



Unfinished business

Tanzanians' views on the stalled constitutional review process

1. Introduction

The most recent attempt to revise the Constitution of the United Republic of Tanzania began after the 2010 general elections, when the country's two major opposition parties, Chadema and CUF, made a call for a new Constitution. The need for a new Constitution had been a key pillar in both of their election campaigns. President Kikwete responded to this call by initiating a review process. The process however stalled in 2015, in the run up to the subsequent 2015 general elections, and has not been revived since.

The review process had three main phases. In the first, a Constitutional Review Commission (CRC) was formed, under the leadership of former Prime Minister, Justice Joseph Sinde Warioba, which traversed the country to consult the public on the shape of a new Constitution. The CRC published an initial draft which was revised after feedback from citizens. This revised text known as the "Warioba draft"

was published in December 2013. It included amongst other things a proposal to replace the existing two-government structure (Union Government and the Government of Zanzibar) with a three-government structure (Union Government, Mainland Government, Government of Zanzibar).

In the second phase, the Constituent Assembly (CA), which comprised all Members of the Union Parliament and as well as Members of the House of Representatives from Zanzibar, together with nominated members of the public drawn from political parties and civil society, met in 2014 to review and revise the draft Constitution. Under the leadership of CA chair, Samwel Sitta, and the chair of the CA's drafting committee, Andrew Chenge, substantial revisions were made to the draft. In particular, the replacing of the two-government structure by a three-government structure was dropped.

This new draft, officially known as the “proposed Constitution” but popularly known as the “Chenge version”, was passed by the CA in October 2014. This was despite a walkout by the opposition coalition, Umoja wa Katiba ya Wananchi – Union for the People’s Constitution (UKAWA), which formed when opposition members and some civil society representatives of the CA felt the ruling party CCM was using its numerical advantage in the assembly to undermine proposals in the draft, from the commission led by Justice Warioba, that it did not like.

The proposed Constitution was to have been subjected to a public referendum in 2015, but this did not happen. Challenges with voter registration, combined with preparations for the national elections in October 2015 led to the referendum being suspended. The CCM Manifesto, however, expressed strong support for the proposed Constitution and for completing the review process. To date, The current Magufuli administration has not taken steps either to hold a referendum or to re-open the debate. The future of the national Constitution remains uncertain.

This brief presents data on citizens’ views on the Constitution-making process as it happened, and as it might go forward. How much were citizens aware of the process? How meaningful do they feel the public consultations were? Do they approve of key changes that were made to the Constitution at each stage? Do they approve of UKAWA’s walkout? Do they think the process should be revived, and if so, how should this be done?

Data for the brief come from Twaweza’s flagship *Sauti za Wananchi* survey. *Sauti za Wananchi* is a nationally-representative, high-frequency mobile phone panel survey. It is representative for Mainland Tanzania not including Zanzibar. Information on the overall methodology is available at www.twaweza.org/sauti. For this brief, data were collected from 1,745 respondents from the 20th round of the second *Sauti za Wananchi* panel, conducted between 27 June and 14 July, 2017.

The key findings are:

- Almost all citizens have heard of the Constitution, but just 1 out of 3 can explain what it is
- 7 out of 10 citizens are aware of the Constitutional Review process
- 1 out of 5 citizens participated in the consultation process run by the Constitutional Review Commission
- Understanding of the Constitution, awareness of the review process, and participation in the process are much lower among women than men
- 2 out of 3 citizens say the process did not allow citizens’ views to be reflected in the Constitution
- Citizens disagree with many of the changes made by the Constituent Assembly, including the decision to drop the requirement for parliamentary confirmation of ministerial appointments
- Among mainlanders, the most popular structure of government for Tanzania is the current two-government system

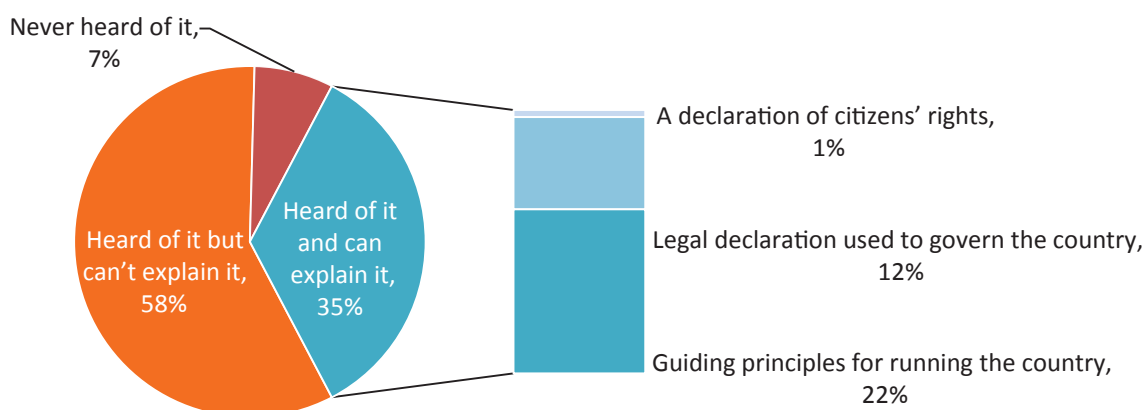
- 1 out of 4 citizens support UKAWA’s walkout from the Constituent Assembly and boycott of the review process
- The most popular option for reviving the review process is to restart entirely with a new commission
- If the process is restarted, most citizens think it should either start again with a blank page or build on the Warioba draft
- 2 out of 3 citizens think Tanzania needs a new Constitution and 3 out of 10 think this will happen in the next three years

2. Nine facts about citizens’ views on the Constitution

Fact 1: Almost all citizens have heard of the Constitution, just 1 out of 3 can explain what it is

Over nine out of ten citizens (93%) have heard of the Constitution (“Katiba”), but the majority (58%) are not sure what it is. One in three (35%) can explain it, with the largest number (22%) describing it as a set of guiding principles for running the country. One in eight (12%) describe the Constitution as a legal declaration used to govern the country, and a few (1%) describe it as a declaration of citizens’ rights. All three of these descriptions can be considered correct, in that they accurately describe one or more functions of the national Constitution.

