

Strengthening Capacity for Local Governance and Service Delivery in Zimbabwe Project

The Constitution of Zimbabwe 2013 as a basis for local government transformation: A Reflective Analysis



Supported by European Union



Forewords

In taking its research agenda forward Midlands State University (MSU) local governance department partnered with the Commonwealth Local Government Forum (CLGF) to debate the inclusion of local government in the Constitution of Zimbabwe 2013. The implications of local government constitutional provisions have not been fully debated hence the gap that MSU and CLGF sought to close through debate leading to this edited volume. The debate recognised limited progress in implementing relevant provisions of the Constitution particularly the core ideals of devolution which remain contentious suggesting need for an implementation framework and plan. Such a framework would guide reforms of relevant administrative structures and relations. Currently these remain unchanged and thus constitute an implementation drag. The 'dragging' is seen in re-centralisation of local authority functions and spaces suggesting that the devolution agenda is not yet fully institutionalised. Changes in local government now require a constitutional rather than legislative changes and policy directives. The right to govern, the right to services and space for citizen participation are provided for in ways that usher a new dispensation for both national and local governance. Local government constitutionalisation is accompanied by a guaranteed sharing of national resources (at least 5%) between the national and sub-national tiers of government.

Contributions in this volume provide an in-depth understanding on the constitutional provisions on local government and search for trajectories critical for entrenching the mechanisms needed to implement and optimise those provisions. Much of the discussion on local government constitutionalisation has hitherto been limited to realignment of laws. It did not engage with deeper governance transformations anticipated in the constitution. As such, this paper teases out key questions and reflects on possible avenues for making the constitution live. The paper generates preliminary yet foundational knowledge to guide further debate and practical processes needed for local-national constitutionalism post 2013. Important governance issues need not continue to be usurped by party political actors and interests. More empirical research on how the constitutional provisions can be a factor in local governance is required to further inform the implementation of local government constitutionalisation.

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The significant role of local government as a democratic arm of government, providing core services and enabling inclusive local development, is increasingly being recognised in national Constitutions around the world. In 2013 the Constitution of Zimbabwe was adopted with a section relating to devolution. The debate as to how this should be interpreted on the ground is on-going, and this document provides an understanding of the constitutional provisions for devolution, addresses the need for legal change and suggests strategies for making the new provisions real in the way in which the state functions.

The report is the result of an extensive period of research by partners at Midlands State University, and it has been prepared to support work which CLGF and a broad cross-section of partners are taking forward, with funding from the European Commission, to strengthen the role of citizens in service delivery in Zimbabwe. The findings will be debated by the local government associations and their membership, as well as other stakeholders, and will guide debate and advocacy in efforts to strengthen local governance and put people at the heart of local development. CLGF would like to thank colleagues at Midlands State University for their extensive contribution to such a critical debate.

Dr. Greg Munro

Secretary-General, Commonwealth Local Government Forum

Acronyms

ACBF:	African Capacity Building Foundation;
ACRWC:	African Charter on the Rights and Welfare of the Child;
ARDCZ:	Association of Rural District Councils of Zimbabwe;
AU:	African Union;
BPRA:	Bulawayo Progressive residents Association;
CALR:	Centre for Applied Legal Research;
CASS:	Centre for Applied Social Sciences, University of Zimbabwe;
CBO:	Community-Based Organisation;
CCDZ:	Centre for Community Development in Zimbabwe;
CCMT:	Centre for Conflict Management and Transformation;
CEDAW:	Convention on the Elimination of Discrimination against Women;
CHRA:	Combined Harare Residents Association;
CLGF:	Commonwealth Local Government Forum;
CPIA:	Centre for Peace Initiatives in Africa;
CRC:	Convention on the Rights of the Child;
CSOs:	Civil Society organisations;
DEAP:	District Environmental Action Programme;
DEGI:	Development Governance Institute;
DFID:	Department for International Development (UK Government);
ECDPM:	European Centre for Development Policy and Management;
EFZ:	Evangelical Fellowship of Zimbabwe;
ESAP:	Economic Structural Adjustment Programme;
EU:	European Union;
FBOs:	Faith-Based Organisations;
GNU:	Government of National Unity;
HTF/HDF:	Health Development/Transition Fund;
ICLD:	International Centre for Local Democracy;
IDEA:	Institute for Democracy and Electoral Assistance;
IDZ:	Institute of Development Studies;
IGR:	Inter-Governmental Relations;
IRBM:	Integrated Results-Based Management;
IRWSSP:	Integrated Water Supply and Sanitation Programme;
LED:	Local Economic Development;
LG:	Local Government;
LGCCBDT:	Local Governance Community Capacity Building and Development Trust;
MDC:	Movement for Democratic Change (party);
MDP:	Municipal Development Partnership;
MICS:	Multiple-Indicator Cluster Survey;
MISA:	Media Institute of Southern Africa;
MOU:	Memorandum of Understanding;
NCA:	National Constitutional Assembly;
NGO:	Non-Governmental Organisation;
NUST:	National University of Science and Technology;
OPC:	Office of the President and Cabinet;
OVC:	Orphan and Vulnerable Children;
PAC:	Partnership Africa Canada;

POSA:	Public Order and Security Act;
PPPs:	Public-Private Partnerships;
PVOA:	Private Voluntary Organisations Act;
RAU:	Research and Advocacy Unit;
RDC:	Rural District Council;
SADC:	Southern Africa Development Community;
SNV:	Netherlands Development Organisation;
TILCOR:	Tribal Trust Land Development Corporation;
UCAZ:	Urban Councils Association of Zimbabwe;
UDCORP:	Urban Development Corporation;
UK:	United Kingdom;
UN:	United Nations;
UNDP:	United Nations Development Programme;
UNICEF:	United Nations Children’s Fund;
US:	United States of America;
VIDCOs:	Village Development Committees;
VNG:	Association of Dutch Municipalities;
WADCOs:	Ward Development Committees;
WiPSU:	Women in Politics Support Unit;
WOZA:	Women of Zimbabwe Arise;
ZANU PF:	Zimbabwe African National Union-Patriotic Front (party);
ZAPU:	Zimbabwe African People’s Union (party);
ZBC:	Zimbabwe Broadcasting Corporation;
ZCBC:	Zimbabwe Catholic Bishops’ Conference;
ZCC:	Zimbabwe Council of Churches;
ZCTU:	Zimbabwe Congress of Trade Unions;
ZILGA:	Zimbabwe Local Government Association;
ZIMSTAT:	Zimbabwe Statistics Agency;
ZINARA:	Zimbabwe National Road Authority;
ZINWA:	Zimbabwe National Water Authority;
ZIPAM:	Zimbabwe Institute of Public Administration and Management;
ZLHR:	Zimbabwe Lawyers for Human Rights;
ZUM:	Zimbabwe Unity Movement (party);

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Executive summary

This report attempts to fill the knowledge gap regarding understanding of local governance constitutional provisions and Chapter 1 presents the context in which these can be a factor in the development of good local governance. The Constitution of Zimbabwe 2013 provides for a devolved system of governance where local government is a tier and builds from the 1996 adoption by the Cabinet of the Thirteen Principles of Decentralisation. Whilst acknowledging that Chapter 14 of the Constitution anchors local government constitutionalisation, all contributors made reference to the relevance for local government of the constitutional provisions in other Chapters.

