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REPORT ON CITIZENSHIP LAW: TANZANIA

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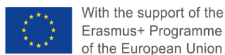
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Report on Citizenship Law Tanzania

Caroline Nalule and Anna Nambooze

1. Introduction

The United Republic of Tanzania as it is known today comprises approximately 120 indigenous ethnic groups¹, and was formed following a union of two newly independent states, mainland Tanganyika and the island of Zanzibar, on 25 April 1964².

Prior to independence and while under colonial rule, Tanganyika was modelled on a three-tiered racial segregation comprising the native Africans, at the bottom of the hierarchy; the Indians and Asians who had settled there mainly through prior trade links and as labourers on the construction of the railway; and the Europeans who colonized the territory. The segregation was maintained in political, social and the economic spheres of life. The Africans had their land confiscated by the colonialists and they ended up working as labourers or peasant farmers. Additionally they had limited access to educational opportunities, further marginalising them, both economically and politically³. The Asians enjoyed better privilege than the Africans did, especially economically. They specialised in commerce and professional services and enjoyed some level of representation in the government. So while the Europeans treated them as second class citizens, the Africans perceived of them as advantaged to the latter's disadvantage. At the top of the hierarchy the Europeans took over the governance of the country and run each and every lucrative economic venture including corporation and the plantations from the confiscated land of the Africans and other natural resources⁴. The struggle for African independence, and not least in Tanganyika, aimed at turning the tables in favour of Africans governing themselves and, expectantly, accessing better socio-economic opportunities.

The issue of race was central to the citizenship debate in Tanganyika as they prepared for independence. While some wanted the new citizenship law in Tanganyika to distinguish between citizen and non-citizen on the basis of race, others, including Tanganyika's first President, Julius Nyerere favoured a non-racialised law that focussed on equality for all⁵. The latter won the day, and their views shaped the citizenship law upon independence in 1961.

¹ World Atlas, *Ethnic Groups of Tanzania*, available at <https://www.worldatlas.com/articles/ethnic-groups-of-tanzania.html>, accessed on 28 September 2019.

² Both Tanganyika and Zanzibar gained independence from British rule, the former on 9 December 1961, and the latter two years later on 10 December 1963.

³ B Heilman (1998) 'Who Are the Indigenous Tanzanians? Competing Conceptions of Tanzanian Citizenship in the Business Community' *Africa Today*, 45:3/4, p.372-3.

⁴ Ibid.

⁵ Ibid, p. 374; R Aminzade (2013a) *Race, Nation and Citizenship in Post-Colonial Africa: The Case of Tanzania*: Cambridge University Press, p. 115.

This report traces the history of citizenship in Tanganyika dating back from German colonialism, through British control and the changes brought in by the wave of independence in Tanganyika in 1961. This is followed by the history of citizenship in Zanzibar under foreign leadership and how Zanzibar citizenship was defined following the revolution of 1963. The report continues to follow the citizenship developments in the United Republic of Tanzania following the union of Tanganyika and Zanzibar in 1964. The citizenship laws of Tanzania were consolidated in 1998, when the Citizenship Act, Cap 357, Act. No. 6 of 1995 became effective. The Citizenship Act being the overarching legislation on citizenship in Tanzania guides the discussion on the current trends on acquisition and loss of citizenship in Tanzania. The report also discusses the citizenship status of minority groups that have settled in Tanzania and highlights lacunae that still need to be redressed by the government.

2. Historical Background and Changes

2.1 Citizenship under the pre-independence period

2.1.1 Tanganyika

Tanzania has a rich cultural diversity whose composition changed over the years as new migrants and settlers from various parts of the world arrived. In addition to the various African communities that settled in Tanzania from other parts of the continent, during the tenth century, there was an increase in settlement by the Arab and Asian traders⁶. Later centuries saw the arrival of Portuguese in the fifteenth century who, in the eighteenth century, were driven out from the coastal area by the Arabs⁷. The German colonialists took over Tanganyika declaring it as part of German East Africa in the late nineteenth century. The Germans faced a lot of resistance to their rule from the native Africans whom they managed to overpower⁸. Under German rule, most of the Africans in order to pay off the taxes imposed by the colonial rulers, were forced to provide labour for the construction of roads and forts, as well as on the plantations established for the production of mainly cash crops⁹. In the interim, a number of Asians were also brought in mainly to work provide technical services, but also as labourers on the railways; and these later stayed on and became traders¹⁰. As demand for literary skills grew, Africans were educated and were employed in mainly middle-level administrative positions, with the top-level posts occupied by the Europeans. While the Asians enjoyed a comparative economic and professional advantage than the Africans, they never enjoyed any political power. Suffice to note that under the German rule, Africans, Indians and Arabs were all regarded as natives, a status that the Indians were later to challenge.

Following the defeat of Germany in World War I and the subsequent Treaty of Versailles in which German renounced its rights and influence over its overseas territories

⁶ Heilman, supra note 3 at 369.

⁷ Ibid.

⁸ It is alleged that the Germans faced over 50 rebellions during their rule including the Bwana Heri rebellion in the 1889-1890, the Mkwawa rebellion in 1891-8, and the famous Maji Maji rebellion from 1905-8. See A Coulson (2013) *Tanzania: A Political Economy*, 2 ed. Oxford University Press, pp.52-6.

⁹ Ibid, p.64.

¹⁰ Ibid, p.69.

including colonies¹¹, the League of Nations gave Britain the mandate to administer Tanganyika Territory.

The League of Nations mandate directed Britain ‘to respect the rights and safeguard the interests of the native population’¹². Moreover, the Indians who had for long lobbied to be moved from the “native” to the “non-native” category were protected under Article 7 of the mandate which provided for the equal treatment of all members of the League of Nations. India, being a League of Nations member (the only non-self-governing territory to be recognised as such), meant that Indians in Tanganyika were almost at par with the British, hence they got elevated to ‘non-native’ status¹³, thus making them higher in hierarchy than the Africans¹⁴. Britain retained control of Tanganyika after World War II, when it became a United Nations trust territory in 1946¹⁵. It is argued that under the British colonial rule in Tanganyika, racial segregation was entrenched in the laws and institutions¹⁶. Noteworthy though is the fact that the Trusteeship Agreement neither conferred sovereignty over Tanganyika on the British Crown nor did it render the inhabitants British subjects¹⁷. The position in British law was articulated in the British Nationality Act (BNA), 1948 and the British Protectorates, Protected States, and Protected Persons Order in Council, 1949 (‘1949 Order in Council’).

As a distinct category, citizenship appeared in British laws in 1948 under the British Nationality Act, chapter 56. The purpose of the Act was ‘to make provision for British nationality and for citizenship of the United Kingdom and Colonies’. It contained provisions on acquisition of citizenship under the following categories; by birth, descent, registration, naturalization and citizenship by incorporation of territory¹⁸.

As it has been argued, the colonial powers were not concerned about African citizenship, but rather, were more concerned about the citizenship status of children born to British parents and other Europeans residing in Tanganyika¹⁹. Hence the BNA provisions on ‘citizenship of the UK and colonies’ were meant mainly for people of British ancestry living in that territory. The Africans were categorized as natives and native laws, primarily consisting of local customary laws, applied to them. Moreover it seemed like the determination of whether

¹¹ Article 119, Treaty of Versailles signed on 28 June 1919 and came into force on 10 January 1920. See Encyclopaedia Britannica, ‘Treaty of Versailles’ available at <https://www.britannica.com/event/Treaty-of-Versailles-1919>, accessed on 3 November 2019.

¹² ‘British Mandate for East Africa, Article 6’ as cited in J R Brennan (2012), *Taifa: Making Nation and Race in Urban Tanzania*: Ohio University Press, p. 29.

¹³ In addition, when India attained independence in 1947, India gained dominion status under British law, and thus Indians were considered British Subjects prior to the enactment of the British Nationality Act of 1948, under which they became Citizens of the UK and Colonies. As British subjects, Indians enjoyed a more privileged status than British Protected Persons- See S Ansari (2013), ‘Subjects or citizens? India, Pakistan and the 1948 British Nationality Act’ *The Journal of Imperial and Commonwealth History*, vol. 41, No. 2, pp. 285-312 at 286-7.

¹⁴ Ibid, p. 30. The legal distinction between native and non-native was mainly that the latter were governed under British common law, while the former were governed by their respective customary laws. – See C J Lee (2011) ‘*Jus Soli and Jus Sanguinis in the Colonies: The Interwar Politics of Race, Culture, and Multiracial Legal Status in British East Africa*’ *Law and History Review*, vol. 29, No.2, pp. 497-522 at 512.

¹⁵ Encyclopaedia Britannica, Tanganyika, Historical State Tanzania’, available at <https://www.britannica.com/place/Tanganyika>, accessed 28 September 2019

¹⁶ Brennan, supra note 12, p. 49.

¹⁷ J R S Cole & W N Denison, *Tanganyika: The Development of its Laws and Constitution* (Stevens & Sons, 1964), p. 8.

¹⁸ British Nationality Act, 1948, sections 4-11 define which persons fall under each of the categories of citizenship acquisition and status.

¹⁹ C L Miller (2011), *Who are the “Permanent Inhabitants” of the State? Citizenship Policies and Border Controls in Tanzania, 1920-1980*: PhD thesis, University of Iowa, p. 96

or not one was a native depended on the facts of each case²⁰. The status of biracial children was also of concern to the colonialist administrators. Legally, biracial children assumed the nationality of their fathers; however, the colonial state decided cases on individual basis after examining people's "standard and mode of their life"²¹. In addition, 'Commonwealth citizens' (citizens of Canada, Australia, New Zealand, South Africa, Newfoundland, India, Pakistan, Southern Rhodesia and Ceylon (Sri Lanka)) could register as 'citizens of the UK and colonies' based only on twelve months residence – including in a protectorate.²²

The status of the natives of Tanganyika was defined in the 1949 Order in Council which rendered persons born in a trust territory (as well as a protectorate), before or after its enactment, British protected persons. Their status was also extended to persons born outside the trust territory to a father born in that territory, and to persons born after the enactment of the Order to a father who was a born in the trust territory or was by then a British protected person²³. Since Tanganyika did not have a separate nationality law until it attained independence, all Tanganyikans held the status of British protected persons. As British protected persons, Tanganyikans enjoyed the protection of the Her Majesty, but did not have a right to either a passport or diplomatic protection²⁴.