Figure 1: When you hear the word Constitution (“Katiba”), what does it mean to you?¹



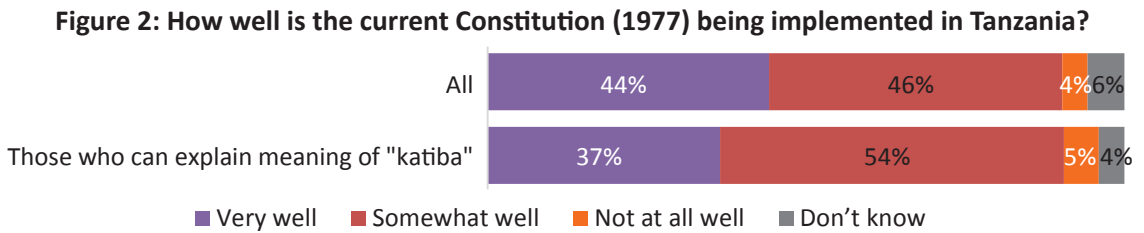
Source of data: *Sauti za Wananchi*, mobile phone survey, Round 20 (June-July 2017)

Base: all respondents, n=1745

Understanding of what a Constitution is, is higher among those with secondary or higher education (49%) than those who did not complete primary school (22%). It is also higher among citizens aged over 50 (45%) than those under 30 (29%), and among wealthier citizens (40%) than among the poor (28%). Most striking, however, is the stark difference in understanding of the term between men and women, with 47% of men able to explain what the Constitution is, compared to 22% of women (not shown in charts).

1 Percentages may not add up to 100% due to rounding.

Just under half the population (44%) say the current Constitution is being implemented well, with a similar number (46%) saying “somewhat well”. A small group (4%) say “not at all well”.



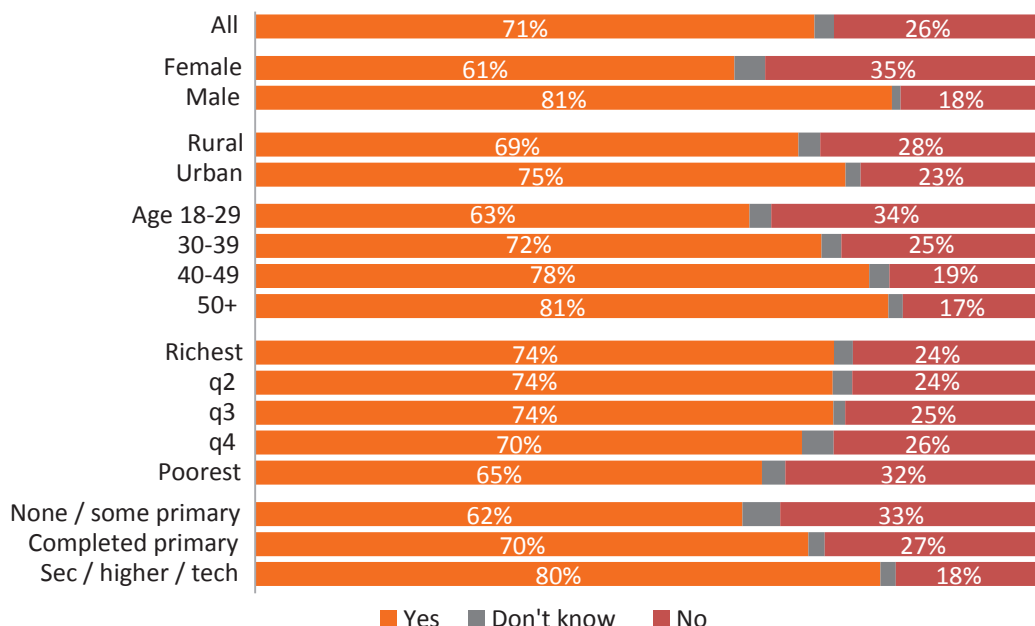
Source of data: *Sauti za Wananchi*, mobile phone survey, Round 20 (June-July 2017)
Base: all respondents, n=1745

Asked to explain reasons for this assessment, most of those saying the Constitution is being implemented well said this was either because the laws are being followed (22%) or there is good leadership (12%). Most of those saying “somewhat well” explained either that parts of the Constitution are not followed (15%) or that laws are not followed (12%) (not shown in charts).

Fact 2: 7 out of 10 citizens are aware of the Constitution review process
A clear majority (71%) of citizens are aware that the Government of Tanzania initiated a process to develop a new Constitution for the United Republic of Tanzania.

