

**THE TRIPARTITE POWERS OF THE EXECUTIVE ORGAN OF
STATE IN TANZANIA**

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ABSTRACT

In the countries which follow presidential system of government President of the country is the head of state and the head of government. Since the President is the head of state and the head of government, he/she, in almost all the countries which follow that system of government, is the head of the executive organ of the state. Being the head of the executive organ of the state the President exercises three powers, which are the legislative powers, judicial powers and executive powers. This is the tripartite powers of the Executive organ of the state, which are exercised by the President of the country.

Tanzania is the country which follows presidential system of government. This is so because in Tanzania the President is the head of state, the head of government and the commander in chief of the armed forces. The President of Tanzania is elected by direct popular votes for a five years term. After election the President of Tanzania becomes the head of the Executive and exercises executive powers. Apart from exercising executive powers, the President of Tanzania also exercises legislative powers and judicial powers. The President of Tanzania therefore has tripartite powers, which are the executive powers, legislative powers and judicial powers.

This article provides a critical analysis of the tripartite powers of the Executive organ of state in Tanzania which are exercised by the President according to laws of the country. It is premised on general perception that the President of Tanzania, like in other countries which follow presidential system of government is vested with the executive powers. The analysis therefore focuses on the exercise of the executive powers. In the process, the article brings to the fore other powers of the President of Tanzania, obviously unknown to many. These are the legislative and judicial powers. The focus of the article is in Mainland Tanzania. It does not address powers of the Executive organ in Tanzania Zanzibar, the other part of Tanzania. This is so because under the framework of the Constitution of the United Republic of Tanzania of 1977, Tanzania Zanzibar has a separate Executive organ of state and distinct regime governing powers of the Executive. The main conclusion drawn from the analysis points out that despite the existence of the doctrine of separation of powers, the President of Tanzania plays part in exercise of powers in all three organs of the state.

Key words: Presidential system of government, Separation of powers, President, Presidential legislative, judicial and executive powers

1.0 INTRODUCTION

Tanzania is the country which follows presidential system of government with a written constitution, which is cited as the Constitution of the United Republic of Tanzania (CURT) of 1977.¹ The CURT of 1977 establishes the Executive as one of the organs of the state therein, other organs being the Legislature and the Judiciary.² Each of these three organs has distinct functions according to laws of the land.³ The Executive organ is composed of the President, the Vice President, the Prime Minister and the Cabinet. The Legislature, which is known as the National Assembly or Parliament, is composed of Members of Parliament. The Members of Parliament are obtained in diverse ways including elected members from constituencies, members nominated by the President of Tanzania and members from Tanzania Zanzibar.⁴ The Judiciary, which is the court structure, is made up of the Chief Justice, Justices of Appeal Principal Judges and Judges. Its main and traditional function is to interpret laws and administration of justice. This means therefore that Tanzania adheres to the doctrine of separation of powers.

Despite presence of the doctrine of separation of powers the Executive organ of Tanzania has three powers conferred to it by the CURT of 1977 and other laws of the land. For that in Tanzania and like in other countries which follow presidential system of government, the Executive exercises three powers which are legislative powers, judicial powers and executive powers.

The objective of this paper therefore is to analyze constitutional and legislative provisions in Tanzania which empower the Executive to exercise these tripartite powers. It is the aim of this article to critically expose the provisions from the CURT of 1977, legislative provisions and precedents which the Executive of Tanzania may use to exercise legislative powers, judicial powers and executive powers. The article also critically finds out that the exercise of the powers of the Executive organ in Tanzania is done by the President. So the tripartite powers of the Executive are actually exercised by the President of Tanzania. Therefore executive and presidential powers in Tanzania are intertwined.

At the end of this article it is hoped that the analysis of the tripartite powers of the Executive organ of Tanzania will provide insights to many to know who exercises executive powers in Tanzania and what other powers which the Executive organ of state in Tanzania exercises. Before embarking on this analysis, a recap on the history of the Executive organ of Tanzania is wanting.

2.0 OVERVIEW OF THE EXECUTIVE OF TANZANIA

The country which is known as Tanzania today was once known as Tanganyika and the Republic of Tanganyika. Tanganyika was once under the British Empire as a mandate

¹ Cap 2 RE 2019

² The three organs are established by Article 4(1) of the CURT of 1977

³ Article 4(2) of the CURT of 1977

⁴ Article 66(2) (a), (b), (c), (d) and (e) of the CURT of 1977

territory from 20th July 1920 to 9th December 1961.⁵ Upon becoming independent Tanganyika was a dominion country and thus it was still under Her Britannic Majesty. The independent Tanganyika had Executive composed of the Governor General who represented Her Britannic Majesty, the Prime Minister as the leader of the indigenous people, the Cabinet and the public service. As Her Britannic Majesty still had domination *Tanganyikans* struggled for full independence, the struggles which yielded Tanganyika the republic status. So on 9th December 1962 Tanganyika became the Republic. The Republic of Tanganyika had her Constitution, which was the Republic Constitution of 1962. The change from independence to Republic meant abrogation of Her Britannic Majesty to determine affairs of Tanganyika.⁶ Thus from 9th December 1962 Tanganyika got greater independence from Britain.

2.1 The Executive of the Republic of Tanganyika

The Republic Constitution of 1962 established three organs of state, which were the Legislature, the Judiciary and the Executive. The Executive of the Republic of Tanganyika was composed of the President, the Vice President, the Cabinet and the Permanent Secretary.⁷ The President of Tanganyika was elective. The elections for the President of Tanganyika were conducted in accordance with the Presidential Elections Act of 1962.⁸ The President of Tanganyika was elected indirectly.⁹ This means the public did not elect the President of Tanganyika through General Elections. The procedure was that the general public elected the Members of Parliament and then the parliament elected the President on behalf of the general public. The elections of the President in the parliament were being controlled by the Chief Justice of Tanganyika. Once the results for election of the President of Tanganyika were declared by the Chief Justice, no one was allowed to question or to petition any court of law to inquire into the results.¹⁰ This means that the courts of Tanganyika were ousted with jurisdiction to inquire into the election of the President in the Parliament.

The President of the Republic of Tanganyika was empowered to enjoy any right, power, privilege, duties and functions which Her Britannic Majesty enjoyed in Tanganyika through the Governor General. The President of Tanganyika also became the head of state, the head of the government and the commander in chief of the armed forces of Tanganyika. The powers of the President to function as the head of state, the head of the government and the commander in chief were prescribed by the Presidential Affairs Act of 1962¹¹ and the Military Forces (Consequential Provisions) Act of 1962.¹² This ended the dominion status of Tanganyika and from then onward the Republic of Tanganyika was full-fledged independent country.