What seems clear is that much as the Act seemed to extend to the colonies and mandated territories or trusteeships, it only applied to those that were of British descent or from states with a privileged status with Britain. It was never meant to extend citizenship status to the colonised. Moreover, compared to the Africans, the Indians and Pakistanis enjoyed a privileged status. It is no surprise then that the issue of race *cum* indigeneity would always be central to Tanganyika's later debates on citizenship.

As Africans fought for independence, one of the main issues they faced was with regard to the criteria for membership in the post-colonial community. In Tanganyika, as a result of the racial segregation that had characterised the colonial era, the debate on the inclusivity or exclusivity of Tanganyika citizenship revolved around race²⁵. While some leaders, including Julius Nyerere, the leader of the Tanganyika African National Union (TANU), and later, first president of the independent Republic, advocated for an all-inclusive citizenship that recognised the various races in Tanganyika at the time, others were in favour of a definition that recognised as citizens only the indigenous Africans.

²⁰ This was the position taken in the case of *Purshottam Narandas Kotak V A Ali Abdullah* [1957] 1 EA 321 (CAD), available at https://www.academia.edu/36861132/EA_LAW_REPORTS_1957_VOL_1, pp. 573 – 582, accessed 9 September 2019. In this case, 'native' was defined in accordance with section 2 of the Credit to Natives (Restriction) Ordinance to mean 'any member of any African race, and includes a Swahili, but does not include a Somali or an Abyssinian'.

²¹ J Brennan (2002), *Nation, Race and Urbanization in Dar es Salaam, Tanzania, 1916-1976*: PhD diss., Northwestern University, p. 277.

²² British Nationality Act 1948, sections 1(3), 6 and 8.

²³ *The British Protectorates, Protected States and Protected Persons Order in Council, 1949, section 9.*

²⁴ See M Jones, *British Nationality Law*, (Clarendon Press, Oxford 1956), p. 195. The ambivalence of one's status as a British protected person was illustrated in the case of Ahmed Seif Kharusi, a former British protected person, who upon applying for British nationality, it had to be decided whether he had become a citizen of Tanzania, in which case he had lost his status as a British protected person, or if he was stateless in which case he might qualify for naturalization or registration as a British national. A debate on the status of Ahmed Seif Kharusi can be found in a Hansard - Modifications of British Nationality Acts HC Deb 17 June 1969 vol 785 cc406-12, available at <https://api.parliament.uk/historic-hansard/commons/1969/jun/17/modifications-of-british-nationality-acts>, accessed 22 February 2020

²⁵ Aminzade (2013a), *supra* note 5 at p. 115.

The Bill that was published just prior to independence²⁶, and which would later become the citizenship law for Tanganyika was all-inclusive of Tanganyika's multiracial constituents and it effectively abolished the racial hierarchy under colonial rule. More shall be said about the Tanganyika Citizenship Act, 1961 in a later section.

2.1.2 Zanzibar

Zanzibar was settled for many centuries by traders from the Arabian Peninsula. It was valuable for trade, particularly as the main slave market of the East African coast. From the sixteenth century, the Portuguese controlled the Indian Ocean, but were ousted by the Omanis in the mid-1600s. Zanzibar became the Omanis' 'most important outpost of their empire'²⁷ until 1856 when the then Sultan of Zanzibar broke all links with Oman²⁸. In 1885, the Germans, having taken over German East Africa, attempted to take Zanzibar as well, which at the time had a British presence. In the scramble for the region, the Germans ceded their interest in Zanzibar by virtue of the Treaty of Heligoland and consequently, the British persuaded the Sultan of Zanzibar to approve of the British Protectorate on Zanzibar. In 1890, Zanzibar was declared a British protectorate²⁹.

Despite its status as a British protectorate, under the 1949 Order in Council, Zanzibar was treated as a protected state because at that time, it already had in place its nationality law. Thus subjects of the Zanzibari Sultan for purposes of British law were regarded as British protected persons by virtue of their connection with Zanzibar³⁰. The Nationality and Naturalization Decree of 1911 formed the law on matters of citizenship in Zanzibar. It provided for the acquisition of Zanzibari citizenship by birth as essentially a child born in the Dominions of the Sultan to a Zanzibari father, or to parents unknown, or to an alien father born in the Dominions of the Sultan³¹. Furthermore, one could be a citizen by naturalisation having resided in Zanzibar for a period of three consecutive years³². There were other iterations of the nationality laws in Zanzibar such as the Nationality Decree of 1952 under which all persons born in Zanzibar after its enactment would become a citizen by birth. Furthermore one could become naturalised after three years of consecutive residence or five years of non-consecutive residence³³. What is important to note, however, is that quite distinct from Tanganyika, Zanzibar, with its concept of subjecthood to the Sultan, and later nationality, had a better defined legal status of 'citizenship' prior to independence, although the term 'citizenship' would only be applied to Zanzibaris much later after Zanzibar's union with Tanganyika.

In the lead up to the independence of Zanzibar, local politics was largely racialized mainly between the Arabs and the Africans. The two major parties at the time were dominated by either of the races: the Zanzibar Nationalist Party (ZNP) was mainly Arab dominated, while

²⁶ *Government Paper No. 4: Tanganyika Citizenship*, also known as the *Citizenship Bill* –see Press Release, November 21, 1961, 593/NA/1, TNA.

²⁷ Coulson, *supra* note 8 at p. 46.

²⁸ History of Zanzibar, available at <http://www.historyworld.net/wrldhis/PlainTextHistories.asp?historyid=ad52#ixzz62UxZV3Qn>, accessed on 24 November 2019.

²⁹ N Matthews (2016), *The Zinjibari Diaspora, 1698-2014: Citizenship, Migration and Revolution in Zanzibar, Oman and the Post-War Indian Ocean*: PhD Dissertation, Northwestern University, p. 111.

³⁰ The 1949 Order in Council, section 12. See also, L Fransman, *Fransman's British Nationality Law*, 3 ed (Bloomsbury Professional 2011), p. 1297; B Manby, *Citizenship in Africa: The Law of Belonging*, (Hart Publishing 2018) p. 63

³¹ The Nationality and Naturalization Decree, 1911, section 3.

³² Matthews, *supra* note 29, p. 127.

³³ *Ibid*, p. 142.

the Afro-Shirazi Union (ASU, later the Afro-Shirazi Party (ASP)) was dominated by Africans. After much protracted negotiation, political machinations and electoral contestations that saw power shift from ASP to ZNP, Zanzibar negotiated for its independence from the British. At a conference held in London in September 1963, the date for Zanzibar's independence was set, the Sultan would be the Head of State, and one of the key provisions curtailing his powers was that he would no longer make laws independent of the legislature. On 10 December 1963, Zanzibar became an independent state, but racial divisions between Arabs and Africans remained unabated³⁴.

2.2 Post-colonial period

2.2.1 Tanganyika

The 1961 independence Constitution of Tanganyika, which was appended to the second schedule of the Tanganyika (Constitution) Order-in-Council,³⁵ contained elaborate citizenship provisions that were a standard for all former British colonies and territories. Citizenship could be acquired automatically by reason of birth or descent, by registration which was time-bound (covered under transitional provisions), and through on-going naturalisation procedures.

- Automatic citizenship acquisition at the date of independence:
 - i). By birth; applicable to any person born in Tanganyika and was on 8 December 1961, a citizen of the United Kingdom and Colonies or a British protected person; provided that either of his or her parents was born in Tanganyika³⁶.
 - ii). By descent: applied to a person born outside of Tanganyika, but whose father became a citizen of Tanganyika or would, but for his death, have become a citizen by birth on Tanganyika's independence³⁷.
- Automatic citizenship acquisition for those born after independence:
 - i). By birth: a person born in Tanganyika after 8 December 1961 would be a citizen by birth. The only exceptions were i) if neither of his or her parents was a citizen and the father was a foreign diplomat; or ii) the father was an enemy alien and the birth occurred in a place then under enemy occupation³⁸.
 - ii). By descent: a person born outside Tanganyika after 8 December 1961 would become a citizen if his father was a citizen of Tanganyika provided that the father's citizenship was neither acquired under this very provision nor as a

³⁴ For a detailed account on Zanzibar politics particularly in the lead up to independence and the racial tensions and divisions, see A E Frontera (1969), *The Mirror of the Future? The Study of the Union of a Minor Power with a Greater Political Entity, Zanzibar and Tanganyika*: Masters Thesis, Duquesne University, p. 60-83.

³⁵ Published on 27 November, 1961 vide General Notice No. 415 of 1961 and became effective immediately before 9 December 1961

³⁶ Tanganyika Constitution 1961, section 1(1). Years later and just before the current citizenship law came into force, the Court of Appeal had to determine the issues of an applicant's citizenship under the Act. In *Attorney-General and two others v Aman Walid Kabourou*, (Judgment of 31 January, 1995, Civil Appeals No. 32 and 42 of 1994) the Court of Appeal reaffirmed that there were three factors which determined citizenship by birth under the 1961 Act. These were, one, being born in Tanganyika by 8 December 1961; two, being a citizen of the UK and colonies or being a British protected person on 8 December 1961; and, three, having at least one parent born in Tanganyika.

³⁷ Tanganyika Constitution 1961, section 1(2).

³⁸ Tanganyika Constitution 1961, section 3.

citizen of the United Kingdom and the colonies or as a British protected person³⁹.

