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Constrained Agency: Civil society's Search for Political Space in the
Saga of Zambian Constitution Making

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Abstract

Now on its fifth constitutional review process since independence, Zambia continues its slow move towards a more comprehensive form of liberal democracy. The role of civil society organisations in the process of democratisation and the promotion of governance is a subject of great interest. The Oasis Forum, a coalition of several prominent organisations, has drawn particular attention for its advocacy against President Chiluba's attempt to run for a third term, which was prohibited by the constitution. This paper seeks to describe the role of broader civil society engagement in the constitutional review process, which has remained relatively unexamined. New coalitions of unprecedented scope have been forged in this fifth process. This study offers an analysis of the evolution of civil society engagement in constitution making, a contextualized evaluation of the constraints civil society continue to face, and a comprehensive description of the ongoing constitutional review process. Our principal research activities have been a review of relevant scholarly literature, semi-structured interviews, and a review of non-governmental organisation (NGO) publications and communications. This field research was conducted over the course of June and July of 2013, in Lusaka, Zambia.

Abbreviations

CA	Constituent Assembly
CCZ	Council of Churches in Zambia
CGC	Collaborative Group on the Constitution
CRC	Constitutional Review Commission
CSO	Civil society organisation
EFZ	Evangelical Fellowship of Zambia
ESC	Economic, social, and cultural rights
IA	Inquiries Act
IFI	International Financial Institution
IMF	International Monetary Fund
JCTR	Jesuit Centre for Theological Reflection
LAZ	Law Association of Zambia
MMD	Movement for Multiparty Democracy
MP	Member of Parliament
NCC	National Constitutional Conference
NGO	Non-governmental organisation
NGOCC	Non-Governmental Organisation Coordinating Committee
SAIPAR	Southern African Institute for Policy and Research
UNIP	United National Independence Party
UNDP	United Nations Development Fund
ZCTU	Zambia Congress of Trade Unions
ZEC	Zambia Episcopal Conference

ZGF Zambian Governance Foundation

ZNBC Zambian National Broadcasting Corporation

Background

Zambia has undergone four constitutional reform processes since its independence but has not successfully adopted a constitution that guarantees the more comprehensive tenets of liberal democracy. Recent reform processes have followed a similar path. A Constitutional Review Commission (CRC) created under uncertain legal conditions has produced a draft document whose method of adoption and content is unprotected from executive modification. Incoming administrations have not upheld promises to meaningfully address past errors and structural issues, unwilling to abdicate the inherited executive authority.

When in 2011 Zambia saw the first transfer of power under the multi-party dispensation - from the Movement for Multiparty Democracy (MMD) to the Patriotic Front (PF) - in two decades, civil society and the public were optimistic about the new government's constitutional vision. Until recently, civil society engagement in this constitutional review process had been mostly limited to government channels through a series of conventions organised by the Technical Committee. The process has, however, recently seen a resurgence of interest in the flaws in the process and legal structure. Civil society organisations (CSOs) have coordinated several advocacy efforts addressing the constitutional adoption process and their recommendations.

Still, the coalition's ability to successfully agitate for a framework for adoption remains to be seen. Significant challenges exist; the final draft constitution to be completed in December remains unprotected from executive interference, no time frame beyond December exists, and the government refuses to address issues of adoption until after the

document is released. Yet an emerging focus on mass mobilisation and sensitisation arose in stakeholder interviews, which may show promise in engendering public ownership and accountability in the process.

Research Question and Rationale

A critical focus of our research was to investigate how various CSOs have conceptualised themselves, rationalised their actions, and developed advocacy strategy. Due to the apparent consensus regarding the ineffectiveness of processes guided by the Inquiries Act (IA), our initial assumption was that the move by President Sata to create a Technical Committee, in name only, was an abuse of executive power, one that “completely ignores mistakes and lessons of the past” (Ndulo, 2011, pg. 4). In each stakeholder interview, this issue was carefully and repeatedly pressed to try to elucidate the disconnect between this consensus that the IA would doom a constitutional process and the lack of more substantive, visible engagement after the creation of the Technical Committee.

We entered this process without having been inundated by the simplistic, normative conceptions of civil society as agents for liberal democratic reform and good governance. Yet, as western health students with limited experience with political and development theories, it was convenient to latch on to these generalised and simplified conceptions of democratisation and the role civil society plays as democratic actors. This was a bias we recognised early in our research process, and combated throughout. Initially, our research was framed by an overestimation of civil society’s autonomy and ideas on how to most effectively agitate for various liberal democratic initiatives. These preconceived notions were guided by our own naïveté and our initial perspective, strongly grounded in the

condemnation of the current process by Zambian Constitutional law experts Muna Ndulo and Chaloka Beyani (Ndulo and Beyani, 2011).

Throughout our research, we attempted to avoid simple evaluations of the success or failure of civil society. Doing so would have necessitated certain tacit assumptions, namely that civil society is acting as a cohesive unit whose people-driven strategy will advance liberal democratic ends to improve governance and service delivery. Plenty of literature already exists attempting to “prove or disprove the liberal narrative of civil society as a force for development and democratisation... with enthusiastic optimism and cynical critiques often going head-to-head” (Hayward, 2010, pg. 2).

