade unions (19), associations of livestock keepers (10), fisheries association (10), agricultural associations (20) and 20 others from any other groups of people. Adding to the number of all Members of Parliament and the House of Representatives, this brought a total number of 639 members to the CA. According to the amendments each group was required to send names of nominees to the President of not less than four and not more than nine for consideration. Thereafter the President will appoint among them into CA. Despite strong objection from the opposition camp, the amendments also provided for the dissolution of the CRC after presenting the draft Constitution to the CA while initially it was supposed to be dissolved after all stages of the constitutional review process.

The Legal Challenges

The above historical background provides the basis for the current stalemate in the CA. It was quite vivid since the drawing of rules of the game that the constitutional review process in Tanzania will suffer obstacles brought about by political interests. If members of parliament

³⁸ *Ibid.*

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http://www.itv.co.tz/news/local/5534697/Makubaliano_ya_Rais_na_wapinzani_kuhusu_Rasimu_ya_katiba_mp_ya_haya_hapa.html accessed on 14th January 2014.

⁴⁰ The National Assembly passed the Constitutional Review (amendment number 2) Act 2013

from the ruling CCM and the opposition camp were always at loggerheads during the debate of the CRA until when the President intervened, it goes without say that the same would happen when they are debating the draft Constitution in the CA. And in my view this difference is not only brought about by the different positions on the structure of the union, but it is also inherent in many other issues in the Draft Constitution. Whether it is two-tier or three- tier government system, this is only the beginning. Each of the two political camps in the CA has its own position on a number of issues. As always the case, politicians have interests to win in elections.

The tension between the two camps in the CA was heightened by the speech of the President who supported his party position. While the opposition camp under the coalition known as *Katiba ya Wananchi* (UKAWA) advocated and fought for the three-tier system, the ruling CCM dismissed the findings of Warioba Commission saying that the Draft Constitution does not represent the views of the people and thus stood firm to defend the existing two-tier system. After being overwhelmed by the majority CCM members UKAWA decided to walk out from the CA at the initial stage when the discussion was on chapter one and chapter six of the Draft Constitution regarding the structure of the union. UKAWA went to the public and complain that CCM has hijacked the Constitutional Review Process. They have issued an ultimatum to the effect that UKAWA will not resume to the CA in August until when the Draft Constitution is respected.

When the Constitutional Review Process had just started some CSOs and academics had raised eyebrows regarding the CRA, in particular the composition of the CA under section 22. They opined that if Tanzania wishes to have a people centred constitution the composition of CA was required to be different. The Special Committee for a New Constitution (SCOC) under the Legal and Human Rights Centre, for example, issued a press release and conducted public debates and stated that majority of members of CA ought to have been drawn from people who are not in active politics. SCOC suggested that two third members should have been drawn from various interests groups in society and the remaining one third drawn from members of parliament.⁴¹ The basis for this proposition was to ensure

⁴¹ See Press Release on Maoni ya Kamati Maaalum ya Katiba Mpya Kuhusu Uundaji wa Bunge la Katiba, May 16, 2013.

that debates in the CA were not driven by political interests but rather the interest of the public. This proposal was ignored in favour political interests.

The CRA provides that the provisions of the proposed Constitution shall require passing by the CA on the basis of support of two third majority of the total number of members hailing from Mainland Tanzania and two third majority of the total number of members hailing from Tanzania Zanzibar.⁴² UKAWA members have refused to support the two-tier government system which is being advocated by CCM. Members from CCM and some of the 201 members have also objected the proposal for the three-tier system. Besides, UKAWA have boycotted the CA. The issue now is whether it is possible to pass a new constitution without the presence of UKAWA. If the requisite two third majority of the total number of members from Zanzibar and Mainland Tanzania is obtained, it is possible to get the new Constitution notwithstanding the absence of UKAWA. Whether or not such a constitution will have political legitimacy or national consensus is another thing. But rumours are that such majority is possible to be obtained from Mainland Tanzania but not Zanzibar because of the big number of members from the main opposition party CUF. It requires negotiations and compromise outside the CA to reach consensus. If this is not done and members from the two camps are not ready to mediate their differences it will be practically impossible to get a new constitution.

Conclusion

This paper has traced the process of making a new constitution in Tanzania albeit briefly due to space constraint. It has attempted to make an assessment of the process and highlighted some bottlenecks. In the discussion the paper shows that there is a serious stalemate for the process to proceed. The CA is polarised into camps; the CCM camp which is in favour of the existing two-tier government system and the UKAWA camp constituting majority of members from the opposition political parties which is in favour of the Draft Constitution produced by the Constitution Review Commission that provides for the three-tier federal system. UKAWA members have boycotted the CA sessions until when the Draft Constitution is respected and adhered to. The CRA requires the provisions of the proposed Constitution to be passed on the basis of support by the two third majorities of members hailing from Mainland Tanzania and two third majorities hailing from Zanzibar. If compromise is not

⁴² See Section 26 (2) of The Constitutional Review Act, Cap (Revised Edition 2014)

reached to have a national consensus on various issues within the draft Constitution, including the type of union the dream to get a new constitution in the near future is likely to disappear.