

Zambia

Democracy and Political Participation

DISCUSSION PAPER



A review by AfriMAP
and the
Open Society Initiative for Southern Africa

Neo Simutanyi

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For further information, please contact:

AfriMAP/OSISA
PO Box 678
Wits, 2050
Johannesburg
South Africa

www.afrimap.org
info@afrimap.org

www.osisa.org

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Preface

The Africa Governance, Monitoring and Advocacy Project (AfriMAP) was established in 2004 by the Open Society Foundations to monitor the observance of standards relating to human rights, the rule of law and accountable government, by both African states and their development partners.

African states have undertaken increasing commitments to good governance since the African Union replaced the Organisation of African Unity in 2002. Among these commitments are the provisions of the Constitutive Act of the African Union (AU), in which member states agree to promote human rights, democratic principles and institutions, popular participation and good governance. Other newly adopted documents include the New Partnership for Africa's Development (NEPAD) and the African Peer Review Mechanism (APRM), the Convention on Preventing and Combating Corruption and the Charter on Democracy, Elections and Governance. AfriMAP's research is intended to facilitate and promote respect for these commitments by highlighting key issues, and providing a platform for national civil society organisations to engage in their own monitoring efforts.

AfriMAP's methodology is based on standardised reporting frameworks that link respect for good governance and human rights to development that benefits poor people. Through a process of expert consultation, AfriMAP has developed reporting frameworks in three thematic areas: the justice sector and the rule of law; democracy and political participation; and the effective delivery of public services. The frameworks included questionnaires, among them the questionnaire on democracy and political participation that guided this report. The questionnaire can be accessed from the AfriMAP website – www.afriMAP.org – in the section tabbed 'Our research'.

The reports are written and researched by experts from the countries concerned in close collaboration with the Open Society Institute's network of foundations in Africa and AfriMAP's own staff.

Drafts of this report were reviewed by a range of experts, with their comments and criticisms reflected in the final content. The aim is that the reports should form a resource both for activists in the country concerned, and for others working across Africa, to improve respect for human rights and democratic values.

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Neo Simutanyi wrote the discussion document, and Derrick Elemu together with Charity Musamba co-authored the report. All worked diligently to produce a high quality report whose credibility and relevance is undoubted. Jeanette Minnie, of Zambezi FoX, an international freedom of expression and media consultant, did a thorough editing job, adding value with her in-depth regional knowledge of the political and democratic landscape of the sector. The AfriMAP/OSISA team of Roshnee Narrandes, Jeggan Grey-Johnson and Ozias Tungwarara supported the process by reviewing drafts, facilitating the validation workshop and providing administrative support.

Introduction

Zambia has enjoyed relative peace since independence in a region characterised by conflict. However, it has had a chequered political history. The country has witnessed three political systems in less than three decades. First, a brief multiparty system (1964–1972) bequeathed by a departing colonial regime in 1964. Then an authoritarian one-party state (1973–1991) and return to a multiparty system in 1991.

Since 1991, Zambia experienced unprecedented political developments. The country held six general elections, including a presidential by-election. There have been four peaceful presidential successions during this period. The holding of regular elections and respect for the constitution on presidential term limits gives Zambia a proud democratic record in the Southern African region. However, elections have not been without controversy. The 1996 and 2001 elections were considered by independent observers as not having conformed to international standards. Losers petitioned the 1996, 2001 and 2008 presidential election results challenging the legitimacy of elected incumbents. It has been widely acknowledged that Zambia's democratic deficits may largely be explained by a defective Constitution and electoral rules. Successive power-holders have also not vigorously attempted to address and reform these problems. It can be argued that there seems to be either unwillingness or inability to reform the deficient political and constitutional order to bring it in line with changed democratic realities.

The experience of constitution-making in Africa demonstrates that not only have constitutions failed to regulate the exercise of power, but that reform processes have almost always been dominated by those in power to the exclusion of the general populace. Essentially constitutional reform initiatives have not tampered with provisions that entrench executive powers, personal rule and centralised decision-making.

Since 1972, there have been four constitutional reform initiatives, culminating in three Constitutions (1972, 1991 and 1996). Apart from the 1972 Constitution which introduced a one-party state, the 1991 and 1996 Constitutions aimed to enhance citizen participation and democratic rights under a multiparty system. However, the 1991 and 1996 Constitutions fell short of overhauling the inherited one-party constitutional regime. As a result there were growing demands for an entirely new constitution that would not only stand the test of time, but would also involve the general populace. It is against this background that the late president Levy Mwanawasa embarked on a constitutional reform process in 1993. However, he did not live long enough to see it through. He died in 2008 and his successor Rupiah Banda continued this constitutional initiative.

The process, which took more than seven years, was finally aborted in early 2011 when Parliament failed to approve it because it lacked backing by the required two-thirds majority of members.

Following the election of President Michael Sata and the Patriotic Front (PF) in September 2011, a Technical Committee on the Constitution was established to draft a new Constitution addressing the deficiencies of the previous Constitution. The Technical Committee has produced a draft Constitution and is currently conducting provincial consultative meetings with stakeholders on its provisions. There is little optimism that this current constitutional reform process will culminate in a new Constitution before the end of term of the current government. The Committee lacks proper legal backing and has no clear road-map as to when the process should end. Further, there is an apparent reluctance by the incumbent government to see to it that popular demands, such as the 50% plus one requirement for the election of president, vice-president as running mate and appointment of ministers from outside Parliament, are incorporated in the new Constitution.

There are also grave doubts as to whether popular demands for a national referendum to approve the draft Constitution will be honoured by the government. If fact, even if a national referendum was to be held, it is most unlikely that the result will hold, as it is inconceivable that the voter turn-out of eligible voters will exceed 50%, which is a constitutional requirement. Since 1991, voter turn-out in general elections as a percentage of eligible voters have only averaged 32.5%. Therefore, insistence on the holding of a national referendum may be a futile exercise, which does not guarantee the approval of the Constitution by popular endorsement.

Zambia's party system has continuities with the single-party era. These continuities reflect Zambia's historical legacy. Whereas the United National Independence Party (UNIP) used its fight against colonialism as its main source of legitimacy, the Movement for Multi-Party Democracy (MMD) used the re-introduction of multiparty democracy as the mechanism around which its popularity was built. However, unlike the nationalist struggle which was waged over decades, the pro-democracy struggle was fought over a relatively short period and had limited goals.

Zambia's party system is characterised by fragmentation, factionalism and weak institutionalisation. The most common features of Zambia's party system are: (a) weak institutionalisation (i.e. lack of permanent organisational structures, poor funding, lack of visibility); (b) dominance by strong personalities; (c) a lack of clear and distinctive ideological/policy differences; (d) weak internal democracy; and (e) a lack of definable membership.

Limited political and democratic space has also conspired to further weaken opposition parties. For example, opposition parties face barriers in promoting themselves imposed by the Public Order Act (which require police authorisation prior to the holding of a public meeting), lack of access to the public media during election campaigns and the President has the power to appoint or co-opt opposition members of Parliament into his government, thus weakening the voting strength of the opposition. Levy Mwanawasa and the current President Michael Sata appointed large numbers of opposition MPs into government which destabilised the opposition significantly. Currently, there are more than ten opposition MPs, from the MMD and United Party for National Development (UPND), serving as deputy ministers in Sata's government. All are serving in government without the approval of their respective parties, which has clearly created serious internal problems in the parties and in Parliament.

The necessity of local government reform has been acknowledged by various governments since independence. However, the present local governance arena does not balance central government domination in a way that provides additional ground for political participation and development. To the contrary, the present system of governance tends to be overly centralised with local governance heavily reliant on the centre for policy direction and funds. Consequently, Zambia's current state of local government can be said to undermine meaningful community participation, democratic development and socio-economic development.

During the colonial period, traditional leaders were recognised and highly involved in running the affairs of their communities, through such structures as the Native Authorities. In return they received recognition, protection and government patronage. The close collaboration between traditional authorities and the colonial authorities came to be resented by nationalist leaders and when they came to power they were suspicious of the chiefs. In some countries such as Mozambique and Tanzania, the institution of chieftaincy was abolished altogether as a way of fostering national unity and de-tribalisation. However, even with the non-recognition of chiefs in those countries, the chieftaincy has continued to exist and people have continued to recognise their traditional authorities.

While there is great tolerance of the institution of chieftaincy in Zambia tensions do exist between the state and traditional authorities. These tensions arise from the fact that chiefs control most of the land in Zambia and are believed to have considerable influence over their subjects. It is against this background that modern political leaders have sought ways of undermining the authority of chiefs, while at the same time recognising their influence over their communities and role as custodians of traditional land and customs. However, during the First and Second Republics under President Kaunda, the power of the chiefs and their political authority was undermined and their authority structures, such as native authorities and native courts, were either abolished or relegated to insignificance. Chiefs had possessed these powers and authority from pre-colonial times and these had also been recognised by the colonial state. Efforts to suppress and remove the authority of chiefs, therefore, left resentment and lack of community regulation in its wake.