Our own empirical investigation guided us in the direction of an alternative model based on Hegel, Marx, and Gramsci (Howell & Pierce, 2001). This conception argues that “the democratic role of NGOs is circumscribed by wider social, economic and political cleavages” and that “both positive (like moral/intellectual) and negative functions (like ideological/political) coexist within the domain of civil society” (Mercer, 2002, pg. 11, ; Patnaik, 2012, pg. 579). Ultimately, it was this nuanced model that most effectively articulated and framed what our empirical research was uncovering and led us to our research question:

How have efforts to seek political space by the Oasis Forum, the Civil Society Constitution Coalition, and the coalition led by Panos evolved in light of both international and domestic forces shaping their agency in the current constitutional reform process? How have these forces conspired to constrain as well as empower?

The Oasis Forum continues to advocate for a people-driven constitutional review process in a second constitutional review process since their historic mobilisation against President Chiluba's third term. This study provides us the opportunity to survey the extent to which the Oasis Forum and other CSOs have matured and adapted to constraints in political space.

Methods

Our principal research activities have been a review of relevant scholarly literature, semi-structured interviews, and a review of non-governmental organisation (NGO) publications and communications. Through an attachment to the Southern African Institute for Policy and Research (SAIPAR) and the Zambian Governance Foundation (ZGF), we have had access to relevant documents and have been able to connect with various stakeholders. We conducted eight semi-structured stakeholder interviews in total, with representatives of the Technical Committee, church mother bodies, and members of the Oasis Forum and the Civil Society Constitution Coalition. This field research was conducted over the course of June and July of 2013, in Lusaka, Zambia.

Conceptions of Civil Society and Democratisation

Beginning in the mid-1990s, civil society entered mainstream development discourse, achieving a near "magic bullet" status as the solution to the "development challenges left by failed state- and market- driven initiatives" (Hayward, 2010, pg. 18). Buzzwords like "democracy", "good governance", and "social capital" became well entrenched within the

international donor community. All these western liberal democratic conceptions were accepted to be universal and absolute. They stemmed from what Howell and Pearce (as cited in Hayward, 2010, pg. 19) refer to as the “mainstream approach” to civil society. The approach is founded on liberal enlightenment thinkers like Locke, Fergusson, and Tocqueville. Hayward describes the basic assumptions of this model:

1) the primacy of the autonomous, rights-bearing, self-interested individual; 2) the emergence of a public sphere in which the “rules of the game” are dictated by reason and mutually agreed upon; 3) mutual recognition between individuals of individual autonomy and a shared concept of justice and moral order; 4) the synthesis of collective solidarity and individualism; 5) economic development and the problem of social solidarity (Hayward, 2010, pg. 19).

The third wave of democracy brought about a new realm of activity distinct from the state that sought to embody the interests and will of the people. This emerging civil society was said to be key in the strengthening of democracy, “encouraging wider citizen participation and public scrutiny of the state” (Mercer, 2002, pg. 8). When executed correctly, a strong civil society possesses the agency to influence public policy based on consensus built around public will. Bringing together NGOs, church bodies, and other public institutions, civil society possesses the potential to advantageously use their autonomy to network and collaborate to create a consolidated group of actors (Mercer, 2002). Through an emphasis on pluralism, civil society’s growth in numbers inundates the arena of democratisation, bringing various voices to the forefront of discourse with the

state. However, despite the potential in civil society to demand accountability of the state, a weak, fragmented civil society can “also have a detrimental impact on democratic consolidation” by causing “civil disruption and conflict and a lack of ‘democratic culture’” (Mercer, 2002, pg. 8).

This emergence of civil society in Zambia presented the opportunity for foreign aid to provide resources and funding to facilitate this discourse, but also introduced new agendas into the mix. Over US\$300 million are channelled into civil society funding from United States Aid (USAID) annually (USAID, 2012). When donor visions are factored into the activity of CSOs, it is important to investigate the extent to which donor groups influence civil society’s impact on governance and democratisation (Hearn, 2001).

The Role of Foreign Aid in Zambia’s Democratisation

In the international donor and debtor community, space for sovereignty can be severely limited by the influence of global politics. Recipient nations are fundamentally constrained when donor agendas must be considered in the process of democratisation and civil society’s ability to effectively influence democratic processes can be severely inhibited. Gould (2008) describes this condition of subjection of a recipient country to the strategic decisions of donors as “subsidiary”, a remnant of colonial times. In this relationship, recipient countries are often “hostage to...decisions made in cabinet meetings and corporate boardrooms on distant continents” (Gould, 2008, pg. 275-276). Donor involvement in democratic processes can greatly hinder the sovereignty of a nation when the consideration of donor agendas “hinders domestic ownership of decisions, and prevents politicians from showing responsiveness to society’s felt needs and expressed

wishes” (Burnell, 2004, pg. 398). This obstructs the way of representative democracy and accountability of a government to its people, a contentious issue that Zambia has struggled with since independence.

In Zambia, foreign aid to support good governance and democratisation has gone to both civil society and government directly. However, aid has increasingly been channelled directly into government initiatives, like United Nations Development Fund’s (UNDP) financial support of the six-month extension for the Technical Committee (*Lusaka Times*, 2013). This trend has also been seen in the past as having a decisive role in constitution making.

A key leader in one of the church mother bodies revealed his perception that bilateral funding was integral in initiating the last constitutional review process under President Mwanawasa:

[Mwanawasa] told us in all uncertain terms that he was not going to do anything about the constitution...at a Consultative Group meeting (CG) meeting in April 2003 was the first time Mwanawasa said he would address the constitutional issue...the day before we had a meeting with the donor parties on the issue of the constitution, and they told Mwanawasa that they would not put in money if he did not make the constitutional agenda the top priority (Informant 1, personal interview).

