



# CONSTITUTIONAL REFORM IN TANZANIA AND REFORM ADVOCACY

## LESSONS FROM THE KENYAN EXPERIENCE

2012

Tanzania is in the process of reviewing its Constitution, which was promulgated in 1977. This is a rare opportunity for Tanzanians to participate in forming the foundational law of their country.

The main purpose of this paper is to explore the ways in which a civil society coalition in Kenya advocated for police reforms during its Constitutional review process and afterwards, and examine the benefits of working as a coalition as well as the challenges. In conclusion this paper hopes to outline coalition strategies and practices that Tanzanian civil society may want to employ in forming a similar coalition and suggest a way forward for the future.

This paper will:

- Explain the role of civil society in the constitutional review process in Kenya;
- Provide a case study of Usalama as a coalition, detailing the positive and negative aspects encountered and overall success;
- Outline a way forward for Tanzanian civil society to build a coalition to advocate for security or criminal justice related reform in their constitutional review process; and
- Provide as an appendix a summary of the process for review of the Constitution in Tanzania.

### A. Constitutional reform and civil society in Kenya

In December 2007, general elections were held in Kenya. The result was disputed, and violence erupted between the parties and various ethnic groups, resulting in over 1000 deaths and the displacement of approximately 600,000 people. After a process of mediation, a new



Grand Coalition Government was formed with Kibaki as President and Odinga as Prime Minister. One of the major components of settlement was a commitment to constitutional and institutional reform.

After the 2007-8 post-election violence, a number of investigation and inquiry committees considered the role of the police in the violence. In October 2008, the Waki Commission released its report, finding the police responsible for all 405 deaths caused by gunshots. This report was disputed by the government. In May 2009, President Kibaki established the Kenyan National Task Force on Police Reform, led by the retired Justice Ransley. The taskforce consultations and drafting coincided with the constitutional review process, and fed into the review of the security organs of the new Constitution.

### **What were the changes to the Security Organs in the Kenya Constitution?**

The new Constitution of 2010 provided for the replacement of the old policing system with the National Police Service headed by one Inspector-General. The National Police Service combines the Administration Police and the Kenya Police Force into the one police service. Of significance, the Constitution enshrined the independence of the police service.

As part of these measures, the Constitution established the National Police Service Commission which is mandated to manage recruitment, promotions and transfers, training and exercise disciplinary control over officers. The Commission was also authorised to receive complaints and recommendations from civilians and police associations. It could also investigate, monitor and evaluate the organization, administration and personnel practices of the service, review and make recommendations to the National Government. Following the investigations, it could hear and determine appeals from the members of the police.

### **B. Civil society advocacy in Kenya process – Usalama Reforms Forum**

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Security sector reform advocacy in Kenya began before the most recent Kenya constitutional reform process, with actors coming together to lobby for change after the post-election violence of 2007/8. During this period, some leading actors in the police reform and security sector in Kenya decided to come together to form a coalition which later developed into a



forum called The Usalama Reforms Forum. The Forum was able to meet with both the Kenyan National Taskforce on Police Reform and the Committee of Experts undertaking the Constitutional review, and in this way, had a key role in influencing the reform process in Kenya.

Formed in 2008, Usalama grew from four members to a strong forum of fourteen international, regional and national organisations. It began as a working group on security reform issues, focusing mainly on police reform that progressed into a forum with funding, a structure and a neutral organisation as the secretariat. Usalama has been successful in advocating for security sector reform in Kenya, and is a possible model that Tanzanian organisations can follow in its advocacy for change.

### **Why did Kenyan groups come together to form a coalition?**

#### **Collective energy and power**

Members of Usalama said that they formed a coalition to harness the energy of all members of the group<sup>1</sup> to push through reforms for that area. An individual organisation that may not necessarily have had enough individual resources to be able to effectively advocate for change could, through combining resources, energy and technical expertise with other like-minded organisations via a coalition with increased power to make considerable change.