The 1996 amendment to the Constitution, which bars chiefs from participating in politics, has been controversial and stirred heated debate. On the one hand are those who argue that participating in politics undermines the dignity of chiefs as they have to be answerable to elected commoners, while on the other are those who maintain that chiefs like all citizens are entitled to enjoy their democratic and human rights, which include the right to take part in elective office by offering themselves for election. This debate remains unresolved. However, politicians have continued to court traditional leaders by seeking their support to turn out the vote during elections. It is not uncommon for traditional leaders to declare their support for the ruling party or for preferred opposition leaders or parties.

There is a need for a sensible debate on this issue to ensure that the role of chiefs in local governance is clearly defined and the institution of chieftaincy within Zambia's democratic dispensation modernised. It is important to acknowledge that the House of Chiefs established by the 2003 legislation, while useful as an advisory body, does not enhance participation of traditional leaders in governance. Its role and functions will need to be re-defined and expanded.

I: Politics of constitutional reform

In Africa constitution-making has mainly involved the question of the extent to which the public should be involved in debating and deciding the final draft of their constitutional texts. For example, it has been argued that a Constitution can only be legitimate if people participate in its making. Indeed, the biggest challenge confronting those involved in struggles for constitutional reform around the continent is how to strike the balance between ensuring that the path to reform is participatory and inclusive and that it comprehensively addresses both the large and small issues of social, political and economic concerns.

Zambia has existed under four Constitutions (with a fifth underway) over a period of 49 years since independence. This is an average of a new Constitution every ten years – a very high rate of constitutional change. It is an unimpressive record as the constitutional changes have rarely altered the power map nor reflected the needs and aspirations of the Zambian people. The major concern has been that all previous attempts at constitution-making did not seek the involvement of the wider populace. Constitutional changes that have so far been undertaken were designed to satisfy the needs of the moment and the short-term interests of those in power. To address this concern, former president Frederick Chiluba and his successor late President Levy Patrick Mwanawasa, both embarked on constitutional reform processes aimed at writing a new Constitution that would be ‘people-driven’ and ‘stand the test of time’. However, these reform processes fell short of public expectations due to serious opposition from civil society activists and other stakeholders who demanded more extensive public participation on the one hand and government’s insistence on being firmly in control of the process on the other.

The constitution-making process in Zambia has been highly contested since independence. The first independence Constitution was put together in a hurry to enable the new leaders to have a functioning modern government. The first Constitution provided for a bill of rights, separation of powers, checks and balances, political parties and the rule of law. However, it cannot be denied that the new constitutional framework came rather late as the new political elites lacked a lived experience with a functioning democracy and a supportive democratic culture. After almost 75 years of formal colonial domination the new rulers had internalised the values of an authoritarian and repressive colonial state and found the new constitutional order not only inappropriate, but unsuitable for what they termed the ‘nation-building project’.

Since 1972 constitution-making in Zambia has neither been an outcome of national consensus nor embodying a political commitment to the national interest. Its value has often

been to serve the moment – i.e. the interests of power-holders. Constitutions have tended to be instruments to advance the supremacy of the executive and preserve the personal interests of the governing elite. For example, Zambia's various Constitutions have conferred enormous discretionary authority on the president at the expense of other arms of government.

The powers of the executive over other organs of state could also be demonstrated in the weakness of the legislature. The independence Constitution made the presidency predominant over the legislature and judiciary. The president could override decisions of the legislature and dissolve the National Assembly when it disagreed with him or tried to remove him from office. He had power to make all appointments to constitutional offices, including that of judges, the attorney-general, permanent secretaries (heads of government departments) and heads of state companies. By the late 1960s the position of president, as the main dispenser of patronage, had been strengthened, including the removal of constitutional constraints on the government's ability to make decisions without consulting the people, through a referendum in 1969.

On 30 March 1972 President Kaunda appointed a Constitutional Review Commission headed by the then Vice President, Mainza Chona, under the Inquiries Act, to inquire into and examine changes to the Republican and UNIP (ruling party) constitutions, as well as practices and procedures, in order to create a one-party system in Zambia. It was not within the Chona Commission's terms of reference to inquire into the acceptability or suitability of the one-party system of government, nor to entertain petitions against the proposed system of government.

The purpose of the Chona Commission was to propose how a one-party state would function and the institutions required for its implementation. People's participation in the making of the Constitution was limited to giving their views on how the proposed one-party system would function rather than its desirability. But the final decision on the content of the Constitution rested with the government. Those who opposed the establishment of the one-party system of government, and there were many at the time, did not receive any hearing and those who petitioned the courts failed in their attempts. In particular, trade unions, the Catholic Church and some opposition parties opposed the idea of a one-party system, describing it as a form of 'dictatorship'. Opposition leaders, such as African National Congress (ANC) leader Harry Mwaanga Nkumbula and United Progressive Party (UPP) leader Simon Mwansa Kapwepwe, petitioned the High Court to declare government's plans to introduce a one-party system unconstitutional. However, the courts ruled in favour of the government.

A one-party constitution was passed by Parliament on 13 December 1972, nine months after the adoption of the Chona Commission's report by government. The report and recommendations of the commission were not subject to public debate, but nor were all the recommendations accepted. Government accepted some recommendations, but rejected most of the proposals made by petitioners. The crucial recommendations rejected included the reduction of presidential powers, and separating the powers of the executive and legislature by creating the position of executive prime minister. In particular, the commission recommended that the president's powers of detention should be limited, that a president should only serve two consecutive five-year terms of office, and that there should not be provision for a sole candidate, but that UNIP should present three presidential candidates for consideration by the electorate.

Following popular pressure the UNIP government introduced a constitutional amendment to allow for a return to the multiparty system in December 1990. The National Assembly passed an amendment to article 4 of the Constitution that had instated UNIP as the only legal political party in the country. Thereafter, a constitutional commission was appointed headed by the then Solicitor-General Patrick Mvunga (the Mvunga Commission). The terms of reference for the Mvunga Commission of Inquiry were to inquire into, determine and recommend a system of political pluralism that would ensure the separation of powers among the major organs of state, i.e. the legislature, the executive and the judiciary.

The commission's report recommended, among other things, a bicameral parliament, a constitutional court, appointment of ministers from outside the legislature, a two-term limitation on the president's terms of office and a provision that to be elected president a candidate should obtain at least 50% plus one of all votes cast. The UNIP government accepted most of the commission's recommendations, except those to do with reducing the powers of the president. The government had no obligation to provide reasons on why it rejected some recommendations. Though the constitutional review process was boycotted by the then main opposition party, the Movement for Multiparty Democracy (MMD), the contentious issues had nothing to do with altering the power map. Significantly, the opposition MMD rejected the idea of a constitutional court and a second legislative chamber as unnecessary and a waste of public resources. The MMD also opposed the proposal to appoint ministers from outside the national assembly as undermining the legislative function and eroding accountability. Despite these reservations the powers of the president remained sacrosanct in the Constitution that was passed in August 1991 by a predominantly UNIP legislature.

The MMD won the elections held on 31 October 1991, with Frederick Chiluba elected president and his party obtaining 125 seats in Parliament against UNIP's 25. Since the MMD had campaigned on a platform of spearheading constitutional reform, there was pressure once in power to deliver on that electoral promise. It was acknowledged that the 1991 Constitution was deficient and fell short of meeting the aspirations of the Zambian people. While some have suggested that the 1991 Constitution was a product of a broad-based consensus as people 'sat down and agreed to a constitutional text', the 1991 Constitution was in fact the product of a bipartisan consensus between the UNIP and the MMD and did not reflect popular aspirations. It represented a form of 'elite consensus' to facilitate the holding of elections. The MMD acknowledged that the 1991 Constitution was an 'imperfect document' and made a public undertaking to review it once in power. It is against this background that former president Frederick Chiluba appointed a commission of inquiry to review the 1991 Constitution.

On 22 December 1993 Chiluba appointed a commission headed by John Mwanakatwe, popularly known as the Mwanakatwe Commission. The commission's wide-ranging terms of reference also called on it to come up with a Constitution that would 'stand the test of time'. In particular, the terms of reference included recommending a system that would ensure that Zambia was governed in a manner that would promote the democratic principles of regular and fair elections, transparency and accountability, and that would guard against the emergence of a dictatorial form of government. The commission was also mandated to recommend appropriate arrangements for the entrenchment and protection of human rights, the rule of law, good

governance and the competence, impartiality and independence of the judiciary. In addition, the commission was to recommend whether the Constitution should be adopted by the National Assembly, a constituent assembly, a national referendum or any other method. The commission was also to propose a suitable method of amending the Constitution.

