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

John Quigley*

INTRODUCTION

A new wave is sweeping Africa. 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. 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

* Professor, Ohio State University College of Law. Harvard University LL.B., M.A. (1966). The author expresses appreciation to Nancy Dorsey, Ph.D. candidate in African Studies, Ohio State University, and a Fulbright scholar in Tanzania 1990-91, for source material and insights on African history, and for reading a draft of this article. He is grateful for consultation to members of the Faculty of Law, University of Dar es Salaam, and particularly to Dr. N.N.N. Nditi, Editor of the Eastern Africa Law Review, for making available articles in progress.

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. 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, and even within a single nationality typically there was no central authority. 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. 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. 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.

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


6. John Iliffe, A Modern History of Tanganyika 88-122 (1979); see Bates, supra note 4, at 400.


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." 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. 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.

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. The governor, however, retained decision-making authority.

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. 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.

10. ILIFFE, supra note 6, at 319-20; Bates, supra note 4, at 409-10.
12. ILIFFE, supra note 6, at 475.
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. 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.

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. 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. Committed to retaining the territories as defined by the colonizing powers, the new governments viewed rivalry among the nationalities as a threat. Seeking to suppress nationality divisions, the Tanganyika Parliament abolished the institution of the chief in 1963.

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

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17. See Ghai, supra note 13, at 412.
19. van Nieuwaal, supra note 9, at 3-4.
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.\(^2\)

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.\(^2\)\(^3\) 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.\(^2\)\(^4\)

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.\(^2\)\(^5\) 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.\(^2\)\(^6\)


\(^2\)\(^6\) 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 UMOSHA: 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. 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.”

“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.” If you have two parties but no fundamental differences, “then you immediately reduce politics to the level of a football match.” 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.

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.

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.”


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".¹³⁴

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.
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").


47. Mwakyembe, supra note 42, at 35.


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.
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, 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. 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.

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. 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.”

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).
55. Kibuta, supra note 23, at 83.
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.
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).
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. Kapina, 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.


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


77. Id. § 3(2).
the auspices of the Party."\(^\text{77}\)

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.\(^\text{79}\)

Thus, the National Assembly became formally subordinated to the CCM.\(^\text{80}\)

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,\(^\text{81}\) and according to the CCM's own constitution, only CCM members could be approved.\(^\text{82}\) Individuals who were critical of CCM policy stood little chance of being endorsed.\(^\text{83}\)

The CCM has typically nominated two persons for each seat.\(^\text{84}\) 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.\(^\text{85}\) The election campaigns are organized by the CCM.\(^\text{86}\) Since all candidates must adhere to CCM policy, electoral campaigns do not feature differences of opinion on major issues.\(^\text{87}\)

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

\begin{itemize}
  \item \(^\text{77. Id. \S 3(3).}\)
  \item \(^\text{79. Id. \S 54(1).}\)
  \item \(^\text{80. Kibuta, supra note 23, at 87.}\)
  \item \(^\text{82. CCM Const. \S 26(2).}\)
  \item \(^\text{83. Peter, supra note 71, at 277.}\)
  \item \(^\text{84. Bavu, supra note 81, at 23-25. In addition to elected members, the National Assembly includes the regional commissioners of each region of Tanzania, plus a number of members appointed by the president or by designated "mass organizations." 1984 TANZ. CONST., supra note 81, \S\S 66, 78-82; see also Pratt, supra note 26, at 206-07.}\)
  \item \(^\text{85. Bavu, supra note 81, at 30-31; Mwakyembe, supra note 42, at 40-41.}\)
  \item \(^\text{86. Election Act, supra note 81, \S 51.}\)
  \item \(^\text{87. See Pratt, supra note 26, at 207.}\)
  \item \(^\text{88. Elections Act, supra note 81, \S 108; N. Issa, 'Legal Touch' on Natural Justice Sensational, BUS. TIMES (Dar es Salaam), May 31, 1991, at 5 (secretary of electoral commission replies to charge by Robert Rwemeye, Business Times legal editor, that commission turns down petitions of losing candidates on technicalities).}\)
\end{itemize}
there is no court jurisdiction over the CCM proceedings that led to the nominations.\textsuperscript{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.\textsuperscript{91} A number of members have lost their seats in this fashion.\textsuperscript{92}

Although not required by the Constitution, the practice has been for the CCM chair to be president of Tanzania as well.\textsuperscript{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."\textsuperscript{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,\textsuperscript{95} and election to parliament requires CCM membership.\textsuperscript{96} If a sitting president were to be disqualified, a new presidential election would be held.\textsuperscript{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.\textsuperscript{98} This policy has been criticized on the grounds that the Constitution requires the National Assembly to allocate government revenue for governmental purposes only\textsuperscript{99} and that taxpayer

\textsuperscript{89} Elections Act, \textit{supra} note 81, § 111; \textit{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).