⁵ Officially Tanganyika became the mandate territory of the League of Nations and was entrusted to Britain by the British Mandate of East Africa of 1920 on 22nd July 1920. As for the independence of Tanganyika see the Second Schedule to the Tanganyika (Constitution) Order in Council of 1961

⁶ Issa, O., Constitutional Law: A Guide to Beginners, Wazo Communications, Mbeya, 2016, p.220

⁷ Ibid

⁸ Act No. 40 of 1962

⁹ Section 4(1) of the Presidential Elections Act of 1962

¹⁰ Section 4(5) of the Presidential Affairs Act of 1962

¹¹ Act No.3 of 1962

¹² Act No. 11 of 1962

Article 11 (1) of the Republic Constitution of 1962 established the office of the Vice President. The Vice President was appointed by the President of the Republic of Tanganyika from among the members of parliament. This means the Vice President was the Member of Parliament first and then became the Vice President by presidential appointment. The Vice President was the principal assistant to the President of the Republic of Tanganyika and the leader of the government businesses in the parliament. Article 11 (2) of the Republic Constitution of 1962 empowered the President of the Republic of Tanganyika to elect the ministers and junior ministers. The ministers and junior ministers exercised executive functions of the government businesses falling under their ministries. There was also the Secretary to the Cabinet and the Controller and Auditor General (CAG) office. However other offices like the office of the Attorney General (AG), the Director of Public Prosecutions (DPP) and the Permanent Secretary (PS) were established by respective Act of Parliament not the Republic Constitution of 1962.

On 26th April 1964 the Republic of Tanganyika and the People's Republic of Zanzibar united and formed the country which firstly was called the United Republic of Tanganyika and Zanzibar.¹³ In December 1964 the parliament of the United Republic of Tanganyika and Zanzibar passed the law, which was the United Republic (Declaration of Name) Act of 1964.¹⁴ This law had the effect of changing the name of the United Republic of Tanganyika and Zanzibar to the United Republic of Tanzania.

The United Republic of Tanzania, in short Tanzania had two Constitutions, the first one being the Interim Constitution of 1965 and the second was the Constitution of the United Republic of Tanzania (CURT) of 1977. The CURT of 1977 was adopted and ratified by the Constituent Assembly of Tanzania on 26th April 1977 as permanent Constitution of Tanzania.¹⁵ The CURT of 1977 like her predecessors establishes the Legislature, Judiciary and Executive.

2.2 The Executive of Tanzania

The Executive of Tanzania is composed of the President, the Vice President, the Prime Minister and the Cabinet. By looking at it the Executive of Tanzania takes from the Westminster model and at the same time it takes from the American presidential system of government. As there is Prime Minister the Executive of Tanzania suggests that it is Westminster system of government while the existence of the President suggests that the Executive of Tanzania is the presidential system of government. In any case the Executive of Tanzania does not take from France although there is Prime Minister. Thus the Executive of Tanzania is, to some theorists, a presidential-parliamentary democratic system.¹⁶ For that the Executive of Tanzania has features of both sides, that is, the parliamentary system of government and the presidential systems of government. As Tanzania follows presidential-parliamentary democratic system of government, the Executive has three powers, which are legislative powers, judicial powers and executive powers. The executive powers in Tanzania are exercised by the President and thus the presidential power and executive powers are intertwined and are analyzed together. In the coming part the paper analyses the position of

¹³ Section 4 of the Union of Tanganyika and Zanzibar Act of 1964, Act No. 22 of 1964

¹⁴ Act No. 61 of 1964

¹⁵ More details on making of the CURT of 1977 see Issa, O (Fn 6), pp 247-255

¹⁶ Anyimadu, A., Politics and Development in Tanzania: Shifting the Status Quo, Research Paper, Africa Programme, 2016, p. 6

the President of Tanzania before describing tripartite powers of the Executive organ of Tanzania which are exercised by the President of Tanzania.

2.3 The President of Tanzania

The President is the chief political executive of the government and who is the head of state.¹⁷ In Tanzania the President is directly elections by the people through General Elections which are conducted after every five years, the first one being conducted in 1965. This means Tanzania follows quinquennial type of presidential elections. The Vice President is elected along with the President while other persons (Prime Minister and Cabinet Ministers) are appointed into the positions by the President of Tanzania. Of course in some circumstances the CURT of 1977 gives power to the President of Tanzania to appoint the Vice President, subject to confirmation by the National Assembly.¹⁸ Thus, although as a general rule the Vice President of Tanzania is elective, being elected as a running mate in the presidential election, he may be presidential appointee, being appointed by the President but after conformation of the National Assembly.

The President of Tanzania is directly elected by all the electorates in the country, subject to the constitutional and legislative laws. In Tanzania therefore the President is not elected by a special body like in the United States of America (USA) but rather he is obtained through direct and unswerving elections. The General Elections in Tanzania is regulated by a number of laws, some of which are the CURT of 1977, the Political Parties Act,¹⁹ the National Elections Act,²⁰ the Elections Expenses Act²¹ and the National Elections (Presidential and Parliamentary Elections) Regulations of 2015.²² Apart from these there are many other laws which, though not outlined as the electoral laws, interplay with the implementation of electoral laws. Therefore presidential elections in Tanzania are largely controlled by laws of the land.

3.0 POWERS OF THE EXECUTIVE AND PRESIDENT OF TANZANIA

Tanzania is the country which follows the presidential system of government. Being the presidential country and having the written Constitution, the President of Tanzania has many powers which are derived from the CURT of 1977, various laws and conventions of constitution. The President of Tanzania therefore discharges executive powers, legislative powers and judicial powers. It is because of this the presidency is described as the most stressful and time consuming job in the world.²³ That is why in most countries the President is required to be middle aged persons and not the person who reached the age of majority. The following parts of this article enumerate the ways in which the President of Tanzania being the head of the executive organ of state exercises tripartite powers of the Executive organ of the state.