Among other things, the commission recommended that the Constitution be adopted by a constituent assembly followed by a national referendum. Other recommendations included the need for a 50% plus one vote for the election of the president. However, Chiluba's government rejected almost 70% of the recommendations of the Mwanakatwe Commission. Significantly, the government rejected the commission's recommendation for a broad-based constituent assembly to ratify the proposed constitutional changes and changed the 1991 constitutional requirement that a president be elected by 50% plus one of the legitimate votes cast to a simple majority vote. There was also a perception that a clause requiring that both parents of a presidential candidate must have been born in Zambia was aimed at excluding Zambia's first president, Kenneth Kaunda, from contesting the 1996 election.

All the attempts at constitutional reform between 1972 and 2011 had four things in common. First, they were dominated and driven by the executive and reflected executive preferences. Second, they undermined horizontal accountability by ensuring there was little or no public participation in the design and approval of the Constitution. Third, the legislature played a minimal role in vetoing government proposals or ensuring that public opinion was taken into account. Lastly, the constitutional reform processes themselves lacked accountability to the general public as those appointed to reform bodies were largely accountable to the executive rather than the Zambian people.

Executive dominance of the constitutional reform process was partly a colonial heritage. It is a practice found in most former British colonies. Under this system the executive appoints a commission of inquiry, determines its terms of reference, and provides it with a time-table and funding. The result of the inquiry is presented to the president or head of government who then tables it before the cabinet. After studying the report government decides what to accept and what to reject and publishes its response to the recommendations in a White Paper. Government's approved clauses are then passed on to Parliament and enacted into law. Under this system the public's role in the constitution-making process was limited to being consulted and their opinions and views were not necessarily taken into account.

The other enduring legacy in Zambia's constitution-making process is the absence of horizontal accountability. There has been little participation of the citizens through their elected representatives (such as Parliament) and civil society organisations. The constitution-making process has tended to reflect the interests of those in power and not that of broad sections of or special interest groups in society. For example, the only role Parliament played in the constitution-making process was to enact a law already crafted by the executive. In a context in which the ruling party is dominant or has an overwhelming majority in the legislature, ruling party MPs are compelled to support a government's constitutional bill, even when it is at variance with the aspirations of the people.

Public participation in the constitutional reform process can take several forms. The public participates through civil society organisations (CSOs) or directly by making submissions,

writing letters to the newspapers or through public discussions on radio and television. With the advent of new media on ICT platforms, including social media networks, these now also constitute an increasingly important element of public participation. The views and opinions of the public expressed by civil society organisations and citizens directly provide important forms of horizontal accountability. The three constitutional reform initiatives undertaken between 1972 and 1996 disregarded public opinion and views expressed by civil society organisations, opposition parties and citizens. For example, the majority of recommendations in the Chona, Mvunga and Mwanakatwe reports were not incorporated in the final constitutional drafts of the governments concerned. Most of the rejected clauses demanded greater accountability of the government to the citizens, through separation of powers between different arms of government, reduction of presidential powers, sharing of power between the executive and Parliament to ensure checks and balances between the two levels of government and ensuring that constitutional reform processes reflect the aspirations of the people.

It has by now been well established that when the government dictates the constitutional reform process, it leads to the exclusion of members of the public from meaningfully participating in drafting their own Constitution. The exclusion of the public in constitution-making processes has implications for public ownership of the Constitution. In a context where the final say on the Constitution is reserved for the government, the content of the Constitution will necessarily reflect the interests and preferences of those in power. Thus public participation in the constitutional reform process can be said to be a form of accountability of the reform process itself, where the public ensure that those assigned with the responsibility of constitution-making take account of the public interest. In the Zambian case, the reason constitutional reform processes have been less inclusive and participatory has been due to the desire to maintain executive power and the infrastructure of patronage that goes with it.

On 17 April 2003 late President Levy Mwanawasa appointed a 41-member Commission of Inquiry headed by Wila Mung'omba. The commission's terms of reference bore resemblance to those of the Mwanakatwe Commission of Inquiry. Its terms of reference, included, among others to collect views from the general public on the type of Constitution Zambia should enact bearing in mind the need to entrench and promote legal and institutional protection of human rights that would stand the test of time; to recommend a system of government that would ensure regular free and fair elections, transparency and accountability and guard against dictatorial rule; to examine functions of government with a view of maximising checks and balances; and to make recommendations on whether the Constitution should be adopted, altered or enacted by the National Assembly, a constituent assembly, a national referendum or any other method.

Unlike Chiluba who embarked on the constitutional review process barely a year into his presidency when he was still immensely popular, Levy Mwanawasa did not have it easy. He ascended to the presidency based on a weak electoral mandate of only 29% of the national vote and lacking popular support even within his own party, the MMD. Thus, while people welcomed his decision to embark on a review of the country's Constitution, they were not convinced that a leader lacking popular legitimacy had the necessary mandate to dictate the constitutional reform process. There were three issues of contention from the very start. First, whether there was a need for the appointment of a Constitution Review Commission when previous commissions

had repeatedly made the same recommendations. Second, it was proposed that members of the Constitution Review Commission should not be appointed by the president, but by participating organisations. Third, there was insistence from the very start that the outcome of the constitutional review process should culminate in a draft Constitution which would be adopted by a constituent assembly and later ratified by a national referendum, as recommended by the Mwanakatwe Commission in 1995.

In its report presented in December 2005, the Mung'omba Commission recommended that the draft Constitution be adopted by a constituent assembly followed by a referendum. In reacting to the Mung'omba report and draft Constitution the government rejected the idea of a constituent assembly and expressed misgivings about a number of recommendations, including the requirement for a presidential candidate to be elected by 50% plus one of votes cast; appointment of ministers from outside Parliament; the vice president being a running mate and enshrining economic and social rights in the Constitution. But as the 2006 elections drew near, government back-peddled and promised that it would honour the wishes of the people by facilitating a constituent assembly. Given the fact that it was an election year, government rejected the demand by civil society organisations for a new Constitution to be enacted before the 2006 elections, pleading for time and a need for resources.

President Levy Mwanawasa won the 2006 presidential election obtaining 43% of the votes over his nearest rival, Michael Sata of the Patriotic Front (PF), who obtained 29% of the national vote. Following his re-election and a slightly higher electoral mandate, Mwanawasa embarked on his constitutional reform plans. He announced that he would continue with the constitutional reform process, but on his own terms. He was opposed to the adoption of the Constitution by a constituent assembly arguing that government would not have the money to establish such a body.

In July 2007 following a meeting of all political parties represented in Parliament, under the umbrella of the Zambia Centre for Interparty Dialogue (ZCID), it was resolved that instead of a constituent assembly, a national constitutional conference would adopt the Mung'omba draft Constitution. The Oasis Forum grouping was of the view that the proposed national conference would easily be manipulated by government and was suspicious as to why political parties acquiesced to the idea after more than three years of wrangling.

In August 2007 the National Constitutional Conference Bill was passed by Parliament and it was assented into law by President Mwanawasa in September. The National Constitutional Conference (NCC) Act no.19 of 2007 was to be 'a forum for the examination, debate and adoption of proposals to alter the Constitution as contained in the draft Constitution as submitted by the commission'. Its main functions and powers included, among others, to consider and deliberate the provisions of the draft report of the commission and submit the adopted draft Constitution or part thereof to Parliament or to a national referendum.

It was also envisaged that in the exercise of its functions, the NCC would be 'accountable to the people of Zambia; recognise the importance of confidence building and developing national consensus and that the final outcome of the adoption process faithfully reflect(s) the wishes of the people of Zambia'.

But this notwithstanding, some civil society organisations and some opposition parties expressed misgivings with the NCC Act and threatened to boycott the process. At issue were some provisions in the NCC Act which gave the president power to dissolve it at any time, if in his opinion it was not fulfilling its mandate. Further, the composition of the NCC was perceived to be dominated by politicians and government appointed officials. For example, of the 478 delegates to the NCC, 72.4% were either politicians or government appointed officials while civil society representatives constituted only 26.8%. There were also fears that the government could easily manipulate the process given the fact that it appeared to enjoy an in-built majority.

Following President Levy Mwanawasa's death in office in August 2008, his successor, Rupiah Banda, continued with the constitutional reform process. The new president extended the NCC's mandate twice. While the NCC was originally supposed to have sat for a year, its mandate was extended to August 2010. The extension of the sittings of the NCC provoked condemnation from civil society organisations and some opposition parties who felt that the body lacked accountability and was a drain on public funds. Most importantly, there was a perception that members of the NCC were more concerned with their personal welfare and not the national interest.