\textsuperscript{90} Elections Act, \textit{supra} note 81, § 108(2); Kibuta, \textit{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).

\textsuperscript{91} 1984 TANZ. CONST., \textit{supra} note 81, §§ 67(1)(b), 71(1)(a); \textit{see also} MARTIN, \textit{supra} note 61, at 52; Kibuta, \textit{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).


\textsuperscript{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, \textit{Nyerere Bows Out with Tanzania in Deep Decline}, WASH. POST, Sept. 26, 1990, at A27.

\textsuperscript{94} 1984 TANZ. CONST., \textit{supra} note 81, § 37(1).

\textsuperscript{95} Id. § 39(1)(b).

\textsuperscript{96} Id. § 67(1)(b).

\textsuperscript{97} Id. § 38(2)(c); \textit{see} Fimbo, \textit{supra} note 92.

\textsuperscript{98} Fimbo, \textit{supra} note 92.

\textsuperscript{99} 1984 TANZ. CONST., \textit{supra} note 81, §§ 133-34; Fimbo, \textit{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).
the CCM was not an exclusive club. 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. 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."

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

By the 1980s, nearly all African States had instituted a one-party system. 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.
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).
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 19 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.


IV. AN AFRICAN PERESTROIKA

In 1990, all over Africa, public demand grew for an end to one-party rule. In a number of States, crowds pressed for a national conference to plot a course to pluralism. One by one, governments made concessions. Gabon held its first multiparty parliamentary elections. The Ivory Coast, following large demonstrations, held its first multiparty presidential and parliamentary elections. 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. Mozambique's National Assembly unanimously approved constitutional amendments establishing a multiparty system. In the Congo (Brazzaville), as a result of recommendations made by a national conference, the government scheduled multiparty elections for 1992. 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. In Zambia, the Constitution was amended to eliminate the monopoly of the United National Independence Party.

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


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." When Oginga Odinga, a former vice-president of Kenya, tried to form a National Democratic Party, the attorney general refused to register it, and the High Court upheld the refusal.

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.

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.

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. The impact of Western pressure was

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, Backgrounder 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).
felt most dramatically in Kenya. In late 1991, donor States informed
the Kenyan government that they were suspending aid programs be-
cause of its refusal to abandon the single-party system. President Moi,
who had staunchly opposed change, said he would propose elimina-
tion 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 op-
pposed to North-South trade and reliance on exports to the industrial-
ized world. In 1989 the United Nations Economic Commission for
Africa (ECA) published its African Alternative Framework to Struc-
tural Adjustment Programs as a blueprint for economic develop-
ment.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 devel-
opment.138 Earlier, economic development had been said to require a
strong central authority. But African economies had deteriorated dur-
ing 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 will-
ing 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 estab-
ishment of democracy is a necessary condition for stable economic

Framework to Structural Adjustment Programmes for Socio-Economic Recovery
African Alternative Framework].
138. Lone, supra note 121, at 7.
140. Id. at 43.
141. Anaclet Rwegayura, Africa: Putting People First in Development, Inter Press Service,
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. 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.

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. The Framework called for less reliance on foreign aid and investment, product diversifica-

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


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


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
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. As elsewhere in Africa, the precipitating event appears to have been the end of one-party rule in Eastern Europe. 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. He said, “Tanzanians should not be dogmatic and think that a single party is God’s wish.”

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. 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.

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

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

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. 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.

President Mwinyi's government refused registration to a pro-multiparty group, the Civil and Legal Rights Movement, but in February 1991, President Mwinyi appointed a twenty-two-member commission to study pluralism and report back to him within one year. 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 multi-partism.”

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.” It called for an immediate constitutional conference, on the order of those being held in West Africa. President Mwinyi, however, ruled that the Committee for a Transition Toward a Multi-Party System could not begin

165. Tanzanian Vice-President on Political Reform, supra note 162.
167. Fimbo, supra note 92, at n.11.
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.
operation, since it had not registered, as is required of all public bodies in Tanzania, and he forbade it to hold a planned public meeting. Later, the group registered and was allowed to function, and it established a National Committee for Constitutional Reform.

Concern was voiced that the debate would be circumscribed by regulations on street demonstrations. As the commission was appointed, preventive detention was still being applied against political opponents. 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.

The President’s powers over the press were also cited as a limitation on the debate. 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,” and the President had shut down newspapers of political opponents. Tanzanian newspapers, which had typically deferred to the CCM, were accused by one multi-party proponent of giving more coverage to one-party supporters.