¹⁷ Garner, B.A., Black's Law Dictionary, 9th Edition, West A Thomson Reuters Business, Dallas, 2004, p. 1304

¹⁸ Article 50(4) of the CURT of 1977

¹⁹ Cap 258 RE 2002

²⁰ Cap 343 RE 2002

²¹ Act No. 6 of 2010

²² GN No. 307 of 2015

²³ Nowaczyk, J., Presidential System of Government: Role of the President, Chicago, 2011, p. 2

3.1 Executive Powers of the President of Tanzania

The President of Tanzania is the Chief Executive and so he exercises the executive powers of Tanzania, on behalf of the state, government and the people. Thus as part of the executive powers, the President of Tanzania is the head of states, the head of government, the commander in chief of the armed forces, has power of appointment, removal power and the diplomatic power. Most of the executive powers of the President of Tanzania are actual powers. This is because Tanzania is the country which follows presidential system of government. For that the President of Tanzania is the centre of executive power and governance of the country.

The President of Tanzania is the head of states and head of government.²⁴ Since Tanzania is the country which follows presidential system of government and since the President therein is the head of state and head of government, he has actual executive powers. As the head of state and head of government the President of Tanzania exercises executive powers, which include enforcement of the state laws, appointment of executive personnel and diplomatic powers.

The President of Tanzania is the commander in chief of the armed forces of the country.²⁵ There are five different types of the armed forces in Tanzania, which are Militia, Police force, Prisons service, National service and the Tanzania Peoples' Defence Force (TPFF). Being the commander in chief of all the armed forces in Tanzania denotes that the President exercises supreme operational command and controls all the armed and military forces of the country. This means the President of Tanzania, as the commander in chief of the armed forces has military competency in relation to the operational and management of all the armed forces of the nation. But this does not mean that the President of Tanzania must be the army officer although he may wear armed forces uniforms. By wearing army uniforms the President of Tanzania does not violate section 6(1) (a) of the National Security Act.²⁶ This provision reads that;

“Any person who, for the purpose of gaining or assisting any other person to gain admission to a protected place for any other purpose prejudicial to the safety or interests of the United Republic-

- (a). without lawful authority uses or wears any uniform of the defence forces...”

From the words of section 6(1)(a) of the National Security Act it is an offence to wear the uniform of the armed forces without lawful authority. The President of Tanzania is the commander in chief of the armed forces and thus he has lawful authority to wear the uniforms of the armed forces of Tanzania. Mwalimu Julius Nyerere the first President of Tanzania once wore the uniforms of the armed forces in 1967. In 2018 John Pombe Magufla the President of Tanzania wore uniforms of the armed forces. The uniforms of the armed force present the President of Tanzania as the commander in chief of the armed forces.

²⁴ Article 33(2) of the Constitution of Tanzania of 1977

²⁵ Article 33(2) of the Constitution of Tanzania of 1977

²⁶ Cap 47 RE 2002

Although it is not constitutional or legal requirement that the President of Tanzania must firstly be army officer out of five persons who served as the President one of them, Jakaya Mrisho Kiwete who served the Presidency from 2005 to 2015 served in the armed forces of Tanzania long before turned into civilian and political life. Jakaya Mrisho Kikwete was the army officer of the TPDF and he rose through to the rank of the Lieutenant Colonel. Later on in 2005 he became the President of Tanzania through presidential elections and became the commander in chiefs of the armed forces of Tanzania.

Although the President of Tanzania is the commander in chief, he does not direct battlefields operations, but he does other things related to militarism. In exercising the power of the commander in chief, the President of Tanzania appoints military commanders and inspects parades of the armed forces. Because the President as the commander in chief appoints the military commanders, all the military commanders swear to obey the President. In exercising the power of the commander in chief, the President of Tanzania may direct the armed forces to carry out special operation within the country, retaliation invasions and can commit the armed forces to larger operations under the auspices of African Union (AU) or the United Nations (UN).²⁷ According to Minde, N Tanzania has contributed a lot in uniforms, weapons or fighters in international missions in various parts of the world.²⁸ In December 2018 the Bank of Tanzania (BoT) conducted operation purge illegal bureau de change business in Arusha by using armed forces obviously on orders from the President of Tanzania. The powers of the President of Tanzania as the commander in chief are exercised in accordance with the provisions of the CURT of 1977, the Presidential Affairs Act and the Emergency Powers Act.²⁹ It means therefore that the power of the President of Tanzania as the commander in chief is not derived by convention but by specific laws.

The power of the President of Tanzania as the commander in chief includes power to declare state of emergency. This is precisely provided by Article 33(2) of the CURT of 1977. Again the President of Tanzania has power to declare wars.³⁰ The power to declare war however is not absolute as it is controlled by the parliament as well.³¹ The President of Tanzania as the commander in chief has power to utilize the armed forces to repel attacks against the country.³² This is part of the duty of the President of Tanzania as the commander in chief of the armed forces. So the President may use the armed forces to suppress rebellions, may threat to use armed forces to maintain peace and order and may use the armed forces to fight against external invasions. It was by using this power that in November 1978 the President of Tanzania of that time Mwalimu Julius Nyerere, as the commander in chief of the armed forces, declared was against Uganda.

The President of Tanzania has power to appoint various persons into various positions as part of the executive power of the President. The power of the President of Tanzania to make appointments is provided by Article 36 (2) of the CURT of 1977. According to the words of

²⁷ Minde, N., Peacekeeping Contributor Profile: Tanzania, International Law and Policy Institute, ILPI, 2017, p. 1

²⁸ Ibid

²⁹ Cap 221 RE 2002

³⁰ Article 44(1) of the CURT of 1977 and section 4(1) of the Emergency Powers Act

³¹ Article 44(1) and (2) of the CURT of 1977 read together with section 4(1) of the Emergency Powers Act, CAP 221 RE 2002

³² Section 4(2) of the Emergency Powers Act

Article 36 (2) of the CURT of 1977, which is known as the 'authority to constitute office and to appoint officers clause,' the Presidential appointment power is in two categories. These are the appointment of principal officers and the appointment of inferior officers. The principal officers include, but not limited to the Vice President, the Ministers, the Ambassadors, the Consuls and the Judges of the high court and the court of appeal of Tanzania. The inferior officers include, but not limited to the Chief Secretaries, Permanent Secretaries of the Ministries, Regional Commissioners, District Commissioners and Regional Administrative Secretaries.

The President of Tanzania has power to appoint the Vice President in certain circumstances. The power of the President of to appoint the Vice President is provided by Article 50(4) of the CURT of 1977. This provision reads that;

“In the event that the office of the Vice President is vacant pursuant to the relevant provisions of sub-article (2) or (3) of this Article as soon as possible and in any case within a period not exceeding fourteen days after the Vice President has ceased to hold his office, the President shall appoint a person who shall be the Vice President and such appointment shall be confirmed by the National Assembly by a majority vote of the Members of Parliament.”