The establishment of the NCC was predicated on the assumption that it would be a mechanism by which the people would participate in drawing and approving their own Constitution. It was expected, for example, that the most popular proposals that were contained in previous constitutional reform reports would find their way into the new Constitution. Further, many expected the Constitution to be completely overhauled to reflect the changed political realities. Considering the fact that all previous constitutional reforms had left an executive-dominated power structure intact and did not fundamentally address the question of separation of powers to enhance accountable governance, it was this time expected that the NCC process would take account of popular aspirations in this regard. It was also envisaged that the NCC would be a mechanism for accountability, as the legislature was considered inadequate to play the role of constitution-making due its partisan character and dominance by the incumbent party.

However, after three years of the NCC most of the contentious issues remained unresolved and prospects for a durable Constitution that would stand the test of time remained a pipe dream. On 30 August 2010 the NCC presented its final report and the Constitution of Zambia Bill to the then Minister of Justice and Vice President, George Kunda, and its tenure came to an end. The Constitution of Zambia Bill contained a number of new provisions, such as expansion of the size of the legislature from the current 150 to 240, a mixed member proportional electoral system, dual citizenship and the registration, funding and regulation of political parties, among others. However, the Constitution of Zambia Bill did not alter executive powers nor enhance the role of the legislature to counter-balance executive powers. Three outstanding issues that remained unresolved by the NCC were: (a) the idea of a presidential candidate being elected based on a majoritarian principle (50% plus one vote); (b) the appointment of ministers from outside Parliament to ensure separation of powers between the legislature and the executive and to make government more accountable to the people; and (c) the mode of adoption of the new Constitution. There was no unanimity in the NCC over the 50% plus one provision. The matter

was put to a vote and the majority of commissioners voted against it, but fell short of the required two-thirds majority.

The last issue of concern was the mode of adoption of the new Constitution, whether it should be adopted by Parliament, a popular body such as the NCC, or a national referendum. The establishment of the NCC in 2007 was meant to move the initiative for constitution-making from the executive to the people. It was envisaged that the body so established would be representative of a diversity of interests and would have the authority to consider, debate and adopt the Constitution. However, the NCC decided that on matters where there was consensus these would be sent to Parliament for enactment. But on matters where no consensus was reached, such as the 50% plus one provision, a national referendum would determine the decision.

A closer examination of the Constitution of Zambia Bill shows that the government got its way. Paradoxically, almost all the provisions that did not have government support did not find their way into the new constitutional draft. This raised questions as to the independence of the NCC and whether its decisions reflected popular aspirations. Clearly, the NCC, though comprising a cross-section of Zambians from different walks of life, was unable or unwilling to overhaul and write a completely new constitution which addressed the governance deficits that have beset the Zambian polity since independence.

Due to widespread public perceptions that the Constitution of Zambia Bill left out popular provisions such as the 50% plus one clause for the election of the president and enjoyed only questionable legitimacy due to the boycott of the NCC by a significant number of civil society organisations, including church mother bodies and the opposition PF, it failed to obtain the support of Parliament. In early 2011 the Constitution of Zambia Bill failed to gain the necessary two-thirds majority to become law. This effectively meant that the whole constitutional reform process had to be restarted all over again.

Following the election of Michael Sata as Zambia's fifth president in September 2011, he declared that he would enact a new constitution within 90 days. To this end he appointed a Technical Committee on the Constitution headed by former Chief Justice Annel Silungwe to study previous constitutional reports and constitutions and propose a new constitutional draft. The committee has since published a draft Constitution and is engaged in public hearings at provincial level, culminating in a national constitutional symposium in Lusaka. The draft Constitution published in June 2012 contained almost all the recommendations of the Mung'omba draft Constitution.

While the PF government had initially committed themselves to delivering a new Constitution in only 90 days it now appears it will take much longer than originally anticipated. It is now close to one and half years since the technical committee on the Constitution was appointed. There is also not a clear road map of the process to be followed and it is therefore unclear when and how the process will end. The involvement of the general public through public consultations appears to follow the same format as other processes before it.

There are serious doubts as to whether the current constitutional reform process will indeed produce a new Constitution. Statements by senior public officials seem to contradict what the PF had stood for while in opposition. For example, PF secretary general and minister of justice,

Wynter Kabimba, has declared that he does not believe in the idea of a vice president as a running mate and the PF government has grave misgivings about the 50% plus one proposal. The government also appears to be paying lip service to the idea of a national referendum, as there seems to be no immediate plans to constitute a referendum commission or to provide for it in the national budget.

It can be argued that even if a referendum was to take place it is not expected that its results will count. According to the Constitution 50% of eligible voters would have to participate for the election result to be valid. Since 1991 there have been very low voter turnouts, especially when measured by eligible voters.

Table 1: Voter turnout in general elections in Zambia by registered and eligible voters, 1991–2011 (percentages)

Year	% of registered voters	% of eligible voters
1991	43.5	37
1996	58.7	29
2001	69.0	32
2006	70.7	30
2008	45.4	28
2011	53.6	39

Source: EISA, Elections Database, various issues, 1991–2012; Electoral Commission of Zambia, 1992–2012.

Voter turnout as a percentage of eligible voters averaged only 33.8% between 1991 and 2011. In other words, it has been well below the 50% threshold required for a referendum question to be approved. Against this background, it can be argued that the whole idea of holding a national referendum will not achieve the objective of involving the public in approving their Constitution. From this point of view the Zambian constitutional reform process would again have failed to involve the Zambian people.

II: Political parties and party system

Like elsewhere in Africa, political parties in Zambia came into existence as associations articulating African grievances and making demands for universal suffrage and self-rule. By the end of the 1980s, it was the pervasive nature of Zambia's one-party state and particularly UNIP's debilitating tendency to limit political expression, harass political opponents and monopolise power that gave impetus to demands for the reintroduction of a multiparty system. Thus, in early 1990, provoked by a perception that Zambia's poor economic performance was as a result of UNIP and Kaunda's misrule, there was a widespread demand for multipartyism in which civil society and in particular the trade unions played an important role. One of the main grievances was that Kaunda had been in office for too long. Because UNIP's one-party state did not provide for alternation of the person in the office of the president, Kaunda had been in office for more than two and half decades, thus frustrating the political ambitions of many of his colleagues. In December 1990, at the end of a tumultuous year that saw people rioting in Lusaka, Kaunda signed legislation ending UNIP's monopoly on power and paving the way for multiparty elections.

The MMD, which was initially formed as a platform to campaign for the re-introduction of a multiparty democracy, transformed itself into a political party in January 1991 and defeated UNIP in the multiparty elections held on 31 October 1991. The MMD's presidential candidate and former trade unionist, Frederick Chiluba, obtained 75.8% of the votes, against Kaunda's 24.2%. The MMD, like UNIP, was organised as a broad coalition of diverse interests including business people, retired politicians, farmers, students, workers and their trade unions, academics, unemployed urban youth and ordinary rural people. It was a broad movement of diverse social forces, all opposed to Kaunda and his single party rule. Many had suffered oppression at the hands of UNIP's one-party regime and saw the MMD as the platform to finally participate in Zambia's political life.

Because of its inclusive nature and broad character, MMD emerged as the only true representative of the opposition against one-party rule. And because the MMD symbolised public aspirations for democracy it gained moral legitimacy. This overwhelming endorsement had important implications for the emergence of political opposition in Zambia. Because most significant forces were aligned to the MMD, opposition was synonymous with the MMD. When the party subsequently gained power in 1991, opposition against the new party in government

had no legitimacy. Those opposed to the MMD were regarded as in support of UNIP and the old one-party regime.

However, because the glue that kept the MMD together was rather thin – opposition to UNIP and Kaunda – the new ruling party soon began to disintegrate. By 2001, internal factionalism led to a major split within the MMD. Although Chiluba's desire to contest presidential elections for a third term in office has often been cited as the reason for the split in the MMD and the weakening of its dominant position, it can be argued that it was in fact the disintegration of the previously broad support by diverse social groups that was mainly responsible for the MMD's decline. This section discusses the trajectory of the Zambian party system since 1991 and seeks to identify the main factors that explain these party system developments. It argues that specific elements of Zambia's institutional architecture, most notably the electoral system and the role of the president, have contributed to a weak opposition. Combined with the neo-patrimonial linkages of the ruling party, forged by co-opting members of the opposition into government, it undermined the opposition's oversight role in Parliament and its overall legitimacy.

The development of Zambia's party system since 1991 has demonstrated a number of continuities with the single-party era. These continuities reflect Zambia's historical legacy. Whereas UNIP used its fight against colonialism as its main source of legitimacy, the MMD used the re-introduction of multiparty democracy as the mechanism around which its popularity was built. However, unlike the nationalist struggle which was waged over decades, the pro-democracy struggle was fought over a relatively short period and had limited goals. Despite these continuities, therefore, it would be erroneous to equate the liberation history of UNIP with the MMD's history of advocating for multiparty democracy.