Constitutions define the key parameters including definition of rights and obligations of citizens; organisation of the different branches of the State: Executive, Legislative, Judiciary and Local Governments; and the frameworks for the functioning of the state including its financing, its policing and how it accomplishes its goals. Chapter 2 outlines Zimbabwe's strong local government tradition on which the 2013 Constitution builds. Local governments in both rural and urban Zimbabwe have a long history and tradition, and play a significant role in development. There is a well established urban hierarchy providing a range of commercial, industrial and service functions. The functions of both rural and urban local governments are to effectively manage the areas under their jurisdiction and they have powers to manage land and the resources in their jurisdiction, as well as to raise rates, taxes and service charges on the land and property in their local government areas. Constitutionalisation consolidates the role and function of local government in the development of Zimbabwe. However, it is not a magic bullet to enabling effective local government and simply adds impetus and creates more certainty around the existence of local government as an institution of a multi-tiered state. The biggest challenge since the constitution came into being in 2013 is the political will needed to craft all the necessary legislation to make the 'new' local government system work. This challenge has come about because the pressure of the power-sharing Inclusive Government which created the constitution has receded, leaving the ruling party to take its time in implementing the various chapters of the new constitution. Critically though, there is need for Zimbabwe to set a vision of the local government consistent with the ideals of the 2013 constitution and to focus on implementing such a vision.

Fiscal devolution is looked at in Chapter 3 with, the constitution entitling local government institutions to 'not less than five percent of national fiscal resources'. The existing fiscal framework is however steeped against sub-national tiers of government leaving them without adequate resources to perform their functions. There should be a clear regime of taxes for each tier government i.e. other tiers will be excluded from collecting such revenue. The delivery of water, roads, education, health, housing, child protection and other welfare services is amenable to division by magnitude and in Zimbabwe this is generally the case. Whilst transitioning of the nation towards a devolved system has been codified into law via its inclusion in the new constitution, political will on the part of ruling elites for the conversion of this into practical programmes of action remains. As rights-holders, citizens have a significant stake in ensuring vibrant, responsive and effective local authorities.

The Constitution of Zimbabwe 2013 has created an opportunity for devolution implementation and chapter four assesses whether national institutions are prepared to implement devolved governance and also makes suggestions for how their preparedness could be increased at national and sub-national level. We suggest specific options for devolution implementation to include drawing up of a Devolution Implementation Policy, Plan and Strategy targeting key national institutions and complete with robust research and communication processes. The devolution framework should be enshrined into law and its implementation funded.

As local government has the most immediate developmental mandate to achieve improved socio-economic environment for the communities it serves, Chapter 5 look at how this mandate is in keeping with the principle of subsidiarity which advocates that public responsibilities should be exercised by those elected authorities who are closest to the people. Local authorities in Zimbabwe have wide ranging powers and functions in their area of jurisdiction allocated in schedules. These powers and functions can be categorised as governance, administration, regulatory and service delivery functions. The present system of local financial management provides little fiscal accountability by or useful information from public officials. Most local governments in Zimbabwe are yet to fully understand and embrace budget development as a policy setting process with the adoption of more informative budget documents and to be responsive to public participation. Local government association play a vital role in the implementation of capacity development programmes, staff forums and other structures have been critical sources of local government strengthening. The current mosaic of laws governing the horizontal and vertical relations between traditional authorities and councils requires smoothing to reduce conflict and overlaps

Chapter 6 focuses on the role of non-state actors – be them civil society organisation such as NGOs and Faith-based Organisation (FBOs) or private sector actors such as corporations, small businesses and the media - in devolved and constitutionalized local government system, and on whether and how the relations between non state actors and local government will change post-2013. It pursues this thrust to inform policy and practice towards creating a local government system that is effective, efficient, transparent, accountable and responsive to the needs and demands of the citizens. Devolution entails democracy, participation, accountability and transparency among other attributes, so local government should enact policies and mechanisms to promote these mechanisms. Non-state actors can support processes of regenerating local institutions, societies and economies working closely with Councils (provincial, metropolitan and local). In this context local economic development strategies become critical as opposed to traditional top- down approaches. Local governments should coordinate activities of all non state actors in their localities under clear socio-economic development frameworks.

Local governments around the world increasingly play key roles in the delivery of basic public services and infrastructure necessary for business development. Chapter 7 explore how the constitutionalisation of local government represents recognition of the role of this lower tier of government in service delivery. Local authorities have however already had a statutory responsibility to provide services through the Rural District Councils Act and Urban Councils Act. The constitutionalisation of local government should therefore be seen as an acknowledgement and a realignment of the new constitution to the realities on the ground: the functions of local authorities that were merely statutory provisions.

Chapter 8 draws out the implications of constitutionalisation for the process and content, beneficiaries and outcomes, institutional relations and sustainability of local government capacity development. An evolutionary and iterative driver-based conceptualisation of capacity development was used to reflect the political contestations over capacity. Possible delivery avenues include the self-defined and self-funded market where knowledge institutions can provide conventional or tailor-made courses to groups and directly to individual Councils in action-oriented learning. Another avenue is to target leadership or executive development for technical and political leaders of the three tiers of government involved with local government and a forth relates to local government information management systems, monitoring and evaluation, communication and public engagement.

In conclusion (chapter 9) the study findings point to the need for a i) devolution implementation policy, ii) relevant law (intergovernmental relations legislation), iii) a devolution strategy that has sector details (e.g. health sector, education, land and water devolution strategies), and iv) an implementation plan with a resource mobilisation framework.

Chapter I: Introduction

Kudzai Chatiza

The research and analysis presented in this paper looks at the implications of constitutional provisions on local government in Zimbabwe and was commissioned by the Commonwealth Local Government (CLGF) and conducted by the Midlands State University's Department of Local Governance Studies. It looks to fill the knowledge gap regarding understanding of local governance constitutional provisions and how these can be a factor in the development of good local governance. The goal was for research to inform local government constitutionalisation and this paper was developed mindful of the need for deep and ongoing debate on relevant policy and practice following the adoption of the Constitution of Zimbabwe 2013.

The specific objectives of the research were to:

1. Conduct a review of the genesis, conceptual and contextual framework for devolution in Zimbabwe;
2. Undertake detailed and extensive analysis of the constitutional provisions on local government and their implications on local authorities;
3. Conduct an assessment of the obtaining situation after the adoption of the new constitution in the country in mid-2013 detailing activities being undertaken and exposing actual and perceived reasons for prevarications on implementation of the provisions;
4. Propose a devolution implementation framework relevant to the provisions focusing on institutional arrangements, structures, operations and procedures at all government tiers;
5. Conduct an assessment of models of service delivery under the new constitution within the context of expanded rights (demand and supply) and space for citizen participation including implications and resource frameworks;
6. Conduct a stakeholder analysis clearly spelling out roles and responsibilities in the operationalisation of the constitutional provisions; and
7. Identify institutional capacity development needs for the local government sector necessary to support the effective implementation of the constitution and transformation of the sector.

To address the research objectives, seven clusters of researchers discuss insights related to: i) the constitution making process, ii) local government and constitutionalism, iii) the preparedness of national institutions to implement devolved governance in general and strengthen constitutionalised local government in particular, iv) the state of preparedness of local government institutions to take advantage of the constitutionalisation, v) implications of constitutionalisation on relations between non-state actors and local governments, vi) the direction for local government service delivery inspired by a constitutionally entrenched and expanded basic rights framework and vii) capacity building frameworks for constitutionalised local governance.