Article 50(2) and (3) of the CURT of 1977 provides for the tenure of office for the Vice President. In case any event prescribed in Article 50(2) (b), (c), (d), (e), (g) and (h) and Article 50(3) of the CURT of 1977 happens the President of Tanzania shall appoint the Vice President. The events are if the Vice President dies, resigns, is sworn in to be the President, is convicted of any criminal offence, is impeached by the Parliament or he otherwise ceases to hold the office of the Vice President. Thus where any one of these occurs the President of Tanzania shall be able and allowed to appoint the Vice President of Tanzania. But the President of Tanzania shall appoint the Vice President by following the words of Article 47(3) of the CURT of 1977.

Articles 50(4) and 47(3) of the CURT of 1977 as they appear today are a result of the constitutional amendments of 1984 and 1994. Prior to those amendments if the office of the Vice President in Tanzania was vacant for whatever reason the office remained unfilled until the presidential election is conducted. But the fifth and eleventh amendment to the CURT of 1977 changed the position and so now the President of Tanzania has power to appoint the Vice President, subject to the approval of the parliament. Ali Mohamed Shein served as the Vice President of Tanzania by being appointed by Benjamin William Mkapa, the President of Tanzania of that time. In July 2001 President Benjamin Mkapa nominated Ali Mohamed Shein the Vice President of Tanzania following the death of Omar Ali Juma. But Ali Mohamed Shein did not begin his duties until he was approved by the parliament of Tanzania. Therefore the 'appointment clause' in Tanzania gives power to the President thereof nomination power of the Vice President with the ultimate appointment of the nominees subject to only the approval of the parliament. This is known as dual appointment of personnel.

Despite the fact that power of the President to appoint the Vice President is subject to the approval of the parliament, the power is illimitable. This means the Framers of the CURT of 1977 gave absolute power of nomination of the Vice President. The requirement of the

approval of the parliament for the Vice President does not mean the parliament can limit the power of the President to make the appointment. The logic behind limitation of the power of the President to make appointments is not far from reach, it intends to create accountability of the President to the parliament and to check and balance the power of the Executive with a view to avoid the possibility of the Executive to abuse the power.³³ Thus, the Framers decided to put a check to the power of the President to make appointment of the Vice President against potential abuse of the power. The dual appointment scheme of the Vice President in Tanzania was created to maintain balances between the responsibility to appointments and security against abuse of the power of appointment. This means although the parliament can say no to the persons nominated by the President of Tanzania it cannot compel the President to say yes to the choice of the parliament. The appointment of Ali Mohamed Shein to the office of the Vice President of Tanzania is one of the evidences that the parliament does not have power to compel the President to nominate someone to the principal office. This is so because upon the death of Omar Ali Juma in July 2001 most of the political theorists and Members of Parliament expected that President Benjamin William Mkapa would nominate Salim Ahmed Salim or Abdulkadir Shareef to the post.³⁴ But contrary to the expectation of the majority, President Benjamin William Mkapa nominated Ali Mohamed Shein who then got super majority approval votes of the Members of Parliament. Expressing 'the disappointment of the majority' on the nomination of Ali Mohamed Shein to the office of the Vice President, the Tanzania Affairs wrote that;

*"Following the sudden death on (sic) of Vice-President Dr. Omar Ali Juma ... president Mkapa appointed on July 1 Dr. Ali Mohamed Shein (53) to take his place. According to the Guardian, President Mkapa's nomination came as a surprise to most Tanzanians including journalists who had predicted that former OAU Secretary General, Dr Salim Ahmed Salim, and Deputy Minister for Foreign Affairs and former High Commissioner in London Dr Abdulkadir Shareef would be the front runners."*³⁵

The land slide approval of Ali Mohamed Shein in the parliament, a rather unknown person by then is a confirmation that the parliament cannot compel the President to appoint anyone in the principal office. The aim of this scheme in relation to the power of the President to make appointments is to see that no unfit persons are appointed to fill in the positions in the government positions.

The 'appointment clause' as provided by the CURT of 1977 gives power to the President of Tanzania to make appointments of principal officers and inferior officers, but it does not expressly give power to the President to remove these appointees. Although the power to remove is not expressly provided in the CURT of 1977 the power is recognized in Tanzania. This is so because, as correctly said by James Madison that without the power to dismiss the

³³ JSTOR, Congressional Restrictions on the President's Appointment Power and the Role of Longstanding Practice in Constitutional Interpretation, The Harvard Law Review Association, Vol. 120, No. 7, 2007, p. 1917

³⁴ Tanzania Affairs: The New Vice President, September 1, 2001, Dar es Salaam, p. 1, available on <https://www.tzaffairs.org/2001/09/the-new-vice-president/>, accessed on 5th April 2020, at 1939 hours

³⁵ Ibid

Executive officials, the President of the country would be rendered impotent.³⁶ Thus in Tanzania the President has power to dismiss some of his appointees. Thus in order to fulfill his constitutional duty, the President of Tanzania must retain an unrestricted power to remove purely Executive officers. Emphasizing on the importance of the President of the country to have power to remove persons from any position, Krent, H. J., writes that;

“In short, the president must be able to exercise plenary removal authority over all principal officers when must critical to discharging his constitutionally assigned functions and exercising initiative in law enforcement. The power to remove enhances the president’s accountability to the public for his administration’s actions... The category of such officers presumably extends to his cabinet, but perhaps not much beyond.”³⁷

Despite that being the position of the law it is argued that the President must remove a person at least for cause. This means the inferior officers must be removed by the President for a good cause. A good cause standard prevents the President from firing the officer arbitrary or for vindictive reasons.³⁸ The President therefore must be able to articulate legitimate grounds justifying removal of the person. Although the President of Tanzania has, by convention power to remove his appointees the removal power of the President does not allow the President to remove the Vice President.³⁹ The Vice President shall cease to hold the office according to the schemes established in the CURT of 1977.

The President of Tanzania is the official head and the representative of the country in foreign nations. As such the President of Tanzania has diplomatic power and foreign affairs. This power enables the President of Tanzania to appoint Ambassador and Consul to represent the country in foreign countries and in international organization. Sending the diplomats in foreign countries is a deliberate uses of diplomacy in international public in order to communicate the foreign policy of the state.⁴⁰ It is this power which enabled President John Pombe Magufuli to restore the title of Ambassador to Costa Ricky Mahalu in March 2018. In this way the CURT of 1977 leaves the responsibility to the President of the country to take care of the interests of the nation in the international affairs, like the diplomatic relations and foreign policies. Thus the President of Tanzania is the chief diploma. As the chief diplomat, the President of Tanzania oversees the diplomatic policy of the nation and diplomatic relations with other countries.

