The Tanzanian Constitution As An Instrument For Economic Growth and Social Justice

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As a nation, we are currently going through one of the most important moments of our county's political history – the ongoing process of searching for a new constitution of Tanzania. This exercise follows an introduction of the infamous ***Constitutional Review ACT*** that was officially tabled before the parliament in April 2011. The ACT has stimulated heated debates across the country in all spheres of national life - political, social, and economic. Much remains to unfold. Focus in this paper however is on how we can change constitution to become an instrument of ***economic growth and social justice in Tanzania.***

In a true democracy, the constitution wells up from the people. To the citizens of such a democracy, the constitution serves as their covenant, their charter of freedom as well as the blue print for the present and the future generations. This is why Tanzanians today regard the constitution as a unique document.

Our new constitution needs to be a sacred document. It ought to reflect the soul of Tanzania, the personality of a timeless society, her unparalleled national ethos, the values and ideals, the hopes and aspirations and those beliefs and faiths that we as a people have come to cherish down the long years of our struggle for political and economic independence. It should symbolize the unity of the people of Tanzania and their sovereign will. The source of all power in our civil-order is the people, so the new constitution must spring from the people and ought to subsist for the people, for their well-being and progress. Therefore by all means, we need to draw the new constitution in a manner that can make it act as an instrument of economic growth and social justice for the citizens of Tanzania.

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The new constitution has to essentially be a social document in the sense that it should envision a societal order which guarantees the dignity of the individual and should be based on principles of equality and justice – in the context of social, political and economic spheres. It should be regarded as an embodiment of the noble ideas and cherished goals of the leaders of our freedom struggle. The father of our nation Julius K. Nyerere led 16 others to make history of our nation in 1954 when he founded TANU. Most of these individuals are hardly recognized in our civil order. They were **S.M Kitwana, C.O. Milinga, Kisungutwa Gabara, L. Bugohe (Makaranga), S.A. Kandoro, Aziza Dosa, Abdu Sykes, Ally Sykes, Patrick Kunambi, Germano Pacha, Japhet Kiliro, John Rupia, Joseph Kimalando, Abubakar Iranga, J.P. Kassela and Tewa S. Tewa.** We must understand that the founding fathers of our nation were people with vision and passion; they were leaders, freedom fighters, and statesmen who were endowed with wisdom, dynamism and pragmatism. Above all, they were people who with diverse perspectives and political

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objectives, deliberated solemnly for years to construct a just system of self governance for our country, and do away with the British colonial rule. Therefore, our new constitution should be regarded as an avatar of the living spirit to guide our country towards a secular, socialist and egalitarian society.

We should all reckon the current process of searching for a new constitution as a great event not only in the political history of our country but also in the history of human rights. The new constitution should open new vistas for growth through an array of rights and privileges to the citizens of Tanzania in general and particularly, to those societies that still experience economic backwardness, rural areas in particular. Our new constitution has to guarantee liberty, justice, fraternity and equality to all. And these aspects have already been proclaimed universally, as the inalienable rights of man. Thus, the preamble should clearly mirror the fact that Tanzania will hardly become a successful democracy in the absence of justice, liberty, equality and fraternity.

In our new constitution, justice in the social, political and economic spheres ought to be emphasized. Social justice should demand for the eradication of social inequalities based on sex, gender, religion, ethnicity and disablement. Economic justice should rule out all distinctions between individuals from an economic standpoint. Every individual ought to be rewarded according to his/her toil or labor. Political justice has to guarantee an absence of arbitrary treatment of the citizens. Importantly, in making our new constitution, stakeholders involved must be fully conversant with the fact that political freedom alone is ineffectual if social and economic justice does not exist. Hence justice in all spheres of national life must be guaranteed.

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A retrace of our country's history reveals that we emerged as an independent society with aspirations for improving the standards of living of the people. Having obtained our independence in 1961, our founding fathers had to cope with the monumental task of bringing far reaching social, economic and cultural changes so as to reorganize our country's feudal and colonial social structure that was inherited at independence, and put an end to the economic backwardness of our society and create a modern, diversified economy as the foundation of our development for the post – colonial era. Based on the socio-economic conditions of the time, the post – colonial state attempted to achieve the following: (i) independence of our economy from reliance on strategic imports and foreign aid (goal being self – sustained growth); (ii) Capital accumulation and resources mobilization, leading to increasing rates of savings and investment (goal being high economic growth rate); (iii) the reduction of sectoral, regional and social disparities (goal

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being social equality) and (iv) the simple concern of providing minimum conditions of subsistence and survival to the citizens(goal being equity and justice).