Awareness of this process is significantly higher among men (81%) than women (61%), among those aged over 50 (81%) than those under 30 (63%), and those with secondary or higher education (80%) than those who did not complete primary school (62%). Awareness is also slightly higher among wealthier citizens and among those living in urban areas, though these differences are smaller.

Figure 3: Are you aware that that the government launched a process for making a new Constitution for the United Republic of Tanzania to replace the 1977 Constitution?

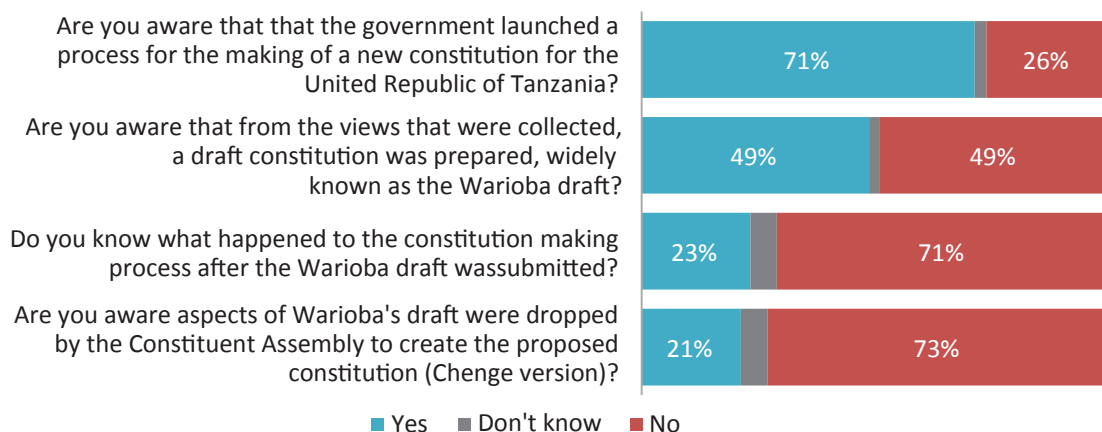


Source of data: *Sauti za Wananchi*, mobile phone survey, Round 20 (June-July 2017)

Base: all respondents, n=1745

Half (49%) of citizens are aware of the consultation process run by the Constitutional Review Commission (CRC) under Justice Warioba, one in four (23%) know what happened following the conclusion of the CRC's work, and one in five (21%) know that aspects of "the Warioba draft" were dropped by the Constituent Assembly to create the proposed Constitution or "the Chenge version".

Figure 4: Awareness of key stages and changes in the Constitution review process



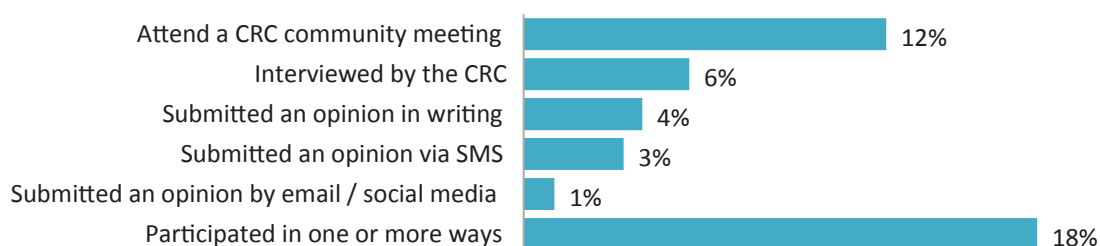
Source of data: *Sauti za Wananchi*, mobile phone survey, Round 20 (June-July 2017)

Base: all respondents, n=1745

Fact 3: 1 out of 5 citizens participated in the consultation process run by the Constitution Review Commission

One out of five citizens (18%) participated in some way in the consultation process of the Constitutional Review Commission (CRC). It is worth noting that in November 2013, 36% of citizens reported submitting their views to the CRC whether through meetings, letters, online or via SMS.² One out of eight citizens (12%) reports having attended a CRC community meeting, and smaller numbers say they were interviewed by the CRC (6%) or submitted an opinion in writing (4%), via SMS (3%) or by email or social media (1%).

Figure 5: The Constitution making process involved collection of views of citizens. Please tell me which one of the following activities did you participate in?

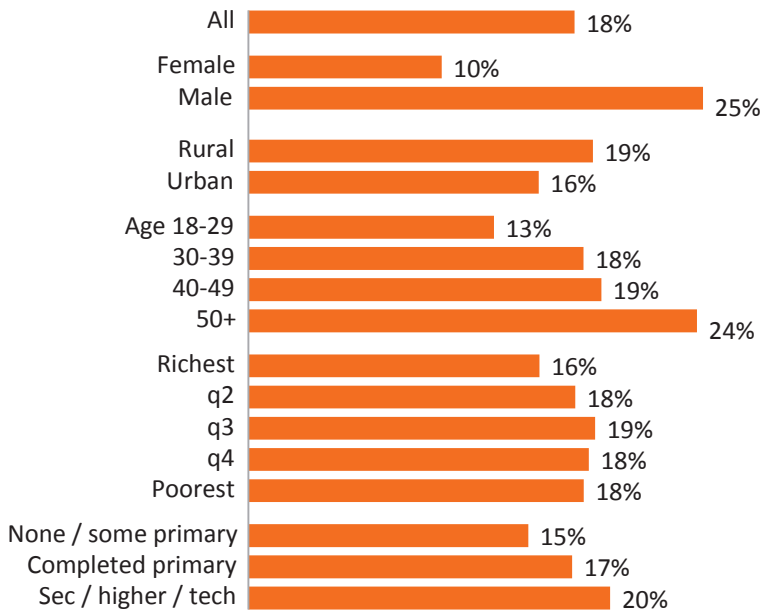


Source of data: *Sauti za Wananchi*, mobile phone survey, Round 20 (June-July 2017)
Base: all respondents, n=1745

Men reported much higher rates of participation in the CRC consultation process (25%) than women (10%). Those aged over 50 (24%) were more likely to have participated compared to those under 30 (13%). Differences in participation levels between different wealth groups are smaller, as are those between citizens with different levels of education and those living in urban and rural areas.