The currently changing aid architecture places a heavy emphasis on aid effectiveness in development co-operation. As outlined in the Paris Declaration on Aid Effectiveness (2005), a main commitment expected of partner countries is to “exercise leadership in developing and implementing their national development strategies through broad

consultative processes” (OECD, 2005, pg. 3). Under these expectations, donors channel their funds through the government, giving them control over its external resources. However, this “distribution of aid budgets has greatly enhanced the financial power of the executive office vis-à-vis civil society and the political opposition” (Rakner, 2011, pg. 1112). The danger in this system lies in the constraints it places on civil society when these resources are inaccessible, constraining civil society’s ability to participate in representative democracy.

These challenges were articulated in our interview with the Non-Governmental Organisations’ Coordinating Council (NGOCC), an umbrella organization with a broad membership of “NGOs and community based organisations (CBOs) active in addressing gender and development challenges” (NGOCC member directory). Our informant argued:

In terms of aid modalities, institutions or governments that are providing support to civil society, some of the aid effectiveness measures are that the resources are provided through the Minister of Finance and the Minister of Gender and Child Development. In our context, in Zambia, civil society cannot access money from government, so there we have been constrained. That has left us a bit vulnerable, and now we rely on two or three major donors. The money is readily available but they would rather give directly to government (Informant 2, interview).

Civil society’s dependence on funds channelled through the government reduces their autonomy and may reduce incentive to speak out against abuses of power in fear of jeopardising their funding.

Aid Channelled through Civil Society

Challenges also exist when civil society receives aid directly from donors. In this system, civil society must answer to the timeline and agenda of those providing the much needed resources. When their ability to effectively and timely mobilise for advocacy measures is dependent on the timelines of external donors, organisations are often left prioritising to cater to donors, rather than focusing on advocacy efforts. The Capacity Building and Networking Coordinator of NGOCC expressed the challenges associated with the recent trends in foreign aid.

We have seen quite a number of our traditional donors also changing their priority focus areas...We've had to adjust our plans time and time again...It's a challenge for advocacy work, to undertake some of these activities, like mass mobilisation, we need a lot of resources. Like now, we have a big plan to do these public forums all over the country but these forums need resources. So obviously it becomes a challenge if these resources are not provided... (Informant 3, personal interview).

In efforts to sensitise, disseminate information, translate constitutional documents into local languages, and mobilise on a large scale, organisations are often hindered by the lack of resources, further constraining their agency in relation to the government. Despite the essential nature of sensitisation in preparation for a referendum, particularly when the burden of passage requires 50% of all *eligible* voters, donors have exhibited a hesitancy to support these efforts (Ndulo & Beyani, 2011). "The key here is that truly accountable

democracy clearly cannot be bestowed by foreign donors according to their own funds-distribution timeline” (Hayward, 2010, pg. 81). The promise of a representative democracy is then compromised as civil society is unable to effectively present their voices.

NGO Act of 2009

The agency of civil society may be restrained in the future through government attempts to regulate NGOs. Through the NGO Act of 2009, NGOs are placed under a number of restricting guidelines that allow government to regulate their activity. Despite a separate system of registration already in place, the act requires organisations to register through the government, allowing them to selectively accept and reject certain NGOs. NGOs must also answer to a governmental regulatory board; in a recent communiqué, various NGOs expressed their rejection of the act on the grounds that the NGO Registration Board would stifle civil society engagement. The Board would be given the authority to monitor and approve the work of NGOs. The composition of the Board was also a source of contention; the 15 members of the board would be exclusively “appointed by and subject to the veto power of the Minister for Community, Mother, and Child Health” (NGOCC, Brief Analysis of Critical Provisions, n.d. pg. 2). This act is seen by much of civil society as a means to constrain the influence of organisations and has thus been largely ignored. As of now, the government has not seriously enforced the act, but the potential threat remains.

The History of Zambia’s Constitution-making

The history of constitution making is part of the collective memory of Zambia and is routinely used by NGOs to preface statements and press releases. Take for example this statement in a recent Oasis Forum Communiqué: “This was held against the background of

failed processes of adopting a people-driven constitution in the past 17 years” (Matale, 2013, pg. 1). An understanding of Zambian constitution making is crucial in order to analyse the motives and strategy behind broader civil society activity.

As Zambia gained its independence from the British through the Act of Independence by the British Parliament, the former colonial power established Zambia’s first constitution in 1964. It served as a preliminary, malleable document that welcomed future amendments and featured an extensive Bill of Rights that granted every Zambian citizen a set of basic human rights. For almost a decade, Zambia operated as a multiparty democracy led by the first Republican President, Dr. Kenneth Kaunda. As opposition to the ruling party grew, Kaunda pushed for the establishment of a single-party system (under the United National Independence Party, or UNIP). In 1972, a Constitutional Commission, led by the then-Vice President, Mainza Chona, was created to recommend the details and structure of the single-party system. The Commission toured the nation, collecting the opinions and sentiments of the general public through hearings. Amassing the written and oral submissions of the people, the Commission presented its proposal to the government. Certain recommendations were accepted, such as the single-party state, and others, like the recommendation to limit a President to two consecutive terms, were rejected, resulting in the Constitution of 1973. This constitution also featured a Bill of Rights, as in the 1964 Constitution, but it “[was] rendered practically meaningless in the context of a one-party state with sweeping executive powers” (Ndulo, 1996, pg. 266). Despite the proclamations from UNIP leaders that the one-party system would allow for a balance of power, the experience was near opposite, as this system of government ultimately gave party officials

the power to push through their preferred candidate to elections and hinder any candidates seen as threats.