- By registration under the transitional provisions⁴⁰: the categories of people below would upon making an application before 9 December 1963 or such other date as may be specified by an Act of Parliament, be registered as a citizen of Tanganyika.
 - a) A person born in Tanganyika who had neither parent born in Tanganyika. Parents or guardians of minor children could make the application on their behalf.
 - b) A woman who on 8 December 1961 was or had been married to a person who subsequently became, or would, but for his death have become, a citizen of Tanganyika by birth or registration.
 - c) A woman who on 8 December 1961 was married to a man who subsequently became a citizen by registration.
 - d) A woman who on the 8 December 1961 had been married to a person that was entitled to register as a citizen, but whose marriage had been terminated.
 - e) Any person who on 8 December 1961 was a citizen of the United Kingdom and Colonies, having become such a citizen by virtue of his having been naturalized or registered in Tanganyika under the British Nationality Act, 1948(a).
- By naturalisation on an on-going basis
 - a) Any woman who married a citizen of Tanganyika after 8 December 1961 was entitled to apply for registration as a citizen⁴¹.
 - b) Persons that were not eligible or were no longer eligible for citizenship under the provisions of the constitution would acquire citizenship as stipulated by an Act of Parliament⁴².
- Dual citizenship was recognised only insofar as one had not yet attained 21 years of age. Once they attained 21 years were required to renounce the other citizenship if they wished to retain the Tanganyikan citizenship⁴³. Persons under this category were given a period of two years from 9 December 1961 within which to renounce any other citizenship, lest they cease to be Tanganyika citizens.
- Commonwealth citizenship⁴⁴ was accorded to citizens of Tanganyika, United Kingdom and Colonies, Canada, Australia, New Zealand, India, Pakistan, Ceylon, Ghana, the Federation of Malaya, the Federation of Nigeria, the Republic of Cyprus, Sierra Leone, the Federation of Rhodesia and Nyasaland, and the State of Singapore. This status also extended to persons who were British subjects but without status under the British Nationality Act, 1948(a). This citizenship was meant, one, to promote African unity with other African countries, but also it was thought that it would ease immigration for Tanganyikans to the UK and other commonwealth countries. Arguably, these aspirations did not exactly pan out, specifically the latter⁴⁵.

³⁹ Ibid, section 4.

⁴⁰ Ibid, section 2 (1-6).

⁴¹ Ibid, section 5.

⁴² Ibid, section 9 (1).

⁴³ Ibid, section 6.

⁴⁴ Ibid, section 7.

⁴⁵ Miller, *supra* note 19, pp. 103-4.

Save for the express provisions on loss of citizenship for persons that held dual citizenship, where they did not renounce their other citizenship by the specified date, the 1961 constitution did not contain any specific provisions on loss of citizenship. The only other explicit provision to that effect stated that ‘Parliament may make provision for the renunciation by any person of his citizenship of Tanganyika’⁴⁶. It therefore follows, by way of argument, that those who did not meet any of the specified citizenship eligibility criteria were disqualified from citizenship.

The provisions of the Constitution, 1961 were replicated almost verbatim in the Citizenship Act of Tanganyika, 1961. Suffice to note, the Act did not lay out any explicit provisions on loss of citizenship but only provided that Parliament may make laws to that effect⁴⁷. Apparently, this Act was passed after a furious debate that focussed mainly on issues of race⁴⁸. Moreover, the Act has been commended for turning out to be ‘very inclusive’⁴⁹ and non-racial. Asians and Europeans could register as Tanzanians during the transitional period, or qualify as citizens by birth if both they and either of their parents was born in Tanganyika.

Owing to the government’s resource constraints in processing the citizenship applications and enforcing the law, many people were not registered by 31 December 1963, the statutory deadline. For instance, it is reported that of the approximately 92,000 Asians in Tanganyika, only 21,557 registered for citizenship although the number that qualified was about 60,000⁵⁰. The government, however, threatened to detain and deport those noncitizen traders, who were mostly Asians, if they did not hold a temporary permit pending approval of their citizenship status⁵¹.

Despite the generous or inclusive provisions of the 1961 Act, the debate on Africanisation and indigenisation did not abate. In 1962, in the spirit of Pan-Africanism and to demonstrate support for independence movements, an amendment to the Citizenship Act extended citizenship rights to ‘persons of African descent from Angola, the Cape Verde Islands, the Comorian Islands, French Somaliland, Mozambique, Portuguese Guinea, the San Tome and Principe Islands, Spanish West Africa, and the Republic of South Africa’⁵².

In 1963, yet another amendment⁵³ was made which entitled any woman who, after 8 December 1961, is married to a person who becomes a citizen of Tanganyika, to apply for registration as a citizen.

A couple of things to note about the Tanganyika law on citizenship: one is that it had a sex bias when it came to who qualified for citizenship status. While a foreign woman married to a Tanganyikan man could apply for registration as a citizen, the reverse for men was not true. A foreign man could not qualify for citizenship by mere marriage to a Tanganyikan woman. In addition, a child born abroad could only acquire Tanganyikan citizenship if it was the father that was the Tanganyikan citizen. A Tanganyikan woman could not pass on citizenship to a child born abroad, if its father was not Tanganyikan. Secondly, the law tried to reverse the colonial racial hierarchical segregation by granting opportunities for non-

⁴⁶ Tanganyika Constitution, 1961, section 9 (3).

⁴⁷ Tanganyika Citizenship Act, 1961, section 9 (2-3).

⁴⁸ Aminzade (2013a), supra note 5, pp. 115-6; Miller, supra note 19, pp.105-7.

⁴⁹ Aminzade, *Ibid*.

⁵⁰ *Ibid*, p. 118.

⁵¹ Miller, supra note 19, p. 142.

⁵² An Act to Amend the Tanganyika Citizenship Ordinance, 1961, No. 69 of 1962: Dar es Salaam, Government Printer, December 9, 1962. Moreover, for such persons to register for citizenship they had to fulfil certain conditions, namely, they had to identify their country of origin, should have resided in Tanzania for at least five years, and should know Swahili or English. See Miller, *ibid*, p. 127.

⁵³ Citizenship (Amendment) Act, No. 19 of 1963.

indigenous Tanganyikan residents to acquire Tanganyikan citizenship. But as mentioned earlier, while some took advantage of this, others took their standing in Tanganyika for granted and never registered, making it easier for the government to deny them citizenship when the tables turned towards localisation⁵⁴. Moreover, while the legislation tended to be inclusive, the racial tensions were never in reality ameliorated and in due course, calls for indigenisation, localisation or Africanisation (all terms meaning more or less the same thing at different times⁵⁵) mounted.

On 7 January 1964, Nyerere in a presidential circular⁵⁶ introduced the policy on hiring of qualified Tanganyikan citizens regardless of race or ethnicity to strengthen the administrative capacity of the state.⁵⁷ The policy led to a mutiny by the army who demanded ‘higher pay and removal of European officers’⁵⁸. Consequently, the ‘Africanisation policy’ was re-instated.

2.2.2 Zanzibar

The Constitution of the State of Zanzibar, 1963, used the term ‘subject’- as allegiance was to the Sultan,-instead of ‘citizen’ as used in other Commonwealth constitutions at the time⁵⁹. It conferred the status of ‘subjects by birth’ to all persons born in the Sultan’s dominions provided either parents were subjects of Zanzibar and the father was neither immune from legal process nor an enemy alien⁶⁰. Subjects by descent were those who born outside the Dominions of the Sultan, but with a father who was a Zanzibar subject⁶¹.

A foreigner that had resided in Zanzibar for at least seven years, and resided in the Dominions of the Sultan for twelve months preceding the application, was of good character, had knowledge of either Swahili, English or Arabic, and intended to reside in the Dominions of the Sultan, could apply for naturalisation⁶². Women married to Zanzibar subjects were entitled to apply to register as subjects⁶³, while parents and guardians of minors could also apply to register them as subjects⁶⁴. Citizenship by naturalisation or registration could be lost by order of minister, on a number of specified grounds⁶⁵.

The Constitution barely got a chance to be effected as the year 1964 began on a rather explosive note. Almost a month after attaining independence, the ZNP-led government was overthrown and the Sultan, who was the constitutional Head of State, was ousted. Many of the Arabs and people considered aliens or close to the political power were targeted during the

⁵⁴ It is reported that out of an approximately total 120,000 persons that needed to register, ‘as at the deadline on December 31, 1963, only 12,178 people had registered as citizens, with 26 rejections and only 77 Africans registered’- Miller, supra note 19, p. 141. Heilman also reports of some Europeans that were summarily deported for mistreating Africans - Heilman, supra note 3, p.374.

⁵⁵ All these policies aimed at granting Tanganyikan, or later Tanzanian, citizens and particularly Africans, access to employment or jobs and business opportunities in the public or private sector- See Heilman, *ibid*, p. 377; also R Aminzade (2003), ‘From Race to Citizenship: The Indigenization Debate in Post-Socialist Tanzania’ *Studies in Comparative International Development*, Vol.38, No. 1, p.44.

⁵⁶ J K Nyerere (1969), *Freedom and Unity*: Oxford University Press, pp. 258-60.

⁵⁷ Heilman, supra note 3, p. 375

⁵⁸ *Ibid*.

⁵⁹ The Constitution of the State of Zanzibar (Legal Supplement (Part I) to the Official Gazette of the Zanzibar Government, Vol. LXXII, No. 4320, of 5th December, 1963), section 13 (5).

⁶⁰ *Ibid*, section 1.

⁶¹ *Ibid*, section 2.

⁶² *Ibid*, section 3 and Schedule 1, part 1.

⁶³ *Ibid*, sections 5-6.

⁶⁴ *Ibid*, section 4.

⁶⁵ *Ibid*, section 7-8.

violent uprising and many were forced to flee. This ethno-political revolution saw the African-dominated ASP, which had won the popular vote in the preceding elections, although lacked the parliamentary majority to govern, take over government and establish a one-party state. The new government repealed the constitution and replaced it with a series of presidential decrees, and established a House of Representatives which enacted the Existing Laws Decree⁶⁶. This law extended the application of some pre-independence laws and on the citizenship question, the Nationality and Naturalization Decree 1911, and the Nationality Decree 1952 continued as the law. To consolidate its position, ASP agreed to a union of the Tanganyika mainland with the islands of Zanzibar.

2.3 The dawn of Tanzania

A few months after the Zanzibar revolution, on 22 April 1964, Tanganyika's President Nyerere and Zanzibar's President Abeid Karume signed Articles of Union under which their countries would become one sovereign state⁶⁷. These Articles were ratified by The Union of Tanganyika and Zanzibar Act enacted on 25 April 1964⁶⁸. This Act provided for modification of the Constitution of the Republic of Tanganyika to provide for, among others, the reservation to the Parliament and Executive of the United Republic on matters of citizenship among others.⁶⁹ On 26 April 1964, Zanzibar and Tanganyika became the United Republic of Tanganyika and Zanzibar, and on 29 October 1964, the country was renamed the United Republic of Tanzania⁷⁰. In November 1964, a decree⁷¹, which extended the citizenship laws of Tanganyika to Zanzibar was passed. In effect, the law made Zanzibaris citizens of the United Republic⁷².