This introduction and the concluding chapters provide an 'envelope' for these more substantive chapters of the volume. The concluding chapter (9) consolidates preliminary recommendations from the individual chapters. Researchers reviewed literature including the Constitution of Zimbabwe 2013, prepared and presented papers at a two-day colloquium before finalising the papers. Comments received at the colloquium and from CLGF on the prepared papers helped sharpen the debates they lead.

Contextual framework of devolution in Zimbabwe

The Constitution of Zimbabwe 2013 is a culmination of governance struggles since before independence in 1980 and reforms since and seeks good local and national governance by and for Zimbabweans. The constitution provides for a devolved system of governance where local government is a tier. This is a specific response to post-independence advocacy led by local government actors which in the 1990s adopted the mantra of 'the local government we want'. This vision defined devolved and empowered local government, especially in terms of its relations with central government. The particular colonial and post-independence history of local government subjugation by central government including but not limited to opaque resource sharing arrangements, was seen as antithetic to local democracy. The 'local government we want' movement articulated a vision of local government with security of tenure, stable resources for delivering services, active citizen participation and local government institutions with an elevated status vis-à-vis state institutions. To emphasise the message and ease communication, the vision was simplified to the lobby for local government constitutionalisation which was seen in many ways as a stronger basis for local government than what only legislated existence made possible. The 1996 adoption of the Thirteen Principles of Decentralisation by the Cabinet signified a significant breakthrough in terms of the movement's efforts at carving a stable existence for local government and a substantive transfer of functions from national government. Initial progress in implementing the principles on the back of extensive capacity development held considerable promise towards delivering 'the local government we want' vision. Without constitutional protection, the legislated and policy-level improvements were quickly reversed and reforms abandoned as the political and economic collapse set in from 1997 onwards. The growth of opposition political party participation in local government from 1999 reflected efforts at growing good national governance from below, which triggered a recentralisation of the Zimbabwean state.

Wekwete (this volume) argues that the divestiture under the Economic Structural Adjustment Programme (ESAP) exacerbated the degree of local government impoverishment in terms of finance, economic and socio-political processes. This period also saw the growth of civil society organisations opposed to economic liberalisation due to their poverty-inducing effects. The changes, among others, were sparked by retrenchments and company scale-downs, withdrawal of subsidies from the social sectors (health, education, social protection and extension) and a shrinking state. The range of civil society organisations spanned social service delivery in the health sector, especially HIV/AIDS, agriculture, food emergencies and economic entrepreneurship. A shrinking state meant local responses gained importance, however the happened when local authorities were becoming weaker – resulting in increased demands for stronger local government. It is within this context that the constitutionalisation of local government gained traction. In many ways 'the local government we want' movement (of mainly sector practitioners, politicians and researchers) slowly built alliances with other civil society organisations agitating for structural reforms with a new constitution as a concise demand.

This paper acknowledges that whilst the constitution provides the critical ideals of devolution, the implementation of the constitutional provisions on devolution remain challenging. The protection afforded by the constitution means that changes to policy, laws and organisational arrangements of local government institutions now require a constitutional amendment rather than legislative or policy changes. The right to choose who governs, the rights to services and space for citizen participation is provided and expanded and the constitutionalisation of local government is also accompanied by guaranteed sharing of at least five percent of national fiscal resources.

Progress post-2013 Constitution

The Constitution of Zimbabwe 2013 was an outcome of broad stakeholder participation and received a 95% approval vote in the referendum held on March 16, 2013, with high implementation expectations. Such national consensus created scope for smooth implementation. Despite more than a decade of conflict, it would seem that across the political parties, civil society organisations, private sector agencies and citizens generally had found common ground. The research notes how the constitution-making process had been contested by actors in the Inclusive Government¹. These contestations sowed the seeds of implementation inertia especially of provisions pertinent to local government, which only became entrenched following the July 2013 elections and the end of the Inclusive Government coalition. However, clear constitutional provisions on local government were made and it is these that are discussed in the section below.

Constitutional provisions relevant to local governance

This paper is premised on the notion that the whole Constitution of Zimbabwe 2013 speaks to and guides local government. This is because as a tiers of government and within the principle of subsidiarity local government pursues the same national objectives as the other tiers of government. Based on this analytical lens the paper did not focus solely on Chapter 14 of the constitution. All research clusters made reference to other constitutional provisions outside Chapter 14. That Chapter 14 anchors local government constitutionalisation is however acknowledged. In the preamble the constitution highlights ‘...the need to entrench democracy, good, transparent and accountable governance... commitment to upholding and defending human rights and freedoms’ (Constitution of Zimbabwe Amendment (No. 20) Act 2013 page19). For instance, Section 3:2(i) recognises devolution and decentralisation of state power and functions as a principle of good governance laying the foundation for Chapters 14 and 15 on provincial/metropolitan councils and local authorities as well as traditional leaders.

In Section 5(c) the constitution defines provincial-metropolitan councils and local authorities as tiers of government stating that councils represent and manage the affairs of the people in urban and rural areas respectively. This provision lays the basis for sections 274:1 and 275:1 which confer on councils the power to govern, on own initiative. Section 8:1 defines the national vision of ‘...a sustainable, just, free and democratic society in which people enjoy prosperous, happy and fulfilling lives’, which critically focuses the purpose of governance, that is, the representing and managing of the affairs of the people. Good governance is further elaborated in Chapter 9 which provides public administration principles for all government tiers.

The constitution places responsibility on the State to ensure citizen participation. Section 13:2 enjoins State institutions to ‘involve the people in the formulation and implementation of development plans and programmes that affect them’. It cites specific groups and categories in Sections 17:1 (gender balance and participation of women on the basis of equality with men), 20:1b and 3 (youth association, representation and participation in all spheres of life), 21:2a and d (participation by the elderly and fostering social organisations aimed at improving their quality of life) and 22:1 and 3d on treating people with physical and mental disabilities with respect and dignity.

¹ The Inclusive Government is the name given to the coalition government of ZanuPF, MDC and MDC-M resulting from the power-sharing deal brokered in 2008-9 by South African President Mubeki.

By providing multiple spaces and mechanisms for sharing of power and responsibilities between the State and myriad citizen platforms that advance citizens' freedom to associate and assemble (section 58), demonstrate and petition (section 59) and taking direct part in their development (section 13) the constitution sets a transformative framework for Zimbabwe's governance. This is anchored in section 62:1 which provides for citizens' '...right of access to any information held by the State'. The provisions build on the preamble's reference to '...the need to entrench democracy, good, transparent and accountable...commitment to upholding and defending human rights and freedoms' (page 19). These are critical constitutional provisions to the extent that they present the reason for the devolved system of governance as relating to defining and pursuing interventions that focus on achieving the national vision (Section 8) and objectives (Section 13).

Sections 274:1 and 275:1 make pronouncements on the existence of urban and rural local authorities to represent and manage the affairs of people. These particular sections and sub-sections open with the phrase "there are" implying an acknowledgement of the historical existence of local authorities in particular. The preamble of Chapter 14 states that "...the democratic participation in government by all citizens and communities of Zimbabwe...must be guaranteed." Section 265:1a states that "provincial and metropolitan councils and local authorities must...ensure good governance by being effective, transparent, accountable and institutionally coherent" while Section 266: 2 directs that "no employee of a provincial or metropolitan Council or a local authority [shall] ... further the interests of any political party". This provision implies that local governments must serve all residents in their jurisdiction in an impartial manner. Consequently, the Constitution establishes a three-tier devolved governance system.