The 1973 Constitution also introduced a Leadership Code designed to curb corruption amongst all people in government leadership posts. However, the implementation of the Leadership Code proved to be shoddy, as “exemptions were granted, and evasions were frequent”, and, unfortunately, this led to the “untoward zeal on the part of political leaders to retain power at all costs” (Ndulo, 1996, pg. 268). This development set the groundwork for future manipulation of the Constitution by political leaders to maintain power.

For almost two decades, Zambia existed under the one-party system with Kaunda as President, until various groups began to express their disappointment with UNIP. By October 1991, Zambia returned to a multi-party democracy, with MMD opposing UNIP. The government also appointed a Constitutional Commission chaired by Member of Parliament (MP) Mvunga that toured the nation just as the Chona Commission did in 1972. Just as in the past, the government selectively accepted and rejected certain recommendations and prepared the document for Parliament. During this constitutional review process, Zambia saw the introduction of the 50+1 requirement for Presidential elections as well as the two-term limit for Presidential office. Soon after the constitution was enacted, Kaunda’s 29 years of office peacefully came to an end as the MMD’s candidate Frederick Chiluba garnered a majority of votes during the 1991 elections.

In 1996, news of Kaunda’s attempt to return as President spurred the undertaking of another constitutional review process. Yet another Constitutional Commission was formed and chaired by John Mwanakatwe. The work done by this commission was said to could have contributed greatly to Zambia and its developing democracy “had [the

recommendations] been adopted” (Ndulo, 1996, pg. 272). Among its recommendations was that the Constitution be adopted through a Constituent Assembly (CA) and that a referendum be required for future amendments in order for the document to “stand the test of time” (Ndulo, 1996, pg. 272). In 1996, the MMD government revised the constitution to make Kaunda ineligible to stand for the presidency . . This successfully impeded Kaunda from candidacy in forthcoming elections.

Recent History and the Genesis of the Oasis Forum

The proliferation of civil society organisations during the early to mid-1990s in Zambia followed the transition to Multiparty Democracy in 1991 and garnered tremendous interest from an entire spectrum of development actors (Alexander, 1997). During this period, a new type of NGO emerged that was mostly issue oriented and comprised of a professional staff. This new form of organisation came to challenge the supremacy of membership-based organisations like the Zambian Congress of Trade Unions (ZCTU) that had exercised considerable influence during one party rule. The ZCTU, crucial in the transition to multiparty democracy, saw its influence wane as the MMD shifted from a democratic movement to a party with increasingly authoritarian tendencies. International donors saw these new CSOs as “suitable vehicles for external democracy support” (Rakner, 2011, pg. 1108). Democracy assistance, mostly funding channelled through professional groups of these types, came to be an enormous portion of overall development assistance (Rakner, 2011).

In 2001, then-President Chiluba initiated a campaign to amend the constitution to permit him to run for a third term. The fledgling multiparty democracy was facing a

significant crisis. In response, leaders of three church mother bodies, the Law Association of Zambia, and the NGOCC met at the Oasis Restaurant in Lusaka to strategise and develop a response. The group, coined the Oasis Forum by media, issued a declaration asking the incumbent, President Chiluba, to respect the constitution and cease efforts to run for a third term (Informant 4, personal interview; Gould, 2008). In the months that followed the Oasis Forum groups mounted one of the successful mass mobilisations in opposition to the bid for a third term. Cleverly, the Forum initiated an effective green ribbon campaign and honking strategy that provided an easy and visible outlet for the public's dissatisfaction with the bid for a third term. Chiluba refrained from attempting to seek a third term and his MMD successor, Mwanawasa, won the presidency by a razor thin margin. The Oasis Forum viewed it as a tremendous success (Hayward, 2010).

The Forum's activities and momentum did not cease there. They turned their attention to reforming the very document whose potential manipulation gave rise to the loose coalition. In June 2001, 17 members from the five respective organisations met at a lodge outside of Lusaka, where they consolidated their alliance and established a new agenda. The forum unveiled an ambitious plan with the overseeing of the drafting and adoption of a new constitution serving as their central priority. They opposed the use of the Inquiries Act to create a new constitutional review commission (CRC) and instead proposed the creation of a technical committee to review the findings of previous commissions and produce a draft constitution for review and consideration by a CA (Gould, 2008).

Ignoring these requests, President Mwanawasa created yet another CRC chaired by Willa Mung'omba. The commission again went province-to-province surveying the views and soliciting submissions. No framework or law existed to facilitate the process with

government suggesting that it was inappropriate to develop a legal framework until views regarding adoption had been properly solicited (Kabanda, 2008). The current Justice Minister Wynter Kabimba recently echoed a similar sentiment in an interview with QFM radio regarding a framework for constitutional adoption for the current constitutional process. Asked about the status of the creation of a Referendum Commission, Kabimba responded that the status of the commission would depend on the format of the final draft constitution (2013).

Ultimately the Mung'omba commission would issue several recommendations regarding the adoption process based on the consultation and submission process. The commission suggested adoption through a CA whose findings would be legal and binding and subject to approval by National Referendum. The commission specifically reasoned against a National Assembly because of overwhelming submissions supporting the use of a CA and because the constitution would be "susceptible to manipulation by the Executive" (Report of the Mung'omba Review Commission, 2005, pg. 799).

In 2007, the National Constitutional Conference Act passed by Parliament provided for the creation of a National Constitutional Conference to adopt the constitution instead of a CA. Unsure of its mandate, the Conference left the Bill of Rights intact to avoid referendum. The draft document was introduced in parliament but failed to gain the necessary majority required to amend the existing constitution (Ndulo and Beyani, 2011).

