

**Comparative Approaches to Referendums and Human Rights in Sub-Saharan Africa: Lessons from Zambia.**

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## Abstract

In the sub-Saharan African region, referendums tend to be pivotal events in constitutional development. They hold out the prospect of greater human rights protections while revealing fundamental tensions between democratic aspirations of the people and vested power interests of the political elite. This article examines the 2016 constitutional referendum in Zambia which sought to amend the Bill of Rights amidst a contested electoral process. It draws comparative lessons from the referendum of Kenya in 2010 and the referendum of Uganda in 2000 on multiparty democracy. From these cases, it explores how referendums can advance civil liberties such as the freedom of assembly and freedom of expression or backslide against them through low turnout of voters, manipulation by the political elite and inadequate civic education of citizens. The lessons drawn from Zambia underscore the need for an inclusive process to ensure legitimacy of the constitution. This highlights the broader African challenge of balancing direct democracy and the substantive advances of human rights and civil liberties. The analysis suggests that while referendums offer pathways towards empowerment, their success centres on robust institutional safeguards and genuine public participation.

**Keywords:** Referendums, human rights, constitutional reform, civil liberties, African democracy.

## Introduction

There is something fundamentally human about a referendum—it is a moment when common citizens, often ignored in the grand machinery of politics, get to have their voices heard on matters that shape their lives. The Electoral Commission of Zambia defined a referendum as a process that allows citizens to approve or reject a law to be passed by the Legislature.<sup>2</sup> In a referendum, voters are given an opportunity to directly decide through a vote on a particular subject matter. All citizens who are eligible have the right to either accept or reject the question posed, in order to provide guidance to the government. A voter is expected to choose ‘Yes’ or ‘No’ on the question given. This may be regarding a new constitution, a constitutional amendment or a proposed law.

In Africa, where colonial legacy and post-colonial autocracy have dominated government for so long, these votes have greater meaning and carry a lot of weight.<sup>3</sup> They are not simply procedural boxes to be ticked, they are battlefields for reclaiming democratic values, especially over human rights. There was excitement amongst citizens in Zambia back in 2011, when citizens voted in a new regime, the Patriotic Front (PF) government after ousting the Movement for Multiparty Democracy (MMD) that had been in power for 20 years. Leader of the Patriotic Front at the time Michael Chilufya Sata promised to deliver a new constitution within 90 days of assuming power.<sup>4</sup> The new regime promised an expanded Bill of Rights that would, finally, enshrine protections for economic, social and environmental rights.<sup>5</sup> The same excitement was seen in Kenya in 2010 when citizens were filled with joy, when a sweeping ‘yes’ on a new constitution was an outright sigh of relief after decades of ethnic strife and one-party

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<sup>2</sup> Electoral Commission of Zambia. (2016). Referendum Handbook: Voter Education Facilitator’s Handbook 2016.

<sup>3</sup> Kersting, N. (2014) Referendums in Africa. In: Qvortrup, M. (eds) Referendums Around the World. Palgrave Macmillan, London. 978-3-319-57797-5.

<sup>4</sup> Lusaka Times. Sata Promises New Constitution within 90 days if voted into power. <https://www.lusakatimes.com/2011/08/14/sata-promises-revist-mungomba-draft-90-days-voted-power/>

<sup>5</sup> National Assembly of Zambia. Ministerial Statement on the Occasion of the release of the Draft Constitution to the members of the Public. October 2013.

dictatorship.<sup>6</sup> But these peaks are tempered by troughs, like the referendum of 2000 in Uganda, when a vote of ‘no’ to multipartyism was a whisper of apathy than a roar of the determination of the people.<sup>7</sup>

This article follows these stories, employing Zambia as a lens through which to analyze comparative lessons across the continent. Drawing on African scholarship and first-hand experience of the processes, it poses the question: How do referendums intersect with human rights in Africa's democracy experiments? What happens when the promise of expanded civil liberties meets low turnout and political opportunism? Most critically, what can Zambia's unfinished business teach us about how to make direct democracy work for the people, not for presidents or the executive wing of government? By putting together stories from Zambia, Kenya and Uganda, we see patterns such as the excitement of participation, the wound of exclusion and the quiet resilience of citizens pushing back emerging. These cannot be said to be academic theories, as they are lived experiences that remind us that democracy in Africa is a big mess yet hopeful and deeply human. These experiences are a lesson to Africa and give confidence for the success of democracy in the future.

