

## TANZANIA

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# MAENDELEO DIALOGUE

BUILDING A NATIONAL CONSENSUS FOR THE NEW CONSTITUTION

**Constitution making is a new culture in Tanzania. This is because throughout the past 50 years, Tanzanians have never been involved in a constitutional making process. The Independence Constitution was bequeathed by the departing colonialists for their own interests especially in safeguarding their investments and the security of their nationals who were left behind. On the other hand, the 1977 Constitution was imposed on citizens by the sole ruling party during the one-party reign without their inputs. No wonder even the Parliament was subordinated to party interests after being assigned the task of overseeing the implementation of party policies and programmes by the government. Henceforth the latest development on constitutional making has attracted interests from all stakeholders across the country. This is the essence in which the Maendeleo Dialogue on "Katiba Moja Kwa Watanzania Wote - Pamoja Tutafika" was hosted by TADIP in partnership with KAS.**

The Maendeleo Dialogue forum came immediately after the Constitutional Review Commission (CRC) had handed over the second draft of the new constitution to the President and after having discussed and incorporated stakeholders' comments on the first draft from various interest groups and forums. Likewise, the Dialogue was hosted ahead of the formation and the launching of the Constituent Assembly. The advantage of having the Dialogue ahead of the meeting of the Constituent Assembly is that it allowed interest groups not only to comment on the various gaps in the second draft for

improvement, but more important to mingle with some of the delegates to the Constituent Assembly with the aim of sensitizing their thinking on the concerns and expectations of citizens. The participants were representatives from the government, civil society organizations, religious groups, political parties, NGOs, education institutions, media, business community, trade unions, organizations of people with disabilities as well as associations of pastoralists, fishermen and farmers and others. It was expected that such an approach would prepare the ground for state and non-state actors to have an open, interactive and participative exchange of ideas thus inspiring and stimulating the deliberations within the Constitutional Assembly which was scheduled to start in Dodoma only a few days later.



250 representatives of organisation have followed the invitation to discuss the new Constitution

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[www.kas.de/tanzania](http://www.kas.de/tanzania)**Official Opening**

In his welcome remarks to over 250 forum participants, Mr. Stefan Reith, KAS Tanzania Resident Representative informed those present that the forum was open to all stakeholders and that he was specifically happy to see so many young people in attendance. He underscored the importance of a people driven constitutional making process saying such a process must always put people at the centre. He said it was equally crucial to involve the young generation as part of inculcating constitutional values and democratic culture as these are the leaders of tomorrow.

Mr. Reith informed those present that Konrad-Adenauer-Stiftung (KAS) was a German political foundation affiliated to his country's ruling party – the Christian Democratic Union (CDU). The Foundation, according to Mr. Reith is one of an overall of six German political foundations and one among the five operating in Tanzania saying they were all state financed but operate independently.

He also informed them that the Foundations share values and basic principles of their sister parties and work closely with partner parties in their host countries sharing similar political orientation. It was for that reason that KAS works very closely with Chama cha Demokrasia na Maendeleo (CHADEMA), while Friedrich-Ebert-Stiftung (FES), another German political foundation works very closely with the ruling Chama cha Mapinduzi (CCM) as both CCM and the Social Democratic Party (SDP) which FES is affiliated to are socialist leaning political parties. The Civic United Front (CUF) works closely with Friedrich-Naumann-Stiftung (FNS) because they share a similar political philosophy and are members of the international liberal family.

Mr. Reith said KAS started its work in Tanzania way back in 1964 when it was invited

by the late Mwalimu Nyerere to assist in the re-organization of the then Kivukoni Ideological College. With regard to what KAS stands for, he said it was out there to promote freedom, democracy, social market economy, good governance, international relations and of late to address issues related to climate change. Constitutions being the legal backbone providing the rules of the game for every democracy, KAS supported and keeps on supporting constitutional reform processes world-wide in order to strengthen the efforts of its partner countries and governments to ensure an inclusive, participatory and transparent democratic process of constitutional building or reform. The Tanzanian process was supported by KAS from the very beginning when the Tanzanian government initiated the current process with the first constitutional reform bill in 2011.