Furthermore, reform in Kenya normally occurred at high levels of government, a large and powerful bureaucracy, with more resources than small individual groups. Small groups joining together increased the ability for these groups to obtain resources, energy and power to tackle the government.<sup>2</sup>

Generally speaking, coalitions are a key way to develop collective power, giving the opportunity for individual organisations to “develop their power base and thereby better defend their interests”<sup>3</sup>. Tony Otoa of the Civil Society Coalition on Oil in Uganda, notes that “generally,

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<sup>1</sup> Jaki Mbogo, at the time of reforms was an officer with Saferworld, (Interview 19 June 2012)

<sup>2</sup> Tennille Duffy, formerly of Commonwealth Human Rights Initiative (Interview November 2012)

<sup>3</sup> Conflict Research Consortium, University of Colorado, USA; Otoa T, Presentation on “Challenges and prospects of Coalition building in Uganda: The experience of CSCO”.



low-power groups are much more successful in defending their interests against the dominant group if they work together as a coalition.”<sup>4</sup>

### **One issue, one voice, greater impact**

A coalition of key actors in the Kenyan security sector resulted in a common position on critical security issues. This was important to insure that the various civil society organisations did not provide competing opinions on the same issue, confusing the government or consultation panel. Numerous opinions on the one area may result in the committee just disregarding the individual voices. Cohesion adds strength to the argument. Thus, if all key organisations are saying the same thing, it is difficult to ignore. Prior to the establishment of Usalama, there were a lot of ‘smaller’ voices trying to advocate around the same issue, but not being heard as well.<sup>5</sup>

In the words of the Usalama Coordinator, Philip Ochieng, one of the primary reasons a coalition was formed was, “to have a common agenda and to have a reinforced and cohesive effort to push for security sector reforms within the country.”<sup>6</sup> This is echoed by former Commonwealth Human Rights Initiative Programme Officer Tennille Duffy who stated that the “the union of all of those voices in the Usalama Forum meant that we were able to present a united, and larger, more credible front.”<sup>7</sup>

### **New national organisation – new voice**

One of the key benefits of forming a coalition was that a range of groups were given the chance to be part of a new national forum—a new Kenyan voice—that didn’t have a previous reputation with the government.<sup>8</sup> This was useful for organisations that were non-Kenyan (ie, international organisations) or that the government was cautious of. In particular, it was perceived that the government had a bad relationship with human rights organisations.<sup>9</sup> In addition to creating a new voice, the coalition amplified the message, as the agreed views of

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<sup>4</sup> Ibid.

<sup>5</sup> Tennille Duffy, above n 40

<sup>6</sup> Philip Ochieng, Coordinator, Usalama Reforms Forum (Interview 28 June 2012)

<sup>7</sup> Tennille Duffy, above n 40

<sup>8</sup> Jaki Mbogo, above n 39

<sup>9</sup> Jaki Mbogo, above n 39



the coalition would also be put forward separately by the individual member (i.e. by Usalama as a coalition, and by the members of Usalama as individual organisations).

Also, the member organisations of the Usalama coalition recognised that, although there was a lot of dialogue about human rights in Kenya, there was less civil society dialogue on security sector reform. A coalition of different organisations that could come together to promote the one issue of security sector reform resulted in a stronger spotlight on the issue.<sup>10</sup>

### **Range of skills and viewpoints**

The different members of Usalama brought with them different skill sets. The coalition was made up of a range of groups, some that focus on legislative advocacy, drafting, research and report writing; others that focussed on implementing projects to affect change; some that brought with them an international, broad view point; and yet others that brought a local, community vantage point.