### **The Zambian Referendum of 2016: A Missed Opportunity for Rights Expansion**

The 2016 referendum in Zambia was supposed to be a cornerstone in the long and bumpy journey of constitutional renewal in the country a process that had been going on since the 1990s and was characterized by false starts and bargains amongst the elite. Signed into law earlier that year by President Edgar Lungu,<sup>8</sup> the amendments had aimed to supercharge the Bill of Rights under Part III of the Constitution. These amendments to the Bill of Rights added a layer of protection of civil and political rights with economic, social, cultural, environmental as well as ‘further and special rights’ divisions.<sup>9</sup>

These amendments were a nod to the Mungomba Draft Constitution of 2005, which was considered a people driven charter that had captured the aspirations of the people but was repeatedly sabotaged by parliamentary wrangles.<sup>10</sup> It would have been progressive to see the rights to clean water, a safe and healthy environment, decent housing and cultural preservation, all enshrined into the fabric of the law. As associate professor Mulela Margaret Munalula pondered, this was supposed to be the consummation of a 40-year quest for a truly legitimate constitution, not merely conceived out of elite consensus but the popular will of the people.<sup>11</sup>

The reality in this case was far much sobering. The referendum was held in conjunction with general elections on the 11<sup>th</sup> of August 2016. The referendum packaged complex questions into a single ‘yes’ or ‘no’ on strengthening the Bill of Rights and repealing Article 79 which governed the aspect of amendments.<sup>12</sup> The referendum question read:

<sup>6</sup> African Business. Made in Kenya: A Constitution for the People, By the People. 14<sup>th</sup> November, 2011. <https://african.business/2011/11/economy/made-in-kenya-a-constitution-for-the-people-by-the-people>

<sup>7</sup> Bratton, M. and Lambright, G. (2001) Uganda's Referendum 2000: The Silent Boycott. Oxford University Press. Vol. 100, No. 400, pp. 429-452.

<sup>8</sup> Lusaka Times. President Lungu ushers in a new constitution, calls for a new approach to politics. <https://www.lusakatimes.com/2016/01/05/president-lungu-ushers-in-a-new-constitution-calls-for-a-new-approach-to-politics/>

<sup>9</sup> Lumina, C. (2016). Zambia's Constitutional Referendum: More Rights, Questionable Legitimacy? ConstitutionNet. <https://constitutionnet.org/news/zambias-constitutional-referendum-more-rightsquestionable-legitimacy>

<sup>10</sup> Munalula, M. M. (2016). The 2016 Constitution of Zambia: Elusive Search for a People-Driven Process. ConstitutionNet. <https://constitutionnet.org/news/2016-constitution-zambia-elusive-search-people-driven-process>

<sup>11</sup> *Ibid*

<sup>12</sup> See Lumina, *supra* note 7.

*“Do you agree to the amendment to the Constitution to enhance the Bill of Rights contained in part III of the constitution of Zambia and to repeal and replace Article 79 of the Constitution of Zambia?”<sup>13</sup>*

The vote crashed to 44.44% which is below the 50% threshold required for validity, despite the presidential race seeing a 56.45% turnout.<sup>14</sup> This disconnect was as a result of woefully inadequate civic education as both the ruling Patriotic Front government and opposition political parties had not mounted genuine campaigns to explain what was at stake. Instead, as Lumina, a Zambian born research professor in South Africa noted, politicians transformed it into an electoral sideshow, urging ‘yes’ votes to boost their manifestos without unpacking the benefits of the human rights that were to be included.<sup>15</sup> The Non-Governmental Organisations Coordinating Committee (NGOCC) criticized this as a deliberate ploy by political parties to avoid the input of the public on this matter of national interest.<sup>16</sup> They argued that the people of Zambia were not aware of the contents of the proposed Bill of Rights that they would be voting for or against. They echoed broader dissatisfaction with the drafting process that had been experienced as one that was imposed, rather than inclusive.

At this point, human rights implications were stark. The failure of the referendum meant clinging to an outdated Bill of Rights, leaving gaps in the protection against arbitrary detention, freedom of expression and assembly—rights that were already strained in Zambia's polarised politics.<sup>17</sup> The U.S. State Department reports from that year highlighted some of the restrictions by government on opposition political party rallies and the media, with online sites such as *Zambian Watchdog* being blocked online.<sup>18</sup> This demonstrated how civil liberties remained fragile without constitutional reinforcement.