The Executive Secretary of TADIP, Mr. John Mallya, reminded those present that this was the first time in the country's history that Tanzania was going to have a Constituent Assembly as part of the ongoing constitutional making process. In this regard the Dialogue on Building a National Consensus for the New Constitution was a golden opportunity to generate new ideas to enrich the constitutional making process.

Mr. Mallya reminded those present that the Constituent Assembly will be followed by a referendum, which also called for well informed participation of people hence the need for constructive participation of all stakeholders.

**Building a National Consensus -  
The Second Draft of the Constitution and  
the Responsibility of the Constituent Assembly**

The opening session was followed by a keynote speech delivered by Professor Mwesiga Baregu, member of the Constitutional Review Commission (CRC) on "Building a National Consensus - The Second Draft of the

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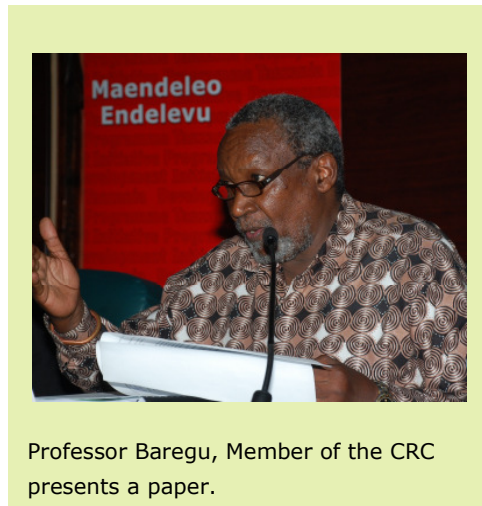
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Constitution and the Responsibility of the Constituent Assembly”.

In his keynote speech, Professor Baregu expressed his satisfaction with the presence of so many young people in the conference hall saying such forums add value to the debate in the forthcoming Constituent Assembly besides the fact that the constitution is basically for the future generation.



Professor Baregu, Member of the CRC presents a paper.

The political science professor then took participants through the political and socio-economic environment and the process and challenges which the constitutional making process had to encounter, including the responsibility of the Constituent Assembly.

Professor Baregu reminded those present that it was the Nyalali Commission, which first recommended in 1991 the reform of the constitution but no action was taken. Since then, he said the debate has always taken three paths. On one side there are those who think there is no need for a new constitution. For those the 1977 Constitution is still a very good legal document. Then there are those who argue that since both, the past and current constitutions, were imposed on people without their inputs, time has come for their participation in constitutional making process. The third group, according to Professor Baregu, is made up of those who argue that the cur-

rent constitution should be consolidated through patches (*kuweka viraka*) instead of overhauling it completely. According to Professor Baregu even today the three groups still linger on hence the Constituent Assembly will have to deal with such groups and reach a consensus.

With regard to what kind of process the constitutional making process should take, Professor Baregu said basically there were two approaches - a controlled and a negotiated process. He then dealt with the 4Ps namely: Players (who are the players - People, Commissioners or Presidents), Path (what route should the constitutional making process take - Constitutional Conference or National Conference), Process (what are the actual processes - Baraza, Interviews, Commissions, Questionnaires etc) and Pace (how long should or can the process last).

The CRC Commissioner explained his satisfaction with what was said and expressed. The Commission was confident that they got what people wanted considering the responsiveness of the people in both urban and rural areas highlighting that the attendance and issues brought out during the collection of people's views was outstanding. Dwelling on the process itself, Professor Baregu said they opted for a people driven constitutional making process through the following steps:

- Seek and collect people's views on what they want;
- Create ownership of the process so that the constitution can be obeyed;
- Consensus building (basic values, aspirations, visions, leadership and types of government)
- Inculcation of new habits and culture (this is important in order to make people live by the constitution instead of resorting to coups);

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- Project sovereignty and hence popularization of constitutionalism and legitimacy.

Professor Baregu also took participants through controversial issues that need more discussions by the various stakeholders like the state of the Union, the supremacy of the Federal Government, directive principles, leadership ethics and accountability and leadership taboos.