The Vienna Convention on Diplomatic Relations of 1961 and the Vienna Convention on Consular Relations of 1963 have the force of law in Tanzania. This is so because the Vienna Conventions are incorporated in the Diplomatic and Consular Immunities and Privileges

³⁶ Encyclopedia.com, Executive Power of Removal, Dictionary of American History, The gale Group Inc, 2003, available through <https://www.encyclopedia.com/history/dictionaries-thesauruses-pictures-and-press-releases/removal-executive-power>, accessed on 15th October 2018, at 15: 09

³⁷ Krent, H. J., Presidential Powers, New York University Press, New York, 2005, p. 45

³⁸ Krent, H. J., Presidential Powers, New York University Press, New York, 2005, p. 46

³⁹ See Articles 50 (2)(a),(b),(c), (d), (e), (f) (g) and (h) of the CURT of 1977 which mention how the Vice President of Tanzania may cease to be. Removal by the President is not among.

⁴⁰ Lapan, L.E.J., The Role of the Presidency in South African Public Diplomacy, A Mini-Dissertation Submitted in Partial Fulfillment of the Requirements for the Degree of Master of Diplomatic Studies, University of Pretoria, Pretoria, 2017, p. 1

Act.⁴¹ Thus the Vienna Convention on Diplomatic Relations of 1961, the Vienna Convention on Consular Relations of 1963 and the Diplomatic and Consular Immunities and Privileges Act give power to the President of Tanzania to receive Ambassador and High Commissioners who represent their countries in Tanzania.⁴² By receiving the Ambassador and High Commissioners of foreign countries the President of Tanzania recognizes the countries or the governments they represent. By recognizing the diplomats of the foreign countries, the President of Tanzania indicates that Tanzania accepts the foreign country as the nation and state in international arena. When South Sudan got her independence on 9th July 2011 the President of Tanzania recognized the country as foreign country.⁴³ This means Tanzania recognized South Sudan as the country on her independence.

As the President of Tanzania has diplomatic power and foreign affairs, he may recognize the foreign country without necessarily approving the policies and characters of the foreign country. That is why sometimes, the President of Tanzania may accept the diplomats of the foreign country but later on he may recall back the recognition. This is because the creation of the diplomatic relationship between states is done by free consent and mutual consent of the states.⁴⁴ However, in most cases the withdrawal of the recognition of the foreign country is normally taken if there is serious diplomatic issue between the countries and it signifies high level of diplomatic relationship deterioration between the two countries, something which may lead to war.

The President of Tanzania may declare *persona non grata* any person, including the diplomat.⁴⁵ The President of Tanzania may declare the diplomat *persona non grata* if the diplomat violated the laws of the country and if he engages in espionage, drug trafficking or any other serious crimes. In 1964 soon after the union of Republic of Tanganyika and the People's Republic of Zanzibar, the President Mwalimu Julius Nyerere of Tanzania declared Robert Gordon and Frank Carlucci *persona non grata* who were American diplomats in Zanzibar and Tanganyika.⁴⁶ This is only one of examples of the power of the President as a chief diplomat of Tanzania.

When the President of Tanzania exercises diplomatic power, he serves as the chief diplomatic of his country. By being the chief diplomatic the President of Tanzania appoints Ambassadors, conducts international negotiations, establishes foreign policy of the country, acts as the national spokesperson at international level and travels abroad.⁴⁷ Although the President of Tanzania under the diplomatic power becomes the chief diplomatic of the country, it is not necessarily for the President to have background in diplomacy. But the Minister of the government responsible for foreign affairs or international relations must have background in diplomacy. Of all five Presidents of Tanzania only two had background in

⁴¹ CAP 356 RE 2002

⁴² Implementations of the Vienna Conventions in Tanzania is provided by The First and Second Schedules to the Diplomatic and Consular Immunities and Privilege Act

⁴³ The Correspondent, "Eustace as South Sudan Flag is Raised," Daily News, (Tanzania), 9th July 2011

⁴⁴ Article 2 of the Vienna Convention on Diplomatic Relations of 1961

⁴⁵ Article 9 of the Vienna Convention on Diplomatic Relations of 1961

⁴⁶ Mwakikagile, G., The Union of Tanganyika and Zanzibar: Formation of Tanzania and Its Challenges, New Africa Press, Dar es Salaam, 2016, p. 105

⁴⁷ Duga-Listana, C.E., Politics and Governance, 2010, available through <http://politicsandgovernance.blogspot.com/> accessed on 15th October 2018, at 19:28

diplomacy. Benjamin William Mkapa and Jakaya Mrisho Kikwete had backgrounds in diplomacy as they served in the Ministry of foreign affairs and international relations, respectively between 1977 and 1980 and 1995 and 2005 for Benjamin Mkapa and Jakaya Kikwete.

3.2 Legislative Powers of the President of Tanzania

The President of Tanzania is the chief Executive of the country. Yet the President has legislative powers. Thus, the President of Tanzania, as the head of state and the head of government, may legislate for the country. The legislative power of the President of Tanzania enables him to exercise political leadership by controlling the parliament.⁴⁸ The legislative power of the President may be explicitly specified in the Constitution of the country or may be impliedly provided as the inherent power of the Executive organ of the state to be able to respond to the emergency situations.⁴⁹ For example Article 62 of the Constitution of the Federative Republic of Brazil of 1988 empowers the President to enact provisional laws as a response to extra ordinary situations and urgent matters. Likewise in India the President has power to make Ordinances if he is satisfied with the circumstances of making the same.⁵⁰ But this power is exercised by the President of India when the Legislature is not in session. In this way then the President may make laws which usually are of temporal and urgent nature.

The legislative power of the President seems to be derogatory to the doctrine of the separation of powers. However, it is, under the prescribed circumstances, prudential to allow the President of the country to make the laws for the country. Bulmer, E supports the legislative powers of the Presidents by stating that;

“It is rational for the Constitutions to give legislative powers to the President. This is so because law making process by the Legislature is sometimes slow process which requires consideration and negotiations between the Members of Parliament or between the two Houses of the Legislature. Thus in situation of emergency the legislative powers given to the President provide a convenient shortcut method which enables the President to respond effectively to urgent matters-especially concerning defense and security.”⁵¹

Despite good side of the legislative powers of the President as put forward by Bulmer, E and others of the like, this article argues that the power should be used by the President where it is really necessary. This is so because frequent and excessive uses of the legislative powers by the President may scupper the doctrine of the separation of powers. For that even in emergency situation and if it is possible, the Presidents should try as much as possible to use the Legislature to make laws under certificate of urgency.

