

MARIDHIANO AND THE GOVERNMENT OF NATIONAL UNITY, ITS IMPACT ON ELECTIONS AND CONSTITUTIONALISM IN TANZANIA

BY ALI UKI
ASSISTANT LECTURER
FACULTY OF LAW,
ZANZIBAR UNIVERSITY

Introduction

The debate on the formation of a Government of National Unity (GNU) has intensified in the past few months at official and non-official fora in and outside Zanzibar, with focus on the reconciliation accord known as “*Maridhiano*” or “*Muafaka*”, the structure and operations of the GNU, and its impact on the last year’s general elections and constitutionalism in Tanzania.

The formation of the GNUs is not a new phenomenon. For example, Kenya and Zimbabwe formed a GNU. However, the style of the formation of the GNU in the aforementioned countries differs from that of Zanzibar. Unlike Kenya and Zimbabwe, Zanzibar worked out a mechanism of the GNU prior to the elections and it was not a result of immediate post elections violence. Towards the formation of the GNU, Zanzibar first enacted a Referendum Act¹ to allow the Zanzibaris to vote and decide on it. Thereafter, Zanzibaris voted on the question or issue² of whether they wanted the GNU and answered in form of “ayes” or “nays”.

Genesis of the GNU in Zanzibar

This is historical question that can be traced from the pre to the post revolution era, and relates to the question of elections. Political parties taking part in the elections did not accept the results announced by the Electoral Commission, the organ responsible for conducting and supervising elections. The picture which emerged showed that the defeated political party never accepted the outcome of elections claiming that the results do not reflect the wishes of the electorate. In essence, it meant that the Electoral Body doctored the results in favour of the ruling party.

GNU in the Zanzibar Context

In the Zanzibar context, a GNU is defined as a government which incorporates representatives of political parties winning a seat or seats in the Zanzibar House of Representatives³. A GNU is a power sharing system of political parties winning seats in the legislature. A political party which does not win a seat in the legislature cannot enjoy a share of the cake. In the spirit of good governance, and in recognition of the existence of other political parties and appreciation of the country politics, the president can invoke his constitutional powers to nominate representatives of these parties to join the House. The constitution gives the president the power to nominate ten members who qualify to be members of the House⁴ to the House. But this has not been done and

¹ No. 6 of 2010

² Ibid section 7 (2)

³ Section 42 (2) of the Constitution of Zanzibar, 1984, reads that; “*the President within the fourteen days after the appointment of the First Vice president and Second Vice President in consultation with the both Vice Presidents, appoints ministers among the members of the House of Representatives in consideration of the proportion of the number of the constituencies of political parties in the House of Representatives*” (not official translation)

⁴ Ibid section 66

there are complaints from parties that this omission constitutes a considerable blow to the democracy.

In the same sub-section (4), the president, in consultation with the leader of opposition in the House of Representatives and (in case there is none), the political parties in the House, is empowered to appoint two members from the opposition to join the House.

Unlike in the past, a plausible move is that the president can now appoint members of the opposition in the House of Representatives to form the cabinet. It should be noted however that the GNU is different from a coalition government which is a cabinet of a parliamentary government in which several parties cooperate. The usual reason given for this arrangement is that no party on its own can achieve a majority in parliament.

Under the Zanzibar GNU, there shall be two vice presidents who shall be known as the First Vice President and Second Vice President⁵. The President is required, within seven days after assuming the office, to appoint the First Vice President and Second Vice President⁶. Under the Constitution, the First Vice President is qualified to be appointed to the post if one possesses qualifications to be a member of the House of Representatives and shall be appointed by the president after consultation with the party which emerges in the second position in the presidential elections results⁷.

In the event that; a party taking the second position in the presidential elections gets less than ten per cent of all votes in the presidential elections or the president stands unopposed, the post of First Vice President shall be given to any party which emerges in second position in terms of the total number of constituency seats from the House of Representatives.

The post of First Vice President is not automatic for the presidential candidate of a party emerging in second position. The position is granted after consultation with his or her party. The First Vice President will not be a member of the House of Representatives⁸. In this context, a person shall be qualified to be a member of the House of Representatives if:

- a) is a Zanzibari
- b) is registered or is qualified to be registered in an election constituency as a voter in an election for members of the House of Representatives
- c) can read, but if he has an impaired vision or other physical infirmity, is capable of speaking Kiswahili
- d) is a member and candidate proposed by a political party that has permanent registration in accordance with Political Parties registration Act, 1992 and
- e) is a person who is not disqualified to contest elections pursuant to the provisions of this Section or pursuant to any law enacted by the House of Representatives⁹.

