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PERESTROIKA AFRICAN STYLE: ONE-PARTY GOVERNMENT AND HUMAN RIGHTS IN TANZANIA

*John Quigley**

INTRODUCTION

A new wave is sweeping Africa.¹ Constitutional systems that have long been controlled by a single political party are opening to allow participation by other parties. The wave hit with remarkable suddenness in 1990, as monopoly parties across the continent made moves in the direction of political pluralism. This article explores Africa's reexamination of one-party rule, focusing on the East African State of Tanzania.² It reviews the reasons for one-party rule as it developed after independence, and the extent to which one-party rule permitted political participation by the citizenry. The article then discusses the reconsideration of one-party rule since 1990 and the arguments that emerged for and against it in the public debate.

The one-party systems in Africa have drawn negative reactions from Western States that provide economic aid. The article assesses the one-party system in light of international human rights law and asks whether aid-giving States must consider whether one-party rule in recipient States violates international standards. In this connection, the article asks whether the rights of association and political freedom as developed in Europe can fairly be applied to Africa, given its historical experience.

Tanzania is an appropriate object of the study because in the 1960s its leader, Julius Nyerere, was the most articulate proponent of one-party rule on the continent. Nyerere shepherded the legislation that brought one-party rule to Tanzania, making eloquent arguments in its

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1. "Africa" in this article refers to sub-Saharan Africa, excluding South Africa. Although North Africa is not covered, it is experiencing many of the same changes discussed in this article.

2. The name "Tanzania" was devised in 1964, as a combination of "Tanganyika" and "Zanzibar," after those two territories merged in that year to form the United Republic of Tanzania.

support. As an elder statesman in 1990, however, Nyerere said that the question should be reexamined, thereby initiating a public debate.

I. THE COLONIAL LEGACY

When colonialism ended in Africa in the 1960s, the newly independent States faced a difficult decision in determining what kind of political system to adopt. The precolonial nations of Africa were ruled by chiefs, typically advised by a council of elders who had a voice in policy and injected a democratic element into decision-making. The councils sometimes virtually amounted to legislatures.³ In some cases, particularly in West Africa, these nations were quite large.

This was not true, however, in the territory that would become Tanganyika, and eventually Tanzania. This territory included the lands of 120 nationalities,⁴ and even within a single nationality typically there was no central authority.⁵ Thus, the decision-making unit was small, facilitating citizen participation.

In a military campaign, Germany conquered this territory in the 1880s and named it German East Africa.⁶ Drawing borders by agreement with other European powers, Germany created a colonial State where none had existed, thrusting nationalities together and splitting many of their lands between German East Africa and newly created neighboring colonies.⁷ During World War I, Great Britain took German East Africa, renamed it Tanganyika, and secured authority from the League of Nations to administer it under a mandate arrangement that involved a degree of international accountability.⁸

To govern Tanganyika, the British brought in their own administrators who served as executive and judicial officers. A governor-general sat at the top of the hierarchy. Instead of trying to handle all

3. T. OLAWALE ELIAS, *GOVERNMENT AND POLITICS IN AFRICA* 19, 220 (1963) [hereinafter ELIAS, *POLITICS*]; T. OLAWALE ELIAS, *THE NATURE OF AFRICAN CUSTOMARY LAW* 193-205 (1956).

4. Margaret L. Bates, *Tanganyika*, in *AFRICAN ONE-PARTY STATES* 395, 433 (Gwendolen M. Carter ed., 1962); Lionel Cliffe, *The Political System*, in *ONE PARTY DEMOCRACY: THE 1965 TANZANIA GENERAL ELECTIONS* 1, 3 (Lionel Cliffe ed., 1967).

5. Bates, *supra* note 4, at 398. A British survey in 1927 showed 679 chiefs. *Id.* at 406-07.

6. JOHN ILIFFE, *A MODERN HISTORY OF TANGANYIKA* 88-122 (1979); *see* Bates, *supra* note 4, at 400.

7. *See, e.g.*, General Act of the Conference at Berlin, Feb. 26, 1885, 17 *HERTSLET'S COMMERCIAL TREATIES* 62 (1890).

8. *British Mandate for East Africa (Tanganyika Territory)*, League of Nations Doc. C.449(1)a.M.345(a).1922.VI, in *TERMS OF LEAGUE OF NATIONS MANDATES*, U.N. Doc. A/70 (1946); *see generally* LEAGUE OF NATIONS COVENANT art. 22 (discussing the general nature of a mandate arrangement). When the United Nations was formed, Britain concluded a trusteeship agreement with it to replace the mandate. *Trusteeship Agreement for the Territory of Tanganyika*, U.N. GAOR, 1st Sess., Supp. No. 5, at 9 (1946).

local administration with British officials, the governor relied on the chiefs, who assumed the role of intermediaries with the population, in a system that came to be called "indirect rule."⁹ While this procedure used the existing political order to a certain extent and reduced the level of outside intervention in everyday affairs, it deprived the chiefs of autonomy by turning them into an arm of the British crown.¹⁰ Eventually, the chiefs came to be regarded as front men for the governor, and they lost the respect that had been the base of their authority.¹¹

Germans and Britons settled in Tanganyika, and, to give them a role in governance, the British government created an Executive Council in 1920 to advise the administration and a Legislative Council in 1926 to debate proposals for new enactments, also on an advisory basis only. Later, as the British administration was pressed to grant self-determination, it appointed Africans to the Legislative Council in 1945 and to the Executive Council in 1951.¹² The governor, however, retained decision-making authority.¹³

The British administration set up a legal system that in many ways was modeled on Britain's, but it used the law to gain access to Tanganyika's resources and labor. It initiated a head tax less to gain revenue than to force Africans to work on plantations. In order to pay the tax, an African had to leave subsistence farming and enter the money economy.¹⁴ African families were forbidden to live with a worker in plantation housing, and if they did they might be arrested for trespass. A worker who left a plantation was guilty of a criminal offense. Thus, for plantation workers the law meant virtual servitude. An African who did not pay the tax could be conscripted into a labor gang. So many Africans were conscripted that the British administration constructed hundreds of miles of roads with forced labor.¹⁵

9. ILIFFE, *supra* note 6, at 318-25; Emile A.B. van Rouveroy van Nieuwaal, *Chiefs and African States: Some Introductory Notes and an Extensive Bibliography on African Chieftaincy*, 25 & 26 J. LEGAL PLURALISM & UNOFFICIAL L. 1, 9-14 (1987); ELIAS, *POLITICS*, *supra* note 3, at 24-27; Bates, *supra* note 4, at 405-06.

10. ILIFFE, *supra* note 6, at 319-20; Bates, *supra* note 4, at 409-10.

11. Bates, *supra* note 4, at 407.

12. ILIFFE, *supra* note 6, at 475.

13. Y.P. Ghai, *Constitutions and the Political Order in East Africa*, 21 INT'L & COMP. L.Q. 403, 406-09 (1972).

14. Issa G. Shivji, *Law in Independent Africa: Some Reflections on the Role of Legal Ideology*, 46 OHIO ST. L.J. 689, 690-91 (1985); David V. Williams, *State Coercion Against Peasant Farmers: The Tanzanian Case*, 20 J. LEGAL PLURALISM & UNOFFICIAL L. 95, 109 (1982); see also H.W.O. Okoth-Ogendo, *Development and the Legal Process in Kenya: An Analysis of the Role of Law in Rural Development Administration*, 12 INT'L J. SOC. L. 59, 63 (1984) (on similar laws adopted for this same purpose by Britain in Kenya).

15. ISSA G. SHIVJI, *LAW, STATE AND THE WORKING CLASS IN TANZANIA* 9 (1986).

As elsewhere on the continent, Africans in Tanganyika came to independence in the 1960s in an artificially constituted State where they had been denied a role in governance and had been subjected to a legal system designed to gain their submission. Like other departing colonial powers in Africa, Britain drafted for Tanganyika a constitution embodying a parliamentary form of government.¹⁶ Britain's motive may have been to protect the European minority it was leaving behind, as suspected by African leaders, rather than to promote democracy. But whatever the reason, the parliamentary model was accepted by the nationalist movements as a condition of gaining independence.¹⁷

II. THE REASONS AND RATIONALE FOR THE ONE-PARTY APPROACH

Administrators in newly independent States were reluctant to accept a parliamentary process proposed by a colonial power that the colonial power had not itself applied prior to independence. However, if the parliamentary system held no luster, there was little else available as an obvious mode of governance. The traditional system of chiefs advised by a council was not appropriate because the new States included many nationalities.¹⁸ After independence, moreover, many African politicians viewed the chiefs as rival sources of power and were reluctant to rely on them to rule even in their own localities.¹⁹ Committed to retaining the territories as defined by the colonizing powers, the new governments viewed rivalry among the nationalities as a threat.²⁰ Seeking to suppress nationality divisions, the Tanganyika Parliament abolished the institution of the chief in 1963.²¹

In regard to nationalities, Tanganyika was in a more advantageous position than other African States because with so many nationalities none could dominate the others. A few were more advanced commercially, but their populations were small. Also, the largest nationality

16. In Tanganyika as elsewhere, the fact that the colonizing power drafted the constitution put it under a cloud of illegitimacy. Kivutha Kibwana, *Issues of Constitutional Reform in Africa: The Example of Kenya*, NAIROBI L. MONTHLY, June 1991, at 31, 33.

17. See Ghai, *supra* note 13, at 412.

18. See R.W. Tenga, *The Historical and Socio-Economic Approaches in Learning the Law: Dar es Salaam and 3rd World Perspectives in Jurisprudence*, in LIMITS OF LEGAL RADICALISM 95, 105 (Issa G. Shivji ed., 1986).

19. van Nieuwaal, *supra* note 9, at 3-4.

20. Simbi V. Mubako, *Zambia's Single-Party Constitution — A Search for Unity and Development*, 5 ZAMBIA L.J. 67, 83 (1973) ("Tribalism has indeed played a largely divisive role in Zambian politics.").

21. African Chiefs Ordinance (Repeal) Act, No. 13 of 1963, TANGANYIKA REVISED LAWS Cap. 517 - Supp. 63, at 3.

numbered only slightly over ten percent of the total population. In African States with one or two predominant nationalities, like Ethiopia, Zimbabwe, or Kenya, the threat that politics would divide on nationality lines was more serious. Nonetheless, there was concern in Tanganyika that political parties might represent nationalities rather than policies and thus detract from State-building.²²

In Tanganyika, as in most of Africa, the political movement that led the anticolonial effort assumed power. In Tanganyika this movement was the Tanganyika African National Union (TANU). In the legislative assembly elected in 1960 to pave the way for independence, there were seventy-one seats, of which TANU won fifty-eight unopposed and twelve others in contested races. The United Tanganyika Party, which was oriented to the European population, won only one seat, and the African National Congress, a breakaway party from TANU, won none.²³ In the presidential election of 1962 that brought Nyerere to the new post of president, the African National Congress, the only other party to field a candidate, received less than two percent of the vote.²⁴

In 1963, TANU proposed that the other parties be excluded by law. This move led Chief Abdallah Fundikira, the Minister of Justice and a TANU member, to resign in protest.²⁵ A one-party system, TANU officials said, would be closer to the traditional mode of governance where consensus was reached by discussion. Thrashing out differences within a single party was closer to that process, TANU leaders said, than a system in which competing parties pursue their own agendas.²⁶

22. Pius Msekwa, *The Doctrine of the One-Party State in Relation to Human Rights and the Rule of Law*, in HUMAN RIGHTS IN A ONE-PARTY STATE 21, 24-25 (International Commission of Jurists, International Seminar on Human Rights, Their Protection and the Rule of Law in a One-Party State, 1976).

23. Bates, *supra* note 4, at 430; Kibuta Ong'wamuhana, *Party Supremacy and the State Constitution in Africa's One-Party States: The Kenya-Tanzania Experience*, 1988 THIRD WORLD LEGAL STUD. 77, 83.

24. Kibuta, *supra* note 23, at 83. Nyerere received 1,127,652 votes, against 21,311 for the candidate of the African National Congress. Bates, *supra* note 4, at 423.

25. Umesh Kumar, *Some Preliminary Observations on the Administration of Justice in a One Party African State: The Tanzanian Experience*, 1 LESOTHO L.J. 119, 122 (1986); Richard Dowden, *Nyerere's Old Enemy Feels His Time Has Come*, INDEPENDENT (London), Aug. 8, 1991, at 8 (giving text of 1963 Fundikira letter of resignation).