Stakeholders involved in the process of drafting our new constitution must be convinced that a rapid economic growth that is oriented in a socially approved direction would be best attained within the framework of a mixed economy that also provides social safety nets to the poor. Efforts to bring about economic development and reduction of social disparities need to be inseparable. Accordingly, on the one hand, the new constitution should produce for people a **democratic republic** and a **parliamentary government** where the state plays an active role of a '**Welfare State'** in the process of socio-economic development. In this context, directives for the state to banish poverty, produce wealth and ensure an equitable distribution thereof amongst all who contribute towards its production ought to be outlined. On the other hand, the new constitution should hold sacred several provisions that protect the rights, privileges and liberties of citizens.

However, socio-economic justice is hardly achievable if democracy pursued is only confined to a 'political democracy'. In order to achieve socio-economic justice, the constitution has to provide enough scope for social justice and also be committed not only on 'political democracy' but also 'social democracy'. Political democracy can hardly survive unless it goes hand-in-hand with social democracy. In simple terms, social democracy is regarded as a way of life which recognizes liberty, equality and fraternity. Liberty, equality and fraternity need to be treated as a tripod. Liberty, equality and fraternity form a union of triplet in the sense that getting rid of one defeats the very purpose of democracy. Liberty cannot be separated from equality; equality cannot be separated from liberty; nor can liberty and equality be separated from fraternity. Stakeholders involved in drafting our new constitution must constantly keep these objectives in mind; they should conceive of abolishing inequality in our society and ensure that the **'National Cake'** is equally shared by all citizens. The constitution ought to be designed as a tool of 'economic salvation' of the poor. It has to set a guideline for the state to remove the curse of poverty that has haunted our country for 50 years, so that a better standard of living among the people of Tanzania begins to materialize.

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A poor country such as Tanzania can hardly achieve economic and social prosperity unless the state intervenes in this regard. Hence in the constitution, the state should be demanded to secure for its citizens, men and women, equally, the right to adequate means of a livelihood; equal pay for equal work; protection against abuse and exploitation of the economic necessity of peasants and workers; the protection of their health and strength; the protection of children of

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minor age and youth against exploitation as well as protection against moral and material abandonment. Within the limits of its economic capacity and level of economic development, the state should ensure that it secures for the people the right to work, the right to education and the right to public assistance in case of unemployment, old age, sickness and disability. The state should also ensure just and humane conditions of work and maternity relief for the people.

By means of a suitable legislation, the state should endeavor to secure a living wage, conditions of work that ensures a decent standard of life and full enjoyment of leisure and social and cultural opportunities to all workers in the agricultural, industrial, mining and service sectors of the economy. Also the participation of workers in the management of undertakings, establishments or other organizations engaged in any sector of the economy must be secured. The socio-economic justice for the weaker sections of our society ought to be stipulated, with the objective being – uplifting all parts of our society that continue to experience economic backwardness, rural areas in particular. The new constitution should place the state on duty to protect such sections of the society from all forms of injustice and exploitation.

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It remains to be a mere fact that no society can achieve meaningful economic progress without investments in education. Therefore, the new constitution ought to require the state to strive for the provision of **free and compulsory education to all children up to secondary level of education (or until they reach the age of 18 for that matter)**. This is a prerequisite for making our children capable of helping themselves, helping others, helping their country and helping the world at large. The provision of free and compulsory education to our children should begin within ten years of the commencement of the new constitution.

It is obvious that as an economy develops, disparity in the distribution of income and wealth becomes inevitable. The rich get richer and the poor get poorer. Under the new constitution, the state therefore needs to embrace suitable measures that would eliminate such inequalities in our society. The state ought to be obliged to secure better distribution of the resources of the country so as to do away with the evils of concentration of wealth and means of production that lead to common detriment. The eradication of all forms of economic exploitation and concentration of power in a few hands must begin to materialize in our country.

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In order to novice and accelerate the process of economic development in our country, an effective planning machinery is required to be in place. In the constitution, this has to be incorporated under the principles of 'economic democracy'. **The Planning Commission** has to engineer economic growth that raises the standards of living of citizens. In addition, it should open up to them new opportunities that enable them to lead a decent life. That way, economic growth that also delivers a relief from **three enemies of man-kind: poverty, diseases and ignorance**, can be attainable. Eradicating these three evils has been our primary concern for many decades. Efforts towards attaining the cherished goals of their eradication should therefore begin with a new speed.

In the new constitution, a welfare state has to see that not just economic progress is guaranteed but also social justice. Defining the term 'social justice' precisely can be problematic. However, social justice is generally thought of as a system of distribution and retribution that is governed by valid moral principles. Stakeholders involved in drafting our new constitution need to have this notion in mind. It should be noted that justice is the final principle which controls the general distribution of rights and the diverse principles of the distribution of such rights. Justice, in this context, renders each principle of distribution – liberty, equality and fraternity its share. The notion of justice shelters in our daily thoughts and has evolved throughout the centuries by a process of social historical thought. Justice has hence become a common inheritance of mankind.