Following these events, the Interim Constitution of Tanzania 1965 was promulgated. It, among others, established a one-party state represented by TANU on the mainland and ASP in Zanzibar⁷³. A two-tier government granting Zanzibar a degree of autonomy was put in place. The President of Zanzibar served as the Vice President of Tanzania; additionally, Zanzibar continued to have its own legislature to legislate on Zanzibar matters that did not fall within Union matters⁷⁴. Besides, laying issues of citizenship within Union matters⁷⁵, the Constitution did not contain provisions affecting the citizenship law already in place.

In February 1967, TANU published the 'Arusha Declaration'⁷⁶, which set the country on a path of socialism and self-reliance. The Tanzanian version of socialism (known as *ujamaa* or 'familyhood') aimed at promoting equal opportunities for all, and one of the steps taken in

⁶⁶ Decree No. 1 of 1964

⁶⁷ For a detailed account of how the Union came to be, see I Shivji (2008), *Pan-Africanism or Pragmatism: Lessons of the Tanganyika-Zanzibar Union*: Mkuki na Nyoka).

⁶⁸ *The Union of Tanganyika and Zanzibar Act*, No. 22 of 1964, available at <https://www.wipo.int/edocs/lexdocs/laws/en/tz/tz027en.pdf>, accessed 26 July 2019.

⁶⁹ *Ibid*, Section 5(1) (a) (vi).

⁷⁰ South African History Online (SAHO), The United Republic of Tanganyika and Zanzibar is renamed United Republic of Tanzania, available at <https://www.sahistory.org.za/dated-event/united-republic-tanganyika-and-zanzibar-renamed-united-republic-tanzania>, accessed 26 July 2019.

⁷¹ *The Extension and Amendment of Laws Decree*, No. 5 of 1964, GN No. 652 of 13 November 1964.

⁷² Shivji, *supra* note 67, p. 97.

⁷³ The Interim Constitution of Tanzania, Act No. 43 of 1965, section 3.

⁷⁴ *Ibid*, sections 13 (1) & 53-55.

⁷⁵ *Ibid*, section 85 (1).

⁷⁶ Available at <https://www.marxists.org/subject/africa/nyerere/1967/arusha-declaration.htm>, accessed on 21 October 2019

this direction was that of nationalisation of previously privately owned enterprises including land, factories, plantations, mines, banks, and other economic enterprises⁷⁷. Labour relations, salaries, and work condition were dictated by the state.

There were a further two separate significant developments, almost a decade later. The first was the merger of TANU and the ASP to one political party, *Chama cha Mapinduzi* (CCM), as the overall ruling party⁷⁸, thus cementing the already constitutionally recognised one-party policy. Secondly, the interim constitution was replaced with the Constitution of Tanzania, 1977. This Constitution essentially re-instated the provisions of the interim constitution, notably, it provided for a strong presidency, single party rule, and retention of the two-tier structure of government; a Zanzibar government and a Union government, as mentioned above. While new constitution reflected new political developments in the country, just like the interim constitution, it did not contain elaborate provisions on citizenship acquisition, status and loss. Rather, it spelt out rights and freedoms to be enjoyed by all, though specific to citizens is the right to vote⁷⁹; the citizen's right to freedom of movement and the right to live in any part of the country⁸⁰; the right to participate in public affairs⁸¹; the right to equal opportunity and equal terms to hold any office or function under state authority⁸². In promoting equality, the constitution expressly prohibits a citizen from having a 'right, status or special position on the basis of his lineage, tradition or descent'⁸³. In addition, article 39(1) (a) and 47(4)(a) require that a person must be a citizen by birth to hold office of the president or vice president; and article 67(1) requires that a person must be a citizen in order to be a Member of Parliament. There were subsequent amendments to the Constitution but none that substantially affect the provisions of the citizenship law. The laws on citizenship as discussed above continued to be in existence until 1995.

3. Tanzania's Current Citizenship Regime

In 1995, the Citizenship Act 1961 was repealed and amendments were made to Decree (No. 5), 1964 with the enactment of the Tanzania Citizenship Act, 1995 (TCA). The law aimed at consolidating the laws relating to citizenship in Tanzania- Mainland and Tanzania-Zanzibar. This law together with its regulations remain the current law in force in Tanzania⁸⁴. The Act recognises the citizenship status acquired under the repealed laws, yet it also does away with 'citizenship by registration'. Rather, what it does is to convert the registration status to one of naturalisation. Furthermore, the Act preserves all citizenship renunciations and deprivations that occurred under the repealed laws⁸⁵.

⁷⁷ For further details on the Arusha Declaration and *Ujamaa*, see, for instance, Coulson, *supra* note 8, pp. 215-223; I G Shivji (1995), 'The Rule of Law and *Ujamaa* in the Ideological Formation of Tanzania', *Social and Legal Studies*, Vol. 4, No. 2, pp.147-174.

⁷⁸ H Othman (2009), 'Tanzania: Beyond sectarian Interests' *Pambazuka News*, April 30, 2009, available at <https://www.pambazuka.org/governance/tanzania-beyond-sectarian-interests>, accessed 27 July 2019)

⁷⁹ The Constitution of the United Republic of Tanzania, 1977, Chapter 2, article 5 (1).

⁸⁰ *Ibid*, article 17(1).

⁸¹ *Ibid*, article 21.

⁸² *Ibid*, article 22.

⁸³ *Ibid*, article 29 (3 & 4).

⁸⁴ The Tanzania Citizenship Act, Chapter 357, Laws of Tanzania, became operational on 1st February 1998 after the adoption of its regulations. The Tanzania Citizenship Regulations, 1997 were adopted on 26 September 1997.

⁸⁵ TCA, section 30.

3.1 Acquisition of citizenship in Tanzania

There are three ways of acquiring citizenship under the TCA.

1. By birth:

A person born in Tanganyika and Zanzibar before 26 April 1964 (Union day) and was immediately before that day a citizen of either country, retains the status of a citizen by birth⁸⁶. Additionally, almost retaining the provisions of the previous law, but with an alteration as to dates, a person is recognised as a citizen by birth from the date of birth, if they were born in Tanzania on or after Union day, unless neither of the parents was a citizen of Tanzania and the father was a foreign diplomat; or either of the parents was an enemy alien and the birth occurred in a place under enemy occupation⁸⁷.

While this provision preserved a *jus soli* acquisition of citizenship, the official practice was that birth in Tanzania had to be further supported by descent from a Tanzanian parent if one were to be recognised as a citizen by birth⁸⁸. The practice, which seems to have been uncontested in courts of law, effectively altered this aspect of citizenship acquisition under Tanzanian law.

2. By descent:

The law recognises as a citizen by descent any person born outside of Tanzania on or after the Union day to a father or mother who is a citizen of Tanzania otherwise than by descent⁸⁹. Moreover all persons having been born outside either Tanganyika or Zanzibar before Union day were recognised as citizens by descent retained their status as such under the new law⁹⁰.

One of the progressive elements in this provision was that it did away with the gender bias in the previous law, through which citizenship by descent could only be conferred through the father. In the current law, one can become a citizen by descent if either father or mother is a citizen of Tanzania. The proviso which precludes children acquiring citizenship on the basis of descent, if the parent's citizenship was solely descent-based (that is, citizenship does not transmit to the second generation born outside the country), presumes that the child would have acquired the citizenship of the country where he or she was born. This would, of course, be a reasonable presumption if the other country had a *jus soli* law, or that one of the parents was a citizen of that country and could pass on that citizenship to the child. The law however gives any person caught by the proviso, that is where one's father was a citizen by descent, to acquire citizenship through naturalisation⁹¹. While this may appear like a redeeming feature, at the same time, it rolls back on the gender-neutral aspects of the primary provision on descent-based citizenship. Apparently, a person born outside Tanzania to a Tanzanian mother who is a citizen by descent would not be covered under this provision. This would accordingly extend to a child born to a Tanzanian female diplomat whose citizenship by birth is not recognised on the same basis as that of a child born to a male Tanzanian diplomat.

⁸⁶ TCA, section 4(1).

⁸⁷ TCA, section 5 (1-2).

⁸⁸ Manby, *Citizenship in Africa*, supra note 30, p. 80.

⁸⁹ TCA, section 6.

⁹⁰ TCA, section 4 (3).

⁹¹ TCA, section 9 (2).

3. By Naturalisation:

Other than by birth and descent, the only way one can acquire Tanzanian citizenship is by naturalisation. All persons that were previously citizens by registration were deemed to have been naturalised under the current law⁹². In order for one to be eligible for naturalisation one must be of full age and capacity, and, subject to renouncing any other nationality or citizenship⁹³, they must also fulfil the following conditions:

- (a) Residence in the United Republic throughout the twelve months immediately preceding the application;
- (b) Residence in the United Republic for an aggregate period of not less than seven years in the ten years immediately preceding the application;
- (c) have adequate knowledge of Kiswahili or English (*note that Arabic was deleted as one of the possible languages*);
- (d) be of good character;
- (e) suitability as a citizen of Tanzania on the basis one's past and potential contribution to the national economy, scientific and technological advancement and to the national social and cultural welfare; and
- (f) must have the intention to continue to reside permanently in the United Republic upon being naturalised.

The procedure for naturalisation as a citizen is as follows⁹⁴:-

- (a) the applicant is required to fill in the prescribed form and submits the application to the Ward Executive Secretary or Sheha (the equivalent in the case of Zanzibar) where he or she resides;
- (b) the Ward Executive Secretary or Sheha submits the application to the District Immigration Office and the applicant pays a non-refundable submission fee⁹⁵.
- (c) the applicant publishes a notice of his or her intention to apply for naturalisation in two consecutive issues of the Swahili and English Newspapers registered in Tanzania Mainland and Zanzibar;
- (d) the applicant is sent to the District Commissioner for an interview with the District Defence and Security Committee, After this interview the application is examined in detail and the applicant will also be required to undergo finger print procedure at the Police Department in order to see if s/he has any criminal records.
- (e) Next, the application will be sent to the Regional Immigration Officer, who in turn forwards it to the Principal Commissioner of Immigration Services. In Zanzibar, the application will have to go through the second Vice-President for a recommendation before it is forwarded to the Principal Commissioner.
- (f) The Principal Commissioner examines the application and thereafter submits it to the Minister with a recommendation. The final decision lies with the Minister for Home Affairs.