Disqualifications for a person to be elected as a member of House of Representatives if that person:

⁵ Ibid section 39 (1)

⁶ Ibid section 39 (2)

⁷ Ibid section 39 (3)

⁸ Ibid section 39 (4)

⁹ Ibid section 68

- a) has citizenship of another country
- b) the High Court decided after consultation with a mental health specialist that he has a mental disease
- c) is not a member and candidate nominated by a party or
- d) has been convicted of a criminal offence and sent to an Educational Centre or Prison in the Mainland for the period of six months or more or for election offences regarding honesty during the period of five years before election¹⁰.

The First Vice President shall be a Principal Advisor to the President in the execution of his duties and shall perform all duties to be assigned by the President¹¹. The Second Vice President shall be appointed by the President from among members of the House of Representatives from a party which the president comes.¹² The Second Vice President shall be a Principal Advisor to the President in the execution of his duties and shall be the Leader of the Government business in the House of Representatives¹³. The First Vice President and Second Vice President shall be accountable to the President throughout the term of their offices.¹⁴

In the event that within seven days after the President assumes office, the party which is required to hold the post of the First Vice President fails to submit the name of a person to be appointed to the post, the President shall, notwithstanding Section 39 (1) and (2) of the Constitution leave the post vacant and proceed to appoint the Second Vice President. In addition, the president is empowered to dismiss the appointment of the First Vice President and Second Vice President¹⁵ and to ask the party to which the First Vice President belongs, to recommend another person to be appointed the First Vice President after not more than fourteen days¹⁶. The House of Representatives may pass a resolution of no confidence in the First Vice President or Second Vice President in case such resolution is moved.

Under the GNU, in the event the First Vice President and, or ministers from opposition political parties resign or stop to execute their duties and their posts remain vacant for more than ninety days, the President may appoint other ministers to fill the posts¹⁷. Interestingly, the President of Zanzibar, subject to direction of the law shall not be obliged to take the advice given to him by any person in the performance of his functions.¹⁸ Does this power of the president remain as it is under the GNU?

In the Zanzibar GNU system, no direction is offered with regard to allocation of key ministries such as the Ministry of Finance and the Ministry responsible for Security Forces. It is at the discretion of the President of Zanzibar to decide on allocation of key ministries between the ruling and opposition. In the Zimbabwean example, some key ministerial posts like Finance are on a rotational basis.

¹⁰ Ibid section 69 (1)

¹¹ Ibid section 39(4)

¹² Ibid section 39 (6)

¹³ Ibid section 39 (7)

¹⁴ Ibid section 39 (9)

¹⁵ Ibid section 40 (1) (c)

¹⁶ Ibid section 40 (2)

¹⁷ Ibid section 42A

¹⁸ Ibid section 52

Apart from the President, the First Vice President and the Second Vice President, the GNU cabinet list has sixteen full ministers nine of whom are from CCM and seven from CUF. Of the sixteen full ministers, two are women: one from CCM and one from CUF. There are six Deputy Ministers of whom five are from CCM and one from CUF. Of the six Deputy Ministers, four are women; three from CCM and one from CUF. There are also three ministers without special portfolio, all of whom are men- Two are from CCM and one from CUF.

Where the office of the President becomes vacant:

- a) by reason of death
- b) by resignation
- c) by reason of ill health
- d) any other reason causing the President to fail to perform his duties, the following persons shall fill the vacancy in the following sequence:
 - i) Second Vice President; or in his absence
 - ii) Speaker of the House of Representatives whom shall come from the party to which the president belongs;
 - iii) The Chief Justice of Zanzibar

In the event the president (a) shall be absent from Tanzania; or (b) for any other reasons whatsoever, the President shall under his hand in writing and subject to specified instructions delegate his/her duties and functions in accordance with the order hereunder;

- (i) Second Vice President and if he is away;
- (ii) One member of the Revolutionary Council whom the President deems fit.

The main question is why the First Vice President is not allowed to hold even on temporary basis, the post of president.

The Concept of Maridhiano

Zanzibar has had three reconciliation accords. The first *Muafaka*¹⁹ was signed in the presence of Chief Emeka Anyaoku, the then Secretary General of the Commonwealth but failed to be implemented as it lacked legal force. The second *Muafaka*, the home grown *Muafaka*, also failed to be implemented for similar reasons and as a result, the post political violence and lack of cooperation between the government and opposition persisted. The third *Muafaka* or *Maridhiano* was reached on November 5, 2009, following on gentleman's agreement between retired Zanzibar president, Amani Abeid Karume who is also the National Vice Chairman of the ruling party, CCM and the Secretary General of the main opposition party, Civic United Front (CUF). The contents of the gentleman's agreement between the two leaders were never made public. But it worked out well and led to the formation of GNU and the tenth amendment on the Constitution of Zanzibar of 1984.

After the agreement, the Referendum Act was passed by the House of Representatives, giving an opportunity to Zanzibaris to hold a referendum to first decide on the GNU. A 66.4 per cent of voters accepted the GNU. Subsequently, the tenth amendment of the Constitution of Zanzibar of 1984, which among other things, included the formation of the GNU was passed.