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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).


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, Ukonga Accused of Ill Treating Membar, BUS. TIMES (Dar es Salaam), May 31, 1991, at 1 (Membar dies, relatives charge officials of Ukonga prison, where he was detained, of failing to provide medical treatment after Membar became ill).


181. MATT, supra note 61, at 94-96.

182. PRATT, supra note 26, at 212.

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. 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.

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. 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. 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

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184. There is no television broadcasting in mainland Tanzania.


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. Tanzania "should never trade off its tranquility," said a one-party proponent. Another said that if political parties were allowed to contend, the army might step in and put an end to any form of democracy.

Unlike many other African States, Tanzania had been free of successful coups and rebellions since instituting one-party rule. 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."

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 multiparty system).


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.

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

195. Uki, supra note 189, at 1.
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).
199. Temba, note 159, at 5.
they were not called to account for criminal abuse of office.\textsuperscript{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."\textsuperscript{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.\textsuperscript{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.\textsuperscript{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."\textsuperscript{204} The CCM also planned a recruitment drive aimed at increasing CCM membership by forty percent.\textsuperscript{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

\begin{itemize}
  \item \textsuperscript{200} Peter Temba, \textit{CCM Leadership Should Resign, Commission Told}, \textit{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?").
  \item \textsuperscript{201} \textit{Wananchi Give Views on Better Political System}, \textit{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."
  \item \textsuperscript{204} 1984 TANZ. CONST., \textit{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, \textit{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).
  \item \textsuperscript{205} \textit{CCM to Recruit Im New Members}, \textit{Sunday News} (Dar es Salaam), July 14, 1991, at 1.
\end{itemize}
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

207. Id. art. 21(1), 21(3).
209. Id. art. 25, 999 U.N.T.S. at 179.
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.\textsuperscript{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,"\textsuperscript{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."\textsuperscript{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.\textsuperscript{216} The case law under the European Convention, where one finds the most extensive international practice, contains little material on access by political parties.\textsuperscript{217} A specific mention of the right of political opposition had been proposed for the European human rights system, but was not included.\textsuperscript{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-

\textsuperscript{213} Id. art. 23, 9 I.L.M. at 682.
\textsuperscript{215} Id. art. 13, 21 I.L.M. at 61.
\textsuperscript{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).
\textsuperscript{217} ZAIM M. NEDIJATI, HUMAN RIGHTS UNDER THE EUROPEAN CONVENTION 201-07 (1978).
\textsuperscript{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).
Perestroika African Style

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 effec-
tive remedy before a national authority for the claim of political
discrimination.\(^2\)\(^1\)\(^9\)

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 oper-
ate. Noting that the Greek government had not permitted parlia-
mentary elections, it said that “the Greek people are thus prevented from
expressing their political opinions by choosing a legislature in accord-
ance with Article 3.”\(^2\)\(^2\)\(^0\) 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.\(^2\)\(^2\)\(^1\)

On the other hand, the Commission recognized that, under the Eu-
ropean Convention, it may be permissible to suspend parliamentary
rights during a “public emergency threatening the life of the na-
tion.”\(^2\)\(^2\)\(^2\)\(^2\)\(^2\)\(^2\) 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.”\(^2\)\(^2\)\(^3\)

In another case, the European Commission of Human Rights per-
mitted the banning of a political party on the grounds that it advoc-
cated 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 prole-
tariat, which implied a negation of democratic institutions. The Ger-
man Communist Party complained to the European Commission,
arguing that its freedom of association was infringed.

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Conv. on H.R. 180 (1969) (hereinafter Greek Case).
\(^2\)\(^2\)\(^1\). 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).
\(^2\)\(^2\)\(^2\)\(^2\)\(^2\)\(^2\). Id. at 180; European Convention, supra note 210, art. 15, 21 U.N.T.S. at 232.
\(^2\)\(^2\)\(^3\). 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. 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.

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." The American Convention on Human Rights contains an identical limitation. 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." 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. 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

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.

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.\(^2\)

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.\(^3\) However, in most African one-party systems this level of reflection of the majority will has not been achieved.\(^4\) 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.


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

\(^4\) 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.
240. EZE, supra note 43, at 58.
241. Societies Ordinance, supra note 172.
ridicule by male participants.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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."\textsuperscript{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


\textsuperscript{244} Mubako, \textit{supra} note 20, at 82.

\textsuperscript{245} See, \textit{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.").

\textsuperscript{246} Nyong'o, \textit{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


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

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

251. Id. at 108-14.
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").
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").
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. 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.

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. 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.

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?"

The problems of universality and neocolonialism notwithstanding,
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

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.