For regular Zambians such as subsistence farmers in Eastern Province or urban youth in Lusaka the failed referendum was not just a technical failure, it was a blow to the gut for hopes of accountability in a system where corruption and inequality were rampant. As later noted by the Electoral Commission of Zambia, the poor turnout was due to the confusion over ‘further and special rights,’ terms which felt strange without the sensitization of the people.<sup>19</sup> The story of Zambia is one of promise that has been deferred, where the mechanics of democracy have instead outpaced the spirit of democracy.

### **Comparative Cases: Kenya and Uganda**

To comprehend Zambia's referendum in fuller relief, we turn to other African countries whose experience mirrors with and deviates from the path of Zambia. The 2010 referendum in Kenya is a model of what direct democracy can achieve when combined with the demands of human rights. After the 2007-2008 post-election violence that killed over 1,000 people and displaced 600,000 citizens. The people of Kenya sought a constitution that will unite divisions

<sup>13</sup> Electoral Commission of Zambia. (2016). Referendum Handbook: Voter Education Facilitator’s Handbook.

<sup>14</sup> Maingaila, F. (2016). Zambia: Bil of Rights Referendum ‘Unsuccessful’. Lack of participation kills new Bill of Rights. <https://www.aa.com.tr/en/africa/zambia-bill-of-rights-referendum-unsuccessful/631627#>

<sup>15</sup> See Lumina, *supra* note 7.

<sup>16</sup> Lusaka Times. Delayed release of proposed Bill of Rights a ploy by PF government. [https://www.lusakatimes.com/2016/06/01/delayed-release-proposed-bill-rights-ploy-pf/#google\\_vignette](https://www.lusakatimes.com/2016/06/01/delayed-release-proposed-bill-rights-ploy-pf/#google_vignette)

<sup>17</sup> U.S. Department of State. (2017). 2016 Country Reports on Human Rights Practices: Zambia. 3 March 2017. <https://www.refworld.org/docid/annualreport/58ec899f13.html>

<sup>18</sup> *Ibid*

<sup>19</sup> Electoral Commission of Zambia. (2016). 2016 Referendum Report. <https://www.elections.org.zm/?p=178>

along ethnic lines and protect rights of the citizens.<sup>20</sup> The ‘yes’ vote carried 67% support and a 72% turnout, which then birthed a document that decentralized power, reinforced judicial independence and expanded the Bill of Rights to include socioeconomic guarantees such as education and healthcare.<sup>21</sup> Scholars like Whitaker and Giersch, writing in the *Journal of Contemporary African Studies* commentary, argue that this was not merely symbolism, it was proof of a maturing democracy, where voters rejected elite efforts at sabotage and approved provisions for the marginalised communities, including protection against gender violence and environmental degradation.<sup>22</sup>

This experience can be contrasted with the referendum of Uganda in 2000, which was a quieter and calm affair that tested the grip of the no-party ‘Movement’ system under President Yoweri Museveni. The people were asked if they wished to return to multiparty politics, a nod to pre-1986 bans, but framed in the context of state dominance. The turnout was about 50%, with 90% saying yes to multipartyism, but the process felt rigged as the opposition were silenced and the civic space was squeezed.<sup>23</sup> Bratton and Lambright, described it as a “silent boycott,” where apathy masked deeper disappointment. Many people saw this vote as simply a façade and not a genuine expansion of civil liberties.<sup>24</sup> During this period, human rights took a hit, as freedoms of association and expression were curtailed. The Museveni regime used the outcome to delay real pluralism until the 2005 referendum, still under controlled conditions.<sup>25</sup> As Kersting rightly observes in his comparative study of African direct democracy, the experiences in Uganda illustrate how referendums can institutionalize authoritarianism.<sup>26</sup> Referendums can place the needs of regime stability above rights such as assembly, which continue to be policed despite the rising displeasure of the people in many African countries.

These events underscore the errors that have been made by Zambia. Kenya was aided by broad coalitions amongst the youth, churches and civil society organisations—driving education campaigns that made rights tangible, fostering huge voter turnout and the general acceptance of the referendum by the people.<sup>27</sup> The failure of the referendum in Uganda, just like it was in Zambia, highlighted the capture of the process by the political elite, the limited levels of information flowing to the citizens and the bundling of questions. This in turn diluted the urgency of this excise, rendering civil liberties vulnerable to abuse of executive power. It is observed that in all three, human rights are not just abstract concepts, they are a safeguard against the very manipulations that undermine referendums.