In 1990, after almost three decades in power it was no longer convincing for UNIP to use the struggle for independence to legitimise its continuation in office. Furthermore, given the deterioration in living standards and runaway inflation, people also felt they needed a change of government. The same logic applied to the MMD during its last decade in government (from 2001 to 2011). The MMD enjoyed legitimacy to the extent that it was able to defeat UNIP in the founding multiparty elections of 1991 and to establish a multiparty democracy. However, the end of one-party rule soon proved an insufficient source of legitimacy. People expected jobs, better living conditions, a secure environment and enjoyment of civil liberties. All of these proved more difficult to deliver. Thus, after ten years in office, the MMD was no longer able to satisfy people with the rhetoric of having brought multiparty democracy to Zambia, especially when it started to display undemocratic tendencies and a high degree of political intolerance.

Despite the large number of registered political parties currently, Zambia's political opposition remains weak and fragmented. The former ruling party, UNIP, managed to hold on to 25 parliamentary seats in 1991, but boycotted the 1996 elections and saw its number of seats drop to 13 in 2001 and to only two in 2006. At the time of writing (early 2013) UNIP had no representation in Parliament. The new opposition parties formed during the first decade of multiparty democracy did not fare much better either. They lacked policy coherence, visibility and organisational viability and most did not survive beyond one election.

Despite the weakness of the opposition, the MMD dramatically lost ground in the 2001 elections. Its share of parliamentary seats fell below 50% and its presidential candidate, Levy

Mwanawasa, polled a meagre 29%. This dramatic decline had its origin not only in the party's failure to satisfy popular expectations, but also in the factional turmoil that arose within the party around the issue of leadership succession. The reversal of the MMD's fortunes in 2001 coincided with Chiluba's retirement as head of state and eventually as party leader. During his two terms in office Chiluba had provided strong personal leadership in the MMD. When his bid for a third term did not succeed, there was uncertainty as to whether the patronage he dispensed would be sustainable under a different leader. Internal splits in the MMD surfaced in 2000 when senior party leaders began to compete in the race to replace Chiluba as party leader. Chiluba succeeded in being elected for a third term as MMD party president in May 2001, but this attempt to hang on to power was short-lived. When the constitutional amendment allowing him a third term as head of state was rejected, Chiluba was forced to give way to Levy Mwanawasa. By ensuring that the party leader and presidential candidate were again the same person the MMD tried to safeguard access to state resources and the patronage that would come with winning the presidential race.

While most opposition formations operating in the first decade of multipartyism were weakly institutionalised, the parties that emerged just before and after the 2001 elections seemed better organised and capable of gaining broader support. However, they proved unable to wrestle control away from the MMD, until Michael Sata managed to win the presidential elections in 2011. During the decade preceding this PF victory, the opposition was unable to form a united front against the MMD mainly because almost all opposition parties revolved around the person of their respective party leader. The personalisation of opposition parties invariably affected efforts to unify the opposition. The most promising attempt was the formation of the United Democratic Alliance (UDA), comprising the UPND, UNIP and the Forum for Democracy and Development (FDD) in 2006. However, the alliance performed much worse at the polls than the three parties individually in 2001. It has been suggested that the UDA failed because it was nevertheless seen as serving the individual presidential ambitions of Hakainde Hichilema, who had just retired from a lucrative international job to replace founding UPND president Anderson Mazoka (who died suddenly in May 2006) and hoped to benefit from Mazoka's support.

In the period between 2001 and 2011, the MMD was able to entice opposition MPs to either defect to the ruling party or support government motions. In the 2006–2011 parliamentary session, at least 22 PF MPs defied their party leader, Michael Sata, and voted with the MMD. However, as it turned out, it was not so much a weakening of the ruling party's ability to co-opt opposition members or the coming together of the opposition that led to the collapse of the MMD's rule. Rather, the presidential elections of 2011 had reached the turning point. By defeating the MMD's sitting President Rupiah Banda and winning the presidential race with 42.9% of the vote, Sata and his PF signaled the end of the MMD's dominance.

It has been argued that given the multi-ethnic nature of African societies, political parties tend to forge ethnic alliances in order to win power. Thus, 'ethnic congress' parties seem to dominate in Africa. As a consequence, few of the main political parties overtly mobilise support on the basis of social cleavages such as ethnicity, religion or region. Most parties seem to take on the character of an umbrella party embracing diverse groups and interests.

In Zambia, social cleavages such as ethnicity and regional differences have not been overtly exploited in party mobilisation. This does not mean that ethnic or regional divisions are irrelevant in Zambian politics. During the single party era, President Kenneth Kaunda used the idea of 'tribal balancing' in his appointments in order to ensure that his government was 'balanced' in terms of regional representation and reflecting the diversity of the country. When the MMD came to power in 1991, it did not alter this unwritten rule of tribal balancing. Nevertheless, complaints of domination by a specific ethnic group, in particular the Bemba ethnic group, soon came to the fore. A split within the MMD in 1993 was partly due to a perception that Bemba-speaking people had a disproportionate share of ministerial positions compared to other groups. However, this did not prove to be a serious threat to the position of the MMD. The party was able to convincingly win the 1996 elections, though its performance in the Western and North-Western provinces mirrored regional grievances. Political parties led by individuals from these provinces performed well in their home areas but gained little support elsewhere, thus having little effect on the MMD's overall position of electoral dominance.

A close examination of election results in the period 1991–2001, however, suggests that the MMD's main support did come from Bemba-speaking people. On the other hand, and in comparison to the opposition parties, the MMD was the only party with a broad membership and an ethnically diverse leadership. In terms of members and leaders, the MMD was a multi-ethnic party. Prior to 2001, the MMD had support across all nine provinces, with its strongest support coming from the Copperbelt, Luapula, Northern and Southern provinces. This changed in 2001 when the MMD lost electoral support in five provinces. In the 2006 and 2008 presidential elections, the MMD lost in its former strongholds of the Copperbelt, Luapula, Lusaka, Northern and Southern provinces. Its electoral support was essentially rural, drawing support mainly from the Eastern, North-Western, Central and Western provinces. This occurred partly because opposition parties took control of the regions where their respective party leaders came from. The UPND, for example, won a majority of the votes in the Southern Province, the region where party leader Hakainde Hichilema stems from, in both 2006 and 2008. In addition, Sata's PF managed to draw Bemba support away from the MMD. Three of the four provinces where the PF won a majority in the 2008 election were Bemba-speaking (the Copperbelt, Luapula and Northern provinces).

This reliance on ethnic-regional support is further illustrated by the share of votes these parties managed to get in the areas in which they did not win a majority. In these areas, the PF polled an average of 9.8% of the votes in 2008, while the third largest party, the UPND, fared slightly better with an average of 11.7%. The MMD was able to attract an average of 29.2% of votes in those areas where it did not win a majority in the 2008 presidential elections.

Although support for the MMD seems to have been less regionally concentrated than support for the main opposition parties, voting patterns in the 2001–2011 period appear to have been strongly influenced by ethno-regional dynamics. The realignment of electoral support along ethnic and regional lines – the MMD in the Central, Eastern, North-Western and Western provinces, the PF in the Lusaka, Copperbelt, Luapula and Northern provinces and the UPND in the Southern province – suggests that regional and ethnic divisions played an important role in the decline of the MMD and thus in the trajectory of Zambia's party system. There is a need for

more empirical studies to further assess these regional and ethnic voting patterns, particularly with regard to the 2011 elections which marked the end of the MMD's hold on power.

Interestingly, despite the increased salience of regional and ethnic voting patterns, most Zambian political parties claim to represent all ethnic groups. A party that is accused of being tribal is generally perceived as engaging in sectional politics and is resented by the bulk of the electorate. Thus, parties that are labelled as tribal, for example the Agenda for Zambia (AZ), the National Party (NP) and the United Party for National Development (UPND), have less legitimacy in the eyes of the general public.

The current institutional architecture in which the presidency is so dominant, but elected by a simple majority, has implications for the party system. Sata's victory in the 2011 presidential elections not only signaled the end of the MMD's dominance, but also paved the way for a change of government despite the fact that Sata polled 'only' 42.9% of the votes and his PF 'only' holds 40% of the seats in Parliament. This prompted President Michael Sata to controversially co-opt up to ten MMD MPs into his government as deputy ministers, so as to boost his parliamentary majority.

It can also be argued that the growing opposition numbers in Parliament, clearly demonstrated to the electorate the possibility of an opposition victory and/or the viability of an alternative choice of government. For example, between 2001 and 2011, the losing opposition parties obtained more votes collectively compared to the ruling party. In 2001 and 2006, the opposition collectively polled 71% and 57% respectively. This signaled the fact that the opposition had more support than the ruling party. But most importantly, it gave confidence to the electorate that a change of government was possible. This was rewarded with a PF victory in 2011. However, the PF failed to win an absolute majority placing it in the same position as its predecessor – the MMD.