26. JULIUS K. NYERERE, DEMOCRACY AND THE PARTY SYSTEM 1-2 (1962) [hereinafter NYERERE, DEMOCRACY]. Substantial excerpts of this pamphlet appear in JULIUS K. NYERERE, FREEDOM AND UNITY: UHURU NA UMOJA: A SELECTION FROM WRITINGS AND SPEECHES 1952-1965, at 195-96 (1967); CRANFORD PRATT, THE CRITICAL PHASE IN TANZANIA 1945-1968, at 202 (1976); Ghai, *supra* note 13, at 415. A contrary argument is made that the traditional consensus-seeking approach is more similar to multiparty politics, where differences must be resolved, than to a one-party system, where, it is argued, differences are submerged through the imposition of one viewpoint on dissenters. Baffour Ankomah, *Why Africa Needs Democracy*,

As TANU chair, Julius Nyerere argued that the overwhelming electoral support for TANU showed that the public did not understand the notion of an opposition party.²⁷ Further, Nyerere questioned whether a multiparty system was more democratic. He pointed out that with multiple parties, parliamentary representatives are under pressure to support their party, and thus cannot vote their conscience. He said that if there is a single party, and if that party "is identified with the *nation as a whole*, the foundations of democracy are firmer than they can ever be where you have two or more parties, each representing only a section of the community."²⁸

"A Two-Party system," Nyerere stated, "can be justified only when the parties are divided over some fundamental issue; otherwise it merely encourages the growth of factionalism."²⁹ If you have two parties but no fundamental differences, "then you immediately reduce politics to the level of a football match."³⁰ If all agree on the major needs of the society, he commented, it is better to have all the representatives cooperating to achieve them, rather than jockeying for political advantage.³¹

Nyerere argued that political parties in Africa were different from parties in the West. "The European and American parties," he said, came into being as the result of existing social and economic divisions — the second party being formed to challenge the monopoly of political power by some aristocratic or capitalist group. Our own parties had a very different origin. They were not formed to challenge any ruling group of our own people; they were formed to challenge the *foreigners* who ruled over us. They were not, therefore, political "parties" i.e., factions but nationalist movements. And from the outset they represented the interests and aspirations of the whole nation.³²

In Tanganyika at independence, Nyerere said, there was "no monopoly of political power by any sectional group which could give rise to conflicting parties. There can, therefore, be only one reason for the formation of such parties in a country like ours the desire to imitate the political structure of a totally dissimilar society."³³

NEW AFR., June 1991, at 10, 11; Christopher Mulei, *Africa Needs Democracy*, NEW AFR., June 1991, at 26.

27. NYERERE, DEMOCRACY, *supra* note 26, at 4.

28. *Id.* at 7.

29. *Id.* at 8.

30. *Id.* at 9.

31. *Id.* at 11.

32. *Id.* at 14-15; *see also* Kibuta, *supra* note 23, at 77 (noting that while more than one party emerged, they were united on the goal of independence and had little or no program for the future, post-independence period).

33. NYERERE, DEMOCRACY, *supra* note 26, at 15.

A two-party system, according to Nyerere, had negative consequences in the African post-independence context:

To try and import the idea of a parliamentary opposition into Africa may very likely lead to violence because the opposition parties will tend to be regarded as traitors by the majority of our people or at best, it will lead to the trivial manoeuvring of "opposing" groups whose time is spent in the inflation of artificial differences into some semblance of reality "for the sake of preserving democracy"³⁴

Moreover, with TANU candidates gaining overwhelming majorities, the opposition, TANU leaders said, had little chance of winning. Thus, the voters had little effective choice, and, indeed, would have more choice if TANU were the only party because then they could choose among TANU candidates.³⁵

For democracy under a one-party system, Nyerere said, party membership must be open to all, and freedom of expression must be assured. Then a one-party system could be more democratic, in the African context, than a multiparty system.³⁶

Nyerere's contention that there were no societal divisions in the African States at independence was questionable because of the existence of many nationalities in the country. It was also questionable because European missionary activity and European-style education in missionary and government schools had divided Tanzanians, as they had other African societies.³⁷ Many Africans who were introduced to the European world in secondary schools assumed a style of life that separated them from their families.³⁸ A young woman in Tanganyika who left her village to work in a city was regarded as immoral by the villagers. In a nomadic society, a young man who moved to a town instead of herding cattle like his peers was regarded as having failed to do what was expected of him in life.

Although TANU enjoyed broad support in Tanganyika, its leaders were educated and urbanized.³⁹ Many were graduates of so-called "sons of chiefs" schools⁴⁰ where they developed an identity that separated them from other Tanganyikans.⁴¹ They came to the indepen-

34. *Id.*

35. Msekwa, *supra* note 22, at 22.

36. NYERERE, *DEMOCRACY*, *supra* note 26, at 23-24.

37. Marjorie J. Mbilinyi, *African Education during the British Colonial Period 1919-61*, in *TANZANIA UNDER COLONIAL RULE* 236 (M.H.Y. Kaniki ed., 1980); Msekwa, *supra* note 22, at 23.

38. See Bates, *supra* note 4, at 435.

39. See *id.* at 423.

40. The "sons of chiefs" schools are described in Mbilinyi, *supra* note 37, at 254.

41. *Id.* at 255.

dence struggle from professional positions.⁴² In the civil service and other salaried urban positions, a social class developed with a lifestyle that set it apart from the peasantry and urban poor.⁴³ The split between this class and the rest of society made consensus on major issues difficult.⁴⁴

Economic factors were an additional reason for one-party rule, as African leaders stressed the need for economic independence to accompany political independence. Investment from companies of the former metropolis remained a dominant factor in African economies.⁴⁵ Concern that Europe remained in control created pressure for firm central control as a counterbalance to the influence of these companies.⁴⁶ TANU advocated a strong executive government led by a strong party.⁴⁷ Its leaders said that economic development took precedence over political development.⁴⁸ Political pluralism, they contended, was an unnecessary, even dangerous, luxury.⁴⁹

The small opposition parties did not accept the TANU analysis but called it a subterfuge for entrenching TANU leaders in comfortable positions.⁵⁰ While this judgment may be overstated, it contained a kernel of truth. As time went on, TANU functionaries developed a proprietary attitude towards their prerogatives and were not above using compulsion instead of persuasion against those who disagreed with TANU policies.⁵¹ One-party rule helped those who came to power at

42. See, e.g., the analysis regarding Tanzania, in H.G. Mwakyembe, *The Parliament and the Electoral Process*, in *THE STATE AND THE WORKING PEOPLE IN TANZANIA* 16, 32 (Issa G. Shivji ed., 1985) (stating that with the attainment of political independence in 1961, the State power in Tanganyika was "captured" by a petty bourgeois class comprised of trade union leaders, small businessmen, cooperative activists, teachers, and other junior civil servants, because it was the only one better placed and organized to mobilize the various strata of the population for national self-determination).

43. OSITA C. EZE, *HUMAN RIGHTS IN AFRICA: SOME SELECTED PROBLEMS* 57 (1984); PRATT, *supra* note 26, at 215-26; Bates, *supra* note 4, at 423 (stating that TANU leadership by the mid-1950s "came mainly from commercial employees in the towns, . . . who were beginning to constitute an African middle class").

44. See Leonard P. Shaidi, *Crime, Justice and Politics in Contemporary Tanzania: State Power in an Underdeveloped Social Formation*, 17 *INT'L J. SOC. L.* 247, 248 (1989).

45. Samuel K.B. Asante, *Restructuring Transnational Minerals Agreements*, 73 *AM. J. INT'L L.* 335 (1979).

46. N.S. Rembe, *Prospects for the Realisation of the New International Economic Order: An African Perspective*, 17 *COMP. & INT'L L.J. S. AFR.* 322, 326 (1984).

47. Mwakyembe, *supra* note 42, at 35.

48. ISSA G. SHIVJI, *THE CONCEPT OF HUMAN RIGHTS IN AFRICA* 83 (1989).

49. EZE, *supra* note 43, at 57; Msekwa, *supra* note 22, at 31; Mubako, *supra* note 20, at 80; Issa G. Shivji, *State and Constitutionalism in Africa: A New Democratic Perspective*, 18 *INT'L J. SOC. L.* 381, 383 (1990).

50. EZE, *supra* note 43, at 57-58; Job Chacha, *One-Party System 'Not Freely Chosen,'* *BUS. TIMES* (Dar es Salaam), May 17, 1991, at 4 (charging that the motive was to "monopolize the intrinsic rewards of holding office").

51. EZE, *supra* note 43, at 58; PRATT, *supra* note 26, at 185.

independence to retain their positions.⁵²

III. THE OPERATION OF THE ONE-PARTY SYSTEM

For TANU's aim of outlawing opposition parties to be achieved, constitutional change was required. The British-adopted 1961 Constitution of Tanganyika did not mention political parties,⁵³ nor did the 1963 Constitution of Zanzibar, which provided for a sultanate that signified continued control by the Arab minority that had long ruled Zanzibar.⁵⁴ Two Arab-dominated parties won an election in Zanzibar to form a government upon independence from Britain in January 1964. However, within a few weeks, that government was overthrown by the African-dominated Afro-Shirazi Party. The Revolutionary Council that assumed power declared Zanzibar a one-party State with the Afro-Shirazi Party as the sole party.⁵⁵

In 1963, Nyerere, by then Tanganyika's President in addition to TANU Chair, appointed a presidential commission to make recommendations on how one-party rule could be implemented and specifically on how citizen participation could be ensured.⁵⁶ By the time the commission completed its work, Tanganyika and Zanzibar had merged to form Tanzania. Following the publication of the commission's report, the first Constitution of Tanzania established one-party rule. The 1965 Interim Constitution of Tanzania stated, "There shall be one political Party in Tanzania."⁵⁷

Since at the time of union Zanzibar and Tanganyika each had a predominant political party (the Afro-Shirazi Party and TANU, respectively), the notion of a one-party State faced an obstacle. The Interim Constitution dealt with the issue in a provision that contemplated an eventual merger between TANU and the Afro-Shirazi Party, stating, "Until the union of the Tanganyika African National Union with the Afro-Shirazi Party (which United Party shall constitute the one political Party), the Party shall, in and for Tanganyika, be the Tanganyika African National Union and, in and for Zanzi-

52. PRATT, *supra* note 26, at 187-88.

53. TANGANYIKA CONST. (Tanganyika (Constitution) Order in Council, No. 2274 of 1961, STATUTORY INSTRUMENTS 3988).

54. ZANZIBAR CONST. (1963) § 32 (*reprinted in* 72 OFFICIAL GAZETTE OF THE ZANZIBAR GOVERNMENT, Dec. 5, 1963 (Legal Supp., Pt. I at 49)).

55. Kibuta, *supra* note 23, at 83.

56. Y.P. Ghai & J.P.W.B. McAuslan, *Constitutional Proposals for a One-Party State in Tanzania*, 1 E. AFR. L.J. 124 (1965).

57. INTERIM CONSTITUTION OF TANZANIA, *confirmed by* An Act to Declare the Interim Constitution of Tanzania, No. 43 of 1965, TANGANYIKA REVISED LAWS Cap. 596 - Supp. 65, § 3(1), *reprinted in* 2 CONSTITUTIONS OF AFRICAN STATES 1517 (Asian-African Legal Consultative Committee, 1972) [hereinafter INTERIM CONSTITUTION].

bar, be the Afro-Shirazi Party.”⁵⁸ “All political activity in Tanzania,” it went on,

other than that of the organs of State of the United Republic, the organs of the Executive and Legislature for Zanzibar, or such local government authorities as may be established by or under a law of the appropriate legislative authority, shall be conducted by or under the auspices of the Party.⁵⁹

TANU and the Afro-Shirazi Party did not immediately merge, and so the mainland and Zanzibar functioned each with its own sole legal party, the two deciding on policy through informal agreement.

On the mainland, once TANU became the only party, the National Assembly, which previously had decided important issues of policy, took a subordinate role to TANU's National Executive Committee.⁶⁰ Members of the National Assembly, said TANU leaders, were not to criticize National Executive Committee decisions, but only to discuss their implementation.⁶¹

Although TANU originally deemed the judiciary a crucial factor in maintaining the rule of law under the one-party system,⁶² many claimants looked to TANU to resolve disputes,⁶³ and TANU, *de facto*, assumed power from the judiciary.⁶⁴

The one-party system brought about a significant concentration of power.⁶⁵ TANU abolished independent trade unions, forcing workers to organize through a single union that it controlled.⁶⁶ It also established control of a powerful rural network of marketing cooperatives.⁶⁷ Nyerere's comment that opposition parties were viewed as traitors was indicative,⁶⁸ because after independence TANU leaders

58. *Id.* § 3(2).

59. *Id.* § 3(3).

60. Ghai, *supra* note 13, at 421.

61. ROBERT MARTIN, *PERSONAL FREEDOM AND THE LAW IN TANZANIA* 52 (1974).

62. Msekwa, *supra* note 22, at 33-34 (citing presidential commission that recommended one-party system because courts must not be influenced by political considerations in dispensing justice).

63. Shivji, *supra* note 49, at 385.

64. Yash P. Ghai, *Legal Radicalism, Professionalism and Social Action: Reflections on Teaching Law in Dar es Salaam*, in *LIMITS OF LEGAL RADICALISM*, *supra* note 18, at 26, 29.

65. *Id.* at 32; Ghai, *supra* note 13, at 433.

66. National Union of Tanganyika Workers (Establishment) Act, No. 18 of 1964, TANGANYIKA REVISED LAWS Cap. 555 - Supp. 64, First Schedule § 3(2) (“The Union shall become affiliated to the Tanganyika African National Union and shall do everything in its power to promote the policies of the Tanganyika African National Union.”); PRATT, *supra* note 26, at 189-91; Wilbert B.L. Kapinga, *State Control of the Working Class Through Labour Legislation*, in *THE STATE AND THE WORKING PEOPLE IN TANZANIA*, *supra* note 42, at 87, 88-91.

67. PRATT, *supra* note 26, at 191-93.

68. See *supra* text accompanying note 35.

regarded opposition elements as subversive.⁶⁹ Using a 1921 statute, the Deportation Ordinance, which the British administration had enacted to move pro-independence activists from one part of Tanganyika to another,⁷⁰ Nyerere transferred political opponents away from their bases of support.⁷¹

TANU also secured the passage by the National Assembly of the Preventive Detention Act, which gave the President the power to detain indefinitely any person he deemed dangerous to good order.⁷² This statute allowed Nyerere to incarcerate persons who opposed TANU, including persons who had been prominent in smaller parties that were rendered illegal by the establishment of a one-party system.⁷³ Detainees had no procedure available to them to challenge a detention, and the courts had no jurisdiction to question a detention order.⁷⁴ The Preventive Detention Act deterred political activity outside established channels.⁷⁵

In 1977, TANU and the Afro-Shirazi Party merged to form the Revolutionary Party, generally called by its Swahili-language name, *Chama cha Mapinduzi*, and a new Constitution reaffirming the Party's monopoly was adopted for Tanzania. "Chama cha Mapinduzi (in short CCM)," the Constitution said, "shall be the sole political party in Tanzania having supremacy in accordance with its Constitution."⁷⁶ "All political activities in Tanzania," it stated, "shall be conducted by or under the auspices of the Party,"⁷⁷ and, "all activities of the organs of state of the United Republic of Tanzania shall be conducted under

69. PRATT, *supra* note 26, at 188.

70. An Ordinance to Make Provision for the Deportation of Certain Persons from One Part of the Territory to Another, No. 18 of 1921, TANGANYIKA REVISED LAWS Cap. 38 - Supp. 58.