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There is a symbiotic relationship between social justice, social reforms, social welfare and social legislation. Under this dependency, social justice provides the ideological basis for social reforms and social welfare. However, social justice is deeply rooted in social equality. Each individual in a society has equal rights which are basically compatible with similar liberty of others. Liberty is closely linked to the concept of justice and in ascertaining what is social justice, Raul (1971) contends that the primary subject of justice is the "'basic structure of the society or more exactly the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation."[1]

The new constitution ought to compel the state to deal with socio-economic justice. Specifically, the state should endeavor to advance the welfare of Tanzanians by securing and protecting a social order in which social, political and

[1] Rawls, John. (1971). *A Theory of Justice*, Cambridge, MA: Belknap Press of Harvard University Press.

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economic justice informs all the institutions of the state. The end result for that matter has to be the promotion of public welfare of the people, with justice being the means towards that end. The constitution ought to dispense detailed methods required by the state to meet the objective of improving the welfare of the people through justice. Importantly, there has to be a provision in the constitution that elaborates how the state should deal with the welfare of the peasants, workers and entrepreneurs, and how to deal with the distribution of wealth in the society in general. The constitution should also disallow the state to make a distinction between the class of peasants or workers on the ground that some are employed by the state enterprises and institutions and others are employed by the private sector. These must be treated as one.

Justice, liberty and equality among women must prominently feature in the new constitution. The new constitution ought to be regarded as an opportunity to formulate a diverse of measures so as to attain the noble goal of uplifting women in our society. It would be ideal for the state to consider, through an act in parliament to establish a Commission for Women. Functions of this commission would include – studying and monitoring all matters relating to the constitutional and legal safeguards provided for women in Tanzania. This commission for women ought to have wide-ranging powers and should function as a full – fledged civil court with the attendant authority to summon witnesses and demand for the production of relevant documents relating to cases at hand. Under the new constitution, the state ought to be compelled to consult with this commission on all major policy matters pertaining to women in Tanzania.

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There should be a provision of fundamental rights in the new constitution. This would offer citizens, individually and collectively, the best fruits of democracy and those basic freedoms and conditions of life which make life meaningful and productive for all. The first and foremost fundamental right in the constitution has to be the right to equality. Equality is the most vital facet of justice. A diverse of concepts of equality envisaged in our constitution should include egalitarian, meritarian, numerical and proportional. By establishing the rule of law and equal protection of the law, politically it makes all Tanzanian citizens equal before the law. Under the current constitution, the right to vote has already been given to all adult citizens above the age of 18. This is an instance of equality in egalitarian or numerical contexts. The precept behind ‘meritarian equality’ is to single out or discrimination individuals on sex, gender, religion, ethnicity and disablement grounds is forbidden.

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There also has to be a guarantee of rights to freedom – a guarantee of certain liberties to Tanzania citizens, for instance freedom of expression, freedom of movement, freedom to form associations, religion, and protection of life, personal liberty and so forth. The right to work, right to food, right to housing and right to healthcare are all rights without which it is hard to assert that citizens are given right to live so that they can enjoy other fundamental rights to have better prospects of living. Thus, it is of paramount importance that all these rights are granted to the people of Tanzania by the state and they are enforceable and justifiable under the new constitution.

Importantly, there has to be a directive in the new constitution that provides a guideline for an effective institutional mechanism for better consultation, coordination and cooperation between the state, the private sector and the civil society in Tanzania so as to keep them together and hence assist them to become more effective in their attempt to ensure that social, political and economic justice is guaranteed to citizens of Tanzania.

Last but not least, the laws and courts in Tanzania should exist to serve the people justice, and not otherwise. Therefore, in order to avoid their misuse and unnecessary delays in disposal of cases, the existing laws should exhaustedly be examined, centralized and crystallized so as to achieve the ends of justice. Besides, given the importance of raising awareness of the citizens with regard to their rights and duties, civic education (legal education in particular) ought to be provided to citizens of Tanzania through adequate constitutional instruments and arrangements. Efforts to provide social, economic and political justice citizens must be regarded as an endless process; all the sections of the society should be obliged to contribute their mite in order for us to usher towards peace, stability, progress and prosperity.

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Ultimately, it should be noted that a constitution is like a music band such as **Machozi Band** - which, even though it is designed to perform live, it can only be appreciated in an actual performance. No matter how nobly we conceive our new constitution, it can only develop its flesh and blood in the matrix of politics that are practical. If we aim to make our new constitution a practical instrument for bringing social, political and economic justice, our struggle towards this end has to be waged constantly and tirelessly.

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