### **Implications of Human Rights: Tensions and Transformations**

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<sup>20</sup> Kramon, E. & Posner, D. N. Kenya’s New Constitution. *Journal of Democracy*. Vol. 22, no. 2, 89-103.

<sup>21</sup> Du Plessis, S., Jansen, A. & Siebrits, K. (2014). Democratisation in Africa. The role of Self- Enforcing Constitutional Rules. *Economic Research Southern Africa*. Working Paper 444. 14<sup>th</sup> July 2014.

<sup>22</sup> Whitaker, B.E. & Giersch, J. (2009). Voting on a Constitution: Implications for Democracy in Kenya. *Journal of Contemporary African Studies*. Vol. 27, Iss. 1, pp.1-20.

<sup>23</sup> Kersting, N. (2009). Direct Democracy in Southern and East Africa: Referendums and Initiatives. *Journal of African Elections*. Vol. 8, Iss. 2. 1-22.

<sup>24</sup> Bratton, M & Lambright, G. (2001). Uganda’s Referendum 2000: The Silent Boycott. *Afrobarometer Working Paper*. Cape Town: Afrobarometer.

<sup>25</sup> Mubangizi, J.C. (2023). Democracy and the Rule of law: Comparative lessons between Uganda and South Africa. *Law, Democracy and Development*. 27, 468-490.

<sup>26</sup> Kersting, *supra* note 1.

<sup>27</sup> Du Plessis et al, *supra* note 18.

Referendums in Africa's do not exist in a vacuum they are pressure cookers for human rights as they can increase both progress and risk. In Zambia, the failure of the referendum in the 2016 election preserved a status quo in which assembly rights were regularly flouted. The police continuously dispersed opposition rallies and journalists were harassed, as documented in annual human rights reports.<sup>28</sup> Lumina warns that without better rights, even prospective reforms are likely to be in danger of illegitimacy and undermine trust in institutions that have already been strained to their breaking point by corruption and inequality.<sup>29</sup> Despite this failure, there were overtones of resilience, as post-referendum parliamentary debates led by, for example, Minister of Justice at the time Given Lubinda, called for renegotiating the Bill of Rights so as to frame it as a necessary protection for citizen recourse against abuse.<sup>30</sup>

By contrast, the referendum that took place in Kenya turbocharged the enforcement of rights and civil liberties. The new constitution of Kenya entrenched freedoms such as the freedom of association and expression. These changes enabled historic rulings like the nullification of the flawed presidential election of 2017,<sup>31</sup> by the Supreme Court a judicial overreach that was born out of the victories of the 2010 referendum. There was an advancement in the rights of women as quotas and anti-discrimination clauses addressed the historical marginalization of women.<sup>32</sup> Tamale<sup>33</sup> and other scholars have detailed in feminist histories of East African changes the advancement of women's rights in Kenya after the referendum of 2010. However, it is observed that countries like Uganda, exhibit regression, as the hollow victory of the vote in 2000 paved the way for bills like the 2023 Anti-Homosexuality Act, which strengthens laws relating to homosexuality, thereby curtailing the liberties of the LGBTQ+ community and threatening broader clampdown of those who dissent to this development.<sup>34</sup> Lindberg's seminal work on elections in Africa underscores the fact that repeated referenda can only solidify liberties if they disrupt elite monopolies, otherwise, they establish electoral authoritarianism.<sup>35</sup>

These tensions have been observed to reveal a core irony. From this, we can see that referendums despite being designed to democratize rights often reveal their fragility also. The low voter turnout in both Zambia and Uganda stemmed from disenfranchisement rural voters were not well informed, urban voters who were skeptical shunned the voting process mirroring continental patterns in which civil liberties score low on indices such as the Freedom House report.<sup>36</sup> However, it is seen that constitutional reforms continue to shine through. It is observed that Kenya's

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<sup>28</sup> U.S. Department of State. (2017). 2016 Country Reports on Human Rights Practices: Zambia. 3 March 2017. <https://www.refworld.org/docid/annualreport/58ec899f13.html>

<sup>29</sup> Lumina, C. (2016). Zambia's Failed Constitutional Referendum: What Next? ConstitutionNet. <https://constitutionnet.org/news/zambias-failed-constitutional-referendum-what-next>

<sup>30</sup> National Assembly of Zambia. Ministerial Statement by Minister of Justice. Referendum and the Way Forward. 27<sup>th</sup> October, 2016.