2 Sauti za Wananchi Drafting the Law of the Land, November 2013 <http://www.twaweza.org/uploads/files/DraftConstitutionFINAL-EN.pdf>

Figure 6: % who participated in at least one activity related to the Constitution making process



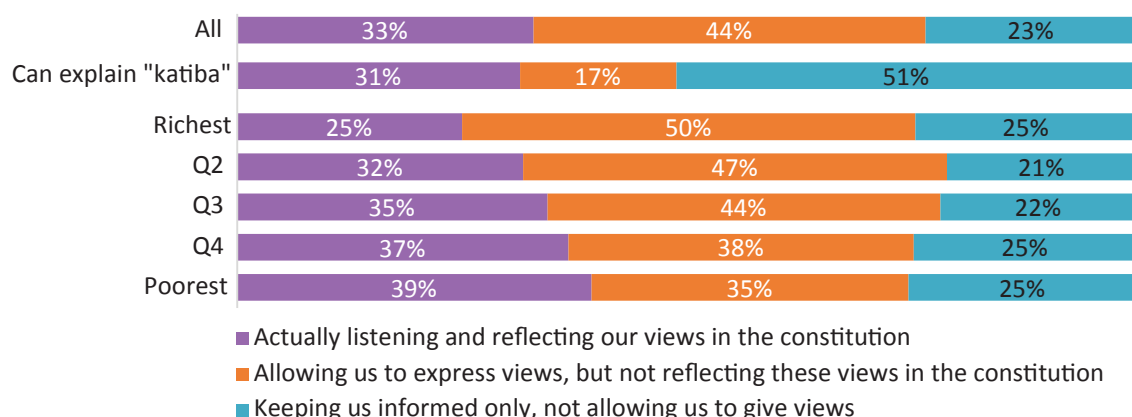
Source of data: *Sauti za Wananchi*, mobile phone survey, Round 20 (June-July 2017)
Base: all respondents, n=1745

Fact 4: 2 out of 3 citizens do not think citizens’ views were reflected in the draft Constitution

One out of three citizens (33%) say the constitutional review process involved actually listening to and reflecting citizens’ opinions in the draft Constitution being developed. One in four (23%) say the process was mostly about keeping citizens informed rather than allowing people to give their views. The remainder (44%) saw the process as somewhere in between – allowing citizens to express their views, but not reflecting these views in the Constitution.

Confidence that the process was meaningfully consultative is higher among poorer citizens than among the wealthy.

Figure 7: Thinking about the Constitution making process in Tanzania, which of the following statements best describes how the process was carried out in Tanzania?



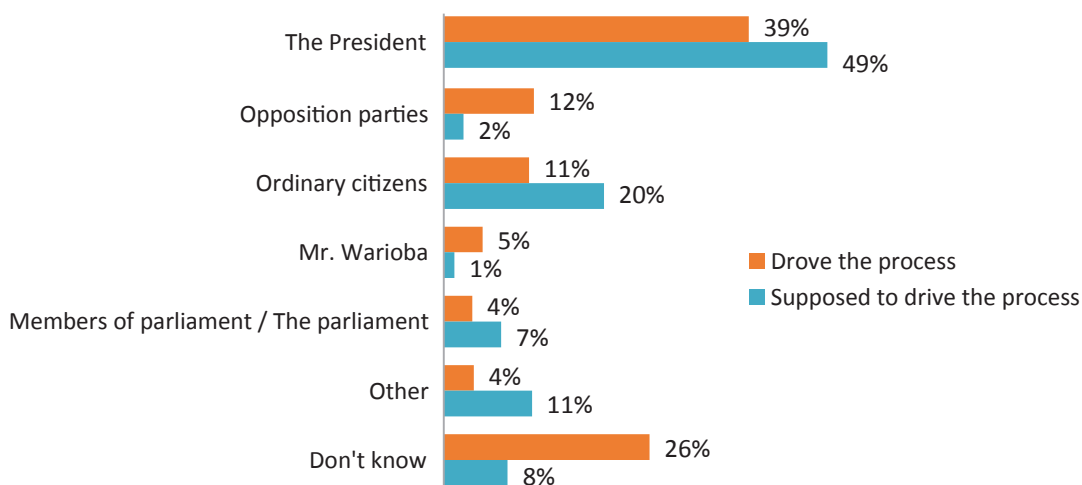
Source of data: *Sauti za Wananchi*, mobile phone survey, Round 20 (June-July 2017)

Base: all respondents, n=1745

Subsequently nine out of ten (91%) citizens agree with the statement that “the process of making the Constitution and the content of the Constitution are both important” (not shown in charts). In addition six out of ten (59%) think the Constituent Assembly (CA) adequately represented all Tanzanians in the process. Four in ten (38%) disagree (not shown in charts).