71. PRATT, *supra* note 26, at 187; Chris M. Peter, *Respect for Fundamental Rights and Freedoms: A New Bill of Rights for Tanzania*, 67 REVUE DE DROIT INTERNATIONAL ET DE SCIENCES DIPLOMATIQUES ET POLITIQUES 255, 266-67 (1989); M.K.B. Wambali, *Freedom of Movement Under the Tanzania Constitution: Some Operational Observations*, 17 E. AFR. L. REV. (1990).

72. An Act to Provide for Preventive Detention, No. 60 of 1962, TANGANYIKA REVISED LAWS Cap. 490 - Supp. 62 [hereinafter Preventive Detention Act].

73. Dowden, *supra* note 25, at 8 (detention of opposition leaders); Msekwa, *supra* note 22, at 25; see generally Martin, *supra* note 61, at 91-93.

74. See Preventive Detention Act, *supra* note 72, § 3 ("No order made under this Act shall be questioned in any court"); see generally L.T. Kalunga, *Human Rights and the Preventive Detention Act of 1962 of the United Republic of Tanzania: Some Operative Aspects*, 11-14 E. AFR. L. REV. 281 (1978-81); MARTIN, *supra* note 61, at 8-9; John Quigley, *Cases on Preventive Detention: A Review*, 11-14 E. AFR. L. REV. 326 (1978-81).

75. See generally K.S.K. Lugakingira, *Personal Liberty and Judicial Attitude: The Tanzanian Case*, 17 E. AFR. L. REV. (1990).

76. TANZ. CONST. § 3(1) (amended 1977), reprinted in 29 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD: HISTORIC CONSTITUTIONS (Albert P. Blaustein & Gisbert H. Flanz eds., 1979).

77. *Id.* § 3(2).

the auspices of the Party."⁷⁸

The Constitution said that

in accordance with the provisions of section 59(11) of the Constitution of the Party, the National Assembly shall constitute a Committee of the National Conference of the Party, whose functions shall be to supervise generally the activities of the Government and of the various public organisations in implementing the policy of the Party.⁷⁹

Thus, the National Assembly became formally subordinated to the CCM.⁸⁰

The CCM closely controlled nominations of candidates to the National Assembly. To be nominated, a person had to be approved by the CCM National Executive Committee, following selection by a CCM district conference,⁸¹ and according to the CCM's own constitution, only CCM members could be approved.⁸² Individuals who were critical of CCM policy stood little chance of being endorsed.⁸³

The CCM has typically nominated two persons for each seat.⁸⁴ On the ballot it designates one of them with a hoe symbol, and the other with a house symbol. It came to be understood that those designated by the hoe were favored by the CCM.⁸⁵ The election campaigns are organized by the CCM.⁸⁶ Since all candidates must adhere to CCM policy, electoral campaigns do not feature differences of opinion on major issues.⁸⁷

A losing candidate who thinks that electoral procedures were not carried out according to law may complain to the electoral commission.⁸⁸ From there the candidate seeks judicial remedies,⁸⁹ except that

78. *Id.* § 3(3).

79. *Id.* § 54(1).

80. Kibuta, *supra* note 23, at 87.

81. TANZ. CONST. (1977), amended by Act No. 15 of 1984, § 77(2)(b), reprinted in 19 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD (Albert P. Blaustein & Gisbert H. Flanz eds., 1987) [hereinafter 1984 TANZ. CONST.]; Elections Act, No. 1 of 1985, TANZANIA REVISED LAWS Supp. 85-90, § 43; Immanuel Bavu, *Election Management and Democracy, in TANZANIA: DEMOCRACY IN TRANSITION* 22, 26 (Haroub Othman et al. eds., 1990); Peter, *supra* note 71, at 277.

82. CCM Const. § 26(2).

83. Peter, *supra* note 71, at 277.

84. Bavu, *supra* note 81, at 23-25. In addition to elected members, the National Assembly includes the regional commissioners of each region of Tanzania, plus a number of members appointed by the president or by designated "mass organizations." 1984 TANZ. CONST., *supra* note 81, §§ 66, 78-82; see also PRATT, *supra* note 26, at 206-07.

85. Bavu, *supra* note 81, at 30-31; Mwakyembe, *supra* note 42, at 40-41.

86. Election Act, *supra* note 81, § 51.

87. See PRATT, *supra* note 26, at 207.

88. Elections Act, *supra* note 81, § 108; N. Issa, 'Legal Touch' on Natural Justice Sensational, BUS. TIMES (Dar es Salaam), May 31, 1991, at 5 (secretary of electoral commission replies to charge by Robert Rweyemamu, *Business Times* legal editor, that commission turns down petitions of losing candidates on technicalities).

there is no court jurisdiction over the CCM proceedings that led to the nominations.⁹⁰ Once elected, a member of the National Assembly remains subject to CCM control in that a member will lose his seat if removed from CCM membership while in office.⁹¹ A number of members have lost their seats in this fashion.⁹²

Although not required by the Constitution, the practice has been for the CCM chair to be president of Tanzania as well.⁹³ Thus, the president may be expected to pursue CCM policy in his role as president. The Constitution, in fact, requires him to do so, specifying that the president must carry out the Constitution, the laws, "and the philosophy and guidelines of the party."⁹⁴ If a president were expelled from the CCM, he would be disqualified as president, since the Constitution specifies that a president must satisfy the qualifications for election to parliament,⁹⁵ and election to parliament requires CCM membership.⁹⁶ If a sitting president were to be disqualified, a new presidential election would be held.⁹⁷

One aspect of the CCM role that has engendered negative reaction from the public in Tanzania is the annual subventions that the National Assembly vote for the CCM in the amount of two percent of total revenues.⁹⁸ This policy has been criticized on the grounds that the Constitution requires the National Assembly to allocate government revenue for governmental purposes only⁹⁹ and that taxpayer

89. Elections Act, *supra* note 81, § 111; *see also* Attorney General v. Monko, Law Reports of the Commonwealth: Constitutional and Administrative Law Reports 211 (Tanzania Court of Appeal) (1989) (High Court and Court of Appeal of Tanzania nullifying an election upon complaint of a losing candidate on grounds that counting was done not by the appropriate officials, but by secondary school students under the observation of those officials, and because the counting was done from each ballot box separately, rather than by mixing all the ballots together and then counting; both practices were found to violate Elections Act).

90. Elections Act, *supra* note 81, § 108(2); Kibuta, *supra* note 23, at 88 (stating that the nomination procedure is more critical than the election procedure, thus that a losing candidate has no court challenge for the stage where irregularities are more likely to affect the outcome).

91. 1984 TANZ. CONST., *supra* note 81, §§ 67(1)(b), 71(1)(a); *see* MARTIN, *supra* note 61, at 52; Kibuta, *supra* note 23, at 87 (nine National Assembly members who had criticized TANU policy were deprived of TANU membership in 1968, thus losing their seats).

92. PRATT, *supra* note 26, at 209; Chacha, *supra* note 50, at 4; G. Mgongo Fimbo, *CCM and the Executive in Tanzania's Constitutional Structure*, 17 E. AFR. L. REV. (1990).

93. Until 1985, Nyerere held both posts. When he resigned as president in 1985, Mwinyi, then-vice-chair of CCM, was nominated and elected president, and in 1990 became CCM chair, when Nyerere resigned that post. Neil Henry, *Nyerere Bows Out with Tanzania in Deep Decline*, WASH. POST, Sept. 26, 1990, at A27.

94. 1984 TANZ. CONST., *supra* note 81, § 37(1).

95. *Id.* § 39(1)(b).

96. *Id.* § 67(1)(b).

97. *Id.* § 38(2)(c); *see* Fimbo, *supra* note 92.

98. Fimbo, *supra* note 92.

99. 1984 TANZ. CONST., *supra* note 81, §§ 133-34; Fimbo, *supra* note 92.

funds should not go to a nominally private organization.¹⁰⁰

The one-party monopoly system was reaffirmed again in Tanzania in the Constitution as extensively amended in 1984: "(1) The Union Republic is a democratic and socialist nation with one political party. (2) The party exercises executive powers over all matters in accordance with the Constitution and the Constitution of the Party. (3) The Revolutionary Party, in short 'CCM', is the only political party in the United Republic."¹⁰¹

Also in 1984, a bill of rights was written into the Constitution for the first time. It gave every individual the right "to establish or join a party or organisations established with the objectives of maintaining and promoting his Faith or his interests or other interests."¹⁰² Another rights provision concerned participation in public affairs:

(1) Every citizen of the Union Republic has a right to participate in the affairs of governing the country, either directly or through officials elected voluntarily by the people in accordance with laid down guidelines and laws. (2) Every citizen has the right and freedom to participate fully in the process of decision-making on matters affecting him, his life and those affecting the nation.¹⁰³

The freedom of association and the right to participate in public affairs were, however, not viewed by the CCM as being incompatible with the exclusion of other political parties. The Constitution referred to Tanzania as democratic in the very sentence that called for a single political party.¹⁰⁴ Political discussion was confined within the party, but that did not mean there was no debate. Indeed, if a single party is sufficiently inclusive, and sufficiently general in its goals, it may provide a forum for wide-ranging debate. A single party does not necessarily mean authoritarianism. The level of democracy in a single-party system depends on the amount of openness and accountability in the processes of that party. It has been suggested that in a single-party system the party needs to be regulated just as government officials are regulated, in order to keep it from oppressing the population.¹⁰⁵

To a certain degree, the CCM provided a forum for debate. Its goal was economic development, a goal widely shared in Tanzania. Membership was open to any Tanzanian who wanted to join, so that

100. Chacha, *supra* note 50, at 4.

101. 1984 TANZ. CONST., *supra* note 81, § 3.

102. *Id.* § 20(1).

103. *Id.* § 21.

104. *Id.* § 3(1).

105. Fimbo, *supra* note 92; J.B. Ojwang & Phoebe N. Okowa, *The One-Party State and Due Process of Law: The Kenya Case in Comparative Perspective*, 1 AFR. J. INT'L & COMP. L. 177 (1989).

the CCM was not an exclusive club.¹⁰⁶ CCM policy was to be made by the National Conference, meeting every five years, but the National Executive Committee made the important decisions, which would then be endorsed without significant discussion by the National Conference.¹⁰⁷ This practice reduced the level of democracy within the CCM. One critic called the one-party system in Tanzania "an ideological fig-leaf to cover authoritarianism."¹⁰⁸

Although some analysts found the operation of the parliament to reflect democratic practice,¹⁰⁹ National Assembly members took little initiative and typically followed the lead of the CCM leadership.¹¹⁰ While the CCM was not overly strict in its ideological requirements,¹¹¹ and typically its National Executive Committee approved potential candidates who had the backing of the local party,¹¹² still the electoral system did not produce an independent-minded parliament.¹¹³

By the 1980s, nearly all African States had instituted a one-party system.¹¹⁴ In a few instances, court challenges were made to one-

106. INTERIM CONSTITUTION, *supra* note 57, § 5. About three million of Tanzania's 25 million residents are CCM members. Kibuta, *supra* note 23, at 96.

107. Kumar, *supra* note 25, at 127-28.

108. SHIVJI, *supra* note 48, at 58; see also P. Anyang' Nyong'o, *A Continent Awakens to Pluralism and Hope*, WorldPaper, Aug. 1991, available in LEXIS, Nexis Library, WPAPER File (arguing that Tanzania's one-party system did not achieve the ends Nyerere said it would).