⁹² TCA, section 30 (1) (b).

⁹³ Ibid, section 9 (3).

⁹⁴ The United Republic of Tanzania, Ministry of Home Affairs, Immigration Department <https://www.immigration.go.tz/index.php/en/services/tanzania-citizenship>, accessed on 11 August 2019.

⁹⁵ Currently, going by the government website (ibid), the non-refundable fee payable for all naturalisation applications is USD 1500. If the application is successful, an additional USD3500 must be paid.

Where one's application is successful, they will have to renounce any citizenship or claim of protection they may enjoy from another country and also take an oath of allegiance⁹⁶.

Naturalisation of minors: The Minister may, if there are circumstances he or she considers special, cause the naturalisation of a minor child. Although, for all other non-citizen minors, their parents or guardians may apply for their naturalisation⁹⁷ upon providing the following requirements⁹⁸: the parent's or guardian's proof of citizenship of parent or guardian; the birth certificate of a child; a valid immigration status for the child; passport photographs, and a non-refundable submission fee.

Naturalisation through marriage: A foreign woman married to a Tanzanian citizen, may at any time during the lifetime of her husband apply for naturalisation⁹⁹. Yet, a woman who before her marriage to a Tanzanian citizen, renounced or was deprived of her Tanzanian citizenship under the law, can only be naturalised with the Minister's approval¹⁰⁰. In applying for naturalisation, the woman must also submit a marriage certificate registered in Tanzania, proof of the husband's citizenship, a valid passport, proof of immigration status, and passport photographs¹⁰¹.

The Minister is not obliged to give reasons for his or her decision to grant or not to grant an application, the decision is final and not subject to any judicial appeal or review¹⁰².

This is one of the provisions of the TCA with more observable restrictions on citizenship acquisition. In the previous law, a woman married to a Tanzanian citizen was entitled to apply for registration whether or not the citizen husband was alive, and whether or not the marriage was subsisting. The current law apparently disqualifies widowed or divorced foreign wives of Tanzanian husbands. Furthermore, and as a carry-over from the previous law, the fact that the law fails to provide for foreign husbands married to Tanzanian women cannot be ignored. Reportedly, TANU had been concerned with the possibility of foreign men, who through marriage, tried to gain citizenship for expedient reasons¹⁰³.

3.2 Prohibition of dual citizenship for adults

Under the TCA, once a person turns eighteen years and they hold another citizenship in addition to the Tanzanian citizenship, they shall be deemed to have ceased to be a Tanzanian citizen, unless they had previously renounced their other citizenship and taken the oath of allegiance¹⁰⁴. The cessation of Tanzanian nationality also applies to persons who turned eighteen before and after the Union day and continued to hold the citizenship of another country in addition to either their Tanganyikan or Zanzibari citizenship¹⁰⁵. The law goes ahead to provide for cessation of citizenship for anyone who voluntarily acquires the citizenship of another country after they turn eighteen¹⁰⁶.

⁹⁶ TCA, section 9 (3).

⁹⁷ TCA, section 10 (1-2).

⁹⁸ Tanzania Immigration website, supra note 94.

⁹⁹ TCA, section 11(1).

¹⁰⁰ TCA, section 11 (2).

¹⁰¹ Tanzania immigration website, supra note 94.

¹⁰² TCA, section 23.

¹⁰³ Miller, supra note 19, p. 137.

¹⁰⁴ TCA, section 7(1).

¹⁰⁵ TCA, section 7 (2-3).

¹⁰⁶ TCA, section 7(4).

A woman who has been a citizen of another country before marriage, will only be naturalised if she renounces her other citizenship, takes the oath of allegiance and declares her intention to continue residing in Tanzania¹⁰⁷.

The Commissioner General of Immigration has the power subject to the consent of the Minister to extend the period within which renunciation must take place for any person who has shown sufficient reasons for his delay to renounce his citizenship of the country other than the United Republic. The extension will only afford that person an opportunity of doing any or all such acts remaining undone¹⁰⁸.

3.3 Loss of citizenship in Tanzania

As mentioned above, one of the ways in which citizenship may be lost on Tanzania is by cessation where a person, in addition to the Tanzanian citizenship, holds another citizenship which they fail to renounce upon attaining majority age. There are two other prescribed ways in which citizenship may be lost.

1. By renunciation

A citizen of full age and capacity may renounce his or her citizenship by making a declaration to that effect. If the Minister causes the declaration to be registered, the person's citizenship ceases¹⁰⁹. The procedure for renunciation of Tanzania citizenship is as follows¹¹⁰. The applicant fills in prescribed forms and submits them to the Immigration Office, Embassies/High Commission where an applicant resides. The forms are then submitted to the Principal Commissioner of Immigration Services who in turn forwards it to the Minister to register the declaration. The application for renunciation of Tanzania citizenship must be accompanied by an approval of the grant of citizenship from the other country, return of the Tanzania passport, passport photographs, and a renunciation fee¹¹¹. The Minister may refuse to register a declaration of renunciation if it is made during a war in which Tanzania is engaged or if it is contrary to public policy¹¹².

A female Tanzanian citizen by birth who renounces her citizenship upon getting married to a citizen of another country may, where the marriage breaks down, revert to her citizenship by birth subject to any conditions the Minister may impose¹¹³.

2. By deprivation

This provision on deprivation of citizenship does not apply to citizens by birth. The Minister has the power to order that a person be deprived of his or her citizenship upon satisfaction that the person is of full age and capacity; and has voluntarily claimed and exercised in a foreign

¹⁰⁷ TCA, section 7(5).

¹⁰⁸ TCA, section 7 (8).

¹⁰⁹ TCA, section 13(1).

¹¹⁰ Tanzania Immigration website, supra note 94.

¹¹¹ The renunciation fee is currently sixty US Dollars, *ibid*.

¹¹² TCA, section 13(2).

¹¹³ TCA, section 13(3).

country, a right that is exclusive to its own citizens¹¹⁴. Such rights include the right to vote and the right to be elected in a public office.

Furthermore, a citizen by naturalisation may be deprived of his or her citizenship for any of the following reasons¹¹⁵:

- i. The certificate of naturalisation was obtained by means of fraud, false representation or the concealment of any material fact.
- ii. Demonstrating, by act or speech, disloyalty or disaffection towards the Tanzania.
- iii. Unlawfully trading or communicating with any enemy with which Tanzania is at war.
- iv. Serving a prison sentence of more than twelve months, in any country, within five years of being naturalised.
- v. Residing in foreign countries for a continuous period of five years without registering with the Tanzanian Diplomatic mission annually, or notifying the Minister of the intention to retain Tanzanian citizenship.

Additionally, a person who was a citizen by naturalisation or registration of another country gets deprived of that citizenship for reasons similar to any of those above, may also be deprived of their Tanzanian citizenship. It is however, hard to think of a situation where this may arise if the law prohibits dual citizenship in the first instance.

Before the Minister makes the citizenship deprivation order, he or she must be satisfied that the continuation of one's Tanzanian citizenship is conducive to the public good; and must give the person concerned a notice in writing informing him or her of the ground for the deprivation, and of his or her right to an inquiry before a Commission of Inquiry comprised of members appointed by the Minister¹¹⁶.

3.4 Due process

The law on naturalisation and deprivation of citizenship in Tanzania vests considerable discretion in the executive or Minister. The naturalisation process, despite being quite prohibitively arduous and costly, ends with the minister having to make the final decision, which may or may not be in accord with the recommendations. The Act explicitly states that the Minister's decision need not give reasons for his or her decision regarding the refusal to grant citizenship, and that decision is final and not subject to judicial review or appeal. This probably explains the scarcity of court cases challenging the minister's refusal to grant citizenship.

In contrast, the process of revocation of one's citizenship by naturalisation entails some accountability and transparency safeguards that would guard against an arbitrary ministerial order. This includes the requirement for the minister to inform the affected person of the proposed grounds for the decision and the right to an inquiry before Commission of Inquiry. These safeguards have, however, been flouted on numerous occasions leading to arbitrary deprivations of citizenship, some of which have been contested in courts of law¹¹⁷. Moreover

¹¹⁴ TCA, section 14.

¹¹⁵ TCA, section 15(1-2).

¹¹⁶ TCA, sections 15 & 16.

¹¹⁷ Examples on domestic cases provided under section 4 below.

these safeguards only apply to citizens by naturalisation and not to citizens by birth that may be wrongly deprived of their citizenship.

The African Court on Human and Peoples Rights has thus noted that under the Tanzanian law, citizens by birth do not have recourse to a judicial remedy where there citizenship is challenged¹¹⁸. In the case before it, the applicant had been born in Tanzania in 1979 and held a Tanzanian passport. In 2012, when he sought to register his marriage at the Ministry of Home Affairs, his passport was retained and he was subsequently informed that his passport had been cancelled on the ground that he was not a citizen. When he tried to make an inquiry in person at the immigration office, he was arrested on arrival, detained and beaten. A week later, he was escorted to the Kenyan border but the Kenyan authorities declared him to be in irregular status, and expelled him back to Tanzania — where he was not readmitted. The applicant was forced to live in a ‘no man’s land’ between Kenya and Tanzania. In May 2015, the applicant emailed the African Court seeking its help. The court had to determine the issues regarding the right to a nationality and not to be arbitrarily deprived of one’s nationality; the right not to be expelled arbitrarily from a country; and the right to be heard by an impartial tribunal. The court found that the applicant had been arbitrarily deprived of his nationality, as was his subsequent expulsion from Tanzania. Moreover, by law and fact, he had not been accorded the opportunity to appeal the loss of his citizenship thus violating his right to have his cause heard. In finding for the applicant, the court ordered the government of Tanzania to amend its citizenship legislation to allow for judicial remedies where there is a citizenship dispute; and to take all necessary steps to restore the applicant’s rights, including readmission to the country¹¹⁹.

