

CONSTITUTION-MAKING IN TANZANIA—PART ONE

By Dr. Stephanie M. Burchard

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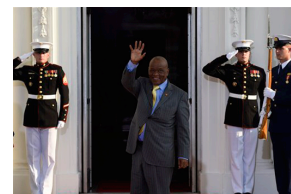
President Jakaya Kikwete addresses the UN general assembly on September 25, 2014. (Source: AP Photo/Frank Franklin II.)

Dr. Stephanie M. Burchard is a Research Staff Member in the Africa Program at the Institute for Defense Analyses.

DESPITE AGREEMENT POLITICAL CRISIS LIKELY TO PERSIST IN LESOTHO

By Alexander Noyes

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Motsoahae Thomas Thabane, Prime Minister of Lesotho, arrives for a dinner hosted by President Barack Obama for the U.S. Africa Leaders Summit, Tuesday, Aug. 5, 2014. (Source: AP Photo/Susan Walsh.)

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President Jakaya Kikwete addresses the UN general assembly on September 25, 2014. (Source: AP Photo/Frank Franklin II.)

Background

The [current constitution](#), Tanzania's fourth, enshrined the supremacy of CCM, which had been in power since independence in 1962, and established Tanzania (composed of the mainland Tanganyika and the islands of Zanzibar) as a single-party state. In the early 1990s, under pressure from civil society and international donors to consider liberalizing, CCM formed the [Nyalali Commission](#) to examine whether Tanzania should abandon the single-party framework. The commission made numerous suggestions about how Tanzania could transition to multiparty rule, including drafting a new constitution, but the government opted to keep the existing constitution and amend it to allow for multiparty elections.

Since the return to multiparty politics in 1992, there have been demands from the opposition and civil society groups to revise the constitution to provide for a more level playing field for electoral competition, but nothing substantial has yet materialized. The opposition has long held that the 1977 constitution [favored a highly centralized presidency](#) and has helped CCM maintain its political dominance—CCM won majorities in the 1995, 2000, 2005, and 2010 elections.

Kikwete's Legacy

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

Regardless of the motivation, the process was put in motion in April 2012 when Kikwete [appointed](#) a 30-member constitutional review commission. The new commission was immediately [embraced](#) by opposition parties, including CHADEMA. According to [Muhammad Yussuf](#), one of the commission members, the commission received input from nearly 1.5 million Tanzanians in a year-long consultation process (personal communication to the author).

Drafts and Deliberations

The commission's [first draft](#) was presented on June 3, 2013. One of its [key provisions](#) was the establishment of a three-tier system of government (separate structures for mainland Tanganyika, Zanzibar, and a union governmental body) to replace the existing two-tier system that currently only represents Zanzibar and a union government. This provision was [highly contentious](#) for many reasons, not least that a [power-sharing agreement](#) had been signed in 2009 between CCM and the main opposition party in Zanzibar, CUF [Civic United Front]. Zanzibar, formerly under control of the Sultanate of Oman until it became a British protectorate in the late 1800s, opted to merge with mainland Tanganyika in 1964. The status of the union has been a frequent problem for the federal government, with intermittent demands for [secession](#) emanating from Zanzibaris who feel marginalized by a federal structure.

As part of the government-initiated process, constitutional councils at the district level were tasked with reviewing the first draft and providing feedback to the commission. Based on this feedback, the commission then released a [second draft](#) of the constitution at the end of 2013. This draft again called for a three-tier system of government.

The final stage of the process—debate and deliberations—began in March 2014 when the Constituent Assembly, comprising 629 delegates from political parties and civil society, convened. Almost immediately, the debates turned acrimonious. CCM party members and their supporters have a [majority of delegates](#) in the Constituent Assembly and have dominated this stage of the process. They have removed the three-tier provision and reinstated the two-tier system of government. In April, Ukawa (a coalition of opposition party members and supporters including partisans from CHADEMA and CUF) [walked out](#) of the proceedings in protest.

And Yet the Band Played On

Despite the boycott, the mandate of the Constituent Assembly was extended, and a second round of debates on the new constitution took place in August. After much criticism about the lopsided nature of the debates, Kikwete was forced to [mediate](#) the dispute over the new constitution in late August. Ukawa and Kikwete [reportedly came to agreement](#) in September: due to the unexpected length of the process and current impasse over the content of the constitution, the reform process would be suspended and resumed only after the October 2015 elections. Even after the details of this agreement were released, the Constituent Assembly continued to meet (and collect stipends), drawing the ire of many and [calls from the opposition](#) and civil society to shut down proceedings immediately. The Constituent Assembly seems [poised to vote](#) on a draft of the constitution soon.