109. EZE, *supra* note 43, at 58-59.

110. See ALI MAZRUI, CULTURAL ENGINEERING AND NATION-BUILDING IN EAST AFRICA 128 (1972).

111. PRATT, *supra* note 26, at 205.

112. Kumar, *supra* note 25, at 129.

113. PRATT, *supra* note 26, at 208-09.

114. MAZRUI, *supra* note 110, at 111-25; Lawrence Zimba, *The Origins and Spread of One-Party States in Commonwealth Africa, Their Impact on Personal Liberties: A Case Study of the Zambian Model*, in LAW IN ZAMBIA 113, 114 (Muna Ndulo ed., 1984); see, e.g., ZAIRE CONST. (1982) tit. III, art. 32, reprinted in 19 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD, *supra* note 81 ("In the Republic of Zaire, there is only one institution, the Popular Movement of the Revolution."), art. 33 ("The Popular Movement of the Revolution is the Zairean Nation organized politically. . . . Every Zairean is a member of the Popular Movement of the Revolution."), art. 36 ("The President of the Popular Movement of the Revolution is by law President of the Republic."); BURUNDI CONST. (1981) tit. III, art. 22, reprinted in 3 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD, *supra* note 81 ("The Republic of Burundi adopts the principle of the one mass party, called 'Union for National Progress' (UPRONA)."), art. 26 ("The National Congress is the supreme instance of the party."), art. 29 ("The President of the Uprona Party is the only candidate for the presidency of the Republic."); ZAMBIA CONST. (An Act to Enact a New Constitution of the Republic of Zambia, Aug. 25, 1973) pt. I, § 4(1), reprinted in 19 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD, *supra* note 81 ("There shall be one and only one political party or organisation in Zambia, namely, the United National Independence Party."), § 4(2) ("Nothing contained in this Constitution shall be so construed as to entitle any person lawfully to form or attempt to form any political party or organisation other than the Party, or to belong to, assemble or associate with, or express opinion or do any other thing in sympathy with, such political party or organisation."); SIERRA LEONE CONST. (Act. No. 12 of 1978) ch. I, § 4, reprinted in 19 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD, *supra* note

party systems on the grounds that they violated the freedom of association, but none of these challenges was successful.¹¹⁵

The one-party system held firm in Tanzania into the 1980s, despite the passage of the bill of rights in 1984. The government continued to suppress those who advocated pluralism. A man, who in the 1980s initiated a campaign that resulted in 300,000 signatures on a petition for a multiparty system, was held in preventive detention for eighteen months and under the Deportation Ordinance was banished for one year to an offshore island.¹¹⁶

In the 1980s, the CCM lost some of its legal base for stopping opponents. In 1985, the Preventive Detention Act was amended to authorize the High Court to entertain a challenge to the legality of the order "on any ground."¹¹⁷ Although the president could still jail political opponents for nebulous reasons, his decision was no longer unreviewable.¹¹⁸ In 1988, a High Court judge held the Deportation Ordinance invalid by finding it inconsistent with the constitutional right to freedom of movement.¹¹⁹ The Court of Appeal, Tanzania's highest tribunal, returned the case for further fact-finding but without disapproving the High Court's decision.¹²⁰

81 ("The One Party recognised shall be such as shall be prescribed by Parliament by a resolution adopted by at least two-thirds of the Members of Parliament."), ch. III, § 22 (president must be a member of that party), ch. IV, pt. II, § 44 (members of parliament must be members of that party). The only States operating under party pluralism were Botswana, Senegal, Gambia, and Zimbabwe, although even in those States a single party in fact predominated. Rodger M.A. Chongwe, *Acceptance of the Role of Law and Lawyers in Africa*, 2 AFR. J. INT'L & COMP. L. 479, 481 n.7 (1990).

115. When the Sierra Leone government initiated a study of the feasibility of establishing a one-party system, a group of citizens sued, but the case was dismissed on the grounds that they had not proved injury to themselves. *Steele v. Attorney General*, 1967-68 ALR S.L. 1, *reprinted in A. MILNER ET AL., LEADING CASES IN SIERRA LEONE* 111 (1975). In Zambia, two potential presidential candidates not of the official party sued, arguing that the one-party system abridged the freedom of association. The High Court, however, in a decision affirmed by the Supreme Court, said that the applicants lacked standing to bring the action. *Nkumbula v. Attorney-General* (1972), *explained in* 6 ANN. SURV. AFR. L. 172 (1972), *noted in* Chandra P. Gupta, *Harry Mwanga Nkumbula and Attorney General for the Republic of Zambia*, 5 ZAMBIA L.J. 147 (1973), *discussed in* *Zimba*, *supra* note 114, at 121-26.

116. See Neil Henry, *Daring to Differ in Tanzania*, WASH. POST, Sept. 10, 1990, at A23 (deportation of James Mapalala, founder of the Civil and Human Rights Movement of Tanzania); Peter, *supra* note 71, at 273-74; *Tanzania*, INDEX ON CENSORSHIP, Mar. 1987, at 40 (detention of Mapalala under Preventive Detention Act, presumably for his campaigning for repeal of one-party rule).

117. An Act to Amend the Preventive Detention Act, No. 2 of 1985, TANZANIA REVISED LAWS § 5.

118. *Dissolve Union Cabinet — Seminar*, DAILY NEWS (Dar es Salaam), June 13, 1991, at 5.

119. *Chumchua s/o Marwa v. Officer i/c of Musoma Prison and the Attorney General*, High Court of Tanzania at Mwanza, Misc. Crim. Cause No. 2 of 1988 (Mwalusanya, J.).

120. Chris M. Peter, *Five Years of Bill of Rights in Tanzania: Drawing a Balance-Sheet*, 18 E. AFR. L. REV. (1991).

IV. AN AFRICAN PERESTROIKA

In 1990, all over Africa, public demand grew for an end to one-party rule.¹²¹ In a number of States, crowds pressed for a national conference to plot a course to pluralism.¹²² One by one, governments made concessions. Gabon held its first multiparty parliamentary elections.¹²³ The Ivory Coast, following large demonstrations, held its first multiparty presidential and parliamentary elections.¹²⁴ Togo's President, also following pro-pluralism rallies, agreed to a revision of the Togolese Constitution to permit a multiparty system, and a constitutional referendum was scheduled.¹²⁵ Mozambique's National Assembly unanimously approved constitutional amendments establishing a multiparty system.¹²⁶ In the Congo (Brazzaville), as a result of recommendations made by a national conference, the government scheduled multiparty elections for 1992.¹²⁷ The President of Zimbabwe, Robert Mugabe, who had long advocated the institution of one-party rule, gave up his quest and pledged to remain with pluralism.¹²⁸ In Zambia, the Constitution was amended to eliminate the monopoly of the United National Independence Party.¹²⁹

In Kenya, however, President Daniel arap Moi spoke out strongly

121. Melinda Ham, *The Waiting Game*, AFR. REP., July-Aug. 1991, at 45-46 (in Zambia, Movement for Multi-Party Democracy outdrawing the former monopoly party ten to one at public rallies); Salim Lone, *Democracy Push Widespread*, AFR. NEWS, Apr. 1, 1991, at 7; John Owen-Davies, *OAU Ministers Set to Grapple with Change in Africa*, Reuter Library Report, May 26, 1991, available in LEXIS, Nexis Library, REUTER File; see also *Democracy and Despots: The State of Government in Black Africa*, L.A. TIMES, Aug. 13, 1991, at 5 (giving a capsule account of recent changes for each African State).

122. *Demands for National Conferences Mount*, AFR. NEWS, June 24, 1991, at 4 (public demonstrations demanding a national conference leading to multi-party politics in Togo, Cameroon); Sennen Andriamirado, *Est-ce vraiment la solution?*, JEUNE AFRIQUE, June 26, 1991, at 16; Albert Bourgi, *Les états généraux de la démocratie*, JEUNE AFRIQUE, June 26, 1991, at 26; *National Conferences Forge Changes*, AFR. NEWS, Aug. 26, 1991, at 3 (all three articles describing national conferences in Francophone States).

123. David C. Walters, *Africa Update*, CHRISTIAN SCI. MONITOR, Nov. 1, 1990, at 4.

124. *Id.*; *Ivorian Protests Spread*, AFR. NEWS, June 24, 1991, at 1.

125. *Togo Seeks New Future*, AFR. NEWS, July 15, 1991, at 1. Togo's reform was stormy, as the military intervened three times in 1991 against a transitional parliament. *Assembly Approves New Cabinet and Conciliatory Program*, Agence France Presse, Dec. 31, 1991, available in LEXIS, Nexis Library, CURRNT File; Walters, *supra* note 123, at 4.

126. Walters, *supra* note 123, at 4.

127. Kenneth B. Noble, *Congo Political Conference Gives Africa a Democratic Model*, N.Y. TIMES, June 25, 1991, at A8.

128. *Zimbabwe: Tekere to Contest Presidential Election*, Inter Press Service, Feb. 23, 1990, available in LEXIS, Nexis Library, INPRESS File.

129. John Mukela, *Kaunda Unveils Multi-Party Era in Fighting Mood*, INDEPENDENT (London), Dec. 5, 1990, at 10; *Zambia Democracy Supporters Form First Legal Opposition Party*, Dec. 20, 1990, Reuter Library Report, Dec. 20, 1990, available in LEXIS, Nexis Library, REUTER File; *Zambia OKs Constitution*, L.A. TIMES, Aug. 4, 1991, at A15 (parliament approves new constitution providing for multi-party system); *Zambia's Ruler Sets 1st Multiparty Vote*, N.Y. TIMES, Sept. 5, 1991, at A5.

in support of one-party rule. "A multi-party system introduced now," he said, "would lead to alliance of tribal groups expressing tribal sentiments not public opinion." For Africa, he said, "starting multi-party systems will definitely trigger off chaotic situations difficult to reverse."¹³⁰ When Oginga Odinga, a former vice-president of Kenya, tried to form a National Democratic Party,¹³¹ the attorney general refused to register it, and the High Court upheld the refusal.¹³²

One spur to reform of the party system in Africa came from the South. As South Africa appeared to be moving towards political participation for its African population, African leaders found it more difficult to explain why they excluded nonparty citizens from a political role.¹³³

The major impetus, however, came from the North. While there had long been opposition to one-party rule in Africa, the move to pluralism in Eastern Europe in 1989 quickly assumed importance in Africa. The U.S.S.R. had been an implicit role model to some proponents of one-party rule, and the reforms in Eastern Europe encouraged those citizens who had long advocated party pluralism to make this issue public. Many one-party leaders in Africa, watching one-party leaders fall in Eastern Europe, decided it was time for concessions.¹³⁴

African leaders also feared that with Eastern Europe becoming a venue for Western trade and investment, Africa would be even less able to sell its products and to attract investment. In 1990 as well, the West began to pressure Africa to move towards political pluralism, and African leaders feared losing Western economic activity, including aid, if they did not reform.¹³⁵ The impact of Western pressure was

130. *Kenyan President Rejects Multi-Party System for Africa*, Reuter Library Report, Mar. 23, 1990, available in LEXIS, Nexis Library, REUTER File.

131. Gitobu Imanyara, *Odinga Launches New Party*, NAIROBI L. MONTHLY, Feb. 1991, at 27; Jaramogi Oginga Odinga, *Our Stand*, NAIROBI L. MONTHLY, Feb. 1991, at 28.

132. Richard Dowden, *Africa Ponders Democracy Moves*, INDEPENDENT (London), Aug. 3, 1991, at 6; *Kenya High Court Turns Down Odinga Application to Register New Party*, BBC Summary of World Broadcasts, July 20, 1991, available in LEXIS, Nexis Library, BBCSWB File. On the court proceedings, see Andrew Kuria, *Odinga Wants New Judge in NDP Case*, DAILY NATION (Nairobi), June 18, 1991, at 1.

133. Neil Henry, *Reforms in Pretoria Put Black Rulers on Spot*, WASH. POST, July 11, 1991, at A23 (quoting an Africa Watch official saying, "the changes in South Africa have left many with nowhere to hide when it comes to their own rule"); Michael Johns, *A New Liberation Doctrine for Africa*, Heritage Foundation Reports, Background No. 822, Apr. 12, 1991, available in LEXIS, Nexis Library, HFRPTS File (saying changes in South Africa made it more difficult for African leaders to deflect criticism by pointing a finger at South Africa).

134. Richard Dowden, *Africa Shaken by 'Second Liberation'*, INDEPENDENT (London), July 29, 1991, at 10.

135. Jacques de Barrin, *M. Mitterand Lie l'Octroi de l'Aide Française aux Efforts de Démocratisation*, LE MONDE, June 22, 1990, at 3 (Mitterand, in a speech at the Franco-African

felt most dramatically in Kenya. In late 1991, donor States informed the Kenyan government that they were suspending aid programs because of its refusal to abandon the single-party system. President Moi, who had staunchly opposed change, said he would propose elimination of the constitutional provision establishing a single party and would call for multiparty elections.¹³⁶

A rethinking of economic policy accompanied the rethinking of pluralism, and the two reform tendencies fed each other. The new thought in economics stressed regional trade and self-reliance, as opposed to North-South trade and reliance on exports to the industrialized world. In 1989 the United Nations Economic Commission for Africa (ECA) published its *African Alternative Framework to Structural Adjustment Programs* as a blueprint for economic development.¹³⁷ Echoing Soviet President Mikhail Gorbachev's prescription for economic improvement in the Soviet Union, the ECA said that democratic reforms in Africa were a prerequisite for economic development.¹³⁸ Earlier, economic development had been said to require a strong central authority. But African economies had deteriorated during the 1980s, and the lack of inclusion of a broad base in decision-making came to be seen as an impediment to development. If those in power were more accountable to the public, it was argued, they would make decisions that better promoted economic development.¹³⁹ If the people had more confidence in government, they would be more willing to sacrifice in the interests of development.¹⁴⁰

The ECA hosted a conference in Arusha, Tanzania, in 1990, where an "African Charter for Popular Participation in Development" was adopted, and delegates expressed a concern that the lack of democracy in Africa was a cause of the continent's continuing poverty.¹⁴¹ This view was shared by Ugandan President Yoweri Museveni, who as chair of the Organization of African Unity declared that "the establishment of democracy is a necessary condition for stable economic

summit, alluded to free elections and multipartyism and said, "France will link its entire aid effort to the efforts that are made to go more towards liberty").

136. *Democracy Movements Win Round One*, AFR. NEWS, Dec. 9-23, 1991, at 11.

137. UNITED NATIONS, ECONOMIC COMMISSION FOR AFRICA, AFRICAN ALTERNATIVE FRAMEWORK TO STRUCTURAL ADJUSTMENT PROGRAMMES FOR SOCIO-ECONOMIC RECOVERY AND TRANSFORMATION (AAF-SAP), U.N. Doc. E/ECA/CM.15/6/Rev.3 (1989) [hereinafter AFRICAN ALTERNATIVE FRAMEWORK].

138. Lone, *supra* note 121, at 7.

139. AFRICAN ALTERNATIVE FRAMEWORK, *supra* note 137, at 7.

140. *Id.* at 43.