Early Civil Society Engagement in the Ongoing Process: Failed Promises

Following the defeat of the draft constitution produced by the NCC in 2011, Zambians had high hopes that PF's presidential elect, Michael Sata, would deliver a new constitution within 90 days of taking office as promised. Some of civil society aligned with the PF, hopeful for the long-awaited constitution, including vocal constitution critic Simon Kabanda. His organization, the Citizens' Forum, actively campaigned on behalf of PF, and Kabanda was later selected to serve on the Technical Committee. The PF and Michael Sata ascended to power with the issue of the constitution playing a decisive role in the election.

On November 16, 2011, the President appointed a Technical Committee without an act of Parliament or any legal framework to either guide the process or establish a means of adoption. Civil society organisations were aware of the danger of vesting this much authority over the process in the executive, as evidenced by Simson Mwale in a briefing from the Jesuit Centre for Theological Reflection (JCTR) in 2005: "And yet all stakeholders agree that the bone of contention in constitution-making is in fact the continued application of the Inquiries Act" (pg. 6). This Committee, which according to Ndulo and Beyani (2011) is all but a CRC in name, was greeted by a wide variety of responses from civil society. Contention arose around certain issues of the Committee's composition, such as the exclusion of the Evangelical Fellowship of Zambia (EFZ) and eminent Zambian constitutional experts, and the inclusion of certain members criticised for their harmful influence on prior unsuccessful constitution attempts (ZNBC, 2011; Shishuwa, 2011). This reflects an Oasis Forum ideal observed by Hayward (2010) that "more diversity of representatives and more balance in numbers of representatives of different potential interest groups are offered as a vision of a 'popular process'" (2010, pg. 71).

The public and the media acknowledged the shortcomings of the process, expressing concerns about the “composition of the committee, their terms of reference and the fact that the final product is to be submitted to the government”; these factors were said to “point to a pessimistic outcome” (Shishuwa, 2011, pg. 1). Despite these criticisms, the general tone that emerged from most of our interviews was that the committee deserved ample time, opportunity, and support to present their final document.

To what extent this notion of giving the Technical Committee this chance to produce a sound document amounts to inaction, or a failure to effectively engage, or a more tactful strategic manoeuvre is up for debate. In a policy brief regarding funding of coalition activity on the constitution, the Open Society Initiative of Southern Africa (OSISA) characterised civil society activity in the process as weak and worrisome:

Of growing concern is the current state of the public, civil society, and media, which has demonstrated a passive attitude to the whole constitutional review process, leaving the successful completion or failure of the constitutional process in the hands of those in power (2013, pg. 1).

While there was no large scale coordination among various CSOs, it would be, at best, generalising to describe the attitude of civil society as “passive” and, at worst, an outright incorrect characterisation. In our interviews, a diversity of perspectives emerged. Key leaders among the Oasis Forum, church bodies, and the labour movement provided explanations or alternative narratives for both theirs, and others’, apparent “passivity”. Explanations for inaction ranged from jaded disillusionment to acceptance that the new

ruling party, although well intentioned, eroded initially due to inexperience and was working to “normalise its policies”, as described by the Deputy Secretary General of ZCTU (Informant 5, personal interview).

One bishop and founding member of the Oasis Forum suggested that attitudes towards this most recent constitutional reform process may differ along generational lines, stating that one “would be hard pressed to find a single founding Oasis Forum member active and engaged in this current process”, and that perhaps some younger members of civil society are involved because they naively “think they can twist arms” or are “interested in winning grants” (Informant 4, personal interview).

Mwale of JCTR described this sort of disillusionment back in a 2005 brief:

past experiences have tended to harden attitudes against the “Commission of Inquiry” process rather than take advantage of the opportunity they offer, e.g., by actively participating during submissions and offering in-put to the Commission’s Interim Reports when they are released for public scrutiny. And so, others have openly and vehemently opposed the process in spite of government assurances to heed to people’s demands (pg. 7).

The spokesperson for the Oasis Forum, likewise, painted a very different picture of early civil society engagement. He stressed that “we were there from the very start” and keenly aware that “you can have a good content, but if the process itself is not well managed, and safeguarded, and guaranteed then you risk having a futile process” (Informant 4, personal interview). Without a legal framework to stipulate the time frame or road map, “a series of statements were issued to attempt to draw attention to these flaws” (Informant 4, personal

interview). With subdued acceptance, the spokesperson acknowledged the limitations of advocacy and the authority of the executive to subdue most efforts.

The Civil Society Constitution Coalition (CSCC) also stressed their early advocacy in the process:

CSCC formed in response to the announcement by the Republican President that he was constituting a technical committee to draft the constitution. We asked ourselves how can we take advantage of this opportunity to ensure we have a constitution that reflects our needs and aspirations, and how can we engage this committee that has been together...Initially we were up to 22 or 24 groups across the broad range of non state actors including CBOs, big NGOs, faith based groups, trade union groups. We were very fortunate that there was a variety of Cooperating Partners to support our work. The CSCC agreed to form a Memorandum of Understanding related to coalition activity, we then collected various documents from member organisations on the constitutional process, and we put together a basic minimum document (Informant 6, personal interview).