The legislative powers of the Presidents of Tanzania are in three folds, first by the Presidents being involved in the legislative process which is actually done by the Legislature, second by

⁴⁸ Bulmer, E., Presidential Legislative Powers, IDEA, Constitution Building Primer, 2017, p. 3

⁴⁹ Bulmer, E., Presidential Legislative Powers, IDEA, Constitution Building Primer, 2017, p. 11

⁵⁰ See Article 123 (1) of the Constitution of India of 1950. See also Article 99(2) of the Constitution of Argentina of 1994

⁵¹ Bulmer, E., Presidential Legislative Powers, International IDEA Constitution Building Primer, 2017, p. 13

initiating the Bills which then shall be passed by the Legislature to be laws and third by actually promulgating the laws which shall be enforceable throughout the country.

In Tanzania the Bills passed by the parliament do not become enforceable until they obtain presidential assent.⁵² This means the President of Tanzania assents to the Bills passed by the parliament for such Bills to become the laws of Tanzania. Parallel to this power, the Presidents of Tanzania also has power to veto the Bills passed by the parliament, and if the President does that the Bill shall not be the law.⁵³ For that presidential assent to the Bills passed by the parliament and the power of the President to veto the Bills passed by the parliament symbolize the legislative powers of the President of Tanzania. It means therefore that the President of Tanzania has legislative power derived from the CURT of 1977.

The process of enactment of the law of Tanzania begins by introduction of the Bill. The Bill may be introduced by individual Member of Parliament, the Attorney General or by the Cabinet Minister.⁵⁴ All the Bills which are introduced in the parliament by the Attorney General or the Minister of the government originated from the Executive organ of the state. This is so because before the Minister introduces the Bill in the parliament, the same must have been deliberated and approved by the Cabinet meetings.⁵⁵ The Cabinet meetings are mostly presided over by the Presidents of Tanzania.⁵⁶ As the President of Tanzania is the head of the Executive organ of the state, then the Bills introduced by the Attorney General or the Minister are initiated by the President of Tanzania. In case the Bills are passed by the parliament and become the laws then those laws are said to be made by the President. This is how the President of Tanzania exercises legislative power by initiating the Bills which then become the laws.

In Tanzania the President has actual power to promulgate subsidiary legislation. The power of the President of Tanzania to promulgate subsidiary legislation is provided by Article 97(5) of the CURT of 1977 and section 35 of the Interpretation of Laws Act.⁵⁷ Acting under these provisions, the President of Tanzania has made, among others, the Constitution of the United Republic of Tanzania of 1977 (the National Prosecutions Service (Establishment) Order of 2018,⁵⁸ to strengthen the role of the National Prosecutions Services of Tanzania.

3.3 Judicial Powers of the President of Tanzania

The judicial power of the President of Tanzania includes appointing the personnel for the Judiciary of Tanzania. The President of Tanzania appoints the Judges, granting pardon, giving reprieve and allows remission. In this way the President of Tanzania plays a role in controlling the Judiciary, though indirectly, in the process of managing the administration of justice in the country. So the judicial powers of the President of Tanzania do not give power to the President to deal with direct adjudicative function. This means the President of

⁵² Article 97(1) of the CURT of 1977

⁵³ Article 97(1) of the CURT of 1977

⁵⁴ See Part 8 of the Parliamentary Standing Orders of 2016

⁵⁵ Majamba, H. I, The Paradox of the Legislative Drafting Process in Tanzania, Statute Law Review, Vol. 00, No. 00, 1-13, 2017, p .4

⁵⁶ Article 54 (2) of the Constitution of Tanzania of 1977

⁵⁷ CAP 1 RE 2019

⁵⁸ GN No. 49 of 2018

Tanzania cannot indict people and cannot preside over any proceeding in any courts of law in Tanzania. This power only gives right to the President of Tanzania to indirectly manage and control the Judiciary.

In the process of exercising judicial power, the President of Tanzania appoints the Chief Justice, Justices of Appeal the Principal Judges and other judicial personnel.⁵⁹ The President of Tanzania also can remove the Chief Justice from the position of the Chief Justice.⁶⁰ But the President of Tanzania cannot remove the Justice of Appeal, Principal Judge and Judges from office contrary to the prescribed procedure.⁶¹ As part of the judicial power, the President of Tanzania has power to order or direct the transfer of the Justice of Appeal or Judge from one place to another.

Granting pardon, remission or respite to the convicts is another aspect of the judicial power of the President of Tanzania. The pardon is a presidential decision to allow any person to be absolved of guilt for any alleged crime charged as if the crime never occurred.⁶² It is argued elsewhere that the pardon may be granted at any time either before institution of the criminal proceeding but after commission of the crime, during pendency of the criminal proceedings or after conviction for the crime depending on the laws of the country.⁶³ However, in Tanzania the pardon may be granted by the President of Tanzania only after conviction for any crime.⁶⁴ This can be granted by the President of Tanzania to the person who was convicted of any offence by the court of law after due process of law.⁶⁵ For that if the person is only suspected or is not yet brought to the court of law and convicted no pardon can be granted to him/her by the President of Tanzania.

The President of Tanzania can grant pardon even to the convicts of capital offence, including convicts of treason and murder. It was in exercise of this power that in 1977 Mwalimu Julius Nyerere the then President of Tanzania granted pardon to Bibi Titi Mohamed who was convicted of treason offence.⁶⁶ In the case of *Hatibu Gandhi and Others vs. R*,⁶⁷ among the person who was convicted for treason was Captain Zacharia Hanspoppe, who was later on in 1995 released after getting presidential pardon from President Alli Hassan Mwinyi. In 2017 President John Pombe Magufuli granted pardon to sixty one death row convicts.