Furthermore, Zimbabwe commits in the constitution's preamble to "...the need to entrench democracy, good, transparent and accountable governance... [and] commitment to upholding and defending human rights and freedoms." In this the constitution promotes the recognition and adherence to the principles of good corporate governance in the administration of public affairs by local authorities. In Section 8:1 it (the constitution) guides state agencies in "formulating and implementing laws that will lead to...a sustainable, just, free and democratic society...". The constitution sets the framework in which justice, inclusivity and responsiveness will shape the local governance sector. This leads to a sustainable society in which future generations enjoy their democratic rights. The constitution is thus progressive and transformational.

There are several implications for the performance of the local governance sector arising from the constitution. These are that i) institutions of local governance now have greater leverage regarding relations with the centre, ii) local authorities are now obligated to adhere to universal good governance principles, iii) the constitution strengthens citizen participation in local governance, iv) local government services are rights not simply 'needs', and v) the democratic ideals of local governance test the existing traditions and capacity of local government institutions from the ministry responsible for local government to sub-council structures. This realisation that the constitution evokes fundamental shifts partially experiences the implementation holdbacks and state institutions seem to have retreated into 'business as usual'. The research shows that constitutionalisation of local government will affect governance processes positively but institutions will initially experience significant shocks.

While the role of local governments is clear, particularly regarding operationalising access to socio-economic rights through service delivery, the place of provincial and metropolitan councils is unclear. This is because the constitution does not adequately define executive and legislative powers of provincial governments. Further, it leaves unresolved the risk that may arise from the duplication of National Assembly and provincial-metropolitan council membership in terms of checks and balances. The absence of a national local government policy and a general loss of sector capacity also threaten the operationalisation of devolution in Zimbabwe. Current and emerging fiscal and administrative relations between central and local government also pose threats to devolution implementation.

At the same time, local authorities seem to conceptualise the constitution as only binding on national government as they have not taken the initiative to implement constitutional provisions that do not require legislation to operationalise. These relate to the provisions on socio-economic rights such as citizen participation. This suggests that governance and service delivery deficits cannot only be explained by how national government has behaved but how individual local governments and the sector as a whole have conducted themselves including the nature of their relations with citizens.

The role of civil society in addressing the gaps in local governance seems strategic. The recent flurry in civil society organisations working on service delivery and local governance issues as well as the interest shown by knowledge institutions, provide a strategic window for addressing sector weaknesses. They have a role in developing or consolidating local democracy and citizen engagement models that help make real the spirit of the constitution. However, such processes require facilitation to address the existing tensions within communities and between communities and local governments in particular but with national government generally. These tensions are frustrating cooperative local governance. Financial and technical facilitation will also address capacity limitations within councils and amongst civil society organisations. This constitutes a critical gap that needs to be closed for Zimbabweans to start implementing devolved governance from below. This paper provide useful insights and initiate debate towards not only accountable local governments but national government as well.

Chapter 2: Constitutionalism and Local Government in Zimbabwe

Kadmiel H Wekwete

Overview on Constitutions and Constitutionalism

A constitution is a set of fundamental principles and established precedents according to which a state or organisation is governed. Constitutionalism and constitutionalisation is the embodiment of the values and norms projected in a constitution and putting them into action. Constitutions define the key parameters including definition of rights and obligations of citizens; organisation of the different branches of the State: Executive, Legislative, Judiciary and Local Governments; and the frameworks for the functioning of the state including its financing, its policing and how it accomplishes its goals. The rules constitute what the entity is all about. Constitutions provide a stable and predictable framework for the operation and function of state, allowing for change to occur in ways that can be managed and controlled. Constitutions are 'living' documents which are amended when necessary and can be completely overhauled or even abandoned, when radical political change takes place.

Constitutions alone do not guarantee political stability, which is derived from history, culture, social and political organisations. Constitutions are binding and respected when all groups, communities, individuals identify and subscribe to the values espoused. Thus constitutions are products of the social and political evolution. They represent agreed and universal values and norms usually arising from political compromises necessary to create a democratic culture. Most constitutions represent a 'negotiated' political order with the 'compromise' phenomena significantly important where different political shades, parties and movements were in action. Some constitutions have been anti-democratic, racist and justified human rights violations as was the case with colonial and racist regimes of South Africa, Rhodesia (Zimbabwe) and South West Africa (Namibia). This became the primary cause of the anti-colonial and anti-apartheid struggles for political equability and democracy in Southern Africa. Post independence and post-apartheid constitutions ushered in democracy, enshrined global human rights values and empowered citizens to participate in governance.

Constitutionalism requires engaged citizens who are active through their political parties and civil society movements to campaign for and sustain good governance. Putting together and adapting constitutions has also got to be understood in a developmental context, reflecting the desire to promote change and removing previous repressive and anti-developmental tendencies. This explains why most constitutional orders adopted in Africa have been democratic and developmental, fostering good governance, civic participation, and promoting developmental states. Attaining this requires constitutional activism, which has however not been the experience in many African countries where extreme docility has been commonplace. As a result potential for change arising out the provisions of the constitution has often been undermined.

Constitutionalism and Local Government in Zimbabwe

Constitutionalism can be traced from the colonial roots when the interests of the colony were clearly established in favour of the European settler population. Until 1923 the British South Africa Company ran Southern Rhodesia. It's imperative was to conquer, colonise and extract resources. After 1923, Southern Rhodesia was granted the status of 'responsible' government, which allowed the European settlers more power to govern without regular recourse to the British Government. State evolution was driven by principles of domination of one racial group over another as reflected in all legislation, sharing of power and responsibilities, and in the dualistic economy that emerged.

Whilst among the European settler population there were differing views on how to address the political and economic needs of Africans, the dominant view was always based on the philosophy of racial dominance of Europeans and subservience of Africans. This permeated all the facets of the economy including the local government system, which was segregated into a European urban based system which was liberal and democratic and a rural based system linked to traditional authority for the Africans emphasising control and subordination.

The 1979 Lancaster House Constitution removed the political and racial segregation framework in the soon to be renamed Zimbabwe and ushered a new democratic, non-racial dispensation. This triggered reforms characterised by new legislation and institutions. At the national level, new sector ministries and parastatal bodies were established and new development policies and plans developed. These included: 1981 Growth with Equity policy; the Transitional National Development Plan 1982/3-1984/85 and the 1985-90 Five Year Development Plan. In terms of local government, major transformations were initiated culminating in new legislation (Rural District Councils Act, Urban Councils Act, Provincial Councils and Administration Act); strengthening of the Ministry of Local Government and Housing; the rationalisation of the management of former African Councils into District Councils; the introduction of the one-city concept in urban management; and the subsequent amalgamation of the rural local government system (comprising former European Rural Councils with the District Councils). The new found political power transformed all branches of government.

Local government was unified at all levels (city, town, and district) through removal of racial discrimination in law. Africans were free to reside anywhere in the country, where in the past they needed to carry passbooks, needed registration cards in urban centres and were designated residents of Tribal Trust Lands (Communal Areas). This transformation had a major impact on local government, in terms of access to housing, services and infrastructure for the population. The African population, who were previously restricted to live, work and enter the cities and towns had legal rights in the urban centres. They could live with their families, could buy property, and could conduct business. This impact is still felt strongly today with the mushrooming of the informal sector everywhere. The informal sector dynamic is ubiquitous in all urban centres, and is shaping housing and employment outcomes for up to 70% of the population.