Zambia's party system is dominated by strong personalities. Most leaders of Zambia's current political parties have either served in UNIP or the MMD. The most successful of them have either held a senior position in government or are (perceived to be) relatively wealthy. Unlike the experience in Western Europe where political parties are institutions that primarily represent societal interests, most political parties in Zambia serve mainly as vehicles for ambitious politicians who compete for power. As a result, people's attachment to political parties is rather weak.

Where parties are perceived as furthering the interests of their leaders, there is a lack of ownership, party membership is unreliable and mass mobilisation problematic. When the founding leader retires, dies or is co-opted by the ruling party, the party tends to lose its main mobilising force. Few opposition parties have been able to survive the departure of their leaders. The Agenda for Zambia (AZ) and the National Citizens' Coalition (NCC) disbanded altogether when their respective leaders were co-opted by the MMD, while the UNIP and the FDD continue to exist in name only after the departure of their respective founding leaders.

Because of the emphasis on the person of the party president as opposed to policy, leadership succession becomes a divisive issue, internal dissent or criticism is rarely tolerated and internal policy debates are discouraged. Where factional debates exist they are squashed. Party leaders who voice dissent or display personal ambitions for the top job (party president) are confronted

with serious sanctions, such as demotions, dismissals, suspensions and even expulsion from the party. Few party leaders who have dared to challenge a party president have survived and almost everything is done to 'finish them' both politically and economically.

There have also been undemocratic tendencies in that party members and supporters have publicly supported undemocratic decisions taken by their leaders. Most of the major political parties have often not followed due process in dealing with internal dissent and contestation. For example, when Rupiah Banda's candidacy in 2011 was endorsed by all provincial MMD committees, party members organised public demonstrations demanding the expulsion of four MPs who were perceived as having presidential ambitions and who had been critical of the party and the president. The party acted swiftly to remove these MPs. This tolerance of undemocratic tendencies is also found in other parties, notably the PF and the UPND, where anyone opposed to the party leader risks being expelled and senior party members publicly justify such measures. It remains to be seen whether the new ruling party, the PF, will be more skilful in managing factional infighting and more successful in growing a democratic culture of tolerance of dissent.

The last aspect of political culture that is relevant to the trajectory of Zambia's party system is the acceptance of state patronage as a normal part of politics. While there are public complaints about poor government performance and poor service delivery, people seem to regard the clientelistic linkages that politicians maintain as acceptable. During Chiluba's tenure it is believed that Bemba-speaking people received a large share of government appointments, including directorships of parastatals and diplomatic postings. Levy Mwanawasa was similarly accused of ethnic favouritism as well as nepotism, as he was said to favour members of his Lenje and Lamba tribe as well as his own close friends and relatives. Rupiah Banda, in turn, seemed to have reversed Mwanawasa's appointments and State House under Banda was said to be dominated by members of Banda's tribe or people coming from his region.

Michael Sata's PF government is also perceived of being dominated by his Bemba ethnic group. There is a widespread feeling that there is a preponderance of Bemba-speaking people in ministerial and senior government positions since the PF came to power. In summary it can be argued that the state serves as a resource for clientelistic networks in that it is a source of employment. As one former cabinet minister and senior MMD official told the author: 'Politics has come to be a source of employment. There is nothing wrong with us – once in government – giving jobs to our close friends, relatives and tribesmen, as long as they are qualified. In fact, our people expect us to do just that, if they have to have any trust in us.'

III: Local government and decentralisation

Since independence the devolution of significant authority and control over resources to locally elected officials has been recognised as essential to the equitable development of the Zambian economy and polity. Although government developed multiple draft decentralisation policies in the mid-1990s, it has now finally moved to implement reforms in this area.

However, the present local governance arena does not balance central government domination in a way that provides additional ground for political participation and development. To the contrary, the present system of governance tends to be overly centralised with local governance that is heavily reliant on the centre for policy direction and funds. Consequently, Zambia's current local government can be said to undermine meaningful community participation, democratic development and socio-economic development.

Commitment to decentralisation has been tempered by political consideration. Although the MMD government formulated the National Decentralisation Policy and the Decentralisation Implementation Plan (DIP), these were not implemented. The DIP received cabinet approval under president Rupiah Banda, but was never implemented. The changed political landscape after 2006, when all urban councils fell under the control of the opposition (PF and UPND) resulted in procrastination on the part of the MMD government. After 2006 the opposition controlled the majority of urban councils and the central government was not willing to provide financial resources to political rivals who would gain political mileage from their ability to deliver social services.

However, following the election of President Sata in 2011 it was expected that decentralisation implementation would receive much more attention. As it turned out, decentralisation implementation under the PF government has been haphazard, uncoordinated and lacking policy coherence. One of the key constraints facing local authorities is a severe fiscal crisis. The majority of councils are unable to meet their statutory functions and obligations. While the Local Government Act of 1991 gives councils vast powers to raise and generate their own revenues, few have been able to take advantage of this provision due to the fact that their resource base is too small to sustain their operations. As a result, local authorities have accumulated large burdens of debt and arrears.

The last one and a half years of the PF government has witnessed the establishment of 29 new districts and one province (arising from the splitting of the Northern province into two provinces – Northern and Muchinga). Two districts have been transferred or re-aligned from their original province to a different province (Chirundu from the Southern to Lusaka province and Itezhi-Tezhi from the Southern to the Central province). Apart from the fact that these measures were undertaken with little or no consultation with the stakeholders concerned, there also seems to have been no consideration of the availability of fiscal resources to run the new districts. These councils are facing serious financial crises. This is despite the fact that there were already a number of smaller, newer districts formed earlier by the MMD which have also been struggling financially.

Zambia's decentralisation has been influenced by a centralising tendency from the colonial administration onwards and a strong desire by the centre to maintain effective control over local-level structures. Following independence in 1964, the Local Government Act (chapter 480 of the Laws of Zambia) was passed in 1965, establishing councils with elected representatives controlling local government at district level while central government administration was represented by the district commissioner, an appointee of the central government. The period 1971–1979 ushered in a variety of political reforms that were enacted in the context of establishing a system of 'single party participatory democracy'. New grassroots political institutions, namely the Village Productivity Committees, Ward Councils and Ward Development Committees, were established under the Registration and Development of Villages Act (1971). Multiparty politics were banned and, at the local level, the government and the ruling party (UNIP) were merged under the supremacy of the latter, through the 1980 Local Administration Act.

With the reintroduction of multiparty politics in 1991, the MMD government implemented a number of legislative changes affecting local governance and administrative systems. The Local Government Act (chapter 281 of 1991) was aimed at restoring the electoral process at council level, by allowing the election of council leadership (councillors) through universal suffrage. To guide local government operations, the Local Government Elections Act (chapter 282 of 1991) was also passed to pave way for the establishment of the Local Government Electoral Commission to administer local government elections on a three-year (now changed to five years) basis (although mayors are elected by fellow councillors annually). Since 1994 the Electoral Commission of Zambia took over the conduct of local government elections.

Zambia currently has a dual system of local government, i.e. elected local governments and deconcentrated sector ministries reporting to their parent ministries in Lusaka. The relationship of local government councils with sector line ministries is ill-defined and has tended to undermine the effectiveness of democratic participation at the district level. The extensive deconcentration of sector-specific services such as education, health and agriculture over the past four and half decades, combined with a switch of resources and investment to those sectors, has meant that these services are mainly provided by sector agencies rather than local councils. As a consequence of the above, councillors are perceived as powerless to affect or intervene in areas which most concern the everyday lives of their constituents.

On coming to power, the MMD government passed the Local Government Act of 1991, designed to ensure that the central government, through the Ministry of Local Government and

Housing, honours its financial obligations to local authorities and grants broad powers to local authorities to raise revenues directly without prior approval or interference from the central government. However, these measures did not improve the financial situation of the local authorities.

In 1993 all central government grants-in-aid to city and municipal councils were withdrawn as part of the new fiscal measure. In the same year councils were directed, under the policy liberalisation, to privatise commercial ventures. In 1994, the Personal Levy (Amendment) Act exempted many workers from paying this tax, further reducing local government fiscal resources. In parallel with the reduction in sources of local government revenue, control over remaining resources was shifted away from local councils, and placed under the direction of MPs. A key step in this process was Cabinet Circular no.10 (1995), which established the Constituency Development Fund (CDF) and the Constituency Development Committees (CDC). This annual grant (approved by Parliament) was controlled by the CDC headed by the respective MP, although for administrative convenience it was disbursed to the local council. This further undermined the authority and performance of the councils, despite their mandate for district development.