141. Anaclet Rwegayura, *Africa: Putting People First in Development*, Inter Press Service, Feb. 12, 1990, available in LEXIS, Nexis Library, INPRESS File.

development."¹⁴²

The *African Alternative Framework* reopened a longstanding debate about the causes of underdevelopment in Africa. One school of thought viewed the problem as primarily external. The European powers had conquered Africa and disrupted its traditional economy by capturing thousands of able-bodied people to be sold as slaves, and by instituting an export-oriented plantation economy that deprived the population of the ability to grow essential foodstuffs.¹⁴³ According to this view, in the post-independence period, Europe, with the United States now involved as well, controlled Africa by operating industries and dominating the export trade. To make matters worse, after independence the terms of trade for African products deteriorated vis-à-vis the manufactured goods of the industrialized world, leading Africa into greater poverty. The prescription was self-sufficiency. Africa should end its concentration on the export of raw materials and should develop the ability to produce manufactured products for itself. Foreign trade should be reoriented to other Third World States, and away from the industrialized world.¹⁴⁴

A second school of thought found the causes of African underdevelopment in Africa itself. Africa had missed the industrial revolution of the eighteenth and nineteenth centuries and needed to model itself on the industrialized world to catch up. For this purpose it needed to integrate itself as fully as possible into the international economy, selling its raw materials to accumulate capital for industrialization. Credits from international lending agencies were needed, and African States were therefore forced to abide by the economic prescriptions of the International Monetary Fund, which typically asked them to tighten spending and reduce social services, in order to pay off their foreign debt.

To adherents of the first school of thought, however, the International Monetary Fund was a tool of continued Western domination of Africa, and a guarantee of nondevelopment. The *African Alternative Framework* tilted towards this view, criticizing IMF restrictions as having failed to improve African economies.¹⁴⁵ The *Framework* called for less reliance on foreign aid and investment,¹⁴⁶ product diversifica-

142. *African States Sign Common Market Treaty*, DAILY NEWS (Dar es Salaam), June 5, 1991, at 1.

143. WALTER RODNEY, *HOW EUROPE UNDERDEVELOPED AFRICA passim* (1976).

144. See M.L. Baregu, *Africa: Imperatives for Delinking from the Capitalist World Economy*, 15 AFR. REV.: J. AFR. POL., DEV., & INT'L AFF. 14 (1988).

145. AFRICAN ALTERNATIVE FRAMEWORK, *supra* note 137, at 16-25.

146. *Id.* at 33 ("Even if such resources could be attracted, it is almost certain that the terms and conditions on which they would be made available would be such as to offer mere temporary

tion to reduce monoculture export dependence,¹⁴⁷ maintenance of, and even increases in, spending on education and health care,¹⁴⁸ reduced military spending,¹⁴⁹ pursuit of self-sufficiency in food production,¹⁵⁰ regional trade as partial replacement for North-South trade,¹⁵¹ and selective privatization, but maintenance of parastatals where private parties were unable to function effectively.¹⁵² In 1991, in line with this approach, the Organization of African Unity called for the establishment of an African common market,¹⁵³ although there was no immediate prospect that such a market could be achieved, because of Africa's strong economic ties with the industrialized world.¹⁵⁴ The anticipated achievement of an integrated economy in Western Europe in 1992 came as a new challenge to an African economy that was already deteriorating in relation to the West. African economists feared that the new European Community trading bloc would hurt Africa.¹⁵⁵

African politicians worried that Western aid-giving States might cut aid or investment if pluralism were not introduced.¹⁵⁶ Some Western aid-giving States, and the International Monetary Fund, indicated that in making their aid decisions they would look more favorably on States permitting political pluralism.¹⁵⁷

relief to the African countries and serve more to aggravate and deepen their structural problems and deficiencies.”).

147. *Id.* at 13, 34.

148. *Id.* at 33-34 (characterizing these expenditures as “prerequisites of an enabling environment” for growth).

149. *Id.* at 35 (noting that Africa spends more on military than on education, whereas Latin America twice as much on education as on military).

150. *Id.* at 11, 36.

151. *Id.* at 13-14, 36, 45; *Africa's Economic Performance Improving*, U.N. CHRONICLE, June 1990, at 72; *African Economic Ministers to Look Towards Self Help*, Reuter Library Report, May 14, 1990, available in LEXIS, Nexis Library, REUTER File (ministers discussing E.C.A. proposals); *Africa: Nyerere Calls for Economic Integration*, Inter Press Service, May 28, 1991, available in LEXIS, Nexis Library, INPRESS File (urging Africa to integrate economically to achieve “true economic independence”).

152. AFRICAN ALTERNATIVE FRAMEWORK, *supra* note 137, at 47.

153. Treaty Establishing an African Economic Community, June 3, 1991, 30 I.L.M. 1245 (1991).

154. Tunda Obadina, *Africa Moves Towards Economic Unity to Boost Growth*, Reuter Library Report, June 5, 1991, available in LEXIS, Nexis Library, REUTER File. Several regional economic groupings already existed — the Economic Community of West African States, Preferential Trade Area for Eastern and Southern African States. See Hawa Sinarè, *The Treaty for the Establishment of the Preferential Trade Area for Eastern and Southern African States and Its Relevance to Economic Integration*, 5 LESOTHO L.J. 77 (1989).

155. *Worries Attend New Initiatives*, AFR. NEWS, Jan. 29, 1990, at 1.

156. Richard Joseph, *Glasnost for Africa?*, N.Y. TIMES, Dec. 28, 1989, at A21 (quoting Olusegun Obasanjo, former Nigerian Head of State: “We are amazed to the point of frustration as we watch substantial amounts of funds being appropriated for economic reforms in just a few countries of Eastern Europe, while we continue to wait for the West to honor its far more modest financial commitments” to Africa).

157. Kibwana, *supra* note 16, at 34; Rowena Whelan, *IMF Chief, at Start of East African*

V. THE DEBATE ON PLURALISM IN TANZANIA

In 1990, the pluralism issue took center stage in Tanzania, when the CCM announced that it would rethink the matter after twenty-five years of one-party rule.¹⁵⁸ As elsewhere in Africa, the precipitating event appears to have been the end of one-party rule in Eastern Europe.¹⁵⁹ Nyerere, then still the CCM Chair, said that the developments in Eastern Europe were of major concern since Tanzania, like Eastern Europe, had a one-party State and was in the process of building socialism. Nyerere said that African leaders should learn from the Eastern European developments that leaders must work closely with the citizenry. He said that a one-party system was "not Tanzania's ideology," and it could lull leaders into "a sound sleep" and held the danger of oppressing citizens.¹⁶⁰ He said, "Tanzanians should not be dogmatic and think that a single party is God's wish."¹⁶¹

While encouraging debate on pluralism, the CCM leadership rejected external pressure. President Ali Hassan Mwinyi objected to the suggestions from aid-giving States that a multiparty system was a precondition for aid.¹⁶² Nyerere found it "incredible" that the industrialized world was trying to tell Africa to move to pluralism as a condition of economic aid. He said that Africans would not accept dictation but would decide the issue on the basis of their own needs.¹⁶³ Nyerere also rejected the equation of party pluralism with democracy: "our commitment to democracy is clear . . . the main problem is that the North believes democracy can only be expressed in the form of a multi-party system." Further, he said, "I'm worried that the North is saying that without a multi-party system there can't be democracy. I don't accept that. We have respect for human beings, participation at

Tour, Urges More Democracy, Reuter Library Report, Aug. 14, 1991, available in LEXIS, Nexis Library, REUTER File (IMF Managing Director Michel Camdessus, noting, however, that IMF financial support would not be conditioned on specific political changes).

158. Paul Chintowa, *Tanzania: Leaders to Debate Multi-Party Democracy*, Inter Press Service, Feb. 21, 1990, available in LEXIS, Nexis Library, INPRESS File.

159. Peter Temba, *Kilimanjaro Want One Party System*, DAILY NEWS (Dar es Salaam), July 11, 1991, at 5 (multiparty advocates invoke changes elsewhere as a reason for change in Tanzania).

160. *Tanzania Nyerere Says One-Party System Not the Country's "Ideology,"* BBC Summary of World Broadcasts, Feb. 23, 1990, available in LEXIS, Nexis Library, BBCSWB File.

161. Jane Perlez, *African Elder Trims One-Party Stand*, N.Y. TIMES, Feb. 27, 1990, at A10.

162. *Tanzanian Vice-President on Political Reform*, Xinhua General Overseas News Service, June 7, 1990, available in LEXIS, Nexis Library, XINHUA File.

163. *Africa: Nyerere Notes External Pressure to Democratize*, Inter Press Service, Dec. 12, 1991, available in LEXIS, Nexis Library, INPRESS File (Nyerere stating, "If there is a need to have changes, let's agree ourselves and not because of external pressures"); *Nyerere: Let Africans Choose Their Future Political Destiny*, Xinhua General Overseas News Service, May 10, 1991, available in LEXIS, Nexis Library, XINHUA File.

all levels . . . we gave our people a sense of dignity and freedom."¹⁶⁴

Nyerere's effort to encourage debate was not universally welcomed. Vice-President Joseph Warioba warned that reform "has caused a lot of trouble," including political instability, in other African States.¹⁶⁵ A group of twenty Tanzanian army colonels issued a statement that pluralism would threaten the national unity that it had taken twenty-five years to build.¹⁶⁶

President Mwinyi's government refused registration to a pro-multiparty group, the Civil and Legal Rights Movement,¹⁶⁷ but in February 1991, President Mwinyi appointed a twenty-two-member commission to study pluralism and report back to him within one year.¹⁶⁸ Half the commission's members were from Zanzibar, and half from the mainland. In a seven-point document titled "Terms of Reference," Mwinyi asked the commission both to give its own recommendation and to "collect people's views in the debate on whether Tanzania continues with a one-party political system or adopts multipartism."¹⁶⁹

Some multiparty proponents objected to the commission's makeup, as it consisted entirely of CCM members, and they announced they were forming a Committee for a Transition Toward a Multi-Party System, to promote party pluralism. Chief Abdallah Fundikira, chair of the group, charged that President Mwinyi's intent in forming the commission was merely "to cool the tempers of the restless people wanting genuine democracy now."¹⁷⁰ It called for an immediate constitutional conference, on the order of those being held in West Africa.¹⁷¹ President Mwinyi, however, ruled that the Committee for a Transition Toward a Multi-Party System could not begin

164. *Nyerere Also Spoke Out Against What He Described*, Reuter Library Report, Nov. 28, 1990, available in LEXIS, Nexis Library, REUTER File.

165. *Tanzanian Vice-President on Political Reform*, *supra* note 162.

166. *East and Horn of Africa in Brief: Tanzania Army Officers Reportedly Rule Out Multi-Party System but Favour Reform*, BBC Summary of World Broadcasts, June 23, 1990, available in LEXIS, Nexis Library, BBCSWB File.

167. Fimbo, *supra* note 92, at n.11.

168. *Tanzania President Appoints Members of Commission on Party System*, BBC Summary of World Broadcasts, Feb. 26, 1991, available in LEXIS, Nexis Library, BBCSWB File; *Tanzanian President Cautions Commission on Pluralism Against Bias*, BBC Summary of World Broadcasts, Mar. 23, 1991, available in LEXIS, Nexis Library, BBCSWB File.

169. Presidential Commission on Multi-Party or Single-Party Political System in Tanzania, Terms of Reference, ¶¶1-2 (1991) (on file with author).

170. *Tanzanian President Bans Opposition. Reviews One Party State*, Reuter Library Report, Mar. 21, 1991, available in LEXIS, Nexis Library, REUTER File. In the 1960s Fundikira was Minister of Justice and a member of TANU's inner circle of leadership. PRATT, *supra* note 26, at 51, 95, 213; Bates, *supra* note 4, at 457.

171. *Opponents in Tanzania Demand Constitutional Conference*, Xinhua General Overseas News Service, June 11, 1991, available in LEXIS, Nexis Library, XINHUA File.

operation, since it had not registered, as is required of all public bodies in Tanzania,¹⁷² and he forbade it to hold a planned public meeting.¹⁷³ Later, the group registered and was allowed to function,¹⁷⁴ and it established a National Committee for Constitutional Reform.¹⁷⁵

Concern was voiced that the debate would be circumscribed by regulations on street demonstrations.¹⁷⁶ As the commission was appointed, preventive detention was still being applied against political opponents.¹⁷⁷ The Committee for a Transition Toward a Multi-Party System demanded the suspension of the Preventive Detention Act and the Deportation Ordinance for the duration of the public debate, and amnesty for political prisoners.¹⁷⁸

The President's powers over the press were also cited as a limitation on the debate.¹⁷⁹ The Newspapers Act let the President stop the publication of any newspaper in the "public interest," or "in the interest of peace and good order,"¹⁸⁰ and the President had shut down newspapers of political opponents.¹⁸¹ Tanzanian newspapers, which had typically deferred to the CCM,¹⁸² were accused by one multi-party proponent of giving more coverage to one-party supporters.¹⁸³

172. *Tanzanian President Bans Opposition, Reviews One Party State*, Reuter Library Report, Mar. 21, 1991, available in LEXIS, Nexis Library, REUTER File; Societies Ordinance, No. 11 of 1954, TANGANYIKA REVISED LAWS Cap. 337, § 7 (requiring any society to register), § 9 (requiring registrar to refuse registration to a society likely to be used for a purpose prejudicial to peace, order, or good government).

173. *Meeting of Students and Opposition Group Banned in Tanzania*, Xinhua General Overseas News Service, Mar. 30, 1991, available in LEXIS, Nexis Library, XINHUA File; *Seminar on Multi-Party Rule Postponed in Tanzania*, Xinhua General Overseas News Service, Apr. 4, 1991, available in LEXIS, Nexis Library, XINHUA File.