The various skill sets and perspectives added to the strength of Usalama as a coalition because it could call on the different members to assist, depending on their strengths. In other words, Usalama, as one organisation, had a very broad range of abilities.<sup>11</sup>

As stated above, the combined work, skills, connections, efforts, and resources of the various members of the forum made the forum more effective than if the individual organisations had continued to operate separately.<sup>12</sup>

### **New relationships**

An organisation that joins a coalition may find that they do not know enough about, other organisations in the coalition. In this situation, the coalition provides an opportunity for member organisations to develop better relationships, which may lead to future partnerships. Furthermore, individual organisations may meet the partners of other members of the coalition, thereby increasing their network and opportunities for new work.

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<sup>10</sup> Jaki Mbogo, above n 39

<sup>11</sup> Jaki Mbogo, above n 39

<sup>12</sup> Tennille Duffy, above n 40



## **Increase profile**

Individual member organisations can increase their profile by being part of a strong, well-regarded national coalition. Again, this may assist in increasing the individual organisation's ability to obtain new work and funding.

## **Successes**

### **Starting the debate**

Although there has been debate about police reform for long time in Kenya, given the extensive range of human rights violations and the police implications in criminal activity, Usalama managed to make the reform a civil society issue,<sup>13</sup> as opposed to a purely political or human rights centric issue.

### **Access**

The fact that Usalama is a coalition of key civil society groups that works in the security sector, with a range of technical expertise, meant that they were consulted on key issues by the various police reform taskforces (the National Task Force on Police Reform and the subsequent Police Reform Implementation Committee) and the constitutional committee. After the constitution was accepted, the Constitutional Implementation Committee (CIC) also conferred with Usalama.

This meant that the members of the coalition had a way to get to the table to express their views to these critical bodies. Without being part of the coalition, many individual organisations may not have been able to put forward their views to these commissions and committees.

### **Requests for assistance**

Furthermore, due to the range of skills possessed by the coalition, as discussed above, the Government and other task forces requested technical assistance from Usalama members. The members could offer knowledge and expertise to the different taskforces, and the government

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<sup>13</sup> Jaki Mbogo, above n 39





drafters, giving Usalama greater ability to influence the product, be that a report or draft legislation.<sup>14</sup>

### **Input in the Constitution**

Usalama advocated for reform for the security sector to be included in the Constitution, with many suggestions put forward by Usalama being included in the final constitution.<sup>15</sup> This occurred both through input directly to the Constitutional committee - Usalama submitted a signed memorandum from the partner organisations which outlined the recommendations for the constitution, and through input in other consultations, such as the Ransley Commission, whose report also influential in the constitutional provisions regarding the police and security.

### **Start of partnerships**

Along with successful advocacy of key parts of the constitution, the process provided the opportunity for Usalama to form a strong relationship with the Commission on the Implementation of the Constitution.<sup>16</sup> This meant further input and consultation on legislation was required to implement the constitutional changes to the security sector.

### **Input in other key documents and activities after the Constitutional review**

As indicated above, Usalama was granted access to many consultations and discussions that otherwise, as individual groups, Usalama members may not have been invited to. This led to putting forward technical expertise and suggestions, leading to actual input in the various reports and draft legislation.

After the Constitution was passed, Usalama made key submissions in both writing and directly to commissions and parliamentary committees, on the new legislation required to implement the police reform constitutional changes: new *National Police Service Act*, *National Police Service Commission Act* and *Independent Policing Oversight Act*. Usalama has also made submissions and advocated on content of the *National Coroners Bill* and the *Private Security Regulation Bill*, currently still awaiting discussion and approval by Parliament.

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<sup>14</sup> Jaki Mbogo, above n 39

<sup>15</sup> Philip Ochieng, above n 43

<sup>16</sup> Philip Ochieng, above n 43



Additionally, Usalama, in collaboration with the Kenya National Commission on Human Rights, monitored the first recruitment of police officers after the new constitution.<sup>17</sup>

### **Securing funding**

Recently, Usalama has secured funding to implement a range of measures relating to the new policing system in Kenya, including public and police awareness materials on the new system, training and training materials, model police stations and more. Moreover, Usalama is carrying out a crime and community safety project as well. These projects demonstrate the high regard funders have for the Usalama Forum and its members, and the need for such a group.