3.5 Shifts in Tanzania’s political landscape vis-à-vis the citizenship regime

Prior to the enactment of the TCA, 1995, Tanzania abandoned the one-party system and embraced multi-partyism in 1992. With the political space opened, the issues of indigenisation once more gained traction, with some parties campaigning almost solely on that ground¹²⁰. Rather than specifically targeting non-African Tanzanians, this time round the debate seemed to be more geared against foreigners, particularly in the economic sector. The issue of foreigners in Tanzania disadvantaging the locals had particularly picked up after Tanzania abandoned its socialist policy and adopted structural adjustment programmes that included privatisation. Yet during the same period, Tanzania experienced an influx of refugees mainly from Rwanda and Burundi following the genocide in Rwanda¹²¹. Moreover, there was continued disgruntlement against Asians and other foreigners, who were not only economically better-off, but also were alleged to hold or have acquired Tanzanian passports illegally, thus

¹¹⁸ *Anudo Ochieng Anudo v United Republic of Tanzania*, African Court On Human and Peoples’ Rights, App No 012/2015, Judgement of 22 March 2018, para. 116 available at <http://www.african-court.org/en/index.php/56-pending-cases-details/877-app-no-012-2015-anudo-ochieng-anudo-v-united-republic-of-tanzania-details>.

¹¹⁹ *Ibid.* The African Court also gave the government 45-days within which to submit a report regarding its re-admission of the applicant. It is not clear whether this was complied with, but presently, the government of Tanzania has withdrawn its declaration allowing individuals and Non-Governmental organisations to bring cases against it to the African Court. See <https://ijrcenter.org/2019/12/05/as-african-court-releases-new-judgments-tanzania-withdraws-individual-access/> accessed on 7 December 2019.

¹²⁰ For example, the CHADEMA and later the NCCR-Mageuzi party- see Aminzade (2003), supra note 55, pp. 51-5.

¹²¹ Aminzade (2013a), supra note 5, p. 302.

being in possession of multiple passports¹²². The TCA was, in a way, the government's response to the growing opposition to its inclusive policies, thus endorsing the restrictions on acquisition of citizenship, dual citizenship and immigration¹²³. The Immigration Act, passed at about the same time contained further restrictions on issuance of work and residence permits to foreigners¹²⁴. Yet, the new citizenship law was not targeted at only foreigners, but was also later used to disqualify some politicians and revoke their citizenship status which they had either acquired through registration or naturalisation under the previous law.

Four prominent politicians were embroiled in contested citizenship status. For some politicians who had been born in Tanzania the government argued that they were disqualified as citizens under the TCA since their parents had not acquired citizenship, while one was alleged not to have been born in Tanzania but in Burundi¹²⁵. In yet another case, a prominent journalist critical of government and outspoken on corruption had his citizenship revoked by the minister on the grounds that he had failed to prove his parents' citizenship¹²⁶.

Hence the changes witnessed in the new citizenship law are very much reflection of the political, economic, social, and the real or perceived nationalistic sentiments that were happening in 1990s Tanzania.

4. Status of Ethnic Minorities

4.1 Pre-independence migrants

During the colonial period, there was massive recruitment of labour from Mozambique (under Portuguese leadership), Ruanda-Urundi and Congo (under Belgian leadership), and to a lesser extent from Kenya and Uganda, to work on Tanganyikan plantations. These migrants did not automatically become Tanganyikan on independence. Even if they came from two generations born in Tanganyika, those originating from Mozambique or the Belgian territories were not British protected persons that qualified for Tanganyikan citizenship. Migrants from British territories born in the country would have been eligible for registration as a citizen¹²⁷, and from 1962 the law also provided for those originating from certain other African non-Commonwealth countries (those where liberation struggles were underway) to register as Tanganyikan¹²⁸.

¹²² R Aminzade (2013b), 'The Dialectic of Nation Building in Postcolonial Tanzania', *The Sociological Quarterly* Vol. 54 (3), p. 353-54.

¹²³ Aminzade (2013a), *supra* note 5, p. 302.

¹²⁴ The Immigration Act, No. 7 of 1995, sections 15 (6), 18-22

¹²⁵ These included Arcado Ntagazwa, a prominent politician and Member of Parliament; Azim Premji, among others. Some of these politicians later had their citizenship re-granted. Aminzade (2013a), *supra* note 5, p.304. For Ntagazwa's case there was a court case *Arcado Ntagazwa v Buyogera Bunyambo* [1997] TZCA 21; (26 August 1997); 1997 TLR 242 (TZCA); the trial court nullified the election of Mr Ntagazwa on the ground that he was not a Tanzanian but a citizen of Burundi. The Appellate court however did not delve into the subject matter of this appeal as it declared the decision of the court null and void on a preliminary objection.

¹²⁶ Africa News Service, 'Tanzania: Gov turns down journo's application for naturalisation' 15 February 2002 available at <http://citizenshiprightsfrfrica.org/tanzania-gov-turns-down-journos-application-for-naturalisation/> accessed on 7 December 2019.

¹²⁷ Tanganyika Citizenship Act, 1961, Section 2.

¹²⁸ Tanganyika Citizenship Ordinance Amendment Act No. 69 of 1962.

In the decade following independence, the Immigration Act¹²⁹ exempted from immigration controls Africans as defined by the Act¹³⁰. Section 2(4) of the Act, defined "African" to mean "a person, not being a citizen of Tanganyika, who is a member of a tribe indigenous to, Tanganyika, Kenya, Uganda, Zanzibar, Mozambique, Northern Rhodesia, Southern Rhodesia, Nyasaland, Burundi, Rwanda or the Congo Republic (Leopoldville) and includes a Swahili but not a Somali (other than a Somali who is normally resident in any of the foregoing countries)".

In the case of *Re Abdallah Salim Ali Ab-Salaam*¹³¹, the applicant sought a court order prohibiting enforcement of a notice made under the Immigration Regulations 1964 -Regulation 13, which stated that he was a prohibited immigrant and ordered him to leave Tanganyika within 24 hours. He contended that he was both a citizen and an African and, therefore, was exempted from the Immigration Act by section 2(1) (a) and 2(1) (b) thereof. Evidence was adduced that his father was an Arab and his mother half-Arab and half-Mnyamwezi. However, at various times in the past, the applicant had claimed in official applications to have been born in Muscat and to be a Muscat citizen. The court held that 'Section 1(1) of the Citizenship Act, 1961 designates persons born in Tanganyika as citizens, provided that one parent had been born in Tanganyika... Section 2(4) of the Immigration Act defines "African" as including Swahilis... Therefore, the applicant's evidence, if believed, would prove he is a citizen. His evidence here was sufficient to overcome the force of the prior inconsistent statement he had made. Therefore, he could not be deported'¹³².

In 1972, the 1963 Act was replaced by a new Act¹³³ which subjected nationals of African countries to the same requirements as other foreigners. Section 30(2) defined "alien" to mean "a person who is not a citizen of Tanzania or a Commonwealth citizen within the meaning" of the prevailing citizenship laws or citizens from the following countries: Angola, Cape Verde Islands, Comorian Islands, French Somaliland, Mozambique, Portuguese Guinea and the San Tome and Principe Islands, Spanish West Africa (comprising Ifri, Spanish Sahara, Fernando Po, Rio Irani and Moroccan Enclaves) and South Africa¹³⁴.

The significance of these immigration laws is that they created a class of persons who might have had the opportunity to register as citizens but never did despite continued residence in Tanzania. It could also be argued that had the *jus soli* provision been interpreted and applied in its literal sense, then some of these persons would actually be Tanzanian citizens by birth. The fact is, however, that they were never considered as such. Some of these persons would later be subject to expulsion and deportation when the government of Tanzania adopted a tougher stance on non-citizens or foreign nationals.

One of the most notorious moments was in 2013 when 'Operation Kimbunga' was launched and about 65,000 persons who did not have citizenship documents but might have

¹²⁹ Tanganyika Immigration Act, No. 41 of 1963.

¹³⁰ B Manby (2018), *Statelessness and Citizenship in the East African Community*, UNHCR, at p. 65, available at <https://data2.unhcr.org/en/documents/download/66807>, last accessed 10 October 2019.

¹³¹ *Re Abdallah Salim Ali Ab-Salaam*, Misc. Civ. 19-D-67; 15/6/67 as reported in *Tanzania High Court Digest* [1967] H.C.D. n.203.

¹³² In yet another similar case, *Jama Yusuph v Minister for Home Affairs*, [1990] TZHC 9; (23 July 1990); 1990 TLR 80 (TZHC), the Minister made a deportation order against the applicant claiming he was Somali. The applicant in seeking to quash the Minister's order, adduced evidence to show that he and his mother had been born in Tanzania. The respondent did not dispute these facts. The court quashed the Minister's decision on the grounds that the Minister had acted beyond his powers and in breach of the Immigration Act which did not empower him to deport Tanzanian citizens. The applicant had proved that he was indeed a Tanzanian citizen.

¹³³ The Immigration Act, No. 8 of 1972.

¹³⁴ Persons from these countries were exempted as non-alien since they were recognised under the Tanganyika Citizenship Ordinance, 1961, section 4A and the fifth schedule.

been long-term immigrants in Tanzania were expelled and deported¹³⁵. Some persons that were expelled were effectually rendered stateless¹³⁶.

Tanzania being a member of the East African Community (EAC) that accords rights of free movement and residence among member states, the matter was discussed by the EAC Council of Ministers and it was decided that the EAC Secretary General undertake a fact-finding mission; and that the governments of Rwanda and Tanzania meet on the matter; among others. This was in regard to those citizens of other EAC member states, particularly Rwanda that had been affected by the deportations. In February 2014, the East Africa Law Society (EALS) submitted an inquiry as to what remedial measures had been taken by the EAC Secretary General to resolve the issue, and learned that the two State governments had not yet met, there was no Peace and Security Council, and though a fact-finding mission took place in September 2013, the EAC Secretary General had yet to submit the findings to the relevant EAC organs. The EALS then filed a petition in the East African Court of Justice (EACJ) alleging that the prolonged inaction and failure to carry out the directives of the Council of Ministers constituted a breach of the EAC Secretary General's obligations to investigate matters relevant to the Community. In its decision issued in March 2016, the EACJ condemned the failure of the EAC Secretary General to investigate and provide redress for the illegal expulsion of immigrants, which "if its illegality was confirmed, would constitute a flagrant violation of the objectives and fundamental principles of the community"¹³⁷.