Other notable proposals of the second draft of the New Constitution include:

- i. The structure of the Union - a three-tier federal arrangement composed of the Federal Government, Zanzibar Government and Tanganyika Government;
- ii. The number of union matters has been reduced from the original 11 to only seven;
- iii. The cabinet will be made of people outside the Parliament;
- iv. The Powers of the President have been trimmed down, e.g. appointments are institutionalized instead of pickings;
- v. The qualifications for the President are outlined;
- vi. The number of MPs has been trimmed from 350 to only 70;
- vii. People given recall powers in order to tame absenteeism (rules will have to be made on the procedures);
- viii. Independent / private candidature guaranteed;
- ix. Parliamentary Speaker and Deputy to be / remain apolitical;
- x. Quorum in Parliamentary session is 50% (the aim here again is to check absenteeism).

Turning to the responsibility of the Constituent Assembly, Professor Baregu had strong advice to all Constituent Assembly

delegates saying their duty is to improve the draft of the new constitution and not to suppress or overturn people's views.

He advised them to take a win-win approach (consensus building) otherwise the Constituent Assembly would fail to deliver a new constitution. Furthermore, he advised Constituent Assembly delegates to pay more attention to wider public concern instead of working on narrow philistine interests. He regretted that the CRC had been abolished prematurely as it could have been a vital advisory body including the provision of civic education ahead of the proposed Referendum.

He concluded this area by underscoring the importance of expressing the interest of all Tanzanians and to breaking party deadlocks and come out with a people-centered new constitution.

Regarding challenges to be surmounted, the CRC Commissioner was quick to mention the size of the Constituent Assembly saying 640 is a lot of people. In order to be productive, the best approach, according to him, is to work in committees.

The second challenge relates to diversity as the interaction of the varied interests, affiliations, leanings, perceptions, the age factor, education and understandings of the issues at hand was a daunting task. In order to manage such diversity it was crucial to avoid a majoritarian approach and work through consensus. The third challenge is the language barrier. He suggested using Swahili during the session in order to facilitate communication among Constituent Assembly delegates. The final challenge relates to political interests saying there were people who were against a federal structure of the Union not because of convenience but because of inbuilt selfish political interests. He said it was axiomatic to respect people's view.

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### Some Comments

Commenting on the keynote speech, Mr. Hebron Mwakagenda, from Jukwaa la Katiba, praised the commendable job done by the CRC saying the task ahead was to improve it and not to suppress what people want. He warned against politicking saying the constitution was for all Tanzanians and not the property of political parties. He called for political will and avoidance of divisive politics along political lines.

Mr. Mwakagenda said it was a big mistake to allow parliamentarians to sit in the Constituent Assembly saying this is not what they were elected for from the constituencies and through their respective political parties.

On the way forward, he said Jukwaa la Katiba was planning to conduct orientation workshops for the 201 Constituent Assembly delegates in order to not only familiarize them with what was expected from them by the people, but also to empower them with confidence and get rid of the inferiority complex when they come head to head with seasoned politicians inside the Constituent Assembly.

Professor Chris Maina Peter, of the Law School, University of Dar es Salaam and Chairman of the Zanzibar Legal Service Center warned those present that a constitution is a product of struggle saying if you don't struggle you have already lost for nobody will ever accept the constitution.

He reminded those in attendance that the previous Constitutional Review Act of 2011, which was rejected by stakeholders before being reviewed had no-go-areas and threatened punishment to those who dared to venture into areas like to talk about the Union structure or the powers of the President.

He highly commended the CRC for reaching consensus and to come out with a very progressive document in a very short period of time given their diversity. He equally reminded dialogue participants that it was the first time that Tanzanians were being involved in the constitutional making process saying the past constitutions were imposed upon the people.



Professor Chris Maina Peter comments on the paper

Noting that a constitution must be people-centered, Professor Peter strongly supported the drafts saying the second was built on the foundation laid in the first draft. What is good about the new draft, he said is the fact that it has retained all the basics that usher a new dawn to Tanzanians in addition to being a modern constitution.

Professor Peter lauded the presence of the extensive provision of the Bill of Rights, the separation of powers, transparency and accountability and the infusion of international law. "Not only that it takes into account people's views but this is also a modern constitution", he said.