This was all accomplished in the first decade of independence (1980-1990) and gave strong visibility and durability to local government in national development. While all these changes were not constitutionally stipulated and driven per se, they formed a key pillar of the broader governance reform program. The momentum for local government reform originated from a desire by the post 1980 majority government to reach the largely neglected and marginalised African population. Local government was viewed as a developmental tool to achieving development goals. It became central to achievement of local development as reflected in initiatives to strengthen structures, procedures and means for local development. The momentum was also driven by political consensus among key political stakeholders on the importance and development significance of local government, whilst the government viewed local government as a key state instrument in maintaining its legitimacy.

In the 1980's and 1990's the performance of local governments was viewed as an important barometer of state performance. The Ministry of Local Government was headed by a Senior Minister, a rank only accorded otherwise to Ministry of Finance and Economic Planning. This gave the Ministry the necessary leverage at the highest level of Government to support local governments, and facilitated significant resource inflows through the Public Sector Investment Programme (PSIP).

The political and administrative centrality of local government ensured its performance, and allowed for close monitoring of performance by the relevant statutory bodies and instruments. During the Transitional National Development plan 1982/3-1984/5) significant funding was devoted to urban development (housing); infrastructure development in the fifty-five designated rural growth centres; training and capacity building of local authorities. The Minister and the Ministry were central to the process and this worked until the advent of multi-party system gained a strong foothold in the urban local authorities. This created a disjuncture between the central authority and local governments, whereby the former sought to control and sometimes frustrate, and the latter was out to prove itself and outdo the centre.

However in spite of the political and economic challenges, there is no doubt the resilience of the local government system in Zimbabwe which was acknowledged by scoring Zimbabwe the top performer on this dimension in Sub Sahara Africa in 1999 (Ndegwa, 1999). The Constitution of 2013 is therefore reinforcing and building on that historical foundation. It signalled a departure from the pre-2013 situation particularly in strengthening and enshrining citizen power; in constitutionally formalising the sub-national spheres of government (provincial and metropolitan councils and local authorities); in assigning a mandatory share of national resources; and calling for realignment of laws governing local government.

Local government evolution in Zimbabwe

Local government has been a well established institution since the early colonial days (1890 onwards). The colonisation of Southern Rhodesia was initially achieved by the establishment of the colonial administrative and military “forts” - Fort Tuli, Fort Victoria, Fort Charter and Fort Salisbury (1890). Early colonisation was characterised by the establishment of a colonial settlement system with infrastructure. The early establishment of the municipal system by 1894 testifies to the importance accorded to local government. It was from these military and administrative centres that colonial conquest and subjugation of Africans was achieved. Initial colonial settlement built on municipalities with sub-municipal structures as the main citizen forums making critical decisions for the early colonial state. The focus was on European settlers who were treated to a high degree of devolution and good democratic governance. This contrasted sharply to the autocracy and lack of basic rights endured by Africans. The destination of all the new European colonial settlers was initially to the municipal centres which grew and were well planned to accommodate the new inhabitants. With it was also the stamp of their values and standards which have characterised Zimbabwe’s cities and towns to the present day. This is reflected in the town planning legacy, the infrastructure legacy and the philosophy of spatial segregation (formerly European versus African areas; now low density versus high density, higher income versus low income).

Local government as has been categorised as a “creature” of central government (Jordan 1984). Therefore it does not exist outside the “State”, and is shaped by the political, economic and social values characterising the given society. Local government (in federal, unitary states) is the sphere of government closest to the population, but is also shaped by and integrated into national government, reflecting the dominant ideology shaping the nation. In multi-party systems there could be different parties controlling the different local governments, but they operate as one system nationally. In Zimbabwe, local government has existed throughout the colonial period, was inherited and reformed by the post-colonial government after 1980, but the basic rationale of local government has remained intact. The system has been shaped by different paradigms from the oppressive and control logic of the colonial system, to the post colonial developmental (but also control) system. The current system has been influenced and shaped by different governments, individual leaders of the bureaucracy, ministerial heads and locally elected leaders.

It is arguable that the idea of developmental local governments was rooted in the early post-independence period, when local government was seen as a tool for transformational change, reconciliation and as a significant arm of the state and its operations. There was a strong belief at central government level that local government was an agent for participatory development. The 1985 Prime Minister's directive enshrined this by articulating a hierarchy-based development model from villages, wards, district and provinces, all playing a catalytic role in development. During the heyday of local government in the 1980s, development was viewed through the lenses of local authorities.

The 1990's ushered in the Economic Structural Adjustment Programme (ESAP) which urged dismantling of an 'activist' state in development – abolition of subsidies, selling off state assets to the private sector, reduction of support to the poor and vulnerable groups. ESAP negatively impacted on local government, as the state reduced its support in various ways – local governments had to stand on their own in terms of infrastructure and service delivery, which affected programs in housing, health delivery, and capital investment in infrastructure and the framework for intergovernmental fiscal transfers. Whilst acknowledging the democratic nature and importance of local government, there was a failure to support investment in services and infrastructure. This marked the beginning of the decline in capacity for service delivery by local governments and the abandonment of state-local government service delivery programs.

Of major significance was the emergence of multi-party politics, which significantly impacted local governments. The Movement for Democratic Change (MDC) made significant electoral gains from 2000 onwards and swept all the major urban local authorities – Harare, Bulawayo, Mutare, Gweru, Masvingo. The majority on these urban councils became politically controlled by the opposition MDC.. The opposition also made strong in-roads in the national parliament which further created tension with the government. All this culminated in the Government of National Unity (GNU) in 2009, with shared power arrangements at all levels. The implications for local government were significant in terms of polarising the main local government pillars of i) relations between elected and appointed officials, ii) council officials and structures on one hand and citizens on the other, and iii) councils and central government. The polarisation pitted the majority opposition party representatives running councils and government who controlled the national Ministry of Local Government. This tension has played out and negatively impacted on local government. Central government did not sufficiently support the development initiatives within local government areas during this period. Some councils were viewed as anti-government leading to undue interference by the Ministry of Local Government in their smooth functioning.

The 2013 Constitution and implications for local government

The 2013 Constitution was a product of a compromise between the Inclusive Government's two parties: ZANU PF and the MDC. While the Constitution was a major triumph in terms of asserting democratic values, it was not hailed as political triumph by either of the political parties and was largely seen as a means to an end because it was a primary condition for holding elections in 2013 which ZANU PF won and reasserted its dominance in managing the state. Since the elections were held, implementation of the various provisions of the constitution has taken a back stage. This has affected the local government promise as outlined in Chapter 14 and other parts of the constitution. This raises the fundamental question of what difference a constitution makes in local government. Local government can exist with or without a constitution, and in the case of Zimbabwe it has evolved from colonial to post-colonial era based on the political will of national political actors who have used local government to achieve their goals.

Local government practitioners have pinned high hopes on the constitution changing sector fortunes, making it more proactive in development, more democratic and a firm “sphere of government” close to the needs of the population. Such hopes have been expressed in the Green Paper on Zimbabwe Local Government (CHRA2014). The Green Paper articulates a new democratic and developmental local state based on devolution. This is defined as one committed to working together with citizens to find sustainable ways to meet their various needs. Other critical issues include cooperation across tiers of government, institutional arrangements for the different tiers of sub-national government, leadership and political systems, administrative systems and social service delivery, financing and the overall framework for local government. In spite of all the high hopes raised by the 2013 Constitution, there are major challenges in terms of crafting the necessary and relevant legislation to enable its implementation. From the COPAC discussions in the lead up to the constitution, it is clear that the government was not in favour of devolution, but more for a devolution-deconcentration mix. Devolution was seen as threatening the central state and likely to lead to agitation for autonomous regions particularly the Matabeleland regions. In reality there seems to be a preference for local government directed by a strong control from the centre via the Ministry of Local Government, further marginalising the local authorities controlled by the opposition party.