As Tanzania turns the tide against its immigrant population, there are some communities that may lie somewhere on the margins or the periphery. These include those communities that arrived much earlier particularly during the colonial labour recruitment process, who may find themselves in a more or less precarious situation as they had been ineligible for citizenship although they continued to reside in Tanzania. Most notable among these are the Comorians and the Makonde who now constitute part of Tanzanian's stateless population in Zanzibar.

4.2 The Comorians

People of Comorian origin have lived in Zanzibar which is their immediate neighbouring state and trading hub long before the Omani took over Zanzibar. Comorians arrived in Zanzibar for different reasons; some went to Zanzibar for economic and social status; from manual labourers to civil servants and religious leaders¹³⁸.

Under the 1911 decree on Zanzibar nationality, Comorians would only become subjects of the Sultan by application¹³⁹. From 1952, Zanzibari nationality was automatically attributed

¹³⁵ Operation Kimbunga was launched in September 2013 to expel "illegal immigrants" living in Tanzania without a permit - see Manby, *Statelessness*, supra note 130, page 65.

¹³⁶ See for example, R Naluyaga (2013), 'Expelled immigrants stranded as 'countries of origin' deny their citizenship', *The East African*, 21 September 2013 available at <https://www.theeastafrican.co.ke/news/Expelled-immigrants-stranded/2558-2001848-format-xhtml-sejgwg/index.html>, accessed 23 March 2020.

¹³⁷ *East African Law Society v. Secretary General of the EAC*, Ref. No. 7 of 2014, Judgment of 22 March 2016, available at <http://eacj.org/wp-content/uploads/2016/04/Referene-No-7-of-2014-Judgment-of-22-March-2016.pdf> accessed on 7 November 2019.

¹³⁸ For more information on the Comorians in Zanzibar, see I Walker (2014), 'Identity and citizenship among the Comorians of Zanzibar, 1886-1963' in A Sheriff & E Ho (eds.), *The Indian Ocean: Oceanic Connections & Creation of New Societies*: London: Hurst & Co.

¹³⁹ Manby, *Statelessness*, supra note 130, p. 63.

on the basis of birth in the Sultan’s dominions, but not to subjects or citizens of specified countries, which included France¹⁴⁰. Since Comoros was a French colony, Comorians in Zanzibar remained French subjects¹⁴¹.

The 1963 independence constitution of Zanzibar established citizenship by birth for every person born (whether before or after the commencement of the Constitution) within the Dominions of the Sultan to parents either of whom was a Zanzibar subject¹⁴². Accordingly, Comorians had to register and apply for a certificate of naturalisation¹⁴³. During the 1964 revolution, since Comorians were associated with the Arabs, they too became victims of the violence. In the aftermath and after the Union with Tanganyika, some Comorians, specifically those that had served under the Sultanate, were repatriated back to Comoros.

In the last half of the 1960s and early 1970s, Comorians were the subject of a census, a government-led crackdown on schools, also threats of expulsion unless they naturalised as Tanzanians¹⁴⁴ and dismissals from public office¹⁴⁵. Even for those that naturalised, some were later to have their passports revoked on the “grounds that they had been issued in error”¹⁴⁶. To date, although eligible Comorians may acquire Tanzania citizenship by applying for naturalisation, those that have not obtained citizenship may be considered as illegal migrants.

4.3 The Makonde

The Makonde migration from Northern Mozambique started before colonial times for reasons that included escaping mosquito and tsetse fly infestations, and raids from the Ngoni people. A large number of the Makonde, however, settled in present-day Tanzania during the colonial times when they were brought in to work on the plantations. Since they originated from a Portuguese colony, they were excluded from the nationality laws of either Tanganyika or Zanzibar. They could however apply for naturalisation under citizenship provisions of the Constitution and the law¹⁴⁷. Despite the legal opportunity to apply for citizenship, it seems like most of the Makonde did not naturalise, possibly because of their social and economic marginalisation, coupled with the bureaucratisation of the naturalisation process. Consequently, most of the Makonde remain in Zanzibar without formal recognition as citizens of Tanzania¹⁴⁸.

4.4 Long-term refugees in Tanzania

Since most African countries gained independence, they have experienced civil wars and conflicts of sorts. Most of Tanzania’s neighbours have been no exception. Conflicts in Mozambique, Rwanda, Burundi, Congo, and Uganda, to mention but some, led to many people

¹⁴⁰ The Nationality Decree, Cap 39 of 1952, section 1 (2) and Schedule 3.

¹⁴¹ Manby, *Statelessness*, supra note 130, p.63.

¹⁴² The Constitution of the State of Zanzibar, 1963, Article 1(a).

¹⁴³ Ibid, Article 3.

¹⁴⁴ Manby, *Statelessness*, supra note 130, p.63.

¹⁴⁵ T A Mohamed (2006), ‘Les Comoriens de Zanzibar durant la Révolution Okello (1964-1972)’, *Journal des Africanistes*, Vol. 76-2’ pp. 137 – 154, available at <https://journals.openedition.org/africanistes/819>, accessed on 2 October 2019.

¹⁴⁶ Manby, *Statelessness*, supra note 130, p.64.

¹⁴⁷ The Constitution of Zanzibar, 1993, sections 1(a) & 3; the Nationality Decree, 1952, sections 5 & schedule 1.

¹⁴⁸ Manby, *Statelessness*, supra note 130, pp. 64-5.

seeking asylum in Tanzania. In line with its pan-African spirit and support for liberation struggles, Tanzania welcomed refugees to stay, settling them in rural settlements. Some of the refugees eventually left the settlements where they were required to stay and mixed with the locals.

In 1979, Tanzania hosted an international conference on refugees, out of which arose some recommendations among which was: i) refugees should not be subjected to national legislative or administrative provisions relating to prohibited immigrants; ii) naturalisation as a solution for African refugee problems in cases where voluntary repatriation can no longer be envisaged and where refugees have attained a sufficient degree of integration in their asylum country¹⁴⁹.

Presumably, this conference influenced Tanzania's mass naturalisation of refugees soon afterwards. About 32,000 Rwandan refugees were naturalised in 1982¹⁵⁰. For former refugees that acquired Tanzanian citizenship through mass naturalisation, normal application procedures and fees are waived¹⁵¹. Yet another mass naturalisation drive, targeting specifically Burundian refugees who had arrived in 1972, was initialised in 2007 following the Tanzania Comprehensive Solutions Strategy (TANCOSS) adopted by the government of Tanzania in partnership with the government of Burundi and the United Nations High Commissioner for Refugees (UNHCR). Out of a total of about 200,000 Burundi refugees at the time, about 79% opted for Tanzanian citizenship while 21% chose to return to Burundi¹⁵². While the process hit some obstacles, it was resumed in 2014 leading to naturalisation of about 162,000 Burundians in what has been termed as 'the first time in history that any state had naturalised such a large group of refugee in a single move'¹⁵³. Moreover, still in 2014, about 3000 Somali Bantu refugees who had fled to Tanzania in the 1990s were also naturalised¹⁵⁴. While a significant number of certificates have been offered to those who applied for naturalisation, there are still some pending cases, while some were rejected¹⁵⁵.

In 2015, there was a change of leadership in Tanzania and while on the campaign trail, refugees from Burundi and Rwanda had been promised citizenship opportunities¹⁵⁶, the new president has since backtracked on that promise. The naturalisation process for refugees was suspended in 2017 and the President urged the Burundians to return home as peace had been restored¹⁵⁷. Of recent, Tanzania seems to be more resolved for Burundi refugees to return to Burundi¹⁵⁸. Moreover, even for those who were naturalised, they seem to live under a threat of revocation of their citizenship should they be seen or found to "misbehave"¹⁵⁹.

¹⁴⁹ Recommendations from the Pan-African Conference on the Situation of Refugees in Africa, Arusha, Tanzania, 7-17 May 1979, paras 4 (3) & 6 (5), available at: <https://www.refworld.org/docid/3ae6b37214.html> accessed 11 November 2019.

¹⁵⁰ F Markus (2014), 'Tanzania grants citizenship to 162,000 Burundian refugees in historic decision' 17 October 2014 available at <https://www.unhcr.org/5441246f6.html> accessed on 7 December 2019.

¹⁵¹ Manby, *Statelessness*, supra note 130, p. 66.

¹⁵² A Kuch (2016), 'Naturalization of Burundian refugees in Tanzania: The debates on local integration and the meaning of citizenship revisited', *Journal of Refugee Studies* Vol.30 No. 3, pp. 468-87 at 468.

¹⁵³ Ibid at p. 469.

¹⁵⁴ Markus, supra note 150.

¹⁵⁵ Manby, *Statelessness*, supra note 130, p. 67. She reports that by April 2016, 151,019 naturalisation certificates had been distributed.

¹⁵⁶ A Mkama (2015), 'Tanzania: Yes, Refugees may be Naturalised', *Tanzania Daily News*, 17 September 2015.

¹⁵⁷ Citizen reporter (2017), 'Magafuli: No citizenship for Burundi refugees', *The Citizen* 21 July 2017.

¹⁵⁸ Amnesty International (2019), 'Tanzania: Confidential document shows forced repatriation of Burundi refugees imminent' 6 September 2019 available at <https://www.amnesty.org/en/latest/news/2019/09/tanzania-confidential-document-shows-forced-repatriation-of-burundi-refugees-imminent/> accessed on 7 December 2019.

¹⁵⁹ P Siyame (2017), 'Tanzania: Nchemba tells former refugees – behave, else you forfeit citizenship', *Tanzania Daily News*, 24 August 2017.

5. The Draft Constitution and Proposed Reforms

Tanzania has formally been on course to draft a new constitution since the enactment of the Constitutional Review Act in November 2011. The Constitutional Review Commission carried out public consultations in two phases, following which it submitted the Draft Constitution in December 2013. Although the most contentious provisions seem to be those on the proposed three-tier government system in which Mainland Tanzania will have a separate government from that of Zanzibar, both operating under an overarching government of the United Republic, there are also some new proposals regarding Tanzanian citizenship.

