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CONSTITUTION-MAKING IN TANZANIA: THE UNDOING OF A COUNTRY?

By Stephanie M. Burchard

Tanzania is often praised for its [peacefulness](#) and stability. Historically—and in comparison to neighbors such as Rwanda, Uganda, Kenya, and the Democratic Republic of Congo—this has largely been true. However, the country's recent experience rewriting its constitution, and specifically the drama and acrimony that has accompanied this process, could prove a catalyst for unrest before the country's 2015 general elections. These next elections promise to be the most competitive in Tanzanian history. They are scheduled to take place in the wake of a contentious constitution-making exercise that has invigorated civil society, has galvanized the opposition, and may have undermined a power-sharing arrangement between political parties in Zanzibar. The sequence of events unfolding now bears some striking similarities to what transpired in Kenya in the mid-2000s. A hotly contested constitutional referendum followed by a close and tense general election ultimately culminated in the death of more than 1,300 Kenyans and the displacement of at least 600,000. Could Tanzania be traveling down this same dangerous path?

The Decision to Adopt a New Constitution

The writing of a constitution is a crucial event in a country's history. Constitutions, even in less democratic settings, establish the formal pathways for accessing political power and serve as a loose framework for governance. Because of the significance of how a country's government is structured, these exercises can provoke strong opinions and reactions. There are multiple stakeholders, each with a vested interest in influencing the new institutional arrangement. In addition, the prerogatives of these stakeholders are often in direct conflict. The party in power, which generally has benefited from the previous arrangement and knows how the existing political institutions function, would like to keep the new dispensation as close to the previous as possible. The opposition, which has generally been excluded from power under the previous arrangement, seeks to drastically alter institutions to allow them easier methods of accessing political power. Civil society groups generally advocate for stronger protections of their rights and liberties, which often translates into restrictions on government that those seeking political power may find unpalatable.

Since the 1990s, almost every country in sub-Saharan Africa has adopted a new constitution. Some were adopted in response to demands for democracy (Ghana, Benin), some were adopted as a result of a managed regime transition (Nigeria, South Africa), and some have been adopted as part of a conflict-resolution process (Mozambique, Rwanda). More recently, countries such as Zimbabwe and Kenya adopted new constitutions in an attempt to reduce tensions and stem the wave of political violence that each had been experiencing.

Tanzania had been one of the few exceptions to this trend until recently. Instead of adopting a new constitution to facilitate the country's transition from single-party rule to multipartism in the early 1990s, the country opted to amend the most recent constitution, written and approved in [1977](#). Since Tanzania's return to multiparty politics, there have been demands from the opposition and civil society groups to redesign the constitution to provide for a more level playing field to promote true electoral competition. The opposition has long held that the 1977 constitution, written during the height of single-party rule under Chama cha Mapinduzi (CCM), [favored a highly centralized presidency](#) and has assisted the ruling party in maintaining its political dominance. For many years, there seemed to be little political will on the

part of CCM to revisit the issue. Under the current constitution, CCM has won each of the country's past four multiparty elections (1995, 2000, 2005, and 2010) by comfortable margins.

Thus, it came as quite a surprise when President Jakaya Kikwete [announced](#) after the 2010 election that the country would begin the process of drafting a new constitution. There are different views as to why Kikwete chose his second term to commit Tanzania to this process. To some, it is a function of the success of the opposition in the 2010 elections. CHADEMA (Chama cha Demokrasia na Maendeleo) specifically campaigned on a platform of [constitutional reform](#) that seemed to resonate with much of the population. CHADEMA's presidential candidate Willibrod Slaa received 27 percent of the vote to Kikwete's 63 percent—the most an opposition candidate has received since the country's inaugural multiparty elections in 1995. Others view it as an attempt by Kikwete to secure his legacy after two terms in office. That there was significant [opposition within CCM](#) to drafting a new constitution gives this interpretation some credence because Kikwete seemingly bypassed party wishes when he made the announcement.

Regardless of the motivation, the announcement was met with much enthusiasm, and for several years the process was unfolding in an inclusive and progressive manner. Unfortunately, over the past year the process has been overtaken by partisan concerns and the resultant proposed constitution has polarized political opinion and hardened divisions between the ruling party and the opposition. The proposed constitution is likely to feature heavily in the country's next general elections, currently scheduled for October 2015.

Drafts and Deliberations

The constitution-making process was formally put in motion in April 2012 when President Kikwete [appointed](#) a 30-member constitutional review commission. In a year-long consultation process, the commission, according to member [Muhammad Yussuf](#), received input from nearly 1.5 million Tanzanians who attended the commission's meetings, including more than 350,000 who aired their views directly either through speaking or writing, throughout the country.¹ The commission's [first draft](#) was presented on June 3, 2013. One of its [key provisions](#) was the establishment of a three-tier system of government (separate structures for mainland Tanganyika, Zanzibar, and a union governmental body) to replace the existing two-tier system that currently only represents Zanzibar and a union government. The structure of the union and division of government powers has been one of the most divisive issues in writing a new constitution. Opposition parties and civil society groups on the mainland have long advocated for a system that devolves power away from the central government. Zanzibari opposition parties have sought more autonomy to manage their affairs. The government, however, has consistently maintained that the current arrangement is more than adequate to meet the needs of Tanzania, that a three-tier system would be unnecessarily expensive and that a drastic change such as this could undermine national unity.