¹⁹ Signed on June 1999, by Honourable Haji Mkema Haji (CCM), a member of the House of Representatives and the Central Committee of CCM and Honourable Shaaban Khamis Mlozi (CUF).

Unlike the formation of the Union between the then Tanganyika and Zanzibar on April 26, 1964, signed by the late Mwalimu Nyerere and the late Sheikh Abeid Amani Karume without consulting the people,²⁰ there was no element of secrecy surrounding the GNU. The content of GNU and power sharing system were made public and debated in public and privately owned electronic and print media and in a number of seminars before the bill was moved in the House of Representatives for deliberation and approval. The House of Representatives passed the bill on August 9, 2010²¹ and was three days later on August 13, 2010, assented to by the President of Zanzibar and Chairman of the Revolutionary Council, Amani Abeid Karume,²² as Act No. 9 of 2010.

The Impact of Maridhiano and GNU on Elections

Unlike in the past, as a result of *Maridhiano*, Zanzibar did not experience pre-election or post election violence. The island's situation was calm and orderly. During campaign period, leaders of the parties avoided use of insults, provocations or inflammatory remarks that could lead to instability. Election Observers from international and local organizations highly commended Zanzibar's political calm and stability.

For example, one of the Observers' Reports²³ which was issued in early February, 2011, reads thus:

"..... the power-sharing agreement reached between the two historic rivals CCM and CUF made the campaign uneventful and free of the violent rivalry seen in past elections. This situation was reinforced by public declarations from CUF's presidential candidate who stated to be ready to work as a vice-president if CUF lost the presidential elections".

In addition, acceptance of the results announced by the Zanzibar Electoral Commission by CUF's presidential candidate, and his congratulatory message to Zanzibar's CCM presidential candidate further contributed to the peaceful situation. Apparently, this is one of the positive results of *Maridhiano* and GNU.

On Constitutionalism in Tanzania

The *Maridhiano* and the formation of GNU will necessitate an amendment of Chapter IV of the Constitution of the United Republic of Tanzania of 1977, in order to harmonise it with the Tenth amendment on the Constitution of Zanzibar of 1984. The constitutional provisions that need to be amended in view of the GNU are:

Article 103 (3) which reads:

"in addition to his other powers, the Head of the Revolutionary Government of Zanzibar shall have the power to appoint and assign responsibilities to Ministers and Deputy Ministers of the Revolutionary Government of Zanzibar"

²⁰ A Report of the Kituo Cha Katiba Fact-Finding Mission to Tanzania, Federation Within Federation, the Tanzania Union Experience and the East African Integration Process, 2010, p.18

²¹ GAZETI RASMI LA SERIKALI YA MAPINDUZI YA ZANZIBAR. Gazeti Makhushi, Sehemu ya CXIX Nam. 6380, 26 Agosti, 2010, p.151

²² Ibid p.138

²³ Final Report of the European Union Election Observation Mission in Tanzania – October 2010, p.22

Article 105 (1) reads:

“There shall be a Zanzibar Council which shall consist of the following members:

- (a) The Chairman of the Revolutionary Council;*
- (b) The Chief Minister of the Revolutionary Government of Zanzibar;*
- (c) All Ministers of the Revolutionary Government of Zanzibar;*
- (d) Other members to be appointed by the Chairman of Revolutionary Council in accordance with conditions of the Constitution of Zanzibar.”*

However, in the intended amendments, there are some critical questions that must be answered. They are;

- a) Will the Union government accept to harmonise the Constitution of the United Republic of Tanzania of 1977 with the Tenth amendment on the Constitution of Zanzibar?
- b) The position of the members of the National Assembly on the Tenth amendment on the Zanzibar Constitution: Will they support or oppose it?
- c) What shall be the situation in Tanzania if the National Assembly does not accept to harmonise the Union Constitution with the Zanzibar constitutional changes?
- d) If the National Assembly refuses to harmonise the amendments with the Union Constitution; will Tanzania be in a constitutional crisis? Will the Union Constitution then be superior to the Zanzibar Constitution (even on non-union matters)?

Recommendations

In order to strengthen the operations of the GNU, there are issues that need to be taken into consideration namely:

- a) The First Vice President who is from the opposition needs to be given political power;
- b) It is the CCM Election Manifesto which is applicable and the CUF Election Manifesto currently has no place;
- c) There is no official opposition in the House of Representatives. This means there is no sense of check and balance;
- d) There should be an allocation system of key ministries;
- e) A mechanism should be put in place to include in the House of Representatives some members whose political parties do not win a seat in the constituency elections;
- f) The size of the cabinet should be cut down;
- g) To constitutional power of president in the running of GNU should be reduced.

Way Forward

It is up to the people of Zanzibar to work closely to ensure that the GNU becomes a success and in case of differences in the operation of the government, wisdom not emotions should prevail.