This raises the important question of which way for local government? While there is a strong local government tradition in Zimbabwe, the current functionality of local governments is weak, fragmented and sub optimal. There is evidence of serious dysfunctionality in terms of service delivery, infrastructure development and weak performance of both rural and urban local government. Service delivery is weak both in terms of maintaining the existing and creating new services. The funding model has declined significantly as the capacity for local revenue raising has diminished as the informal sector has taken a dominant stage in most urban economies. Citizens’ participation in local democratic processes has experienced marginal improvements in local government elections where very low turnout during elections and quality of representation is low.

All these weaknesses raise the question – can this be solved through a more robust implementation of the constitution? The answer is probably yes, but the issues confronting local government are complex and require a comprehensive look at history and structure. Firstly the question of democracy is beyond the jurisdiction of local governments alone, it is a larger governance issue. It touches on the core of national values and principles, requires strong political will on the part of all key political stakeholders. The commitment to democracy requires a focus on values of transparency, accountability, good governance, strong representation and a long term vision of the country. The democratic imperative goes beyond short to medium term political interests and capacity building requires long term commitment by politicians, citizens, community groups and the non-governmental sector. Secondly the question of financing is critical and buttressing democratic, developmental local government. This requires a commitment to provide adequate and predictable intergovernmental fiscal transfers; supporting local revenue mobilisation and encouraging public-private partnerships. There is a need to adopt a formula for such transfers and testing such formulas at very local levels so that citizens and civil society are fully engaged.

Through elected local representatives, traditional leadership, community based groups and other citizen groups; there is a need for sustained education on the constitution, on the system of local government and on the expectations among stakeholders. This could be termed education for critical consciousness of citizens on local government. This might sound too “political” for the politicians, but it is also very constitutional focusing on citizen engagement.

Arnstein (1968) through the “ladder of citizen participation” allowed us to visualise and focus on the level of engagement and the direction towards a devolved, democratic and inclusive local government system. Participation ranges from citizen manipulation through token representation to full citizen engagement which allows for the full realisation of democracy. The 2013 Constitution portrays a ‘normative’ state of local government which is universal and drawn out of best practice. The challenge is to connect it to a politicised environment which reflects the challenges prevailing in the macro-political economy. Local government has a history, it has personalities who have shaped it, and it is constantly changing and shifting to reflect political realities. Therefore achieving the ideal is impossible, and so the reality dictates a ‘muddling through’ process, which accepts a ‘messy’ reality, constantly changing and requiring agility and nimble footed approaches.

It is important going forward that a clear model is articulated on where Zimbabwe is coming from and where it is going? Local government requires a very clear compass to give it direction to the future. Such a compass can only be driven by strong political will, supported by committed managerial commitment at all levels of the local government ‘food’ chain. The 2013 Constitution offers the hope of building a united, just and prosperous nation, founded on values of transparency, equality, freedom, fairness, honesty and the dignity of hard work. It offers all the basic principles of good governance, full recognition of the fundamental human rights and freedoms, the rule of law and supremacy of the constitution. The constitutional recognition of the sub-national tiers of government is a departure from earlier constitutions which left the discretion to central government to establish appropriate local government systems. Chapter 14 of the constitution makes specific provisions for provincial and local government. It clearly stipulates the need for devolution of power and responsibilities to lower tiers of government, and the need to transfer responsibilities and resources from the national government to provincial, metropolitan and local authorities. While local and provincial councils have existed in Zimbabwe, their powers were derived from legislation and there was no constitutional guarantee of their existence. The specific constitutional provisions on local government not just in Chapter 14 and their implications are discussed Chakaipa and Chakunda (this volume). The provincial and metropolitan councils provisions are developmental. They relate to service provision, coordination and implementation of government programmes. These powers are not new and go back even to the pre-independence Provincial Councils. The main weaknesses of the provincial levels have always been the lack of recognisable territorial authority and resource allocation powers. While central government has managed ‘sector’ developments through provincial officers, this has always been through a ‘deconcentrated’ and not ‘devolved’ model to the provinces. The ‘deconcentration’ makes the province a platform to coordinate what has already been decided by the various Ministries. The proposed devolution of power creates a locus of political or policy making and implementation power which reflects the province as a tier of the state.

Whilst the representation in provincial councils is strong, most representatives are not ‘provincial’ per se, but represent interests which manifest on the provincial platform – senators, chiefs, national assembly members and mayors. Another significant dimension for provincial, metropolitan and local governments is in Chapter 17 (Finance) which states: “An Act of Parliament must provide for;

- a) The equitable allocation of capital grants between provincial and metropolitan councils and local authorities;
- b) Any other allocations to provinces and local authorities, and any conditions on which those allocations may be made”.

Depending on the agreed formulas the provision on finance is a major breakthrough for devolution. It has considerable potential for fiscal capacity and efficiency at sub-national government levels (provincial and metropolitan councils and local authorities). The constitution states that: “not less than 5% of the national revenues raised in any financial year must be allocated to the provinces and local authorities as their share in that year”. Such a clearly stated commitment will ensure that provinces, metropolitan councils and local governments can sustain development programmes. It is clear that the formula adopted will need to be adjusted to take into account the variations in regional endowments, levels of development, and the capacity and capabilities of local governments. Also, urban local authorities are a significant feature of sub-national government given the rapid urban growth that the country is experiencing.

Conclusions

Zimbabwe has a strong local government tradition which the 2013 Constitution builds on. Both rural and urban local governments have a long history and tradition, and they play a significant role in development. It has a well established urban hierarchy providing a range of commercial, industrial and service functions. The functions of both rural and urban local governments are to effectively manage the areas under their jurisdiction. They have powers to manage land and the resources in their jurisdiction, and they raise rates, taxes and service charges on the land and property in their local government areas. Constitutionalisation consolidates the role and function of local government in the development of Zimbabwe. However, it is not a magic bullet to enabling effective local government and it simply adds impetus and creates more certainty around the existence of local government as an institution of a multi-tiered state. In Zimbabwe, constitutionalisation comes on the back of a strong local government tradition built since the early colonisation period.

The biggest challenge since the constitution came into being in 2013 is the political will needed to craft all the necessary legislation to make the ‘new’ local government system work. This challenge has come about because the pressure of the power-sharing Inclusive Government which created the constitution has receded, leaving the ruling party to take its time in implementing the various chapters of the new constitution. The promise of a devolved, democratic local government system is a long-term goal. Even when the legislation is passed and agreed, there is a need for a sustained capacity building programme targeting both the local authorities as well as the citizens. On the part of the citizens there is need for civic education emphasising the underlying values of local empowerment and development, and helping them to view local government as a critical institution for development. The low turnouts at government elections will become a thing of the past on the part as citizens become more engaged. On the part of local authorities, there is need to shift their orientation towards local development. Local governance has to be seen articulating local interests and needs, and mediating their differences, and exercising their rights and obligations (UNDP Handbook, 2014). Therefore local development becomes development that leverages the comparative and competitive advantages of localities, and mobilising their specific physical, economic, cultural, social and political resources. These are issues variously discussed in the following chapters. Critically though, there is need for Zimbabwe to set a vision of the local government consistent with the ideals of the 2013 Constitution and to focus on implementing such a vision. Research needs to be a central feature of that process to provide evidence for local government policy making and implementation. This should be built around the local government implementation agenda.