Another Government Circular in 1996 directed all city/municipal councils to sell their housing stock to sitting tenants under a Home Ownership Empowerment Programme. The below-market prices placed on these housing units by the central government (without council input) caused these councils extensive losses.

Furthermore, the property rates, being determined on the basis of the sale price, are not even worth the cost of collecting them, and are much lower than the rental value of the units. The 1997 Ratings Act, though rescinded two years later, exempted a number of properties from being charged normal rates. Motor vehicle licensing, from which the council earned sales commission, was transferred from City/Municipal Councils to the Road Traffic Commission in 1997, thus further reducing the councils' revenue base.

The local government councils are therefore in severe financial crisis, and their already weak administrative capacity has been damaged by staff attrition due to unpaid salaries and allowances and poor conditions of service. Many councils have lost their assets such as road graders, motor vehicles and buildings to retired and retrenched former employees seeking payment of their terminal benefits by attaching these assets through court actions.

Other common features of the current local government system include rampant corruption, gross incompetence and inefficiency, over-bureaucratisation, nepotism and excessive patronage.

The MMD's loss of parliamentary dominance after the 2006 election limited policy space and reduced government's willingness to undertake radical reform. The 2006 election results reconfigured Zambia's power structure in a fundamental way. The MMD did not only obtain a reduced share of both presidential and parliamentary votes and seats, but also lost control of the Copperbelt, Luapula, Lusaka and Southern provinces. Significantly it was the first time that the MMD lost control of the politically and economically important region of the Copperbelt.

Opposition resurgence in the form of the Patriotic Front (PF) also threatened the MMD's hold on power. The PF, which had only won one seat in the National Assembly in 2001, came a respectable second in the presidential election, polling close to 29% of the vote and winning 42

seats in Parliament. At local government level, however, the MMD lost control of almost all urban councils to the opposition in the 2006 elections. In particular, the politically important councils of Lusaka and the Copperbelt fell to the opposition PF, while districts along the main railway line in the Southern Province fell under the control of another opposition party (the UPND). This was the first time since 1991 that the MMD had lost control of the urban councils and therefore its influence in Zambia's urban areas.

In the local government elections, the MMD won the majority of council seats (754), against the opposition's 638 seats. While the MMD controlled the majority of councils across the country (43) against the PF's 18 and the UPND's 11, the fact that the opposition controlled the urban councils was a matter of concern to the government. Given the political significance of urban constituencies the control of all urban councils along the line of rail by the opposition created political uncertainty as to what the opposition could do if given more autonomy and resources by the central government.

The declaration by then PF president Michael Sata, after the 2006 general elections, that he would govern through the councils unsettled the central MMD government. There were threats from late President Mwanawasa that should Michael Sata proceed with his threat to govern the country through the councils he would be arrested as he would be breaking the law (Local Government Act of 1991) and committing 'treason'. Former Minister of Local Government and Housing Sylvia Masebo (now tourism minister in the PF government) was categorical when she stated that local authorities fell under the general direction of the central government and as such was an extension of central government. To the extent that the PF did not carry out its threat when it later took control of government, it demonstrates the control that central government has over local authorities, but also shows the reluctance of the national power holder to cede power, authority and resources to local level structures in Zambia.

However, following Levy Mwanawasa's untimely death in August 2008 and the inconclusive election results that returned the MMD candidate Rupiah Banda with a narrow electoral victory of 40% against Michael Sata's 38%, winning with just over 35 000 votes, the new president was faced with a legitimacy crisis. In order to win support across the country, Rupiah Banda may have been persuaded to use the DIP as a way of legitimising his presidency and winning over constituencies that may not have supported his candidature.

Faced with a legitimacy crisis both in his own party and the nation and informed by a desire to win a large constituency of support for his 2011 presidential bid, Rupiah Banda saw decentralisation as a way of proving that he was different from Mwanawasa by approving the DIP. In December 2009 Cabinet approved the DIP almost four years after its formulation. However, others have argued that the decision to approve the DIP may have been influenced by the desire to meet donor demands in return for more financial support, especially in the form of budget support. Since 2006 donors had made demands on the government to move quickly in implementing the DIP as part of wider governance reforms. However, the government did not feel comfortable enough to embark on implementing decentralisation given a changed political landscape in which it no longer enjoyed dominant control over the legislature and had lost overall control of urban councils.

The MMD's loss of political control of urban councils following the 2006 elections had several implications for governance. It implied that the urban electorate had passed a vote of no-confidence in the MMD government. The preference for the opposition in urban areas meant that urban constituencies felt that the opposition's alternative solutions to problems of urban development were better than those of the then ruling MMD. It was also a real threat to the MMD's control over local authorities in general and challenged its resolve to decentralise power.

The dilemma of Zambian politics is how to break the knot that confronts efforts to reduce, channel and redistribute the power of the executive, since such efforts are ultimately subject to executive approval. However, with the coming to power of President Michael Sata and the PF in September 2011, it was felt that the MMD's procrastination over the implementation of decentralisation would be addressed. President Sata had been a minister of local government and had set improvement of service delivery as the centrepiece of his election campaign from 2001. Further, the PF manifesto was committed to implementing decentralisation as one of its key policy priorities.

The PF government's attitude towards the MMD's national decentralisation policy and the decentralisation implementation plan remains unclear. Where the DIP talked about devolving authority and resources to the districts from the centre, the PF is instead creating new districts without addressing the capacity of current districts to take on new devolved responsibilities. Further, PF pronouncements in the last year seem to suggest a return to the UNIP form of local government based on Village Productivity and Ward Development committees, with a role for traditional authorities.

There has been little or no debate on the form and content of decentralisation in Zambia since the new PF government came to power. Other than complaints from various stakeholders for not having been consulted on decisions to do with the re-alignment of districts in Chirundu and Itzhi-Tezhi where Southern province chiefs made representations to the president opposing the measure, there has been no sensible debate on the creation of the new districts, new district boundaries and mandates vis a vis available resources.

Instead the two major opposition parties (the MMD and the UPND) that lost the election have since waged incessant attacks on government and its policy initiatives in general. Most of the attacks are not focused on policy, but consist mainly of rather personalised hate speech. As a result there has not been a sensible debate and response from opposition parties on the government's decision to establish a large number of new districts and its implications for the economy in the short to medium term. Given the existing administrative inadequacies the policy to establish a large number of new districts seems ill-conceived and does not take account of the fact that there are already a number of small districts that are experiencing a fiscal crisis and administrative incapacities. It is important that government considers implementing decentralisation in a more systematic and coherent manner with regard to resource availability and ensuring citizen participation. As things currently stand the PF's decentralisation measures can be said to be haphazard and reflecting the idiosyncrasies of the head of state.

IV: Traditional authorities and democracy

The institution of traditional authorities is one of the enduring legacies of the pre-colonial era. It has simply refused to go away in the face of modern democratic developments. Although traditional authority structures appear at variance with democracy, they are tolerated but also sometimes politically manipulated. This is because traditional authorities wield considerable power and influence in their localities that challenge the authority of elected leaders. With little exception many African governments have side-lined, marginalised or excluded traditional authorities and chiefs from participating in national politics. Where they are involved or have been involved, they have been co-opted by a ruling coalition, such as in South Africa and in Zambia under the UNIP government.

During the colonial period, traditional leaders were recognised and highly involved in running the affairs of their communities through structures such as the native authorities. These structures were used by colonial authorities to administer local communities on its behalf, through what came to be known as ‘indirect rule’. In return they received recognition, protection and government patronage. This close collaboration between traditional authorities and the colonial authorities was resented by nationalist leaders and when they came to power they were suspicious of the chiefs. In some countries such as Mozambique and Tanzania the institution of chieftaincy was abolished altogether as a way of fostering national unity and de-tribalisation. However, even with the non-recognition of chiefs in those countries, the chieftaincy has continued to exist and people have continued to recognise their traditional authorities.

While there is great tolerance of the institution of chieftaincy in Zambia tensions continue to exist between the state and traditional authorities. These tensions arise from the fact that chiefs control most of the land in Zambia (90%) and are believed to have considerable influence over their subjects. It is against this background that modern political leaders have sought ways of undermining the authority of chiefs while at the same time recognising the spatial influence they exercise over their communities as custodians of traditional land and customs. During the First and Second Republics under President Kaunda the power and political authority of chiefs were undermined and structures such as native authorities and native courts were either abolished or relegated to insignificance.

During Kaunda’s reign his government passed legislation that weakened the position of chiefs in relation to the central government, but at the same time selectively co-opted some

chiefs into the ruling power structures, as there was no law preventing chiefs from participating in politics. In the mid-1980s at the height of the one-party state, Kaunda appointed three chiefs into the UNIP governing structures. These were the Lozi paramount chief, Litunga Ilute Yeta IV, Chitimukulu of the Bemba and Senior Chief Kazembe of the Lunda. These controversial appointments to UNIP's central policy-making structures were highly resented by their subjects who viewed it as undermining of traditional customs.