When asked who *should* drive the constitutional making process, one in five citizens (20%) say that citizens should have been driving the process, but only one in ten (11%) say this was actually how it worked. Similarly, half of the citizens (49%) say the President should have driven the process, while four in ten (39%) say that he actually did drive it. It is interesting to note that 26% of citizens have no idea who drove the constitutional making process.

Figure 8: Who do you think drove the Tanzania constitutional making process?
Who do you think was supposed to drive it?



Source of data: *Sauti za Wananchi*, mobile phone survey, Round 20 (June-July 2017)

Base: all respondents, n=1745

Fact 5: Citizens disagree with many of the changes made by the Constituent Assembly

Citizens disagree with many of the changes introduced by the Constituent Assembly (CA) under the chairperson of the drafting committee, Andrew Chenge. In particular, eight out of ten (79%) disagree with dropping the provision for Ministers to be confirmed or rejected by a vote in parliament after being nominated by the President. Two out of three (64%) disagree with removing the provision for citizens to recall their MP if they fail in their duties.

Majorities also disagree with the decision to drop the prohibition on leaders and civil servants holding bank accounts outside the country (54%) and to remove 15-year term limits for MPs (52%).

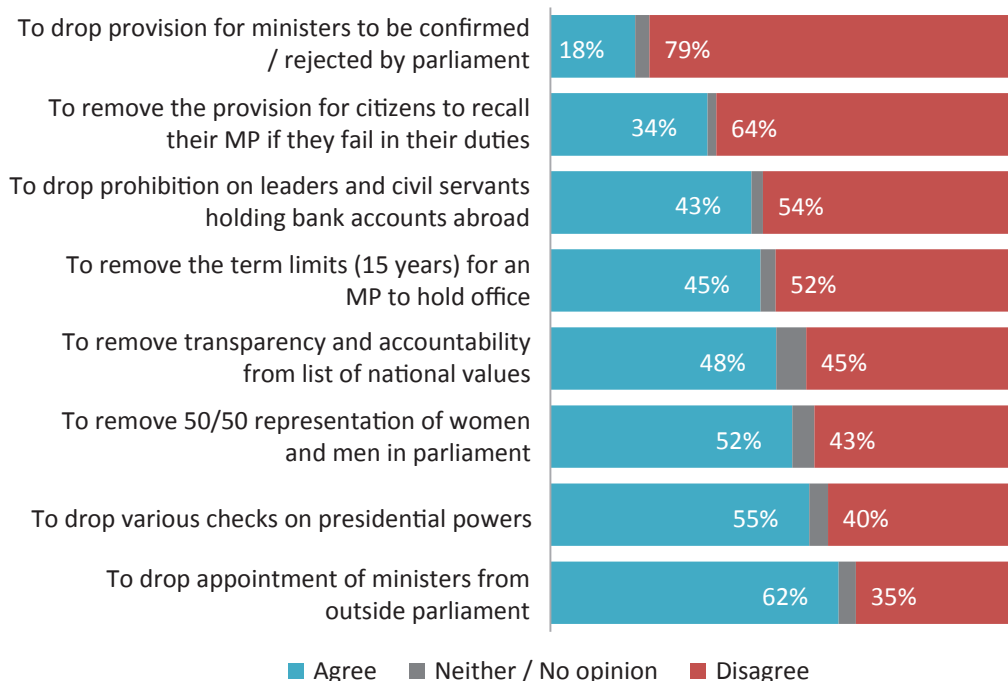
Citizens are evenly split (48%-45%) on whether the CA should have removed “transparency and accountability” from the list of national values in the Constitution.

Three changes made by the CA that do have popular support are the decision to drop 50-50 representation of men and women in parliament, to drop some checks on presidential powers and to drop the requirement that ministers must be appointed from outside parliament.

Those who understand the term “katiba” were in general slightly less likely to support these changes (not shown in charts).

Support for some of these changes appears to have grown since the Constituent Assembly concluded its work. In 2015, around half (47%) supported dropping the appointment of ministers from outside parliament; this has now risen to six in ten (62%). Similarly, support for removal of term limits for MPs has grown from 26% to 45%, support for removing transparency and accountability from the list of national values from 21% to 48%, and support for removing the provision to recall failing MPs from 19% to 34% (not shown in charts).

Figure 9: To what extent are you in agreement with the changes made by the constituent assembly?



Source of data: *Sauti za Wananchi*, mobile phone survey, Round 20 (June-July 2017)