The Consultative Process and the Formation of the 260+ CSO Coalition

Zambian civil society has continued to engage in the constitutional review process, putting on a concerted effort. This effort seems to be a result of widespread agreement amongst civil society that the formal Consultative Process undertaken by the Technical Committee has been sufficiently “people-driven”. The same sentiment was expressed in past constitutional processes. As Hayward describes in reference to the last draft document: “The Mung’omba CRC report and draft constitution were widely accepted as the

baseline indication of the collective will of Zambians...it would be worth interrogating the forms of popular participation and engagement employed to determine the direction of this collective will” (Hayward, 2010, pg. 67).

A spokesperson of the CSCC suggested that the consultative process did represent a form of popular participation in discussion of the value of the consultative process: “I do not regret having a National Convention because it more or less validated what had come through the grassroots, the districts and provinces, except maybe in one or more instances” (Informant 6, personal interview). Here popular participation is conceptualised as a consensus between the views expressed by civil society at the national level and those shared by the rest of Zambians as judged by these local conventions.

A leader in the NGOCC shared a similar perception:

We organised a conference and called women from all walks of life the marketers, the trade union, the medical professional, the traditional leadership, professional women bodies, civil society, and the private sector. It was quite diversely represented with 750 delegates. The first idea was to harmonise the various positions that we had made through different CRC and to bring on board, and build a consensus on the critical gender aspects that we wanted to see in the constitution. It culminated into a declaration that we recognise the importance of women in the process and expressed the gender specific minimums that we wanted to see from a gender responsive constitution. And the final purpose was to inform and sensitise the different constituencies...Our aim was to make sure our 102 delegates in the consultative process was carrying the same message at all levels (Informant 2, personal interview).

Civil society appear to display that their mandate to represent and advocate on the behalf of greater Zambian society is based on a consistency of resolution across all levels of the formal consultative process. Effectively the Consultative Process, which was criticised broadly by civil society as somewhat of an unnecessary exercise (as views had already been sufficiently surveyed), was used as an instrument to display that their role and their activity is indeed “people driven”. While the leader of CSCC simply expressed satisfaction with the consistency in point-of-view, the NGOCC clearly took great effort to harmonise views across all levels of the consultation process. Whether these views truly represent those of broader Zambian society or the NGOCC was simply able to effectively instil its views to its delegates, creating an illusion of consensus, is an area worth further exploration.

Ultimately, nearly two years into the process, civil society cooperation culminated in the formation of a coalition featuring both new leadership and new approaches to advocacy around the constitutional process. Going beyond the precedents set by civil society in the past, the Panos Institute Southern Africa acted as a neutral party, using this stance as an advantage in bringing together over 260 CSOs involved in the process. Panos and other key organisers recognised the lack of coordination between several players that coexisted in the sphere of civil society, as well as the utilised potential in the variety of organisations dedicated to the process. They took the opportunity to gather these efforts in one place, in hopes of amplifying their voices. By drawing on each organisation’s competitive strengths, this coalition has been able to delegate tasks accordingly.

The coalition features a myriad of civil society organisations, ranging from church bodies to youth movements. It is inevitable for challenges to arise when coordinating such

a diverse group of organisations with varying agendas around a single issue. The spokesperson in the CSCC admitted that a portion of the newly formed coalition were motivated by the allure of funding and by “having their name included in the list of over 260 CSOs” (Informant 6, personal interview). Still, he considered this coalition, despite some imperfections, to be an incredible triumph over significant self-interest that had existed in the past:

Some complained that CSCC was strongly aligned to the Technical Committee. Some groups complained that we were too close to the Technical Committee...and so some civil society groups complained that we had received undue funding from the donor groups. On account of these two issues some civil society groups decided to go in alone...We all want to be seen doing something, and if we become part of a bigger group then we may not be seen as active. We put our egos aside and [eventually] said the constitution was much bigger than any of our groups (Informant 6, personal interview).

On 20 May 2013, the coalition came together in Chisamba for a meeting to formulate advocacy strategies. The persistent enthusiasm and dedication that civil society has demonstrated through meetings such as this points to the fact that civil society has largely adopted the philosophy “to not throw the baby out with the bathwater “, and instead, adapting advocacy measures to fit this review process. One development that has come from this Chisamba meeting is the production of a Basic Minimums document, a culmination of the selective sacrifices and prioritisations by the coalition. Despite their

success in these developments, there is also consensus among this coalition that problems with the process continue to persist, including the lack of legal framework surrounding the process, which threatens the viability of a draft constitution.

Civil Society Recent Participation

Zambian civil society's advocacy strategies have demonstrated a degree of adaptation to the circumstances and constraints of the current constitutional process, employing both new and old measures to agitate for change. The Oasis Forum has long upheld the ideal that "process protects content", utilising this mantra in its advocacy strategies. Recently, this ideal has spread to be the focus of many civil society organisations, reflected in the sheer scope of the 260+ CSOs that met to demand a legal framework for adoption. An effort of this scale is hardly spontaneous, but rather the culmination of past efforts to coordinate between civil society organisations.

In the last constitutional review process, civil society's ability to influence the constitutional review process was limited due to delayed efforts during the process. When the NCC Act was passed in 2007, it "incited opposition from a broader range of CSOs", leading to the formation of the Collaborative Group on the Constitution (CGC). This group was established as an extension to the Oasis Forum, and included SACCORD, FODEP, AVAP, and others. The actions of this group lacked momentum from previous mobilisation, and were largely reactionary, in response to government mandates.