Turning to the Constituent Assembly, the Don expressed his concern that it was the weakest area in the constitutional making process. This is, according to him, because people's representatives are a minority compared to politicians who make up the majority. He then went on to enumerate guiding principles in the Constituent Assembly which includes

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- Public participation
- Inclusiveness
- Transparency; and
- Public ownership

He echoed a point raised by Professor Baregu, in his keynote speech to the effect that the duty of the Constituent Assembly is not to amend the draft constitution but rather to improve it, stressing that to do otherwise, will be an abrogation of the people's mandate.

Professor Peter was also quick to point out pending dangers saying delegates to the Constituent Assembly need to focus on issues of concern to the communities instead of concentrating on the structure of the union for example. He cited the issue of the independent candidate saying while the issue was neatly covered in the first draft it has been carted away in the second draft. According to the law professor, in the first draft if an MP was fired by her or his political party she or he could retain the parliamentary seat as an independent candidate. However, that right has been taken away in the second draft saying this is one area in which the Constituent Assembly delegates could improve the draft.

Professor Peter was also not happy by subjecting the Constitution to ordinary laws saying unless such laws were provided and defined it was dangerous to subject for example, human right articles to other laws which are not even provided in the constitution. All such areas need to be improved by the Constituent Assembly.

Another area that requires improvement was related to oaths to the President instead of oaths to the Constitution and to the Republic, noting that, it was wrong, for example, for the Attorney General to swear allegiance to the President instead of the Constitution and the Republic. He concluded

by saying the frame work put forward formed the basis of a modern constitution and the duty of the Constituent Assembly is to improve rather than to mutilate the draft so that we have people-centered constitution.

**Building a National Consensus for a New Constitution - Roadmap and Way Forward**

The last session was conducted through a panel discussion on the following topic: "Building a National Consensus for a New Constitution - Roadmap and Way Forward". Panel discussants were: Judge (rtd) Amir R. Manento, Chairman of the Commission for Human Rights and Good Governance, Mr. Francis Stolla, President of the Tanganyika Law Society, Mr. Abdallah Salim Mohammed of the Zanzibar Law Society, Ms. Rahma Bajun, Programme Manager of the Tanzania Youth Coalition and Dr. Ayub Rioba, Lecturer at the School of Journalism and Mass Communication, University of Dar es Salaam.

Judge (rtd) Manento told those present that he was a strong believer of the three-tier government structure because it will clear once and for all claims and counter-claims of being short changed or swallowing one part of the Union and vice versa. However, he said it was important to take care of economic development of both sides of the union, which were to root cause of reservations.

Speaking specifically on the position of the Commission on Human Rights and Good Governance (CHRAGG) in the draft constitution, Justice Manento said the CHRAGG as a watchdog body needs to be independent as per international standards. He said it was wrong for the Executive Secretary of CHRAGG to be appointed by the President based on recommendation by the Public Service Commission saying such an arrangement is not acceptable by interna-



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tional standards. He was of the view that the independence of CHRAGG must be assessed in the terms of appointing authority, security and remuneration.

With regard to the National Electoral Commission (NEC), Manento noted that by the wording in the document, NEC appears to be independent, but in reality it was not. He said the electoral management body was based in Dar es Salaam while elections were conducted by DEDS, TAMISEMI, and Ward Executive Officers who are public officers answerable to their appointing masters. He underscored the importance of NEC to have its own people on the ground that can be held accountable. Likewise, he said if NEC is not well funded it cannot be independent.

With regard to the suggestion concerning the appointment of the Chief Justice, in which it is proposed that the post should be subject to the approval by the Parliament, Manento said such an approach was totally wrong. "How can one pillar of the government pick another pillar of the government? Can the Speaker be approved by the Judiciary and vice versa?" he asked, saying issues of confirmation should be considered afresh.

Francis Stolla, TLS President noted that in the 1962 Constituent Assembly Act, it was provided to turn the existing Parliament into a Constituent Assembly in order to deal with constitutional matters or Union matters. It was on that basis that the current members of Parliament and those of the House of Representatives had been transformed into Constituent Assembly delegates plus the 201 representatives from the civil society.