Constitutional councils at the district level were then tasked with reviewing the first draft and providing feedback to the commission. Based on this feedback, the commission released a [second draft](#) of the constitution at the end of 2013. This draft again called for a three-tier system of government. The final stage of the process—debate and deliberations—began in March 2014 when the Constituent Assembly, composed of 629 delegates from political parties and civil society, convened. Almost immediately, the debates turned acrimonious. CCM party members and their supporters had a [majority of delegates](#) in the Constituent Assembly and dominated this stage of process. They removed the three-tier provision and reinstated the current two-tier system of government. In April, Ukawa (a coalition of opposition party members and supporters, including partisans from CHADEMA and CUF) [walked out](#) of the proceedings in protest.

¹ Personal communication, October 2014.

Despite the boycott, the mandate of the Constituent Assembly was extended, and a second round of debates on the new constitution took place in August. After much criticism about the lopsided nature of the debates, Kikwete was forced to [mediate](#) the dispute over the new constitution in late August. Ukawa and Kikwete [reportedly came to agreement](#) in September. Due to the unexpected length of the process and current impasse over the content of the constitution, the reform process would be suspended and resumed only after the October 2015 elections. Even after the details of this agreement were released, the Constituent Assembly continued to meet (and collect stipends), drawing the ire of many and [calls from the opposition](#) and civil society to shut down proceedings immediately. The process continued, and after a few more weeks it became apparent that the deal struck with Kikwete must not have had broad approval within CCM because on October 8, Kikwete [formally received](#) a draft of the new proposed constitution from the Constituent Assembly. This draft was approved [without the participation and consent](#) of Ukawa. The Attorney General announced that the constitutional referendum will take place on [April 30, 2015](#). As things stand, Ukawa has promised it will [campaign against the new constitution](#).

Reception in Zanzibar

Although there is little history of ethnic or religious conflict in Tanzania, the country is quite heterogeneous. There are an estimated 120 different ethnic groups, and the country has almost equal numbers of Muslims and Christians. The estimates of the Muslim population of Tanzania range from [30 percent to 50 percent](#). Exact figures are unknown, in part, because that country has chosen to not include information on religion in any census conducted since the 1960s. In Zanzibar, however, it is believed that [well over 95 percent](#) of the islands' residents are Muslim. The union between Zanzibar and mainland Tanzania has long been [tense](#), with Zanzibaris often feeling marginalized by the dominance of mainland politics and mainlanders feeling like Zanzibaris receive preferential treatment. Although the population size of Zanzibar is only a fraction of that of the mainland (approximately 1 million residents versus 45 million), the islands have their own parliament and president, who are elected separately from those of the union parliament and union president.

While constitutional deliberations were taking place at the political elite level, there has been tangible evidence of grassroots dissatisfaction with the status quo in Zanzibar. In 2011, a radical Islamist group emerged, demanding Zanzibari independence. UAMSHO, or the Association for Islamic Mobilization and Propagation, began as a Zanzibari Islamic charity in the 1960s. It officially registered as a non-governmental organization in 2001 and radicalized only recently. UAMSHO advocates Zanzibari independence and espouses [support for Wahhabism](#). It has called for a public code of conduct for tourists that would include modest dress and abstention from alcohol.

After several violent elections in Zanzibar in 1995, 2000, and 2005, a peace agreement was signed in 2009 that created a permanent power-sharing arrangement between the ruling party and its closest competitor so as to prevent violence in future elections. Ironically, [some believe](#) the power-sharing agreement reached between the government and opposition prior to the 2010 election has contributed to increased attacks in Zanzibar. The perceived cooptation of the opposition by the ruling party may have facilitated the radicalization process—some claim that UAMSHO emerged to fill the political vacuum left by the opposition when it joined the ruling party. Because of the so-called [government of national unity](#) (GNU) in which the ruling CCM and opposition Civic United Front (CUF) share power—regardless of who wins elections—there is no party left to advocate for Zanzibar's interests. CUF, while a national party, enjoyed the vast majority of its support from voters in Zanzibar. In addition, there are rumors in Zanzibar that politicians, [particularly those from CUF](#), are operating indirectly through UAMSHO because they can no longer officially oppose government policy.

The [constitutional review process](#), which began after the 2010 election and the GNU, seems to have galvanized UAMSHO. In 2011, UAMSHO began holding rallies and frequent [anti-government protests](#),

advocating dissolution of the union. These sentiments for more autonomy are widely shared among Zanzibari. Based on data from an [Afrobarometer](#) survey conducted in 2012 in Tanzania, roughly 44 percent of mainlanders said there was no need to substantially alter the structure of the union with Zanzibar, whereas almost 90 percent of Zanzibaris wanted a change in the status; 23 percent of Zanzibaris surveyed wanted a complete dissolution of the union.