For example, an "Alternative Roadmap" was released by the Oasis Forum in response to the release of a five year timeline from the government, and the Red Campaign was a reactionary measure encouraging Zambians to call their government "off-side" and give

them a “red card” for their refusal to enact a CA. At this time, civil society did not focus on pre-emptive and coordinated efforts to mobilise on a large scale, and instead, focused on response measures. Although the Oasis Forum undertook pre-emptive efforts to advocate for adoption by CA, broader civil society was not well integrated into these efforts. The passage of the NCC Act was thus crucial in bridging this gap and coordinating civil society efforts at a large scale.

The recent formation of the coalition led by Panos is significant in that a group of such scope and size is unprecedented. The coalition also demonstrates a certain level of sophistication in its strategy compared to the Collaborative Group and the Oasis Forum in the past process. Their activities include:

- Creation of a Basic Minimums Document
- Development of a Private Members Bill to develop a legal framework to govern the adoption process
- Development of a shadow roadmap and budget for a national referendum
- Sensitization via provincial engagement forums and radio programs
- Response strategising

None of these activities are particularly novel, aside from the development of a Private Members Bill, which is a strategy that has never been employed on the issue of constitutional adoption (mostly because there has never been as significant a legal void). The demand for adoption via referendum is well voiced and, unlike the last process where government and civil society debated the nuances of adoption via Constitutional Conference versus Constituent Assembly, the expectation of a referendum is more easily

articulated to the public. The spokesperson of the CSCC also reveals refinement from previous engagement and a reflection on the previous boycott of the NCC by the Oasis Forum in a discussion of strategy:

I think the efforts for having a legal framework will continue although, if the Private Members Bill fails, I'm not sure what other alternatives exist. One would be withdrawing from the process entirely, which the government would probably welcome because it would permit them to gain the constitution they want (Informant 6, personal interview).

While the idea that broader civil society had become more engaged on the issue of constitution was well expressed among stakeholders, the limitations and naïveté of some organisations just beginning to study the issue was also expressed. Key leaders in ZCTU expressed fears that this would open up the process to possible government interference:

Maybe the mode of adoption will be that of removing whatever clauses they maintain are contentious. I have heard this suggestion...Why don't we remove contentious clauses, adopt the constitution, and then begin debate on the contentious clauses. I have also heard that the referendum just vote on the contentious clauses while the constitution would be tabled in parliament. We do not know which direction they will take it in. These are the areas that we have to strategize (Informant 5, personal interview).

The Minister of Justice, Wynter Kabimba, issued a statement back in April that the government cannot constitute a referendum commission until the format of the draft

constitution is done. This, along with the recent rejection of a Private Members Bill created by the coalition, lends credence to this possibility. There is a real fear of government still having unseen influence over the constitutional process (NCC, 2009). One concern is that government could derail successful mass mobilisation by cleverly altering the referendum procedure in a seemingly “people-driven” manner, but still fail to address the flaws in process (NCC, 2009). This clearly shows the constraints that still exist for civil society despite learned lessons and the subsequent strategy employed by the coalition.

Conclusion

Civil society and its proliferation are itself products of broader social and economic forces that continue to empower the executive and constrain civil society. Although bilateral partners were crucial in past constitutional processes, shifting aid modalities now favour direct state funding, which weaken civil society’s ability to agitate for constitutional reform. Because constitutional reform could seriously challenge executive authority and potentially eliminate the “widespread corruption, neo-patrimonialism, systemic unemployment, mass poverty and outside exploitation” that has been said to plague African states, it is a process that is fiercely contested in Zambia (as cited in Hayward, 2010, pg. 115). Civil society’s efforts to finally reign in the power of the executive through constitutional reform and break the cycle of “elite habituation” are consistently thwarted by the executive’s overwhelming power (as cited in Hayward, 2010, pg. 115). This itself is a product of the failure to redraft the constitution for multiparty democracy.

It is not easy to articulate all the broader forces that mediate constitution making, how they constrain civil society, or if these constraints themselves even prevented actors from successfully agitating for constitutional reform. However, what remains clear is that civil society has failed to secure meaningful concessions in this process, and that the deep structural issues that have long been articulated by constitutional law experts and civil society figures persist in this process. The inability of civil society to effectively facilitate dialogue on these issues on a broad scale, or secure these concessions in the fifth process, suggest nothing less than their marginalisation in Zambian politics. The failure to secure concessions thus far in this process speaks to constraints in political space that appear to be advancing rather than being challenged. The creation of an unprecedented coalition in size and scope does, however, represent one such challenge. There has been some innovation in strategy and structure by CSOs, but it remains to be seen what impact this coalition will have on the process: if this coordination will force the administration to stand by its commitment to not interfere, and finally create a formal timeline for adoption by referendum in order to produce a document that will stand the test of time. With the PF emboldened and civil society limited in its opportunities to achieve the “procedural changes necessary to actualize the promises of liberal democracy”, it is the opinion of the authors that this process will again be an exercise in futility (Hayward, 2010, p.122).