He demanded that courts be freed from unnecessary technicalities. Further he wanted in Article 151 qualifications of judges to be clarified. Turning to the National Electoral Body (NEC) Mr. Stolla said there is lot of ambiguities saying it was unworkable to appoint a NEC boss in the absence of Tanga-

nyika. On the Referendum, he warned that the danger of a "YES" and "NO" vote is loss of good things provided in the draft document and vice versa. He therefore, suggested instead of "YES" or "NO" approach to opt for a questionnaire approach.

Mr. Muhamed noted that Tanzania had two children of the same mother who were being treated differently and unequally saying Zanzibar was short changed in many areas. He wondered why women should be given preferential treatment of 50:50 (parity) in representative bodies, while youths were marginalized despite of being not only the majority, but also the most productive group.

He lauded the separation of powers and the inclusion of independent candidates in elections. He equally commented the decision to trim presidential powers specifically on appointment powers, which will now be subject to approval by the Parliament.

Turning to NEC he shared similar views with Justice Manento saying the work of NEC has always been questioned in the past but it seems there are no lessons learned.



The panel consists of representatives from CSO

With regard to disputes of the committee on union matters in which the Vice President is to chair, he was of the view that the right person to chair such a committee meeting should be the President himself.

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With regard to the Presidential election results pegged at over 50%, Mr. Muhamed warned that if it stands as it is, then Zanzibar will never produce a Union President given the numerical number. He therefore suggested for alternating or rotating of Presidential candidates between Tanganyika and Zanzibar. On ministerial, ambassadors and other senior posts, he said there should be parity between Zanzibar and Tanganyika.

Ms. Bajun from the Tanzania Youth Coalition spoke very strongly on the involvement of youth given their numerical number and productivity. She said the youth had several issues which form the basis of their agenda as follows

- An independent Youth Council
- Youth policy
- Youth employment
- Youth education
- Youth participation in decision making
- Improvement of sporting environment
- Youth access to health facilities
- Accountability and good governance
- Poverty denting from the family level onwards
- Social service to youth with disabilities
- Participatory policy

She noted that the draft constitution was silent on youth employment and health status. She demanded compulsory education to be extended from Standard VII to Four IV as a stepping stone to curb youth pregnancy.

Ms. Bajun expressed her approval on the Public Leadership Code of Ethics and the reduction of the age for MP aspirants from 26 to 21 adding however, that age should

come down to 18 which is the voting age in Tanzania.

On the structure of the Union, she said the youth were united for a three-tier structure of government.

**The Way Forward**

It was recommended that CSOs, FBOs, academic institutions and the media should have the following functions and duties:

- i. To spearhead in sensitizing and encouraging Constituent Assembly delegates and specifically MPs to work on gaps identified in the draft constitution;
- ii. To form coalition groups to push forward on specific group agendas (e.g. youth, women);
- iii. To produce print outs and disseminate them widely in order to inform the public;
- iv. To involve the media outlets to contribute to an informed public and a national consensus around the constitutional reform;
- v. Religious bodies should continue to mobilize, inform and sensitize their followers on the importance of the constitutional reform for peace and sustainable development;
- vi. Academic institutions have a duty to research and bring out issues of public interest relating to constitutional making process.

At the end of the day participants agreed on the formation of a task force on a voluntary basis which shall summarize and bundle the results of the discussion.

**Great media interest**

The event attracted a big interest within Tanzania's media houses. On the evening of the discussion several television and radio stations covered the discussion. On the next



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day reports about the event could be found in various newspapers, in some even on the front page.

The great interest of the participants as well as the media emphasizes that the Tanzanian citizens are aware of the importance of a broad consensus supporting the constitutional reform and that there is a strong public interest and will for participation and dialogue in order to establish a national consensus. Hence this platform was more than timely. It gives hope that the Constituent Assembly will be submitting a draft that can satisfy the needs and wishes of the majority of Tanzanians in order to ensure that they can vote for an adoption of the draft into a new Tanzanian constitution.



**Impressum**

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