Looking to 2015

There are a few important ways in which this constitutional review process will likely affect the 2015 elections. The consultative process provided much needed civic education to many Tanzanians, some of whom had never before seen the 1977 constitution.² More Tanzanians are invested and engaged in politics than ever before. Perhaps this will translate into higher voter turnout in 2015; voter turnout in 2010 at 40 percent was the [lowest the country](#) has experienced since the return to multipartyism. In addition, the question of the nature of the union between the mainland and Zanzibar has been re-raised and will likely continue to be debated around the country. Interestingly, CHADEMA and CUF were able to find common ground on this matter as both parties now support a three-tier system. If this ad hoc coalition—formed solely for the purposes of advocating for their vision of the new constitution—were able to persist, the opposition could pose a serious challenge to CCM hegemony in 2015. On October 26, CHADEMA, CUF, and two additional parties (NCCR-Mageuzi and NLD) signed a [memorandum of understanding](#) to contest the 2015 elections together.

[Twaweza](#), a civil society organization established to promote change in East Africa, conducted a survey of Tanzanians in September 2014. It reports that Tanzanians are [very dissatisfied](#) with politicians at all levels and of all parties. Almost half of Tanzanians surveyed (47 percent) said that they would vote their current MP out of office. Only a slight majority (51 percent) said that if the election were held today they would vote for the CCM candidate for president, a decline of 10 percent from a 2012 survey. These results suggest that the next election will be close, perhaps closer than any election in Tanzanian history.

Previous elections, while having the veneer of legitimacy, have been problematic. The 2010 election, while hailed as free and fair by most observers, was not without flaws. According to the [EU observers report](#), although the vote was free, fair, and peaceful, the secrecy of the vote was compromised in up to 32 percent of polling places; electoral bodies on mainland and Zanzibar may not have been impartial; parts of the tallying process were not transparent; and constituent boundaries seemed gerrymandered. In addition, the quality of the voter registration list was called into question because it was released just two weeks prior to elections without sufficient time for it to be inspected. Domestic observer reports also raised several red flags. According to the Tanzania Election Monitoring Committee (TEMCO) [report on 2010 elections](#), several by-elections prior to 2010 elections had been marred by violence, and violence broke out in several instances between CCM and opposition supporters. Deaths were reported in Maswa, Dodoma and Dar es Salaam.

Elections in Zanzibar have historically been violent. [Irregularities and vote rigging](#) were alleged in the 1995 elections, which led to riots, the resignation of the leadership of the Zanzibar Electoral Commission, detention of opposition members on charges of treason, and several fatalities. There were at least [20 deaths after the 2000 elections](#). In 2005, in response to reports that the ruling party was [busing in voters](#) from other constituencies, there were riots on the day of voting in Zanzibar. After several iterations of peace negotiations, [the 2010 elections were peaceful](#), but it is unclear if the peace will hold in 2015, especially if CUF and CHADEMA's coalition endures.

² Personal communication, September 2014.

Similarities to Kenya?

The current situation in Tanzania is, in some ways, reminiscent of the [Kenyan 2005 constitutional impasse](#). The constitution-making process there was also long and drawn out, and the draft that was presented to voters little resembled the document the party in power and the opposition had agreed to. A vigorous “no” campaign was waged by the opposition, and the proposed constitution was rejected by 58 percent of Kenyan voters. The subsequent general election held in 2007 saw the same pro-constitution and anti-constitution coalitions form. The animosity between the parties was so deep and hardened after the constitutional referendum that it, in part, contributed to a wave of [post-election violence](#) that gripped the country and threatened to bring Kenya to the brink of civil war. Post-election violence erupted amid significant electoral irregularities and the perception that the 2007 election had been stolen. Long-standing ethnic and land disputes provided the fuel that some politicians needed to stoke more than a month of violence. The situation required international mediation to resolve.

Unlike elections in Kenya, however, Tanzanian elections have never before reached the levels of violence that have generally accompanied Kenyan elections. The 1992 and 1997 Kenyan elections were both extremely violent, with as many as 2,000 fatalities combined. Even elections in Zanzibar, violent as they have been, have never reached such heights. In addition, ethnic rivalries have frequently caused friction in Kenya. Unscrupulous politicians have manipulated and stoked ethnic identities to win elections. Fortunately, this has not yet been the case in Tanzania, but it is not outside the realm of possibility that the nascent UAMSHO, or some other group, could be used TO carry out violent attacks before or after the election.

Although there are many differences between Kenya and Tanzania, the constitution-making process can have long-reaching and unanticipated effects, especially when the process is perceived as unfair and one-sided. At this point in the process, there are several warning signs that the next several months in Tanzania will be, at the very least, tense. Compounding these problems, very little international attention is being paid to this situation. Beyond the work of the United National Development Program, not much domestic and international work is being done to assist the country in its preparations for the many electoral tasks it is about to undertake. Over the next year, the country must conduct a voter registration exercise that should reach an estimated 20 million people, hold its constitutional referendum, and then hold general elections. Any breakdown in this process, any perceived slight or sign of electoral malfeasance (intentional or not) could provide the spark that leads to widespread violence and instability.

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