

VIEWS AND RECOMMENDATIONS OF CIVIL SOCIETY ON THE CONSTITUTION REVIEW BILL, 2011

General Comments

- 1. Use of English Language in the proposed bill.** The bill could have been written in Kiswahili which is understood by all Tanzanians. More than 80% can neither speak nor read English. As such, it will be difficult for them to understand the legal technicalities used in the Constitutional Review Act. We recommend that the bill be written in Kiswahili Language.
- 2. Constitution-making Organs.** The proposed bill does not provide for the participation of all constitution-making organs. The proposed Constitutional organs under the interpretation section clearly stipulates that "Constitutional Organs" means, for the purpose of this Act, the President, the Constituent Assembly or the National Assembly. This means that there are only two organs namely the President and either the Constituent Assembly or National Assembly. We recommend that the following four (4) organs be the Constitutional Organs for the purpose of making the constitution; **1) The Commission 2) Constitutional Assembly 3) National Convention 4) The National Assembly and finally a Referendum. These organs should be clearly defined and their roles be provided in the Act.**
- 3. The President is given enormous powers.** The president has powers to appoint the Commission, issue Terms of Reference, Appoint secretary, Receiving the report and Analysis, to constitute the Constituent Assembly without regard to the present Parliament and the Constitution of the United Republic of Tanzania, 1977 to mention but a few.
- 4. Contradicting sections in the Bill.** For instance, name of the bill Constitutional Review Act, 2011 does not reflect the idea of forming a New Constitution but rather implies amending the existing Constitution. There are no clear set objectives of the bill, repetition of various provisions like sections 9 and 17 and contradictory sections which are 23(3) and 26, 16 and 19. This waters down not only the spirit but also the commitment that the President had already indicated and promised to the people of Tanzania.
- 5. The proposed bill does not adhere to the public demands for a new constitution.** The review will not touch and

propose any changes to the state of the union, the presidency, Revolutionary Government of Zanzibar and others as provided under sect. 9(2). We recommend for a free discussion on these and people should be let to decide on the destiny of their country.

- 6. Threats and criminal offences created by the Bill.** The bill creates offences and criminalizes persons who in the view of the commission obstruct its work (Sect. 20, and 28). Constitutional making can be contentious and divergent views might arise. The bill therefore ought to encourage the freedom of expression and protect persons who will give views to the commission. Threats will limit people's participation in the constitution-making process.
- 7. The Bill does not put a timeframe.** The bill does not provide time for completion of the constitution-making process. We recommend the bill to allow for a timeframe for each activity from the commencement of the Act to the promulgation of the New Constitution.

Following these deficiencies and discrepancies we hereby recommend the following:

- (a) The translation of the bill into Kiswahili language which is a National Language for wider participation of the public in the discussion.
- (b) Broad dissemination of the draft bill to the public through media, public institutions, local government organs for the public to access the content of the bill
- (c) Moderation of public hearings at constituency level by the Members of Parliament for collection of views from citizens.
- (d) The commission should be independent, appointed by a parliamentary committee, Terms of Reference be developed under the Act itself and its report to be submitted to the Constituent Assembly and should be open to the Public for scrutiny
- (e) The draft bill should be re-drafted to create room for public participation, freedom of expression and independent constitution making organs to exercise their mandated functions