### **Challenges**

#### **Vision, coordination, meeting and funding**

At times it was difficult to bring all Usalama members together at critical moments and to coordinate advocacy responses and work, whilst considering all members views.<sup>18</sup> In fact, it still remains difficult to agree to an advocacy response considering that Usalama has 14 members. Furthermore it was very important to come together and agree on a combined vision for the future and to assess this vision at intervals. This was critical and did prove difficult to organise and manage at times. It was noted that an organisation or person needed to take responsibility for managing this vision and review.<sup>19</sup>

A strong organisational structure, a clear chain of communication, and one or two people dedicated to acting impartially on behalf of the coalition and to putting all members' contributions on the table/together, as well as maintain the vision, was the most effective technique.<sup>20</sup>

To have such an organisational structure, and to ensure meetings could take place, funding was required. At the beginning funding was not available to allow a dedicated person to take on that role as a wholly separate job, as opposed to having to fit the role in around their own jobs

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<sup>17</sup> Philip Ochieng, above n 43

<sup>18</sup> Tennille Duffy, above n 40

<sup>19</sup> Eva Kimani, formerly of PeaceNet, now at Usalama Reforms Forum

<sup>20</sup> Tennille Duffy, above n 40





within their own organisations.<sup>21</sup> It is noted that Usalama started as a working group, which then developed into a forum. As a working group, less funding was needed, although most agreed that having a dedicated Secretariat from the beginning would have been very helpful.<sup>22</sup>

Once Usalama grew to having 14 members with a strong reputation, it was recognised that a full Secretariat was required. Although a challenge, as funding of a secretariat and the meetings of Usalama would require relatively significant funding, funding was later provided by one member of the forum.<sup>23</sup> Such funding also allowed members of the group to meet more frequently.

Now, after four years, Usalama can largely operate by itself, as it has received grants to implement projects. This however meant that Usalama has moved from being solely an advocacy forum, to an organisation that implements projects. Usalama operates by contracting parts of a contract to different Usalama member organisations, according to the expertise of its members.

You may also want to add in terms of lessons learnt that just like group dynamics there will be need to have one of the organisations or an individual maintain and chart the vision for the whole team. There must be a vision bearer and carrier, a person willing to “take one for the team” and some of the key members must share that vision.

## Structure

The coalition needs to have an agreed vision, clear structure and organisation to insure that it can be effective. Usalama members had to agree on a member organisation to act as the Secretariat and to chart the vision of the group. Once agreed upon, the Secretariat coordinated meetings, advocacy and input into technical groups. However, Usalama did face challenges in getting common agreement amongst members on the agenda and approach to take as a forum.<sup>24</sup> Usalama learnt that it needs to be clear which member of the coalition will do what job, and how the group will decide on advocacy positions to put forward. In this respect, clear

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<sup>21</sup> Tennille Duffy, above n 40

<sup>22</sup> Tennille Duffy, above n 40

<sup>23</sup> Jaki Mbogo, above n 39

<sup>24</sup> Philip Ochieng, above n 43



rules and a clear organisational structure are required. This should be put in writing, such as in a founding document, so each organisation is aware of, and can refer to, the agreed rules and procedures as required.

Further, it was noted that a good organisational structure is especially important if the coalition wants to continue to act after the forming of the Constitution. A good structure will mean that all the different voices can be managed, whereas a bad structure may mean certain organisations feel sidelined, and leave the coalition.

Structure is also very important if the coalition stays in operation after the constitutional process, to continue to advocate, or even to take on projects to implement. In this latter case, structure is very important to ensure member organisations can guide the coalition without having conflict of interests in obtaining work under a new contract or project.