Base: all respondents, n=1745

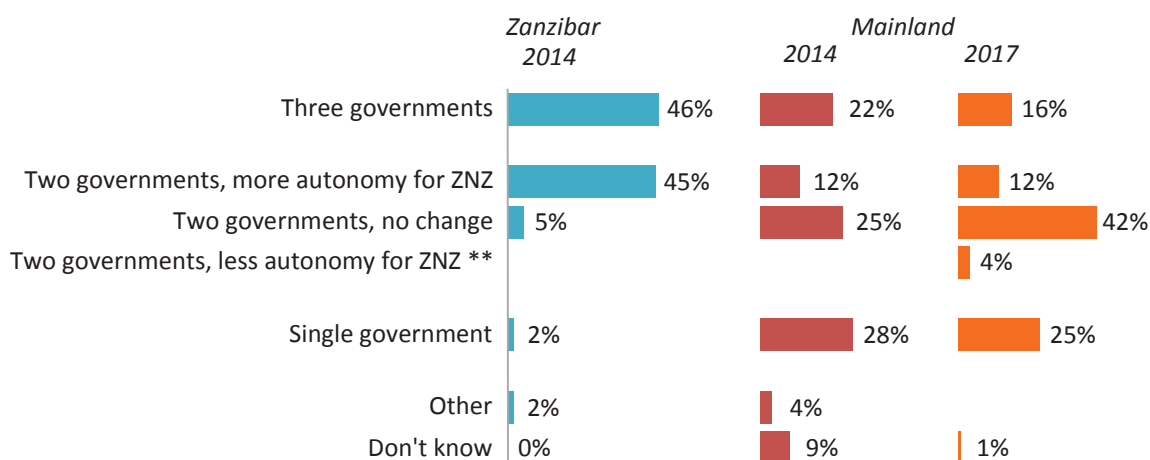
Fact 6: Among mainlanders, the most popular structure of government is the current two-government system

Four out of ten citizens on mainland Tanzania (42%) see the current, two-government structure as the most appropriate structure of government for the United Republic of Tanzania. This is more popular than any of the other alternatives that have been proposed. A further one out of eight (12%) say the best structure is something similar to the current arrangement but with more autonomy for Zanzibar. One out of six (16%) see a three-government structure, as proposed by the CRC under Justice Warioba, as the best option, and one out of four (25%) prefer the idea of a single government structure.

For mainland Tanzania, these figures have changed a little since a similar survey was conducted in 2014. Support for the current structure has grown from 25% to 42% and support for a three-government structure has declined slightly, from 22% to 16%.

It should be noted that the figures cited above all come from mainland Tanzania, and when a similar survey was conducted in Zanzibar in 2014, citizens' views were quite different from their mainland counterparts. Among residents of Zanzibar, support for the current structure was very low, with just one in twenty (5%) citing this option. The majority were split between either a three-government structure (46%) or a two-government structure with more autonomy given to Zanzibar than is currently the case.

Figure 10: Public preferences on the structure of government for the United Republic of Tanzania**



* 2014: What changes, if any, would you like to see in the Union between the Mainland and Zanzibar?

2017: What form of government structure do you think is most appropriate for Tanzania?

** Two-govs, less autonomy for ZNZ was not included as a response option in 2014 surveys

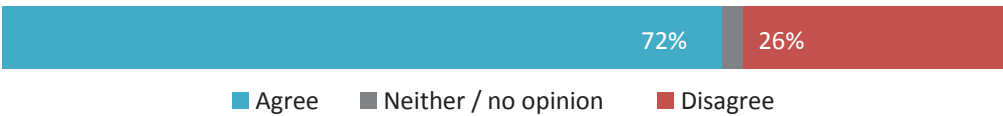
Source of data: *Sauti za Wananchi*, mobile phone survey, Panel 1 Round 14 (February 2014) and Panel 2 Round 20 (June-July 2017);

Wasemavyo Wazanzibari, mobile phone survey – Round 6, February 2014

Base: 2017 - all respondents, n=1745; 2014 (Mainland) - all respondents, n=1547; 2014 (Zanzibar) - all respondents, n=445

Similarly, three out of four citizens from mainland Tanzania (72%) say they agree with the decision of the Constituent Assembly to revert to a two-government structure, rather than to endorse the three-government structure as proposed by the Constitutional Review Commission.

Figure 11: To what extent are you in agreement with the decision of the CA to drop the three-government structure and revert to two governments



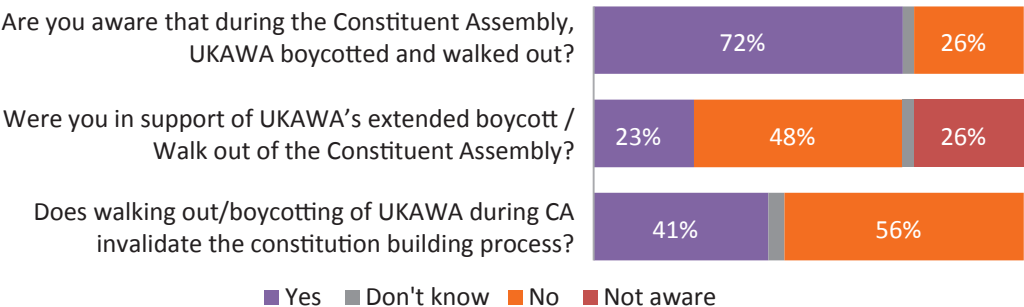
Source of data: *Sauti za Wananchi*, mobile phone survey, Round 20 (June-July 2017)
Base: all respondents, n=1745

Fact 7: 1 out of 4 citizens support UKAWA’s walkout from the Constituent Assembly and boycott of the review process

One out of four citizens (23%) support the decision of the opposition coalition, UKAWA (Umoja wa Katiba ya Wananchi – Union for the People’s Constitution), to walk out of the Constituent Assembly (CA) and boycott the rest of the review process. A further one out of four (26%) are not aware of the walkout / boycott, leaving half (48%) who disapprove of UKAWA’s actions.

A slight majority (56%) say the UKAWA walkout does not invalidate the Constitution-making process, while four in ten (41%) say it does invalidate the process.