- i. Every citizen's right to have his or her citizenship recognised by being issued with the relevant documents, such as birth certificates, national identification cards, or travel documents¹⁶⁰.
- ii. The Constitution proposes two types of citizenship acquisition: by birth and by registration. Citizenship by birth, will unambiguously be descent-based, that is, acquired where one is born whether in or outside Tanzania to parents either of whom is or both are citizens of Tanzania¹⁶¹. Death of one's parent (who is a citizen) does not affect the recognition of one as a citizen by birth even if the parent's death occurred before that person's birth¹⁶².
- iii. Citizenship by registration: The word 'registration' would be reintroduced in place of the current 'naturalisation'. Any person who has resided in Mainland Tanzania or Zanzibar for a period prescribed by law and having fulfilled all conditions thereunder, may apply for citizenship by registration¹⁶³. With regards to marriage, the draft proposes, without further elaboration, that a person who marries a citizen of Tanzania may apply to be registered as a citizen. Furthermore, if the marriage terminates, the spouse that acquired citizenship by registration should be able to retain that citizenship¹⁶⁴. The article on acquisition of citizenship through marriage is progressive in the sense that it does away with the current gender discrimination whereby only women married to Tanzanian men may apply for citizenship by naturalisation.
- iv. Citizenship acquisition for children: The draft proposes the presumption of citizenship for any child found in Tanzania, who is below seven years and is without parents¹⁶⁵.

Some of the proposals, most notably, the right to citizenship documentation, the removal of gender discrimination and the presumption of citizenship for foundlings, are undoubtedly commendable, yet the proposed draft leaves some rather gaping gaps and concerns. Regarding citizenship by registration, it is not clear whether residence alone is the key deciding factor, and if it is, what is the minimum duration required? Would long-term

¹⁶⁰ The Proposed Draft Constitution of Tanzania, draft article 37, available at http://constitutionnet.org/sites/default/files/tanzania_draft_constitution_2013-english.pdf accessed on 8 December 2019.

¹⁶¹ Ibid, draft article 55 (1-2). Unfortunately, the draft constitution neither clarifies nor attempts to resolve the status of those persons who are by law recognised as citizens by birth but have in practice not been so recognised. There is a high possibility that they will be rendered stateless if their plight wrought by the incongruence between law and administrative practice is not addressed.

¹⁶² Ibid, draft article 55 (3).

¹⁶³ Ibid, draft article 56 (1).

¹⁶⁴ Ibid, draft article 56 (2-3).

¹⁶⁵ Ibid, draft article 55 (4).

migrants, including marginalised communities and refugees, be necessarily covered by this provision? Other conditions for eligibility are not mentioned, leaving it within the purview of each government.

By inference, it seems that citizenship matters generally will no longer be Union matters but federal matters. In fact in the schedule which lays out union matters, only citizenship by immigration is mentioned. Considering that this type of citizenship has not been mentioned in the main body of the draft constitution, this is likely to create confusion as to which aspects of citizenship fall within the purview of each of the proposed tiers of government. Consequently, the draft constitution creates ambivalence over who is in charge of citizenship matters and which body or government may legislate upon it. This is all the more important because the draft constitution prescribes as qualification for a number of offices that one should be a citizen by birth coupled with descent from at least one Tanzanian parent. These offices include: president of the United Republic; vice-president; minister or deputy minister; attorney-general; chairman, deputy chairman and members of the Electoral Commission¹⁶⁶. For other offices such as Member of Parliament; chairpersons of the Commission for Ethics and the Commission for Human Rights, they only need to be citizens of the United Republic. The ambivalences under the proposed draft as to who decides on citizenship would potentially result in different interpretations as to who may or may not qualify for such offices.

In spite of the debate on dual citizenship, or precisely because of it, the proposed draft constitution does not make any mention of dual citizenship. Opinions on the issue seem to be divided, but during the constitutional review debates, it seems to have been rejected¹⁶⁷. The government seems to be taking a rather cautious approach on dealing with the issue even where it has been strongly recommended by the Law Reform Commission of Tanzania¹⁶⁸, but its non-inclusion in the constitution renders it more of a grey-area rather than reflecting the considerably more decisive stance under the current citizenship law.

The proposed draft, quite remarkably, fails to provide for deprivation of citizenship. It contains a rather perfunctory provision to the effect that Parliament will make laws for supervising matters concerning citizenship. Since it is not clear which aspects of citizenship fall under the authority of the Union Parliament and which ones fall under the authority of the federal Parliaments, this leaves room for further ambivalence and inconsistency in the laws on citizenship.

One advantage of laying out some of the key provisions on citizenship within the constitution rather than elaborating them in a dedicated citizenship law is that it provides a much needed leeway to challenge the constitutionality of any later law or action taken pursuant to a law, if they go against the general constitutional provisions. Additionally, if promulgated after a legitimate public consultation exercise, the constitutional provisions would be reflective of the widely held position on citizenship than a law passed in the ordinary course of legislative process probably would.

¹⁶⁶ See also, Kituo cha Katiba (2013), *Report of East African Consultative Theme on the Tanzania Constitutional Review Process*, p. 48, available at http://constitutionnet.org/sites/default/files/report_on_the_tanzania_draft_constitution_jan_2014_0.pdf accessed on 8 December 2019.

¹⁶⁷ Manby, *Statelessness*, supra note 130, p.14.

¹⁶⁸ P Msekwa (2016), 'The issue of dual citizenship in Tanzania – revisiting recommendations by the Law Reform Commission' *Tanzania Daily News* 8 September 2016.

A referendum to adopt the proposed draft constitution that should have been held in April 2015 was postponed and in the interim, a new president was elected who had his mind set on other priorities¹⁶⁹. All in all, the process seems to have stalled.

6. Conclusion

Tanzania's citizenship law over the years, from independence to the present has been a reflection of the popular debates seeking to promote the interests of those considered the native or indigenous Tanzanians versus whoever may not fit or is considered not to fit in that category. This is an issue that plagued Tanganyika right from before the independence day and afterwards, as well as Zanzibar, partly leading to its 1964 revolution. The indigenous or native Tanzanian was initially defined along racial lines, the Africans versus the Asians and Arabs versus the Europeans. While the 1961 Constitution of Tanganyika and the aligned citizenship law aimed for inclusivity of all persons in Tanganyika without discrimination on the basis of race, the tensions especially between Africans and Asians/Arabs, continued to fester. Moreover, Tanzania's post-independence inclusive citizenship also extended to other African nationals in the spirit of Pan-Africanism.

While Tanzania's socialist policy may partly account for the stability of country and a stronger nationalistic sense among Tanzanians, when it was abolished it brought to the fore the economic disparities between those that would later be seen as profiteering from the capitalist economy and the disadvantaged Tanzanians. The debate was now not so much guided by the issue of race, although it continued to be a factor to some degree, but one of foreign investment, foreign workers and foreigners generally, as against the local Tanzanians. Hence, citizenship laws became more restrictive to keep out foreigners or all those deemed to be foreigners. That continues to be the present situation, which is also evident in other related laws such as the National Employment Promotion Service Act, 1999; the Immigration laws, as mentioned above; and most recently, the Non-Citizens (Employment Regulation) Act, 2014.

Tanzania continues to battle with the questions of: who is a Tanzanian? Who qualifies to be a Tanzanian? To whom should Tanzanian citizenship be extended? Who should be disqualified from Tanzanian citizenship? Every country has to deal with these questions, and Tanzania's varied historical social, political and economic and ideological contexts have much shaped the country's citizenship and other related laws as they have evolved over time. While Tanzania still ponders its constitutional reforms, these are some of the recommendations and suggestions that could be taken into account with regard to citizenship.

- i. There is need for a more transparent and impartial, non-biased procedure in the grant and revocation of citizenship which is not currently the case as this discretionary power lies with the Minister. There should be an independent body to advise the Minister on such matters rather than have a body, appointed by the Minister, which may or may not review the Minister's decision. The Minister's powers need to be tempered with a more independent and impartial process in order to reduce the likelihood of arbitrary decisions.
- ii. In fulfilment of the country's commitments under the African Charter on the Rights and Welfare of the Child (ACRWC), Tanzania should introduce in its law a provision

¹⁶⁹ M Kuhengwa (2016), 'Tanzania: Draft new constitution- cautious approach by president Magufuli commendable', *Tanzania Daily News*, 16 December 2016.

presumption of citizenship for foundlings i.e. children found in Tanzania of unknown parents.

- iii. In order to combat statelessness, Tanzania should, in accordance with its commitments in the African Charter on the Rights and Welfare of the Child¹⁷⁰, accord nationality to children born in Tanzania if they cannot acquire the nationality of either of their parents.
- iv. The citizenship law in Tanzania should remove gender discrimination in relation to acquisition of citizenship on the basis of marriage to a citizen such that a Tanzanian woman is permitted to confer citizenship to her foreign husband.
- v. As recommended by the African Court on Human and Peoples' Rights¹⁷¹, the citizenship law in Tanzania ought to be amended so as to provide for a judicial redress where one's citizenship claim is denied or revoked; or where the application of any provision of the citizenship law is challenged.
- vi. While Tanzania has been commended for its mass naturalisation process of long-term refugees, it could go a step further by setting clear criteria under which long-term migrants may apply for citizenship. Simplified procedures could be put in place for the especially marginalised communities of Tanzania, such as the Comorians and the Makonde.
- vii. Considering Tanzania's migration history and multi-racial population, as well as the evolution of its citizenship law, the lawmakers should give serious consideration to the prospect of dual citizenship.
- viii. As part of the East African Community (EAC) and its commitment to greater regional integration, Tanzania should consider special dispensations to East African citizens as it did for commonwealth citizens and citizens of specific African countries in its erstwhile laws. Its formerly inclusive citizenship regime would provide a notable blueprint on how the regional body should address the issue of EAC citizenship.

¹⁷⁰ ACWRC, article 6. Tanzania ratified the Charter on 16 March 2003.

¹⁷¹ *Anudo case*, supra note 118.