Elsewhere the person who is granted and accepts presidential pardon implies his confession to the offence convicted. However, in Tanzania the persons who accept the pardon do not necessarily implicitly confess guilt. It means the person may accept pardon despite the fact that he denies being guilty of the offence convicted. Nguza Viking @ Babu Seya and his two

⁵⁹ Articles 109(1), 118(1) and (2) and 112(2) of the CURT of 1977

⁶⁰ Article 118(2) (c) of the CURT of 1977

⁶¹ The procedure to remove the Judge or Justice of Appeal is provided by Articles 110A and 120A of the Constitution of Tanzania of 1977

⁶² Weihofen, P., *The Effect of Pardon*, 88 U. Pa Rev 177, 1939, p. 179

⁶³ Hastedt, G.P., *Presidential Pardon*, White House Studies Compendium, Nova Science Publisher Inc. 2007, p. 328

⁶⁴ Article 45(1) (a), (b),(c) and (d) of the CURT of 1977

⁶⁵ Article 45(1)(a) of the CURT of 1977

⁶⁶ On conviction of Bibi Titi and others, see "Tanzania Treason Trial Entering Third Week," the New York Times, 13th July 1970, on line, <https://www.nytimes.com/1970/07/13/archives/tanzanian-treason-trial-entering-third-week.html>, accessed on 13th February 2019, at 2134 hours

⁶⁷ (1996) TLR 12

sons were granted pardon by the President of Tanzania and they accepted it despite the fact that they do not confess committing the crime for which they were charged with and convicted of. This is proved by the fact that despite being given pardon in December 2017 they continued to prosecute their Application in the African Court on Human and Peoples' Rights until March 2018.⁶⁸ Since the trio pursued their Application in the African Court on Human and Peoples' Rights it means they were pleading not guilty despite receiving pardon granted to them.

By granting pardon the President of Tanzania can set free any offender who has been tried and convicted by the courts of law. The power of the President of Tanzania to grant pardon is discretionary, final and conclusive and no appeal can be made against the decision of the President in exercise of power to grant pardon. This is so because granting of pardon is not the subject of legal rights but begins where legal rights end.⁶⁹ It is granted as pure mercy and in the discretion of the President of Tanzania.

The pardon, remission and respite in Tanzania are also known as the prerogative of mercy.⁷⁰ The prerogative of mercy has been entrenched in the CURT of 1977 as a way to supplement judicial justice. This is because it is possible sometimes that through judicial justice a wrong person may be convicted and the real criminal who should be convicted may be discharged or acquitted. In view of that the pardon and prerogative of mercy are taken to be mode of attaining social justice and as the last line of defense for justice. In showing the significance of prerogative of mercy Islam, M., writes that;

“From ancient times, the power of the executive to suspend the operation of the justice system by extending clemency to an accused or convicted criminal has been a fundamental part of the criminal justice systems. Now every civilized country in its constitution or its laws provides for power to grant pardon or remission of sentence. The philosophy underlying the pardon power is that “every civilized, country recognizes, and has therefore provided for, the pardoning power to be exercised as an act of grace and humanity in proper cases. Without such a power of clemency, to be exercised by some department or functionary of a government, a country would be most imperfect and deficient in its political morality and in that attribute of Deity whose judgments are always tempered with mercy.”⁷¹

Thus, prerogative of mercy is granted to the deserving persons especially to those who were wrongly convicted or who claim to have been wrongly convicted.⁷² The conviction of the four members of one family in the famous *Babu Seya case*⁷³ raised outcry of many citizens of

⁶⁸ See the case of *Nguza Viking and Two Others vs. the United Republic of Tanzania, Application No. 006 of 2015, the African Court on Human and Peoples' Rights, Arusha, (Unreported)*

⁶⁹ See the words of Lord Diplock in the case of *De Freitas vs. Benny (1976) AC 239*

⁷⁰ Read marginal notes to Article 45 of the CURT of 1977

⁷¹ Islam, M., *Judicially Reviewing the President's Prerogative of Mercy: A Comparative Study*, Bangladesh Research Publications Journal, Vol. 7, Issue 3, 2012, p. 257

⁷² Ekwenze, S.A.M., *Presidential Pardon and Prerogative of Mercy: A Necessary National Soothing Balm for Social Justice*, Anambra State University, Igbariam Campus, Lagos, 2011, p. 2

⁷³ Citation of the case is *Nguza Viking @ Babu Seya and Three Others vs. the Republic, Criminal Appeal No. 56 of 2005, Court of Appeal, Dar es Salaam, (Unreported)*

Tanzania and in most cases it was believed that the four were wrongly charged and convicted. In December 2017 President John Pombe Magufuli granted pardon to the family. Prerogative of mercy is also one of the ways of decongesting the prisons in the country. But the President of Tanzania cannot exercise prerogative of mercy on a person who is in other programmes like probation, parole or community service which also have the purpose of decongesting the prisons.

The President of Tanzania has power to reprieve the whole of the sentence or part of it at any time and for any offender.⁷⁴ The reprieve is taken by the President as a preparation stage for granting of pardon. For that before the President of Tanzania grants pardon to the offender he may first, grant reprieve in which case the offender shall not serve his sentence awaiting for pardon.

In exercising power of prerogative of mercy the President of Tanzania is guided by the CURT of 1977, the Presidential Affairs Act and the Criminal Procedure Act.⁷⁵ Article 45(2) of the CURT of 1977 gives power to the Parliament to make law for the procedure to be followed by the President in order to exercise power of prerogative of mercy. Pursuant to this provision the parliament of Tanzania has enacted the Presidential Affairs Act which *inter alia* has provisions related to the exercise of power of prerogative of mercy. Section 3(3) and (4) of the Presidential Affairs Act requires the President of Tanzania to obtain from or consult the Advisory Committee of Prerogative of Mercy (ACPM) before he exercises his powers conferred by Article 45 of the CURT of 1977.

The ACPM is a body which is established by section 3(1) of the Presidential Affairs Act. The major function of the ACPM is to advise the President of Tanzania on exercise of the power of prerogative of mercy. The ACPM is entirely different and separate from other bodies which are established by other laws but which have somehow similar functions. For that the ACPM is different from the Parole Boards and the Community Service Committees which administer parole, community service or substituted sentence. Likewise the ACPM is not an appellate body for those who are not granted parole, community service or substituted sentence. The Parole Boards are established by the Parole Boards Act⁷⁶ while the Community Service Committees are established by the Community Service Committees Act.⁷⁷ Thus, the Parole Boards and the Community Service Committees are different from the ACPM.

Composition of the ACPM is provided by section 3(1) (a), (b) and (c) of the Presidential Affairs Act. According to this provision the members of the ACPM are the Minister of the Government, the Attorney General and other members who shall be not less than three and not more than five.