Figure 12: Views on the UKAWA walkout / boycott of the Constituent Assembly (% answering “yes” to the following questions)



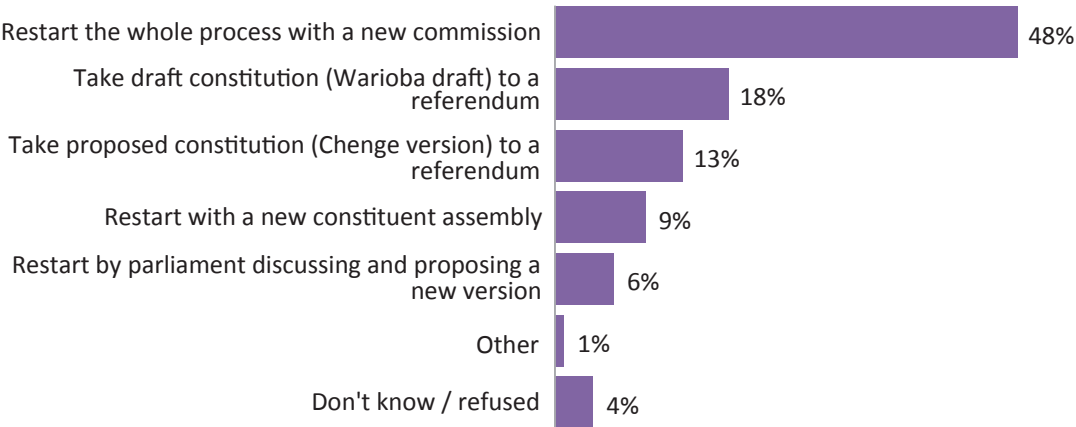
Source of data: *Sauti za Wananchi*, mobile phone survey, Round 20 (June-July 2017)
Base: all respondents, n=1745

However, asked in more general terms and without mentioning UKAWA by name, this situation is reversed. A majority (56%) agree that “if a group decides not to participate in the Constitution making process, it makes the Constitution lack legitimacy among all citizens” (not shown in charts).

Fact 8: 1 out of 2 citizens say the best way forward to revive the review process is to restart entirely with a new commission

Almost half (48%) of citizens say that the best way forward to revive the Constitution-making process would be to restart the whole process with a new review commission. Two out of ten (18%) say the best way forward is to go straight to a referendum on the Warioba draft. A smaller number (13%) say a referendum using the Change version / proposed Constitution is the way to go, while fewer still say the process could be restarted with a new Constituent Assembly (9%) or by taking the draft to parliament for MPs to work on a new version (6%). Those who can explain the term “katiba” are slightly more likely than the wider population to say the process should be revived with a referendum on the Warioba draft: 25% compared to 18%.

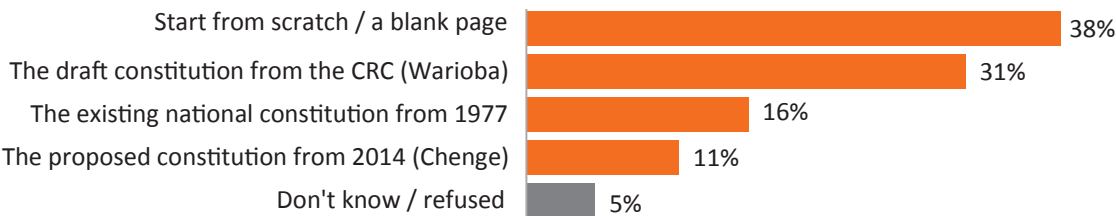
Figure 13: What is the best way forward to revive the process to make a new Constitution in Tanzania?



Source of data: *Sauti za Wananchi*, mobile phone survey, Round 20 (June-July 2017)
Base: all respondents, n=1745

Asked specifically which version of the Constitution should form the starting point for discussions if the process is revived, four in ten (38%) said “a blank page” and three in ten (31%) said the draft Constitution from the CRC (the Warioba draft) should be used. One in six (16%) prefer to start from the existing national Constitution from 1977 and one in ten (11%) name the proposed Constitution from the CA (the Change version). Those who can explain the term “katiba” are slightly more likely than the wider population to say the process should be go back to the Warioba draft (43%, compared to 31%) and less likely to say it should begin again with a blank page (26%, compared to 38%).

Figure 14: If the Constitution making process is restarted, which version of the Constitution should be used as a starting point?



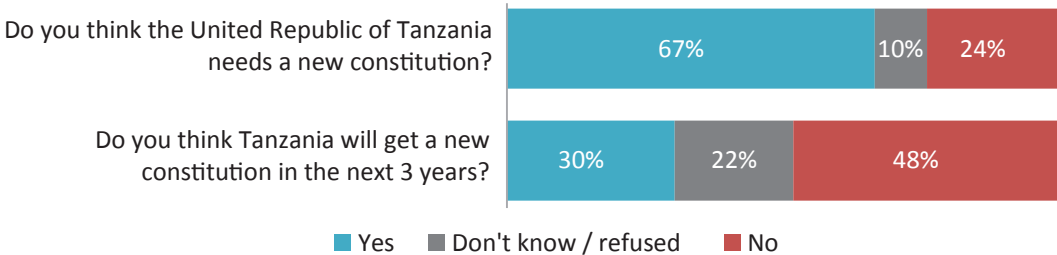
Source of data: *Sauti za Wananchi*, mobile phone survey, Round 20 (June-July 2017)
Base: all respondents, n=1745

Furthermore a clear majority (56%) say that whatever process is used to prepare a Constitution, the final decision should be given to the public in a referendum. One in four (24%) say the final decision should rest with parliament (not shown in charts).