Chapter 3: Insights from the Constitution-Making Process and their Implications for Local Government Financing and Functions

July Moyo

The historical evolution of the local governance sector in Zimbabwe over the past century is characterised by a series of significant milestones. Perhaps the most substantial moment was the formal recognition of local government institutions in the Constitution Amendment No. 20 of 2013. For the first time in Zimbabwe's governance history the country took the bold step of conferring constitutional status to local governance institutions. The legal and operational consequence of this deliberate effort is that sector institutions ceased to exist only in terms of guiding statutes but are now recognised as vital cogs of constitutional democracy. The generally progressive and transformational constitution has set in place a framework for realising a devolved state in which local government institutions form a critical component.

Current and emerging areas of debate among stakeholders have focused on alternative ways of financing development efforts by local authorities in their respective jurisdictions. Mechanisms of sharing resources between national and sub-national tiers of government have also attracted widespread scrutiny. The role of communities as rights-holders and the ultimate clientele of service delivery and organisations that represent them in deciding how their affairs are managed by the authorities was a key focus of the constitution making process. These debates have raised questions on the suitability of the prevailing political economy of the country. Evidence suggests that it has not led to the realisation of optimal governance outcomes at local and national levels. The constitutionalisation of local government in Zimbabwe constitutes a significant pillar in terms of having triggered fundamental reforms. Devolution as a form of decentralisation was, and continues to be an issue for debate. The political controversy that devolution has generated is unprecedented. Arguments against devolution seem to pit political elites perceived as resisting it contending that the process has the potential to a cause secessionism, disunity and ethno-cultural disruptions in the country against those for devolution particularly in local government and civil society who argue for its progressive and transformational capability to install responsive, inclusive and participatory governance.

The formal recognition of local government institutions has stimulated debate on the ideal resource mobilisation and sharing framework between the national and lower tiers of government. Recognising that local government institutions are the tier of government closest to communities, the constitution entitles them to 'not less than five percent of national fiscal resources'. The existing fiscal framework is however steeped against sub-national tiers of government leaving them without adequate resources to perform their functions. The concepts of 'division by magnitude' and 'division by exclusion' could be applied in devising a resource sharing framework beyond the 'not less than five percent' provision. That framework will exclude certain levels of government from certain taxes or levies (division by exclusion) to guarantee resources for levels of services that the particular tier is mandated to deliver (division by magnitude). There should be a clear regime of taxes for each tier government i.e. other tiers will be excluded from collecting such revenue. The delivery of water, roads, education, health, housing, child protection and other welfare services is amenable to division by magnitude and in Zimbabwe this is generally the case. The challenge is that resource safeguards for delivery of services are inadequate with grants for services like education and health that previously came from national government, stopped.

In other sectors like roads, disbursements are irregular and the formulae unclear. That Zimbabwe's national government has a monopoly over revenue sources that could be (or were previously) managed by councils is well-documented. The latest example relates to unit (land) tax and development levy. For local governance to be exercised effectively there is need to clarify the roles and responsibilities of sector institutions. Role duplication leads to wastage of scarce resources and turf wars. The fundamental question for metropolitan and provincial councils relates to the extent to which these institutions will perform their duties without unduly straying into the domain of the other tiers. Equally important are the accountability mechanisms for both institutions at this middle tier. In the event that the Minister of State for Provincial Affairs' accountability is conceived as being to the national President then the devolution system will somehow limp to the extent that national government will potentially encroach into and limit the functionality of the middle tier of government. As a presidential appointee, it is reasonable to speculate that the allegiance of the Minister lies with the appointing authority rather than the Provincial or Metropolitan Council even though he/she may be obligated to account to the latter. Thus, besides the disproportionate centre-local relations, the administrative architecture of the councils themselves requires further examination to ensure effective local governance. To add on, the constitutional dispensation has significant implications on regional development and managing ethno-cultural dynamics in Zimbabwe. Whilst the constitution stipulates that five percent of the national fiscal resources must be disbursed to provincial and metropolitan councils and local authorities, how these will be shared among the councils is not clear. It is instructive to note that local authorities in Zimbabwe have diverse revenue streams and collection capacities. As such, it is critical for disbursements to be equitable. A Fiscal Advisory Committee within the Ministry responsible for managing the national fiscus could help in terms of advising on the disbursements. This is because provinces in the country clearly have different development needs and capabilities due differences to natural, human capital and infrastructural make up. Sharing resources unfairly will potentially entrench regional disparities and breed discontent. As such the constitution has in a way framed the debate on sharing of national resources.

Constitutionalisation of the local government has generated controversy on the stewardship of national assets. Within the context of 'division by magnitude' and 'division by exclusion' it becomes critical to untangle ownership and administration of productive and other assets. The land and water sectors among others present clear opportunities for devolved ownership and administration (see also Chatiza and Makanza, this Volume). The administration of dams that are significant for providing water services in local authority jurisdictions is a case in point. A question can be posed as to why the national water authority (ZINWA) retains ownership and control of a water body that exclusively meets the primary water needs of a settlement rather than the settlement itself becoming responsible for the water body. Institutional layers around specific services need untangling to reduce decision centralisation and to make service delivery and maintenance chains shorter. In that devolved framework, citizens can play an increasingly significant role in how their areas are administered if their capacity and that of citizen organisations, is built.

On the whole, the recognition of the local government sector in the constitution stimulated vibrant and robust debate during the constitution making. However, constitution-making participants at different levels were not agreed on the conceptual implications of decentralisation by devolution let alone the practical meanings of it. As such, the debate continues resulting in implementation holdbacks. Local government stakeholders therefore need to continue to argue for full sector reforms recognising that transfers of power require consistent pressure. The ideal local governance system that will serve residents optimally as envisaged in the constitution is yet to be realised and will not be accomplished without consistent engagement across of levels. Whilst transitioning of the nation towards a devolved system has been codified into law via its inclusion in the new constitution, political will on the part of ruling elites for the conversion of this into practical programmes of action remains. As rights-holders, citizens have a significant stake in a ensuring vibrant, responsive and effective local authorities.

Chapter 4: The Preparedness of National Institutions for Devolution in Zimbabwe with respect to Selected Services

Kudzai Chatiza and Angeline Sithole

Zimbabwe has had positive patches of local government-led development in both colonial and post-colonial times (Wekwete, this volume). In these periods, transformation progressed where the priorities of national and sub-national politicians and bureaucrats aligned, and where there was a misalignment decentralisation and related reforms stalled followed by centralisation. The 1980 to 1996 period saw the depth and range of reforms somewhat entrenched democracy and local development. We have written elsewhere on the continued control of local government institutions and their management by the centre (Chatiza 2010), straining the sustainable devolution that Zimbabwe experimented with from early independence (Matyszack 2010) making for shallow reforms. The Constitution of Zimbabwe 2013 has created an opportunity for devolution implementation and this chapter assesses whether national institutions are prepared to implement devolved governance. It also makes suggestions for how their preparedness could be increased at national and sub-national level.