174. *Fundikira Invited Nyerere to Side with Multi-Party Democracy*, BUS. TIMES (Dar es Salaam), May 24, 1991, at 4 (letter written by organizer of the group); *Opponents in Tanzania Demand Constitutional Conference*, Xinhua General Overseas News Service, June 11, 1991, available in LEXIS, Nexis Library, XINHUA File (two-day seminar held by the group).

175. Dowden, *supra* note 25, at 8 (reporting that the Committee dismissed Fundikira as chair after he announced in London that he was forming a new political party; the Committee called the effort premature).

176. *Dissolve Union Cabinet — Seminar*, *supra* note 118, at 5.

177. Mbena Mwanatongoni, *Sick Member Freed and Deported*, BUS. TIMES (Dar es Salaam), May 24, 1991, at 1 (Mussa Membar, founder of Tanzania Youth Democratic Movement, a London-based exile group, who in 1982 had hijacked an Air Tanzania plane, held in preventive detention seven months); Chase Mdoe, *Ukongu Accused of Ill Treating Membar*, BUS. TIMES (Dar es Salaam), May 31, 1991, at 1 (Membar dies, relatives charge officials of Ukongu prison, where he was detained, of failing to provide medical treatment after Membar became ill).

178. *Opponents in Tanzania Demand Constitutional Conference*, *supra* note 171.

179. Issa G. Shivji, *Minimum Legal Conditions to Begin the Process of Democratisation in Tanzania*, 17 E. AFR. L. REV. (1990).

180. Newspapers Act, No. 3 of 1976, TANZANIA REVISED LAWS Supp. 76, § 25.

181. MARTIN, *supra* note 61, at 94-96.

182. PRATT, *supra* note 26, at 212.

183. Timothy S. Kapinga, *We Are Already Divided*, SUNDAY NEWS (Dar es Salaam), June 9, 1991, at 5.

The presidential commission, nonetheless, took up its task, dividing itself into seven groups to hold hearings around the country to collect public opinion. From May to October 1991, it held hearings throughout Tanzania, which were widely reported in the press. Some were also broadcast by radio, and in Zanzibar on television.¹⁸⁴ The commission also sent questionnaires to Tanzanians living abroad and solicited written opinion from the public, agreeing to entertain even anonymous statements. Although the commission's report was to be only advisory to the President, the Chief Minister of Zanzibar said that the Zanzibari government would respect the public's preference.¹⁸⁵ Salim Ahmed Salim, Secretary-General of the Organization of African Unity, and a Tanzanian, commended Tanzania for the orderly fashion in which the debate was being conducted.¹⁸⁶

The public hearings brought out opinion on both sides of the issue. One-party proponents, repeating the argument made in the 1960s, feared that nationalist rivalries would come to the fore under a multiparty system.¹⁸⁷ The bloody nationality conflicts that accompanied the end to one-party rule in Eastern Europe heightened this concern. Another concern was that political parties might divide along religious lines. In Tanzania, where one-third of the population practices Islam, one-third Christianity, and one-third traditional religions, one-party proponents feared conflict between Muslims and Christians. The Terms of Reference directed the commission to assess the impact of a switch to a multiparty system on "unity, peace and concord amongst all Tanzanians regardless of tribe, creed, race or gender," and to make proposals for guarding against unrest based on these factors if a multiparty system were adopted.¹⁸⁸ This injunction also directed the commission's attention to a concern that if new political parties were allowed to form, some of them might seek a breakup of the union between Zanzibar and the mainland.

Over and above these considerations, however, the most persistent

184. There is no television broadcasting in mainland Tanzania.

185. Ali Uki, *Isles Pledges to Respect People's Views on Pluralism*, DAILY NEWS (Dar es Salaam), June 8, 1991, at 1; *Zanzibar President Briefs French Envoy on Political and Economic Situation*, BBC Summary of World Broadcasts, July 11, 1991, available in LEXIS, Nexis Library, BBCSWB File (Salmin Amour, Zanzibar President, said any system agreed upon by the citizens would be adopted); see also *Tanzania: Mwinyi Calls for View of the People on a Multi-Party System*, BBC Summary of World Broadcasts, available in LEXIS, Nexis Library, BBCSWB File (saying the majority view would receive "careful attention").

186. *OAU Commends Peaceful Discussion About Political System in Tanzania*, Xinhua General Overseas News Service, July 16, 1991, available in LEXIS, Nexis Library, XINHUA File.

187. Shy-Rose Bhanji & Moses Kitururu, "Multi-Partism Will Invite Recolonisation," DAILY NEWS (Dar es Salaam), May 21, 1991, at 1 (quoting Nyangize Bakari and Rose Mgwai at a public meeting).

188. Terms of Reference, *supra* note 169, ¶¶3-4.

argument made for maintaining one-party politics was that Tanzania enjoyed political stability which pluralism might jeopardize.¹⁸⁹ Tanzania "should never trade off its tranquility," said a one-party proponent.¹⁹⁰ Another said that if political parties were allowed to contend, the army might step in and put an end to any form of democracy.¹⁹¹

Unlike many other African States, Tanzania had been free of successful coups and rebellions since instituting one-party rule.¹⁹² However, in 1964, just prior to one-party rule, there had been a coup attempt by the army on the mainland, and a violent overthrow of the government in Zanzibar. Thus, the one-party system was a known quantity. With pluralism, tendencies might emerge that would lead to political violence. The Terms of Reference asked the commission to explore "ways of guarding against any dangers of a political nature or national security that might arise as a result of change or the lack of it in our political system."¹⁹³

Despite the concern over stability, the ground swell for ending one-party rule in Africa suggested that the tranquility enjoyed under a single party might not last. All over Africa, the public was taking the matter into its own hands, and in some cases resorting to violence. Concern over such public feeling may well have been behind the CCM decision to take the party issue to the public.

Multiparty proponents came forward with their arguments. They said that it did not make sense to suppress opposing political tendencies, and that the political climate would be healthier if all ideas could compete. In the debate, the connection between politics and economics proved controversial. Some multiparty proponents, in agreement with the U.N. view, saw multipartyism as a cure for Tanzania's desperate economic situation. Proponents of a one-party State, however, objected that the causes of the economic crisis lay elsewhere, and that

189. Ali Uki, "We Don't Want to Jump on Multi-Party Bandwagon," DAILY NEWS (Dar es Salaam), May 20, 1991, at 1. For an analysis expressing this concern on a continent-wide basis, see Anver Versi, *Democratic Debate*, NEW AFR., June 1991, at 9 (arguing that political parties appeal to the lowest common denominator, that the lowest common denominator is ethnicity, and that the parties representing the largest ethnic groups therefore would win under a multi-party system).

190. Bhanji & Kitururu, *supra* note 187, at 1 (quoting Ali Keto at a public meeting).

191. Methuen Chinyuka, *Too Early for Multi-Partism — Commission Told*, DAILY NEWS (Dar es Salaam), July 12, 1991, at 1.

192. In 1983 there was an apparent coup attempt, based in the military, that led to the arrest of several hundred persons. John Worrall, *Tanzanian Coup Foiled, but Not Economic Woes*, CHRISTIAN SCI. MONITOR, Jan. 24, 1983, at 11.

193. Terms of Reference, *supra* note 169, ¶4.

it was unrealistic to view an opening of the political system as a panacea.

Some one-party proponents feared that the poor would suffer under a multiparty system because the wealthy might make parliament serve their interests. Tanzania has one of the lowest per capita income levels in the world, and thus its poorest can ill afford any reduction in standard of living. In particular, the fear was expressed in Zanzibar that a multiparty parliament might overturn land expropriations of 1964 that had distributed plots to the poor, or revoke rent subsidies in effect for low-income people or free education and health services.¹⁹⁴ Some rural Zanzibaris feared that a multiparty system would encourage revenge by supporters of the sultan who was overthrown in Zanzibar in 1964.¹⁹⁵ As the presidential commission began its work, Nyerere, somewhat surprisingly, ventured the opinion that most Tanzanians still favored a one-party system.¹⁹⁶

Pluralism was supported by many CCM members, but it was opposed by many CCM functionaries whose positions would be jeopardized if the CCM lost its monopoly.¹⁹⁷ The difference of opinion within the CCM raised the possibility that the National Assembly might be able to muster a majority to revoke the CCM's constitutional monopoly on power. Unless, as has happened in some African States, new processes outside the existing order were established, it would be the National Assembly that would have to take the decision to amend the Constitution to eliminate the one-party monopoly.¹⁹⁸

Apart from arguments for and against the one-party system, the national debate elicited scathing attacks on the CCM, to the extent that it was not always clear whether the critics supported multiparty politics or simply found the CCM corrupt. At one public meeting of the presidential commission, citizens complained that CCM officials harassed and humiliated them to make monetary contributions to the party. Other citizens called CCM leaders "dictatorial"¹⁹⁹ and said

194. Ali Uki, "Common Man Will Suffer under Multi-Party Rule," DAILY NEWS (Dar es Salaam), May 30, 1991, at 1; see Uki, *supra* note 189, at 1.

195. Uki, *supra* note 189, at 1.

196. Nyerere: *Let Africans Choose Their Future Political Destiny*, Xinhua General Overseas News Service, May 10, 1991, available in LEXIS, Nexis Library, XINHUA File.

197. See, e.g., *Tanzania Ruling Party Leader on Political System*, Xinhua General Overseas News Service, June 8, 1991, available in LEXIS, Nexis Library, XINHUA File (Rashid Kawawa, CCM vice-chair, said CCM would not welcome a multiparty system because it might destroy unity among the people).

198. E.P. Mikongoti, *The Road to Democracy by Political Pluralism*, BUS. TIMES (Dar es Salaam), May 31, 1991, at 4.

199. Temba, note 159, at 5.

they were not called to account for criminal abuse of office.²⁰⁰ One man said that when party leaders mistreated people, higher-ups to whom complaints were made did nothing, "because the leaders protected one another."²⁰¹ CCM leaders warned citizens against turning the debate into "platforms of unleashing vitriolic attacks against CCM and its leaders," saying this might lead to chaos.²⁰²

The criticisms made of the CCM during the debate led to several immediate reforms. To facilitate party membership and thereby make the party more accessible, the CCM eliminated a three-month ideological course that had been a requirement for admission.²⁰³ To reduce its control over society, the CCM loosened its ties to five mass organizations that, according to the Constitution, function "under the umbrella of the Party."²⁰⁴ The CCM also planned a recruitment drive aimed at increasing CCM membership by forty percent.²⁰⁵

VI. AN INTERNATIONAL PERSPECTIVE ON AFRICAN PERESTROIKA

Since the emergence in international law of a human rights régime, mechanisms of governance have assumed an international aspect. They are judged not only in terms of domestic law, but by universal norms. States have undertaken to abide by these standards, which accord rights to citizens against the State. As will appear below, the standards are also relevant to States that provide economic aid.

Human rights law has developed norms of some precision on issues involving a State's treatment of an individual, such as one charged with crime, but it has experienced difficulty with rights issues affecting a society as a whole, such as political participation.

On the question of political party pluralism, human rights law is

200. Peter Temba, *CCM Leadership Should Resign, Commission Told*, DAILY NEWS (Dar es Salaam), June 13, 1991, at 5 (a woman said, "Why are the big shots not taken to court when they steal public funds or abuse their positions?").

201. *Wananchi Give Views on Better Political System*, DAILY NEWS (Dar es Salaam), June 6, 1991, at 3 (statement of Daniel Majengo at a public meeting of the presidential commission). "Wananchi" is the Swahili word for "citizens."

202. *Tanzanians Warned Against Abusing Ruling Party*, Xinhua General Overseas News Service, June 24, 1991, available in LEXIS, Nexis Library, XINHUA File (statement of Prime Minister John Malecela).

203. *Party Hails Kagera for Recruiting More Members*, DAILY NEWS (Dar es Salaam), June 28, 1991, at 1; Kibwana, *supra* note 16, at 35.

204. 1984 TANZ. CONST., *supra* note 81, § 80(1)(a) (listing the Union of Tanzanian Women (UWT), the Union of Workers (Juwata), the Youth Organization (Vijana), the Apex Organization of Cooperative Societies, and the Parents' Organization (Wazazi)); see Gavin Evans, *Africa: Campaign for Independent Trade Unionism Takes Hold*, Inter Press Service, June 27, 1991, available in LEXIS, Nexis Library, INPRESS File (on new independent status of Juwata).

205. *CCM to Recruit 1m New Members*, SUNDAY NEWS (Dar es Salaam), July 14, 1991, at 1.

vague. Two rights found in the law are relevant: freedom of association and the right to participate in government. The Universal Declaration of Human Rights states, "Everyone has the right to freedom of peaceful assembly and association,"²⁰⁶ "Everyone has the right to take part in the government of his country, directly or through freely chosen representatives," and "The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures."²⁰⁷

The International Covenant on Civil and Political Rights provides, "Everyone shall have the right to freedom of association with others,"²⁰⁸ and

Every citizen shall have the right and opportunity . . . without unreasonable restrictions . . . to take part in the conduct of public affairs, directly or through freely chosen representatives; . . . to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.²⁰⁹

The three regional human rights treaties contain similar provisions. The Convention for the Protection of Human Rights and Fundamental Freedoms (regarding Europe) states, "Everyone has the right to freedom of peaceful assembly and to freedom of association with others,"²¹⁰ and a protocol to that convention states, "The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature."²¹¹

The American Convention on Human Rights (regarding the Western Hemisphere) provides, "Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes,"²¹² and

206. *Universal Declaration of Human Rights*, art. 20(1), G.A.Res. 217, U.N. Doc. A/810, at 71, 75 (1948).

207. *Id.* art. 21(1), 21(3).

208. International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, § 22(1), 999 U.N.T.S. 171, 178 (entered into force Mar. 23, 1976).

209. *Id.* art. 25, 999 U.N.T.S. at 179.

210. Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, art. 11, 213 U.N.T.S. 222, 232 (hereinafter European Convention).

211. Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, Mar. 20, 1952, art. 3, 213 U.N.T.S. 262, 264.

212. American Convention on Human Rights, Nov. 22, 1969, art. 16, O.A.S. Official Records OEA/Ser.K/XVI/1.1, Document 65, Rev. 1, Corr. 2, Jan. 7, 1970, 9 I.L.M. 673, 680 (1970).

Every citizen shall enjoy the following rights and opportunities: (a) to take part in the conduct of public affairs, directly or through freely chosen representatives; (b) to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters.²¹³

The most relevant human rights treaty for Tanzania is the African Charter on Human and Peoples' Rights, which states, "Every individual shall have the right to free association provided that he abides by the law,"²¹⁴ and "Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law."²¹⁵ Most African governments had one-party rule when these provisions were adopted, but did not consider them inconsistent with the one-party system.

None of the universal or regional human rights instruments directly mentions political parties, or any requirement that more than one be permitted, but they all require States to afford citizens a genuine role in the election of parliamentary representatives. Scholars have had difficulty defining the scope of the right to political participation.²¹⁶ The case law under the European Convention, where one finds the most extensive international practice, contains little material on access by political parties.²¹⁷ A specific mention of the right of political opposition had been proposed for the European human rights system, but was not included.²¹⁸

In one case, Britain's Liberal Party challenged the majority voting system used in parliament, arguing that it disadvantaged minority parties, and that a system of proportional representation, as found in other States, should be required. The European Commission of Human Rights disagreed, however, saying that

European supervision comes into play where first a particular electoral system is arbitrary or manifestly unfair in its effects upon voters or can-

213. *Id.* art. 23, 9 I.L.M. at 682.

214. African Charter on Human and Peoples' Rights, *opened for signature* June 27, 1981, art. 10, 21 I.L.M. 58, 61 (1982) (entered into force Oct. 21, 1986, 7 HUMAN RIGHTS L.J. 403 (1986)).

215. *Id.* art. 13, 21 I.L.M. at 61.

216. See, e.g., *The Human Right to Participate in Government: Toward an Operational Definition*, 82 AM. SOC'Y INT'L L. PROC. 505 (1988).

217. ZAIM M. NEDJATI, HUMAN RIGHTS UNDER THE EUROPEAN CONVENTION 201-07 (1978).

218. Draft of the European Movement, *noted in* P. VAN DIJK & G.J.H. VAN HOOF, THEORY AND PRACTICE OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS 478-79 (1990); KARL J. PARTSCH, DIE RECHTE UND FREIHEITEN DER EUROPÄISCHEN MENSCHENRECHTSKONVENTION 241-43 (1966); see also EUROPEAN CONVENTION ON HUMAN RIGHTS: MANUAL 63 (1963) (right to free elections was inserted in European Convention as an underpinning for the protection of all other rights).

didates of given political opinions or party affiliation, and secondly where it is those very effects which mainly encourage and explain the partisan perpetuation of the system, and where thirdly there is no effective remedy before a national authority for the claim of political discrimination.²¹⁹

This statement implies that if a party were excluded from parliament altogether, the right to free elections would be violated.

In a case filed against Greece when it was under military rule, the European Commission of Human Rights implied that the European Convention requires Member States to allow political parties to operate. Noting that the Greek government had not permitted parliamentary elections, it said that "the Greek people are thus prevented from expressing their political opinions by choosing a legislature in accordance with Article 3."²²⁰ It said, "Political parties are prohibited and . . . they cannot be reorganised and their charters formally approved. This is all in clear and persistent breach of Article 3 of the Protocol," a reference to the protocol on free elections.²²¹

On the other hand, the Commission recognized that, under the European Convention, it may be permissible to suspend parliamentary rights during a "public emergency threatening the life of the nation."²²² A judge who rendered a concurring opinion in the Greek case acknowledged the potential validity of the Greek government's argument that a suspension of parliamentary elections was permissible in the face of a danger that the Communist Party might come to power: "So long as the danger, which in this case is political since it is stated to be due to the Communist party and its allies, has not been averted, a country could not hold free elections without fear of the danger reviving."²²³

In another case, the European Commission of Human Rights permitted the banning of a political party on the grounds that it advocated the abolition of democratic institutions. The German Federal Constitutional Court had ordered the German Communist Party to be dissolved, on the rationale that it promoted a dictatorship of the proletariat, which implied a negation of democratic institutions. The German Communist Party complained to the European Commission, arguing that its freedom of association was infringed.

219. *Liberal Party v. United Kingdom*, 21 Eur. Comm'n H.R. Dec. & Rep. 211, 222 (1981).

220. Report of the European Commission of Human Rights on the Greek Case, 12 Y.B. Eur. Conv. on H.R. 180 (1969) [hereinafter Greek Case].

221. *Id.* at 180; see also VAN DIJK & VAN HOOF, *supra* note 218, at 479 (expressing the view that "a one-party system imposed by the State" is "contrary to Article 3" of the First Protocol).

222. *Id.* at 180; European Convention, *supra* note 210, art. 15, 21 U.N.T.S. at 232.

223. Greek Case, *supra* note 220, at 180.

Article 17 of the European Convention, however, stated that no right in the Convention could be relied on to justify acts aimed at destroying the rights included in the Convention.²²⁴ The Commission said that even if the German Communist Party sought to gain power only by constitutional means, its ultimate aims would bring the destruction of rights protected by the European Convention. Therefore, it could ban the Communist Party without violating its freedom of association.²²⁵

The position taken by the Commission in this case, like the opinion of the concurring judge in the Greek case, suggests that if political pluralism in a particular situation endangered representative government, a State could lawfully ban a political party, or refuse to hold elections. On this basis, Tanzania could argue that permitting any opposition parties would threaten national unity.

Tanzania could also cite the fact that the human rights instruments all contain escape clauses. Under the International Covenant on Civil and Political Rights, the freedom of association may be limited by restrictions "necessary in a democratic society in the interests of national security."²²⁶ The American Convention on Human Rights contains an identical limitation.²²⁷ The European Commission of Human Rights permitted banning a meeting of an Austrian organization devoted to reuniting Austria with Germany on the grounds that the ban was "necessary in a democratic society."²²⁸ The Commission reasoned that Austria was required by treaty to maintain its neutrality, and to achieve this aim it could engage in activity that otherwise would be a rights violation.²²⁹ This kind of exception would seem to open the way for Nyerere's argument that political pluralism could lead to political instability and violence.

In Tanzania, there is no quarrel with the proposition that participation in government is a right. "One of the fundamental rights of every citizen in a democratic political system," said one official, "is the right to take an equal part in the government, or the right to participate meaningfully in the decision-making process of the system which

224. European Convention, *supra* note 210, art. 17, 213 U.N.T.S. at 233.

225. Communist Party of Germany v. Federal Republic of Germany, 1957 Eur. Comm'n H.R. Doc. & Dec. 222, 224-25 (1961) (in French), *translated in* 24 INT'L L. RPTS. 1957, at 349 (1961).

226. International Covenant on Civil and Political Rights, *supra* note 208, art. 22, 999 U.N.T.S. at 178.

227. American Convention on Human Rights, *supra* note 212, art. 16, 9 I.L.M. at 680.

228. A. Association and H. v. Austria, App. No. 9905/82, 36 Eur. Comm'n H.R. Dec. & Rep. 187, 193 (1984).

229. *Id.*

governs him."²³⁰ The Tanzanian Constitution recognizes rights of association and participation in government in terms similar to those found in the international instruments:

Subject to the laws of the land, every person is entitled to freedom of peaceful assembly, association and public expression, that is to say, the right to assemble freely and peaceably, to associate with other persons and, in particular to form or belong to organisations or associations formed for the purposes of protecting or furthering his or any other interests.²³¹

Further, "Every citizen of the Union Republic has the right to participate in the affairs of governing the country, either directly or through officials elected voluntarily by the people in accordance with laid down guidelines and law," and in addition, "Every citizen has the right and freedom to participate fully in the process of decisionmaking on matters affecting him, his life and those affecting the nation."²³²

Thus, the Tanzanian Constitution, like the international instruments, guarantees freedom of association and the right to participate in government. These constitutional provisions were adopted, of course, with full knowledge that they would be applied in a *de jure* one-party system.

As for the application of the international norm, it is difficult to reject outright a political order because it is one-party. If a one-party system effectively permitted all points of view to be entertained, it might not seriously restrict the right to participate in government. It might be easier to find one-party rule a violation of the freedom of association, as any *de jure* one-party system limits the right to form a political party.

The government could respond that it allows, if it in fact does allow, political parties to form, but not to field candidates in parliamentary elections. It might thus argue that it was satisfying the freedom of association norm, although limiting it in one way in order to protect national security.

If freedom of association is violated by a one-party system, but if the right to participation is preserved through open procedures in that one party, would there be a violation of human rights norms? It might be contended that the right to participation is *lex specialis* in this situation because it is more specifically directed at the question of parliamentary representation than is freedom of association, which is a right that applies in a variety of contexts.

230. Msekwa, *supra* note 22, at 26.

231. 1984 TANZ. CONST., *supra* note 81, § 20(1).

232. *Id.* § 21.

The notion that rights overlap and that in certain situations one applies to the exclusion of another on the principle of *lex specialis* has been recognized in international practice. An example is the interplay between freedom of expression and freedom of association. Freedom of association often involves freedom of expression, since the purpose of association is typically some kind of expression. In a case involving the banning of a public procession, however, the European Commission of Human Rights said that the real issue was association, and so that right alone should be analyzed, to the exclusion of freedom of expression.²³³

The view has been expressed that freedom of association is not necessarily violated by a one-party system if the system is sufficiently open and inclusive of differing views that it can be said to reflect the will of the majority of the population.²³⁴ However, in most African one-party systems this level of reflection of the majority will has not been achieved.²³⁵ As the one-party system has functioned in Tanzania, it would not seem to satisfy freedom of association or the right to participate in government, and the case for a national security exception is not sufficiently strong to warrant derogation.

In Africa, the one-party system has an historical logic. Although its maintenance did allow party bureaucrats to feather their own nests at public expense, many party activists genuinely believed it to be best-suited for the good of the State. The overwhelming support for TANU that served as a rationale for a one-party system at the time of independence diminished after Britain departed, and political choices needed to be made. In 1967, TANU made a significant choice with the Arusha Declaration, which called for a major governmental role in economic development. Nationalizations and the emergence of a network of parastatal companies followed. In the mid-1980s the CCM retrenched on the government role in the economy, again making a significant political choice. Differences of opinion surfaced at both junctures. The justification for a one-party approach is that these differences can be accommodated within the party, and an appropriate policy determined. The argument for a multiparty approach is that if there were legal political opposition, it might keep the government from making mistakes that later require major policy shifts.

233. *Christians against Racism and Fascism v. United Kingdom*, App. No. 8440/78, 21 Eur. Comm'n H.R. Dec. & Rep. 138, 147-48 (1981), also in 24 Y.B. Eur. Conv. on H.R. 179, 194 (1981); see also VAN DIJK & VAN HOOF, *supra* note 218, at 321.

234. Ibrahim Fall, Dean, Faculty of Law, University of Senegal, Lecture, at the International Institute of Human Rights, Strasbourg, France (July 3, 1981).

235. *Id.*

The one-party approach did not secure the economic development and political stability that justified it. Economic development was poor in the decades following independence, and political upheaval was frequent.²³⁶ The view on development and political parties may be changing. It was never established by any objective criteria that multipartyism stunted economic growth.²³⁷ In fact, the *African Alternative Framework* argued that political pluralism is better for economic development.²³⁸

While opening political systems to political parties would seem to be a necessary ingredient for democratization, it is not necessarily sufficient in and of itself. Other kinds of groups as well must be free to organize, in order to press their views on the political parties.²³⁹ Most African States, including Tanzania, lack developed community-based groups that can influence national politics.²⁴⁰ In Tanzania in particular, no group is permitted to form without gaining a license from the government.²⁴¹

Further, so long as widespread poverty in Tanzania remains the norm, the majority of the population will be unable to take advantage of political rights. The daily struggle to survive takes precedence. The time and expense of litigation make legal rights extremely difficult for the majority to enforce.²⁴² Moreover, with a substantial discrepancy between the educated rich and the illiterate poor, the former are better able to organize politically and may promote their own interests to the detriment of the latter.

Women also suffer from serious legal disabilities in Tanzania and enjoy less access to political institutions than men. Multiparty politics will not change that situation. A woman who attended a seminar on multiparty politics sponsored by the Law Society (bar association) reported that women in attendance did not speak forthrightly for fear of

236. Mubako, *supra* note 20, at 84-85.

237. *Id.* at 85.

238. AFRICAN ALTERNATIVE FRAMEWORK, *supra* note 137, at 7 ("Basic rights, individual freedom and democratic participation by the majority of the population are often lacking in Africa. This pervasive lack of democracy also makes mobilisation and effective accountability difficult. This is one important sense in which Africa needs more democratic political structures in order to facilitate development."); *id.* at 15 ("The political systems will need to evolve to allow for full democracy and participation by all sections of the society. Only in this way will it be possible to persuade people to accept sacrifices and give their best energies to the task of transformation."); *id.* at 49-50.