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Appendix A: Chronology

Date	Event	Description
23 September 2011	Michael Sata of the Patriotic Front party elected President.	Campaigning on a platform promising a new constitution within 90 days, Sata successfully defeated Rupiah Banda of the MMD party gaining 41.98% of the vote over Banda's 35.42%.
16 November 2011	President Michael Sata appointed a technical committee to draft a new Constitution for the Republic of Zambia.	<p>Under "executive powers vested in him by the current Republican Constitution" Sata named 20 experts to a Technical Committee. Only 17 would eventually sit, with three bishops refusing the invitation. A notable exclusion was any representative from the Evangelical Fellowship of Zambia, one of the three church mother bodies of the Oasis Forum.</p> <p>The legal basis would later be clarified by the Technical Committee themselves as under the "exercise of the executive powers, vested in the President under Articles 33 and 44 of the current Constitution".</p>
1 December 2011 through 9 December 2011	First Session of the Technical Committee	The Technical Committee devised its Rules of Procedure and Programme of Work including setting time frames for the completion of their work.
30 April 2012	The Technical Committee releases the First Draft Constitution.	The committee begins to undertake work to provide a simplified document and to translate it into seven major local languages.
30 April 2012 through 31 July 2012	Community Consultative Forum	<p>The technical committee provided 92 days for self-organised community validations of the first draft constitution.</p> <p>Comments and recommendations from meetings were to be submitted to a district</p>

		<p>collection centre for examination at District Conventions.</p> <p>Submission of comments by members of the public for consideration at District Conventions was also possible at this time through a wide variety of forms including electronically, through mailing to the Secretary of the Technical Committee, and by dropping off of submissions at either the office of the Technical Committee, the National Assembly Constituency office, or the District Commissioner's office.</p>
17 September 2012 through 12 October 2012	Series of District Conventions	District Conventions were arranged across all provinces with the stated purpose of evaluating the draft document, considering comments from Community Consultative Forums, submitting a report of comments and recommendations for use at Provincial Conventions, and electing three persons to represent the district at the Provincial Convention.
3 December 2012 through 2 February 2013	Series of Provincial Conventions	Each province conducted a convention with the stated purpose of evaluating the draft document, considering comments from District Conventions, and submitting a report of comments and recommendations for use at the National Convention, Sector Groups Convention, and for use by the Technical Committee. Four persons were selected to represent each Province at the National and Sector Group's Convention.
2-5 April 2013	Sector Groups Convention	Representatives of NGOs and other stakeholders who share common specific interests met to evaluate the draft document and make recommendations. Represented organisations included the LAZ, ZARD, NGOCC, ZARAN, MMD, UNIP, YWCA, Mahatma Gandhi School, ACEZ, ZICA and several churches. (See <i>RESOLUTIONS OF THE SECTOR GROUPS</i>)

		<i>CONVENTION</i>).
10-17 April 2013	The National Convention Commences	Representatives of a broad range of stakeholders met and validated each article of the constitution. Resolutions were issued for each article of the draft constitution suggesting deletion, amendment, or retention of some element along with a written justification.
31 December 2013	Final draft constitution deadline	The Technical Committee was initially expected to release the Final Draft document on June 31. Minister of Justice Wynter Kabimba granted the technical committee an extension until December. The extension will be funded by the UNDP.

*The above table was composed using a combination of Technical Committee press releases, Consultative Process Guidelines, and Consolidated Provincial and National Conventions Resolutions, and Sector Groups Resolutions. All documents freely available at the Technical Committee's website: www.zambianconstitution.org.

Appendix B

The Oasis Forum	The Collaborative Group on the Constitution
<ul style="list-style-type: none"> · Council of Churches in Zambia (CCZ) · Evangelical Fellowship of Zambia (EFZ) · Law Association of Zambia (LAZ) · Non-Governmental Organization Coordinating Committee for Gender and Development (NGOCC) 	<ul style="list-style-type: none"> · Oasis Forum · Southern Africa Centre for the Constructive Resolution of Disputes (SACCORD) · Foundation for Democratic Process (FODEP) · Anti-Voter Apathy Programme (AVAP) · Transparency International Zambia (TIZ) · Press Association of Zambia (PAZA) · Citizens Forum · Zambia National Women's Lobby Group · Zambia Alliance of Women

*As described in Hayward (2010).

Appendix C

Civil Society Constitutional Coalition	Panos Institute Facilitated Coalition
<ul style="list-style-type: none"> · ActionAid International Zambia; · Anti-Voter Apathy (AVAP); · Citizen’s Forum; · Civil Society for Poverty Reduction (CSPR); · Hope for Human Rights; · Infotainment Movement; · Jesuit Centre for Theological Reflection (JCTR); · Save the Children; · Southern African Centre for the Constructive Resolution of Disputes (SACCORD); · Transparency International Zambia (TIZ); · Treatment Advocacy and Literacy Campaign (TALC); · Zambia Civic Education Association (ZCEA); · Zambia Community Based Natural Resources Management Forum (ZCBNMF) · Zambia Land Alliance (ZLA) · Zambian Union of Financial Institutions and Allied Workers (ZUFIAW/FFTUZ) · Women and Law in Southern Africa (WLSA) 	<ul style="list-style-type: none"> · Oasis Forum · Non-Governmental Organisations Coordinating Council (NGOCC) · Southern African Centre for the Constructive Resolution of Disputes(SACCORD) · The Civil Society Constitution Coalition · Foundation for Democratic Process(FODEP) · Jesuit Centre for Theological Reflection (JCTR) · Transparency International Zambia · Yatsani Radio · Zambian Voice · Media Institute of Southern Africa (MISA) · Sectoral Advisory Group on Governance (SAG) · Caritas Zambia under the Zambia Episcopal Conference (ZEC) · Action Aid · Community Transformation · National Youth Constitutional Assembly · Zambia Land Alliance · Council of Churches in Zambia (CCZ) · Civil Society for Poverty Reduction

	(CSPR) · Young African Leaders Initiative · Zambia Council for Social Development
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*Over 260 organisations gathered in Chisamba in a meeting facilitated by Panos Institute Southern Africa. The organisations listed here include the leadership of the coalition assembled from the initial brief produced by OSISA regarding funding (2013). CSCC organisations were obtained from a *Lusaka Times* article (2013).