Implications for 2015

It is unclear what will happen next in the process. Nonetheless, there are a few important ways in which this constitutional review process will likely affect the 2015 elections. First, the consultative process provided much needed civic education to many Tanzanians, some of whom had never before seen the 1977 constitution (personal communication to the author). More Tanzanians are invested and engaged in politics than ever before. Perhaps this will translate into higher voter turnout in 2015—at 40 percent, voter turnout in 2010 was the [lowest the country](#) has experienced since the return to multipartism. Second, the question of the nature of the union between the mainland and Zanzibar has been raised again and will likely continue to be debated around the country. It is almost certain this issue will be featured in the 2015 elections. Interestingly, CHADEMA and CUF were able to find common ground on this matter as both parties now support a three-tier system. If this ad-hoc coalition—formed solely for the purposes of advocating for their vision of the new constitution—were to persist, the opposition could pose a serious challenge to CCM hegemony in 2015. It appears that the stakes for the next election will be substantially higher than ever before, making the 2015 Tanzanian election one to watch.

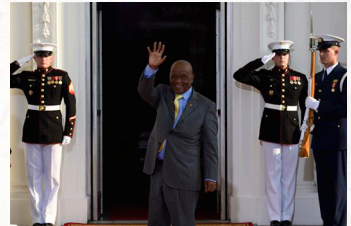
This is the first of a series of articles based on field research on the political outlook in Tanzania.

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Motsoahae Thomas Thabane, Prime Minister of Lesotho, arrives for a dinner hosted by President Barack Obama for the U.S. Africa Leaders Summit, Tuesday, Aug. 5, 2014. (Source: AP Photo/Susan Walsh.)

The events of August 30 were the latest episode in a broader political stalemate between the partners of Lesotho's coalition government, which was formed after 2012 elections. The troubled coalition consists of three main parties—Thabane's All Basotho Convention (ABC), Deputy Prime Minister Mothetjoa Metsing's Lesotho Congress for Democracy (LCD), and the Basotho National Party (BNP). As [highlighted](#) in the July 10, 2014, edition of *Africa Watch*, political disagreements among the coalition partners—namely, over whether Thabane was acting unilaterally—came to a head on June 10, when Thabane [suspended](#) parliament to circumvent the holding of a planned no-confidence vote. The LCD subsequently announced it was pulling out of the coalition, and rumors of an impending coup by the LDF drew [warnings](#) from South Africa.

In the ensuing weeks, SADC mediated a deal between the parties to remain in the fragile coalition, and Thabane [agreed](#) to reopen parliament on August 14. But when parliament remained closed after the deadline, Metsing called for a protest march on September 1 against Thabane and in support of reopening parliament: "If you join us and support this march in your numbers, I'm sure when the prime minister sees that many Basotho are against the prorogation [suspension], it will become relatively easy for him to lift it," [said](#) Metsing. The police, seen as [loyal](#) to Thabane, did not grant permission for the protest march, warning that it would turn violent. Conversely, the LDF, seen as allied with Metsing, claimed that the government-backed UTTA was planning violence. In addition, the night before the August 30 clashes Lieutenant-General Kamoli—who had a history of [disagreements](#) with Thabane—allegedly heard that Thabane was [planning](#) to fire him and replace with him Brigadier Maaparankoe Mahao. These political, civil-military, and inter-service tensions set the stage for the August 30 incidents.

In the wake of the August 30 violence, in which one policeman was [killed](#) and nine others were injured, SADC, led by South African President Jacob Zuma, brokered another deal with the coalition parties. The deal allowed Thabane and his freshly appointed military commander, Mahao, to return to Lesotho under the protection of South African police. Under the terms of the deal, Thabane also [agreed](#) to reopen parliament by September 19. Thabane, however, once again reneged on that promise, citing the current instability. In addition, Kamoli has [refused](#) to step down as commander of the LDF.

On September 30, the SADC mediation mission, now led by South Africa's Deputy President Cyril Ramaphosa, again [returned](#) to Lesotho in an effort to negotiate a way out of the crisis. Ramaphosa announced on October 2 a [further agreement](#) that provides for reopening parliament on October 17 and holding new elections in the latter part

of February 2015. Parliament will be limited to decisions on budget and election matters and will be dissolved in December to prepare for elections.

South Africa and SADC have [historically](#) played dominant and influential roles in Lesotho's domestic politics, and South Africa has significant strategic [water](#) interests in Lesotho. It appears that memories of South Africa and SADC's heavy-handed 1998 [incursion](#) into Maseru and the large number of actors with contradictory motives have made this conflict particularly difficult to resolve. Although the new agreement brings new hope, it does not address the status of Kamoli and the security situation, with ongoing [treason](#) investigations further heightening an already tense political environment. Moreover, as noted above, Thabane has reneged on commitments to reopen parliament twice since July. For these reasons, the crisis is likely to persist, at least in the near term. Earlier in the week, on September 30, two police officers were injured in further [violence](#) between the police and military.

New polls do appear to be the most likely path out of the crisis. However, the largest opposition party, the Democratic Congress (DC), sees the call for new elections as a delaying tactic to allow Thabane to remain in power. On September 17, DC Secretary General Ralechate 'Mokose [asserted](#), "It was said that registration of voters should be done from scratch and they are holding these things for later use as a leeway to prolong their time in governance."

The August 30 events again highlight Lesotho's troubled civil-military relations and the need to further depoliticize the LDF and the country's security sector to prevent further bouts of instability. As suggested [previously](#), good starting points would be providing parliament with increased oversight responsibilities, especially regarding appointments, and enforcing the 1995 defense [policy](#), which outlines the LDF's political impartiality.

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