Fact 9: 2 out of 3 citizens think Tanzania needs a new Constitution, 3 out of 10 think this will happen in the next three years

Two out of three citizens (67%) think the United Republic of Tanzania needs a new Constitution, compared to just one in four (24%) who don't think this is needed. However, many citizens do not think this is likely to happen soon. Three in ten (30%) think the country will get a new Constitution in the next three years, compared to five in ten (48%) who don't think so.

Figure 15: Do you think the United Republic of Tanzania needs a new Constitution? Do you think Tanzania will get a new Constitution in the next 3 years?



Source of data: *Sauti za Wananchi*, mobile phone survey, Round 20 (June-July 2017)
Base: all respondents, n=1745

Asked why a new Constitution was needed, three out of ten (31%) say the 1977 Constitution is old or outdated. Asked why a new Constitution would not happen in the next three years, citizens gave a wide variety of reasons, including that three years is not long enough (14%), a lack of consensus on what the Constitution should say (8%) and a lack of interest on the part of the government (8%) (not shown in charts).

3. Conclusion

This brief looks both backwards and forwards. It provides valuable detail on how the public view the Constitution-making process that took place between 2010 and 2015, and how they appraise these efforts. But the most valuable insights are those that help up to move forward. What lessons can be learned? Is there a public appetite to restart the review process? And if so, how should this be done?

Looking back, the most useful findings are those that provide pointers for anyone thinking of taking Tanzania through a similar process again. Here, four things stand out. First, the level of public awareness and understanding of the constitution and the review process is not very high. 93% of citizens have heard of the constitution, but just 35% can confidently explain what it is, and a quarter of the population are not aware that a review process took place.

Second, there is a real challenge with ensuring inclusion, most particularly of women. Understanding of the Constitution, awareness of the review process overall and in detail, and participation in that process are all much lower among women than among men. One out of four men (25%) participated in the CRC consultations, for example, compared to just 10% of women. There are also signs that younger, poorer and less educated citizens were excluded, though these cases are less stark than the gender imbalance.

Third, there is widespread public scepticism about whether the opportunities they were given to contribute were genuine or not. While a massive 91% agree that both process and content are important in Constitution-making, just 33% of citizens think the public's views were actually listened to and reflected in the various drafts. The remaining two-thirds think the process of consultation was only for creating an impression of consultation or for sharing information.

Fourth, public opinion on the UKAWA walkout and boycott is divided. The majority do not back UKAWA's actions. But asked in general terms, without mentioning UKAWA by name, a majority say that if a significant group decides not to participate, the whole process lacks legitimacy as a result.

Public opinion on the content of the Constitution is worth noting. Many of the changes made by the Constituent Assembly to the draft that relate to accountability are unpopular. There are strong majorities against the decisions to drop provisions for parliamentary confirmation of Ministers and for voters to "recall" failing MPs, and smaller majorities against dropping the prohibition on overseas bank accounts for senior government figures and dropping 15-year term limits for MPs.

On the issue that dominated debate and headlines around the Constitution – the Union question – this brief suggests the most popular structure among mainlanders is the current two-government structure, as proposed by the CA. Only 16% of mainlanders prefer the idea of a three-government structure, as put forward by the CRC. However, these figures in particular must be treated with

caution, as they do not include opinion from Zanzibar. A survey in 2014 found that support for the three-government idea among Zanzibaris was high, at 46%.

Looking forward, the public are very clear on two points: there is a strong appetite for a new Constitution and a strong preference for starting afresh with a blank page, a new commission, and new consultations. Further, if any existing document is to be used as a starting point for discussions, the public would prefer it to be the CRC / Warioba.

Putting all of this together, future Constitution-making processes in Tanzania will need to resolve three key challenges: (i) awareness and inclusion, (ii) popular legitimacy, and (iii) consensus on content. The first of these should be the easiest to address, through awareness raising efforts that specifically target women and other disadvantaged groups and specific efforts to address the gender participation gap. The legitimacy challenge is harder, but it can be addressed through the kind of leadership that prevents the process breaking down into partisan battles, and that solves disagreements through dialogue instead of the weight of numbers.

Finding consensus on content is perhaps the hardest challenge of all. It requires a fine balance between listening to public opinion while providing sage leadership and guidance on some of the more thorny issues. Restarting the process from where it stalled risks reigniting the battles that were fought during the last round. Following the public's guidance and starting again with new consultations and a blank page could help build trust and defuse tension. Developing a draft that reflects public opinion on accountability measures should be relatively straightforward, but the union question is much harder. And this issue must be approached with great care. A simple of tyranny of numbers whereby the mainland can always effectively veto Zanzibari voices does not hold to the spirit of the union and will create significant issues down the line.

Countries all over the world find it hard to reach agreement on arrangements for similar, semi-autonomous areas – Scotland and the UK, Hong Kong and China, Puerto Rico and the US, are three examples. For those Zanzibaris who resent the perceived lower status of Zanzibar in the Union, putting the three-government option onto the agenda through the CRC then taking it away again through the CA, is like putting a cake on the table then telling people they can't eat it. Frustration and even anger are the natural result.

The best chance of finding a solution comes from addressing the other two challenges mentioned here: inclusion and legitimacy. With an open, inclusive process that solves disagreements through dialogue, consensus is possible. With open, inclusive leadership, such a process should be achievable.