### **Capacity**

Despite the fact that Usalama was, and still is, a coalition of a range of organisations with extensive and various expertise, the Forum still would have benefited from having put more energy into capacity development of the group as a team.<sup>25</sup> Further capacity development on how to build and sustain a coalition, with momentum, should have been provided. Also, Usalama could have developed the technical expertise of members more thoroughly, so that when attending consultations and meetings, the technical point of view was expressed more clearly.<sup>26</sup>

### **Timing**

As soon as Usalama was formed, it wanted to act quickly to put forward views in the constitutional process. This was successful in many ways, with the majority of Usalama's view points being incorporated into the constitution. However, trying to achieve consensus and a common position on a significant process such as constitutional reform, whilst also trying to build the capacity and organisational structures of the forum, was a big challenge. In hindsight,

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<sup>25</sup> Jaki Mbogo, above n 39

<sup>26</sup> Jaki Mbogo, above n 39



some Usalama members believe that more time should have been spent on building the capacity of the group and establishing a good base.<sup>27</sup>

### C. Suggested way forward for a similar coalition in Tanzania

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Organisations that hope for change to the security sector through the constitutional reform process, and any subsequent legislative reform process, should consider advocating for their position through a coalition.

The coalition does not necessarily need to be made up of organisations that purely focus on policing or security sector related issues, but can be made up of a range of organisations that work, to some extent, on issues relating to these areas, and have an interest in reform in these spheres. For example, the Usalama Reforms Forum includes human rights organisations, community based safety organisations, general development organisations (i.e. World Vision), as well as specific policing-oriented reform non-government organisations.

As discussed in the section above on the Usalama Forum, a coalition is useful as it brings together the collective energy and expertise of different organisations; the government is likely to respect a strong coalition more than an individual organisation; and one common voice on particular issues adds strength to the advocacy position.

#### Key things required

##### 1. Adequate time for establishment and capacity building

It is suggested that a decent amount of time is allocated for the coalition to meet together to discuss and agree upon base principles, vision and rules, a general advocacy platform and future goals. Once agreed upon this should be documented and circulated, for the reference of all members.

Further, time should be provided to build the capacity of members to participate in advocacy and activities if required.

##### 2. Organisational structure

A clear organisational structure is required to ensure that multiple different groups, with possibly varied viewpoints, can come together and make decisions in accordance with an

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<sup>27</sup> Philip Ochieng, above n 43



agreed process. This structure will include rules and processes regarding communication within the coalition, communication and advocacy as a group, meetings, coordination and adherence to deadlines.

A coalition that is going to continue after the constitutional reform process ends, will also need strong structural organisation to ensure that there is clear governance, no conflict of interests, that all voices are heard and that the secretariat can also get guidance quickly when required.

### 3. Funding

As discussed in the 'Challenges' section of Part D, funding is an essential part of a well-functioning and effective coalition. This is especially important if the coalition is going to stay together after the constitutional review, to advocate further and to even implement particular projects.

It is required to fund a secretariat to manage the meetings of the coalition, to organise the work of the coalition, and to represent the coalition at meetings and consultations. The secretariat would work in accordance with the structure originally decided upon.

Once the structure and rules are agreed on, establishment funding is required to establish the secretariat with an office, equipment and, most importantly, staff. On-going operational funding is required to ensure the members of the coalition work day to day, attend meetings, put forward advocacy views at consultations etc.

Brochures and information on the new coalition should also be produced.

### 4. Management

The coalition will need to be managed by an effective secretariat that is able to manage competing interests within the group and assist the coalition to come to an agreed viewpoint. Besides having these good conciliation skills, the secretariat will need to have strong advocacy skills to represent the group, as well as sound management and financial skills.

### 5. Consistent Media and Outreach Strategy

An agreed, consistent media and outreach strategy should be implemented to raise the profile of the coalition.