The meetings of the ACPM to deliberate on the advice to give to the President of Tanzania shall be convened by the President himself. Where possible all the meetings of the ACPM shall be presided over by the President of Tanzania.⁷⁸ So in Tanzania the President effectively

⁷⁴ Article 45(1)(d) of the Constitution of Tanzania of 1977

⁷⁵ Article 45 of the CURT of 1977, section 3 of the Presidential Affairs Act and Part IX C(b) of the Criminal Procedure Act

⁷⁶ CAP 40 RE 2002

⁷⁷ Act No. 6 of 2002

⁷⁸ Section 3(1)(c) of the Presidential Affairs Act

controls the whole process of prerogative of mercy. This argument is given basing on the fact that the President of Tanzania appoints the members of the ACPM, summons the meetings of the ACPM, presides over the meetings of the ACPM and determines the procedure of the ACPM.⁷⁹ This is so because there are no guidelines of procedures yet for the use of prerogative of mercy.⁸⁰ But again it is so purposely designed since prerogative of mercy is considered as 'pure mercy function' and thus needs to be closely supervised by the President himself. More so even if the President of Tanzania controls the whole process it is important to have the ACPM so that to avoid abuse of power by the President.⁸¹ This means it is better to have the ACPM in place and for the purpose to avoid the President of Tanzania to use pardon 'as a means by which to protect those with whom he had conspired to do harm to the state by adhering to or giving aid and comfort to its enemies.'⁸² This means despite being weak as it may be argued the ACPM ameliorates possibility of the President of Tanzania to abuse his prerogative powers.

According to section 3(3) of the Presidential Affairs Act the President of Tanzania shall grant pardon, respite or remission to the convict of murder after obtaining advice from the ACPM. The obtaining of the advice prior to exercising of the power thereof is mandatory, failure of which shall render the exercise illegal. Although the President of Tanzania is bound to obtain advice of the ACPM before he pronounces pardon, respite or remission to any death row inmate or other convict the President is not bound to follow the advice thereof. Section 3(3) of the Presidential Affairs Act reads that;

"Where any person has been sentenced to death (otherwise than by a court-martial) for any offence, the President shall cause a written report of the case from the trial judge or magistrate, together with such other information derived from the record of the case or elsewhere as he may require, to be considered at a meeting of the Advisory Committee; and after obtaining the advice of the Committee, the President shall decide in his own deliberate judgment whether to exercise any of his powers under section 45 of the Constitution."

From the words of section 3(3) of the Presidential Affairs Act there are two major things which are important to note. First if the prerogative of mercy is to be exercised in respect of the person who was convicted by the Court martial the ACPM shall not be involved. Instead the President of Tanzania shall have to receive advice from the Minister responsible for defense and national security. Second the President of Tanzania is not bound to follow the advice of the ACPM or of the Minister responsible for defense and national security. It means whatever advice the President of Tanzania receives from the ACPM or the Minister responsible for defense and national security as the case may be the decision as to whether to grant pardon, respite or remission remains in the discretion of the President himself, the

⁷⁹ Section 3(5) of the Presidential Affairs Act

⁸⁰ See argument of Counsel Rweyongeza in the case of *Mbushuu alia Domini Mnyaroje and Another vs. Republic (1995) TLR 97*

⁸¹ See examples of abuse of power of prerogative of mercy by the President in Bangladesh in Islam, M., *Judicially Reviewing the President's Prerogative of Mercy: A Comparative Study*, Bangladesh Research Publications Journal, Vol. 7, Issue, 2, 2012, pp 259-260

⁸² Kalt, B.C., *Five Myths About Presidential Pardons*, The Washington Post, 2018, p. 3

discretion which, of course, shall have to be prudently exercised, giving regards to reasonable grounds.

While it is mandatory for the President of Tanzania to obtain the advice of the ACPM if prerogative of mercy is to be exercised to the murder convicts, the President is not bound to seek and receive advice in exercising the power if the prisoner is other than murder convict.⁸³ So for other convicts the President of Tanzania may exercise his powers without even consulting the ACPM, let alone to follow its advice.

4.0 CONCLUSION

The article has revealed that despite existence of the doctrine of separation of powers in Tanzania, the Executive, which is represented by the President, exercises three powers. The President of Tanzania exercises legislative powers, judicial powers and executive powers. Essentially these powers, under the doctrine of separation of powers were to be exercised by three different organs. Under the doctrine of separation of powers the legislative powers are to be exercised by the Legislature, judicial powers are to be exercised by the Judiciary and the executive powers are to be exercised by the Executive. However, constitutional law has realized that there is a time where the President, who is the head of the Executive organ of state, must exercise all the three powers. But the circumstances under which the Executive exercises the judicial and legislative powers, being the powers of the Legislature and Judiciary are not very obvious, but only under specific circumstances. By limiting the exercise of the legislative and judicial powers by the Executive it means that the doctrine of separation of powers is still recognized and it has place even in the countries which follow presidential system of government.

The article has pointed out that Tanzania is one of the countries which follow presidential system of government. As such the Executive of Tanzania is in the hands of the President. The President of Tanzania therefore is the head of state, the head of government and the commander in chief of the armed forces. Thus the President of Tanzania may exercise all the three powers. But since the country respects democracy and respects the doctrine of separation of powers the exercise of the legislative and judicial powers by the President of Tanzania is limited both constitutionally and practically. The history has proved that the President of Tanzania hardly exercised legislative and judicial powers. More so even where the President of Tanzania exercised either of these powers, the exercise was properly carried not to impede the Legislature or Judiciary, which according to the doctrine of separation of powers, are the appropriate organs for that purposes.

It is therefore recommended that the constitutional position which allows the President of Tanzania to exercise all the three powers be maintained. However, the President must always be cautious before he embarks into exercise of the legislative or judicial powers. All efforts must be made to avoid unnecessary exercise of the legislative or judicial powers by the President. Again even where necessity for the President to exercise legislative or judicial powers arises, the President must only exercise the powers to respond to the necessity. The President of Tanzania must not go to the extent of making legislation which may abrogate realization of human rights or which create new offences which traditionally, were to be

⁸³ Section 3(4) of the Presidential Affairs Act

created by the legislative laws. The President also should be cautious before exercising his power to veto the Bill which may have duly been passed by the Legislature. This is so because vetoing of the Bill by the President reduces the Legislature into being lower than supreme organ in law making. The Legislature is, if the President frequently uses his veto against the Bills, made to be under the mercy and grace of the Executive. Again the President must avoid making judicial pronouncements which may have the effects of making decisions of the courts of law nugatory. In exercising the legislative and judicial powers the President of Tanzania is urged to think of the separation of powers and checks and balance.

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