Following the return to multiparty democracy in 1991, there was a debate as to whether it was right for chiefs to be involved in partisan politics. In 1996 the Chiluba government amended the Republican Constitution and introduced Article 129, which provides that 'a person shall not, while remaining a Chief, join or participate in partisan politics'. While this provision was meant to restore the dignity of traditional authorities, it was at variance with the fundamental rights of citizens to participate in national affairs without discrimination. Thus its inclusion was controversial and received condemnation from a number of stakeholders. At the time of passing the Constitution, Senior Chief Inyambo Yeta was also the vice president of UNIP. It was felt in some quarters that the purpose of the constitutional amendment was specifically meant to bar Chief Inyambo from being involved in partisan politics. Considering that Zambian chiefs had held positions as members of Parliament, ministers, parliamentary secretaries, ambassadors, provincial political secretaries and even members of the central committee in the past, the change was not well-received by some sections of the Zambian public.

In recognition of the important role played by traditional authorities in community development and local governance, President Levy Mwanawasa in 2003 re-introduced the House of Chiefs, which had existed prior to 1981. Article 130 of the Constitution of Zambia states that 'There shall be a House of Chiefs for the Republic which shall be an advisory body to the Government on traditional, customary and any other matters referred to it by the President.' The House of Chiefs consists of 27 chiefs, three of whom are elected by their fellow chiefs from each of the nine provinces of the Republic. Overall, there are 286 chiefs in Zambia.

As outlined in Article 131 of the Constitution functions are among others to: '(a) consider and discuss any Bill dealing with, or touching on, custom or tradition before it is introduced into the National assembly; (b) initiate, discuss and decide on matters that relate to customary law and practice; (c) consider and discuss any other matter referred to it for its consideration by the President or approved by the President for consideration by the House; and (d) submit resolutions on any Bill or other matter referred to it by the President, and the President shall cause such resolutions to be laid before the National Assembly.' Thus, although chiefs (or traditional leaders in general) are not allowed to participate in active politics, they do have a limited and indirect channel to influence public policy, though restricted to matters of custom and tradition.

Since the inclusion of Article 129 in the Constitution, which bans traditional leaders from participating in active politics, there have been attempts to amend the Zambian Constitution so that traditional leaders can actively participate in politics, as was the case before 1996. For instance, the Mung'omba draft Constitution proposed that chiefs participate in political activities and stand for any elective office. Prior to Chiluba's attempt to amend the Zambian Constitution traditional leaders participated in public life and even contested parliamentary elections or

were appointed to ministerial and other government positions. In 2004 the House of Chiefs submitted a resolution to the Mung'omba Constitutional Review Commission calling for the removal of the prohibitive clause from the Constitution and argued that it should be left to the people to decide whether their chiefs could participate in national politics.

It is widely recognised that traditional leaders have continued to exercise a certain measure of influence in the governance and developmental life of the country. They have also offered moral and traditional leadership on developmental issues, such as on health, education and community development in their respective communities. The problem is that they compete for authority and influence with local leaders, such as party officials, local authority representatives and government officials. It is this competition for authority and influence which has provoked the debate on what role chiefs should play in their localities. As things stand today, chiefs can only participate in local councils through an appointed representative.

In May 2005, traditional leaders in Zambia called on the government to define their role in political affairs, particularly in the decentralisation process. Speaking through a representative of the House of Chiefs, the traditional leaders argued that there was a need to clearly indicate the role of Chiefs in the decentralisation policy to enable them to participate in its implementation. They noted that the decentralisation policy provided an opportunity to incorporate traditional leadership in the development and governance of the country. They implored government not to ignore and side-line them, but to clearly state what role Chiefs could play in the implementation of the decentralisation policy. Perhaps it is against this background that the PF government has a specific policy on the involvement of chiefs. According to the PF manifesto, chiefs would participate in the decentralisation policy through provincial and district assemblies of chiefs. Further, chiefs would play a part in the administration of the Constituency Development Fund (CDF) and the Farmer Input Support Programme (FISP). However, this does not give chiefs real power and influence. It would appear they will continue to play advisory roles, but that the structure of the House of Chiefs will be decentralised to the provinces and districts. It is debatable whether lifting the ban on the involvement of chiefs in partisan politics will in any way enhance the status of chiefs, as their status remains very low in the modern political establishment and they are literally dependent on it.

It is important to note that despite the opposition to the involvement of chiefs in partisan politics, various political parties have continued to court the political support of traditional authorities during elections. It is not uncommon, for example, for candidates of various political parties to pay courtesy calls on prominent chiefs asking them to use their influence in securing the support of their subjects. Some traditional authorities have also publicly backed either the ruling party or the opposition during elections. In the 2006, 2008 and 2011 elections, for example, some traditional rulers in the Eastern, Southern, Northern and Luapula provinces publicly declared their support either for an opposition party or the ruling party. In the 2011 elections, for example, Senior Chief Kazembe of the Lunda backed the MMD candidate in Mwansabombwe and told his subjects to vote for him because he was closely related to him. Soli Chieftainess Nkomeshya Mukamambo II publicly differed with President Rupiah Banda of the MDM and asked her subjects to support the PF. In both cases, their subjects defied them and

voted for a different candidate. This shows that chiefs may not wield as much influence as they are purported to, but more importantly it should be accepted that they are not politically neutral.

Traditional authorities have also been able to challenge the authority of the central government. Other than public pronouncements by some chiefs complaining about the failure of government to honour its pledges in terms of service delivery, there have been instances of serious confrontation between traditional authorities and the state. The example that follows is a concrete illustration of how serious such confrontation can become.

The Lozi royal establishment is a case in point. In 1993, the Litunga (paramount chief) of Barotseland wrote a letter to the government enquiring about the matter of restoring the Barotseland Agreement of 1964. The Litunga had signed an agreement in April 1964 to be part of the Republic of Zambia on condition that they would carry on with their system of traditional administration. The Barotseland Agreement granted Barotse authorities and people specified limited local self-governance rights and rights to be consulted on specified matters, including over land, natural resources and local government.¹ However, President Kaunda abrogated the Agreement in 1969. Successive governments have refused to recognise the rights of the Lozi people as provided for in the Barotseland Agreement.

Government reaction to the letter of inquiry in 1993 was rude and suggested that there was nothing which could be done as the matter was 'stale'. When the Barotse Royal Establishment declared it was prepared to secede from the rest of the country if the Agreement was not restored, President Chiluba ordered the arrest of the Litunga of Barotseland. The decision angered the Lozi people and there was a stand-off, which could potentially have resulted in the loss of lives had the government not backed down.

In October 2010, Lozi secession activists demanded the restoration of the Barotseland Agreement, failing which they would no longer recognise the Zambian government. The government reacted by arresting the activists, but did not address the concerns raised. On 10 January 2011, the Rupiah Banda government brutally put down a public demonstration demanding the restoration of the Barotseland Agreement and this resulted in the death of two people, scores of injuries and the detention of more than 100 people. The Lozi traditional authorities backed the action of the activists and at a meeting of the Barotse National Council in March 2012, the Ngambela (prime minister) of Barotseland read a statement declaring that Barotseland had broken away from the rest of the country. The response from the new PF government was indecisive. The matter remains volatile and it remains to be seen how the PF government hopes to address it. These demands for autonomy and self-government by the Lozi people of Barotseland (in the Western province) can partly be explained as a function of perceived marginalisation from economic development and receiving a fair share of the national cake.

¹ <http://en.wikipedia.org/wiki/Barotseland>.

Conclusion

By way of conclusion it can be stated that many scholars have lamented the lack of public participation in developing democracies in Africa and elsewhere. For example, 'A general observation is that notwithstanding achievements in multiparty democracy, many elections have not translated into citizen participation in state affairs between elections. It seems that citizen participation in SADC is limited to the ballot box with very little involvement in policy formulation and implementation.'² This comment applies equally well to Zambia.

It would seem that the political culture of Zambia – in which the preservation of executive power concentrated overwhelmingly in the hands of one powerful leader – will first have to change before significant constitutional and electoral reform will take place to provide for meaningful public participation in governance. By the same token, political parties will also have to inculcate the same values of equal participation in the internal democratic functioning of their organisations. The challenges posed by the interface between tradition and democracy as demonstrated by the institution of chieftaincy and its role in local governance in Africa, also needs to be resolved. It will further require a maturing of democracy to accept the role of decentralisation and development through local government, even when these are controlled by rival opposition parties.

² Eisa Occasional Paper Number 13, October 2003, Claude Kabemba, The Impact of Democracy on Public Participation in the SADC Region, p.6.