## APPENDIX: Process for Constitutional Review in Tanzania

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Legislation has been passed to guide the Constitutional Review process, *The Constitutional Review Act 2012 (the Review Act)*. The Act states that a Constitutional Review Commission will be established by the President, who will appoint the members of the Commission after consulting and gaining the agreement of the President of Zanzibar. The Commission will coordinate the review of the Constitution.

### **Work of the Commission**

The Commission will do the following work (explained further below):

- Educate the public on their role as the Constitutional Review Commission.
- Consult with the public on their views regarding constitutional reform.
- Analyse the current constitutional provisions to determine if they are compatible and consistent in relation to: the sovereignty of the people; political systems; democracy; rule of law; and good governance.
- Prepare a report on the constitutional review process, making a recommendation on each term of reference.

### **Safeguarding and promoting particular values in the Constitution**

The Commission must safeguard and promote particular values in the constitution, including:

- Existence of the United Republic of Tanzania's government.
- Existence of the Revolutionary Government of Zanzibar.
- The structure of the government being made up of three branches of government - the Executive, Legislature and the Judiciary.
- The nature of governance: republican.
- The values of national unity, cohesion and peace.
- Periodic democratic elections
- Promotion and protection of human rights.
- Human dignity, equality before the law and due process of law.
- The secular nature of Tanzania – freedom of religion

### **Terms of reference**



The Constitutional Review Act states that the Commission may ask any person who is willing to appear before it for discussion, orally or by production of a document, on any constitutional matter which the Commission considers relevant to the constitutional review process. These individuals and documents would comprise the terms of reference. The Commission shall then examine and analyse these views, information, opinions, proposals and recommendations collected.

### **Civil Society's Interaction with the Commission**

The Commission appointed is mandated to ensure public participation in the review of the Constitution. It must articulate and conduct awareness programmes on its objectives and functions, and examine and analyse the divergent public opinions separately.

Any person who, or organization which, intends to conduct public awareness programmes on the constitutional review, has to issue a notice to the Commission in writing, and register under the relevant laws of Mainland Tanzania or Tanzania Zanzibar. Organizations and institutions can convene meetings and rallies in accordance with the law governing such assemblies, in order to afford opportunity for their members to make their opinions on the proposed Constitution and forward their opinions to the Commission.

The Commission is also mandated to form *fora* on *ad hoc* basis. The *fora* would provide public opinions on the draft Constitution and shall be based on the geographical diversity of the United Republic of Tanzania and shall involve and bring together various community groups.

Before the Commission completes its report, the draft Constitution will be published in the Gazette and other local newspapers to increase public awareness and allow further discussion.

### **Members of the Commission and timeframe**

The members of the Commission were appointed in April 2012, and the Commission started work on 1 May 2012. A list of the members of the Commission can be found below.

The Commission has to finish its work within 18 months after the work began. As 1 May 2012 was the start date, the Commission should finish its work by October 2013.





## Members of the Commission

### Members from Mainland Tanzania

Professor Mwesiga Baregu

Riziki Shahari Mngwali

Dr Edmund Sengondo Mvungi

Richard Shadrack Lyimo

John Nkolo

Alhaj Said Hamad El-Maamry

Jesca Mkuchu

Professor Palamagamba Kabudi

Humphrey Polepole

Yahya Msulwa

Esther Mkwizu

Maria Malingumu Kashonda

Al-Shaymaa Kwegyir

Mwantumu Malale

Joseph Butiku

### Members from Zanzibar

Dr Salim Ahmed Salim

Fatma Said Ali

Omar Sheha Mussa

Raya Salim Hamad

Awadh Ali Said

Ussi Khamis Haji

Salma Maoulidi

Nassor Khamis Mohamed

Simai Mohamed Said

Mohamed Yusuph  
Mshamba

Kibibi Mwinyi Hassan

Suleiman Omar Ali

Salama Kombo Ahmed

Abubakar Mohamed Ali

Ally Abdullah Ally Saleh