<sup>31</sup> Raila Amolo Odinga & Another v Independent Electoral and Boundaries Commission and Others- Presidential Petition No. 1 of 2017.

<sup>32</sup> Nabaneh, S., Andam, K., Eriksson, A. & Stevens M. (2022). Contesting Gender and Coloniality: A Lens on Conservative Mobilisations in South Africa, Kenya and Ghana. *Politique africaine*, No 168 (4), 25-51.

<sup>33</sup> Tamale, S. (2020). *Decolonization and Afro Feminism*. Daraja Press. Ottawa.

<sup>34</sup> Holland L. B. (2024). *Africa in 2024: Democracy and Instability*. House of Commons Library. <https://commonslibrary.parliament.uk/africa-in-2024-democracy-and-instability/>

<sup>35</sup> Lindberg, S. I. (2006). *Democracy and Elections in Africa*. 1<sup>st</sup> Edition. Johns Hopkins University Press.

<sup>36</sup> Abramowitz, M. J. (2018). *Democracy in Crisis*. Freedom in the World 2018 report. <https://freedomhouse.org/report/freedom-world/2018/democracy-crisis>

model shows how referendums, where they are inclusive, can rewire power to the marginalized, fostering what Nzima,<sup>37</sup> refers to as 'human rights-centered development.'

### **Lessons from Zambia: Towards Inclusive Direct Democracy**

The referendum in Zambia even in its shortcomings, is not a dead end, it is actually a teacher. Firstly, it screams the need to disassociate the amendments of rights with elections as this dilutes focus. Lumina rightly critiques, turning constitutional deliberations into mere exercises that will distract the citizens on the main issues they must focus on.<sup>38</sup> The standalone vote in Kenya did not make the mistake seen in Zambia, they allowed the amendment of rights to shine without any distractions. Secondly, extensive civic education must be the bedrock of the process. Numerous NGOs in Zambia, including the Coordinating Committee, can lead here, taking a leaf from the mobilizations that have been done in Uganda since 2000, an occurrence that eventually forced multiparty concessions. Thirdly, thresholds matter Zambia's rule that a referendum needs over 50% support helps protect legitimacy, but also makes success of the referendum harder. A better option would be to keep a fair threshold but add transparency turnout checks like South Africa did in their 1992 referendum to ensure the results truly reflect the will of the people.<sup>39</sup>

The key lesson for Africa is that referendums work best when they focus on protecting human rights. As Kersting points out, they should move away from being political tools used by powerful leaders and instead become genuine people driven processes that defend freedoms such as expression and assembly.<sup>40</sup> In Zambia, many young people registered to vote in 2016 but did not participate in the referendum to amend human rights showing huge but untapped potential. If they were empowered, like in Kenya's active Gen-Z movements, that energy could turn voter apathy into real engagement and activism.<sup>41</sup> Ultimately, referendums are a reminder that democracy is not gifted or handed down it is earned through every informed "yes" at a time.

### **Conclusion**

The referendums in Africa are more than just ballots or a gesture they are reflections of our collective hunger for rights when confronted with power's temptation. The failure of the referendum of 2016 in Zambia, viewed through Kenya's triumph and Uganda's cautionary tale, lays bare the human stakes of higher freedoms that dignify lives or deep rituals that reinforce exclusion. As scholars like Whitaker and Lindberg point out, the path forward demands engagement, education and vigilance to turn elite threat into the people's conversation on the aspects of direct democracy. In a continent where the young outnumber the old and aspirations outpace the realities, these lessons from Zambia are not just academic, they are a call to make constitutions that breathe, rights that endure and futures we can all call our own. The question is not whether or not Africa can do this right it is how we discover the will to do so together.

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<sup>37</sup> Nzima, D. (2014) Linking Human Rights and Development: Is there Value Gained or Lost? *Mediterranean Journal of Social Sciences*.

<sup>38</sup> See Lumina, *supra* note 7.

<sup>39</sup> See Kersting, *supra* note 20.

<sup>40</sup> See Kersting, *supra* note 1.

<sup>41</sup> U.S. Department of State. (2017). 2016 Country Reports on Human Rights Practices: Zambia. 3 March 2017. <https://www.refworld.org/docid/annualreport/58ec899f13.html>

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