239. Shivji, *supra* note 49, at 394-95.

240. EZE, *supra* note 43, at 58.

241. Societies Ordinance, *supra* note 172.

242. Shivji, *supra* note 49, at 401-02.

ridicule by male participants.²⁴³ Even with multiple parties, the parties may be so like-minded that they do not provide the public with a genuine choice in philosophy.²⁴⁴ And even in States that do not give a single party a monopoly, legislated rules on party formation, requiring, for example, a certain number of signatures to get a party on the ballot, may inhibit the formation of new parties.²⁴⁵

However, the opening of African governance systems to political parties must be viewed as an advance for democracy. It is difficult to open the political process to parties without at the same time broadening the rights of community-based groups. Opposition parties can press the government to extend rights being denied by the government of the party in power. Although it does not ensure democracy, a multiparty system eliminates one impediment to the propagation of political views. The fact that it may not bring differing perspectives to bear on public issues in a particular State is not a justification for suppressing parties. The one-party approach is difficult to square with freedom of association. If freedom of association has any meaning, it is that citizens are free to form organizations to influence the political life of the State.

If the international standard is not met by the one-party system as it has functioned in Tanzania, still, it remains awkward from the European standpoint to enforce in Africa a standard that Europe did not apply when it controlled Africa. The political orders created by the European colonizing powers in Africa would be called apartheid by today's standards.

Nonetheless, a universal standard is probably appropriate. While some Africans argue that it is improper to impose European-derived standards on Africa, others welcome the assessment, saying it is Europeans who think that Africa "cannot be judged on the basis of any universal matrix."²⁴⁶ Despite the colonial history and the European origin of human rights norms, the African States have affirmed those standards, as in the Tanzanian Constitution and the African Charter on Human and Peoples' Rights.

The issue of political participation involves not only a question of the right to participate in government, but implicates all other rights

243. Lynda A. Ewen, *Political Seminar Lacked Women Participation*, DAILY NEWS (Dar es Salaam), Aug. 10, 1990, at 4.

244. Mubako, *supra* note 20, at 82.

245. See, e.g., *Williams v. Rhodes*, 393 U.S. 23, 32 (1968) ("New parties struggling for their place must have the time and opportunity to organize in order to meet reasonable requirements for ballot position, just as the old parties have had in the past.")

246. Nyong'o, *supra* note 108.

as well. If a State is governed in such a way that the rulers are not subject to peaceful removal through the political process, it is unlikely that they will protect human rights in general. Rather, they will resort to measures that violate rights in order to suppress political opposition that cannot make itself heard through channels that are lawful under the domestic legal system.

VII. THE ROLE OF AID-GIVING STATES

Should the West encourage multiparty rule in Africa, or should it adopt a hands-off approach? As mentioned above, the leaders of Tanzania reacted negatively to Western suggestions that they must abandon one-party rule. If a Western State encourages the abandonment of one-party rule, does that constitute interference in the political order, particularly if it conditions aid or loans on the switch? If in a particular State a one-party system operates in a way that deprives the citizenry of its rights of association, or participation in government, should an aid-giving State concern itself with that fact, or, indeed, is it legally obligated to do so?

The appropriate policy for Western States must turn on the international standards regarding political parties, and on the rules governing aid-giving States when the recipient State violates human rights. While the issue has not received much attention from human rights enforcement agencies, it would seem that a State does have an obligation not to provide aid that facilitates human rights violations. The United States recognizes this obligation through legislation that calls for a curtailment of aid to States whose governments engage in "a consistent pattern of gross violations of internationally recognized human rights,"²⁴⁷ and annual State Department reports to Congress on the status of human rights in States receiving U.S. aid.²⁴⁸

One would have a clear case where a State provides training or equipment for torture of detainees as part of an assistance program. The International Law Commission, in its draft articles on State responsibility, finds it unlawful to give material assistance that promotes a violation of international law by another State.²⁴⁹ Since torture is internationally unlawful, the provision of training or equipment for

247. 22 U.S.C. § 2304(b) (1990) (Human Rights and Security Assistance); 22 U.S.C. § 2151 (1990) (Human Rights and Development Assistance).

248. See generally U.S. DEPT. OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES (annual).

249. *Report of the International Law Commission to the General Assembly*, U.N. GAOR, 33rd Sess., Supp. No. 10, at 196, U.N. Doc. A/33/10 (1978), reprinted in [1978] 2 Y.B. INT'L L. COMM. 80, U.N. Doc. A/CN.4/SER.A/1978/Add.1 (pt. 2).

use in torture would be unlawful as well.²⁵⁰

In the torture example, aid is related to a particular human rights violation. Where, however, a State gives general economic aid to another, and the recipient State violates human rights, the matter is more complex. Few States engage in no human rights violations. If aid to rights violators were prohibited, there would be no aid. Moreover, an aid-giving State cannot be deemed responsible for any and all rights violations by the recipient State, as that would expand liability to the point of imposing unreasonable demands on aid-giving States. Aid-giving States, consistent with principles of international responsibility, are liable for giving aid to rights violators only where the aid facilitates the violation, and where the aid-giving State is aware of the violation at the time it gives the aid.²⁵¹

Whereas torture is a violation that can be clearly established, undemocratic forms of governance are more difficult to assess legally because democracy is a matter of degree. In the absence of a body of human rights case law defining breaches in this area, it is not readily ascertainable whether a particular State permits enough political participation to satisfy international standards.

The State practice on termination of economic aid that is not specifically connected to a particular violation suggests that a termination is required only where the violations by the recipient State are substantial. A number of aid-giving States, for example, stopped their economic aid to Chile because of the significant violation of rights that accompanied the 1973 overthrow of Chile's civilian government and the establishment of military rule there.²⁵² The cited U.S. legislation requires aid termination only for "a consistent pattern of gross violations."²⁵³

The issue of the legality of giving aid to a government that violates human rights has typically arisen in the context of a particular policy, such as torture or arbitrary arrest, that does not go to the heart of the political system of the recipient State. The political party issue, on the other hand, is intimately connected to the system of governance. Thus, external pressure for change calls into question a fundamental aspect of the political order of the recipient State.

Therefore, there is more reason for concern about inappropriate

250. John Quigley, *Complicity in International Law: A New Direction in the Law of State Responsibility*, 57 BRIT. Y.B. INT'L L. 77, 92 (1986).

251. *Id.* at 108-14.

252. Antonio Cassese, *Foreign Economic Assistance and Respect for Civil and Political Rights: Chile — A Case Study*, 14 TEX. INT'L L.J. 251 (1979).

253. *See supra* note 247.

interference into the domestic affairs of the recipient State. As indicated above, Tanzanian leaders have reacted negatively, for precisely this reason, to Western suggestions that pluralism is a precondition for economic aid.²⁵⁴ At the same time, some multiparty proponents in Tanzania welcomed the external pressure, because they thought it might help win their objective.²⁵⁵ They accused the leaders of using the external pressure argument as an excuse to avoid domestic demands for reform.²⁵⁶

The newfound concern on the part of aid-giving States, and the United States in particular, about the representative character of African governments is a result of the end of the Cold War.²⁵⁷ So long as the major U.S. concern in Africa was a State's adherence to the Western camp, it put little pressure on the recipient States.²⁵⁸ The United States refrained from criticism because it did not want to depict the States that sided with it as authoritarian.²⁵⁹ When the Cold War ended, however, this concern evaporated and the United States criticized more freely and made the promotion of pluralism a central feature of its Africa policy.²⁶⁰

One African analyst, while urging greater democratization, expressed concern over Western motives:

Today with the prospect of countries following the socialist path diminishing, the West may not really be committed to the flowering of liberal democracy in the Third World except for ideological reasons, that is so as to show the West is asserting pressure the world over for adoption of liberal democracy and not merely on Eastern Europe and other socialist countries.²⁶¹

If this is true, the Western interest in democracy in Africa may be a passing phase.

254. See *supra* text accompanying notes 162-63.

255. *Dissolve Union Cabinet — Seminar*, *supra* note 118, at 5 (reporting a resolution adopted by 800 persons at a public meeting calling on countries giving development aid to extend it only to countries that believed that "true democracy is brought by the existence of many parties").

256. *Fundikira Invited Nyerere to Side with Multi-Party Democracy*, *supra* note 174, at 4.

257. Dowden, *supra* note 134, at 10.

258. See Kibwana, *supra* note 16, at 37 ("The West preferred authoritarianism to socialism."); Alain Moyrand, *Réflexions sur l'introduction de l'état de droit en Afrique noire francophone*, 3 AFR. J. INT'L & COMP. L. 251, 259-260 (1991) (making this point as regards Western European aid-giving States, in particular, France).

259. Johns, *supra* note 133, at 4 (characterizing "the old African policy" as "focused heavily on assisting dictatorships primarily because they were anti-Soviet").

260. Richard Joseph, *Glasnost for Africa?*, N.Y. TIMES, Dec. 28, 1989, at A21 (calling for use of aid to force openness in authoritarian African regimes: "with the winding down of the cold war, there is less reason for the U.S. to continue its unconditional support of repressive regimes in Africa"); Kibwana, *supra* note 16, at 34; see also Cheryl I. Harris, *The Impact of the End of the Cold War on Africa*, 48 NAT'L LAW. GUILD PRAC. 101 (1991).

261. Kibwana, *supra* note 16, at 37.

The Western pressure for party pluralism was coupled with an effort to draw African States more closely into the Western economic orbit, by permitting investment on more favorable terms, and granting easier access to Western products.²⁶² Thus, there may be an element of self-interest in the pressure on African States to move to party pluralism. Herman Cohen, Assistant U.S. Secretary of State for African Affairs, linked the two as he threatened to withhold aid from countries not following political pluralism:

We are making clear the link between political and economic liberalization and outside assistance. We will help countries pursue a democratic course and those already with democratic systems. In an era of escalating demand for scarce resources, we cannot waste nonhumanitarian assistance on governments which themselves refuse the path to democracy, and we will not do so.²⁶³

A related concern is that if the Western States view themselves as having a legitimate role in ensuring democracy in Third World States, they might intervene militarily to overthrow offending governments. There were instances of European military intervention in Africa even after independence; as recently as 1989, the United States intervened to overthrow a government in Panama, giving as one among several justifications that the Panamanian government suppressed democracy.²⁶⁴ Western concern about human rights might provide a pretext for interventions undertaken for other reasons. When the United States proposed in the U.N. General Assembly that the United Nations monitor elections in various countries to ensure fair processes, a number of Third World States objected that this might result in an interference in their internal affairs.²⁶⁵

At a British Commonwealth meeting in 1991, the British and Canadian governments indicated that they would not aid countries rejecting political pluralism. Malaysia's prime minister reacted, "The Western world can't judge everyone by their standards. Who decides a country is democratic — a donor nation?"²⁶⁶

The problems of universality and neocolonialism notwithstanding,

262. Johns, *supra* note 133, at 5, 14 (proposing using economic aid to improve human rights, saying this would "advance Washington's interests of bringing Africa . . . into the growing community of democratic, free market nations"; proposing also a radio station aimed at Africa on the order of Radio Marti or Radio Free Europe).

263. Herman J. Cohen, *Africa: Revolutionary Change and Democratization*, FOREIGN POL'Y BULL., Nov.-Dec. 1991, at 24.

264. John Quigley, *The Legality of the United States Invasion of Panama*, 15 YALE J. INT'L L. 276, 303-06 (1990).

265. Mikhail Kochetkov, *UN General Assembly Adopts 20 Resolutions on Human Rights*, TASS, Dec. 19, 1990, available in LEXIS, Nexis Library, TASS File.

266. Cris Chinaka, *Riot Police Seal Off Protests at Commonwealth Summit*, Reuter Library Report, Oct. 17, 1991, available in LEXIS, Nexis Library, REUTER File.

it would seem that an aid-giving State is entitled, even required, to consider the political party issue. Since all States commit some human rights violations, only where those violations reach a certain magnitude will an aid-giving State be in jeopardy of complicity in the violation. Thus, while a one-party system as it functions in a particular State might be sufficiently open to accommodate a wide range of views, it might still violate freedom of association by forbidding other parties. However, in such a case the seriousness of the violation would be insufficient to render the aid-giving State complicit. On the other hand, where elements of democracy are wholly lacking, the aid-giving State would be complicit.

CONCLUSION

In Tanzania, the one-year debate led to a decision to move to a multiparty system. During 1991, more African countries headed in that direction, and increasingly Tanzania has become "odd man out." The presidential commission, in a preliminary report to President Mwinyi that had not yet been made public, concluded in favor of multiparty politics. In January 1992, the CCM National Executive Committee voted to hold a special CCM national conference to chart the way to a multiparty system. The CCM resolution stipulated that parties should be national in scope rather than mainland-based or Zanzibar-based and also said that they should not be parties that "divide the people along tribal, religious, regional or racial lines." However, it was not clear how the formation of parties so based might be avoided.²⁶⁷

The movement for political pluralism that began in Africa in 1990 presents the opportunity to make African governments more responsive to public wishes, and less heavy-handed towards political opponents. Reforms are bringing African States into closer conformity with human rights standards on political freedom. In Tanzania, the one-party system has permitted the expression of opinion on public issues but has restricted opposition in significant ways. The factors that were cited in the 1960s as reasons for a one-party system, if they were valid then, were less valid in the 1990s.

For Tanzania, as for Africa in general, political pluralism brings the danger of divisiveness along the lines of nationality or religion. On the other hand, the desire for pluralism is sufficiently strong that it

267. *Tanzania CCM Leaders Recommend Introduction of Multipartyism*, BBC Summary of World Broadcasts, Jan. 22, 1992, available in LEXIS, Nexis Library, BBCSWB File (resolution stating "that, at the end of the dialogue, the Presidential Commission presented to him [President Mwinyi] a report proposing that a multi-party system be introduced in Tanzania").

may be impossible to curb. Despite the dangers, political pluralism is a needed corrective that holds the potential for more meaningful citizen participation in government.

With regard to aid, African States are in great need of economic assistance. Taking into account the prohibition against facilitating human rights violations, aid-giving States should make every effort to work with African governments to ensure a flow of aid.