Defining Devolution and Preparedness to Implement

We conceptualise devolution as a form of decentralisation, as the political variant concerned with the legal transfer of decision-making and implementing powers as well as resources to legally constituted and popularly elected local governments (ICJ Kenya 2013, AU 2015, Kauzya 2007; Devas and Delay 2006). We draw on Articles 3 and 4 of the African Union Constitutive Act (2002), the Yaoundé Declaration of 2005 and the African Union vision 2063, to show regional trends in adoption of devolution as a governance framework. The African Union (2015) identifies decentralisation as the strengthening of sub-national levels of government's fostering of people's participation and delivery of quality services suggesting that constitutionalisation of local government is a means rather than an end. Further, it acknowledges the emphasis placed on i) spatial or territorial organisation, ii) natural resource management and iii) fiscal resource allocation elements of devolution (Chirisa et al 2013). Contests over power arise from the reality that the disjuncture between political elites and the masses in state building (Chinsanga 2011, Mlambo 2009), engender policy contradictions, result in incomplete social transformation and often spark violent state capture (Thomas 2015). Devolution promises an overhaul of a country's system of governance as is the emerging case in Kenya (ICJ Kenya 2013) principally because power sharing, decentralisation of resources, checks and balances are made an explicit agenda. Based on this understanding of devolution and acknowledging Zimbabwe's governance crisis in 2008 that forced a power-sharing government, the paper rejects the narrative that devolution was a compromise inclusion in the constitution on two grounds: first, Zimbabwe is not new to an operationalisation of devolution, and second, devolution is has been long fought by a generation of post-independence Zimbabweans after consistently and robustly engaging the state (Hammar 2003 and Muzondidya 2009).

We look at whether national institutions are prepared to implement devolution. While acknowledging further analysis is required we propose a preparedness framework. This is based on Fombad (2011) who defines constitutionalism as i) recognition and protection of freedoms and rights, ii) separation of powers, iii) an independent judiciary, iv) review of the constitutionality of laws, v) control of the amendment of the constitution and vi) presence of institutions supportive of democracy.

Africa's experience with these constitutionalism parameters is considered weak as only procedural notions of constitutionalism emphasising values not institutions capable of converting them into practical results are delivered (ibid). Issues of holding government to account are noted where robust responses by the judiciary and civil society are lacking. A devolved system increases citizen participation in holding the state to account which is critical for local democracy (IDEA 2013).

We analyse preparedness with respect to suitability of existing institutional structures and practices for devolution. This is read in the context of the clarity with which citizens stated their expectations for substantially deep reforms and positive changes in governance (see BPRA 2013, CHRA 2014, Chatiza and Chakaipa 2014). This articulation is against a background of the recent governance crises and stalled reforms (ICG 2011; 2014, Raftopoulos 2013a; 2013b, Matyszack 2010; 2013). Suitability becomes key considering the magnitude of governance changes defined in the constitution as spelt out in the Preamble and in Sections 3, 5, 8, 9, 13 and among others the expansive Bill of Rights (Chapter 4). Sections 14 to 33 raise citizen expectations of local government institutions. Significant implications arise in terms of leveraging local government performance towards realisation of developmental rights. Further, the constitution dictates what central government has to do to enable such performance. Constitutional framers used the concept of the State to include its forms at national, provincial and local levels. This conversation on preparedness is about guaranteeing the execution of competences embedded in a developmental right like shelter, health and, among others education. Such execution is either exclusive to an individual tiers of government and/or concurrently across the tiers. The Zimbabwean state's current performance has significant weaknesses with lack of whole-of-government policy development and implementation consistency.

Generalisable Preparedness and Indicative Gaps

Central government implementation of devolution is not necessarily about resetting everything. At least 92 relatively well established local governments governed by directly elected representatives, using resources principally raised locally and with the authority to make independent investment decisions exist in the country (DEGI 2013, Wekwete this volume). The local governments are fully and formally established and have legally recognised geographical boundaries within which they exercise authority and perform public functions. As such, Zimbabwe has longstanding and substantial traditions of devolution. Pre-1980 Urban Councils including Town Management Boards in cities like Harare (Chatiza 2010) and early independence District Councils were devolved (Matyszack 2010). For the latter government retained control through its field offices (ibid, CCMT 2015). Since 1898² national institutions in Zimbabwe have been mandated to function in a devolved system. Central government, among others, has set up an Inter-Ministerial Committee overseeing alignment of legislation to the constitution. The Ministry responsible for justice is leading the process and a General Laws Amendment Bill was placed before Parliament in May 2015. At the same time individual Ministries have been reviewing policies and laws in their sectors in light of the 2013 Constitution. Ongoing interaction between Ministries, Parliament of Zimbabwe and non-state development organisations has also ensured constitutionalism in general remains on the top of the agenda. These constitute an array of efforts at preparing or readying central government to implement devolution.

² Southern Rhodesia Order in Council of October 20th 1898 provides in paragraph 8 of Part II for the British South Africa Company to exercise general administration of affairs through Administrators with clear powers over defined territories.

However, there have been informed doubts expressed regarding the depth of proposed reforms. The Zimbabwe Lawyers for Human Rights (2015) for instance expressed concern that local government (and other legislation) impacting on the protection of socio-economic rights and requiring fundamental amendments was unlikely to be changed going by the proposals in the General Laws Amendment Bill. National guidance is therefore required regarding i) practical objectives of devolution to be pursued at all three levels of government to guide the national fiscal framework, ii) the devolution implementation process, iii) steps towards institutionalisation of participation particularly in key sectors, and iv) thresholds for devolution performance (Kauzya 2007; Devas and Delay 2006). Based on this framing this section of the paper uses the cases of the health, state-owned enterprises, water and land sectors to reflect some of the challenges that detract national preparedness for devolution implementation.

Indicative Health Sector Gaps

The health sector has significant challenges being addressed based on centralised responses. These include gaps in terms of i) high demand versus low coverage of services including access to safe water and sanitation, antiretroviral treatment and food security, ii) the disjuncture between ‘free care’ policies and real direct charges as well as indirect costs for health services that undermine use in poor households, iii) gaps in terms of need and supply in drugs and skilled staff at the primary care level of the system, iv) commitments and spending by the international community and government in the health budget, with rising demand on households to meet the gap, v) expectations and real working conditions and incomes of health workers, and vi) the social capacities for promoting health within communities, and the legal and institutional recognition and support of these capacities (Loewensen and Masotyia 2008).

The sector has seen considerable investment to recover from the dramatic capacity loss of the decade up to 2008. To 2014, there were improvements in child and maternal mortality, post-natal care, approaches to addressing the negative effects on health arising from socio-cultural and religious beliefs and in access to safe drinking water, sanitation and hygiene practices (Zimbabwe Multiple Indicator Cluster Survey 2014). The 90% donor-funded and UNICEF-hosted Health Transition Fund (HTF) as well as the UNFPA-hosted Integrated Support Programme (ISP) have created conduits for sector funding (UNICEF 2015³) and therefore take most credit for the positive changes in the sector. However, structural failings remain because the sector still faces funding challenges and local authorities ceased to receive health grants in the late 1990s (Government of Zimbabwe 2004). Government has launched a Health Development Fund (HDF) which is a multi-donor fund building on the HTF and ISP to focus on reproductive, maternal, newborn, child and adolescent health. USD85 million in HDF funding has been provided by the EU (UNICEF 2015).

³ See www.unicef.org/zimbabwe/media_16578.html (downloaded 15/10/2015)

From a national preparedness perspective it is critical to observe that health services have been run in a highly centralised manner. While, the sector has seen considerable innovations implemented through multi-actor structures and programmes these have been led by the ministry responsible for health. Programmes such as child immunisation, the fight against HIV/AIDS coordinated by the National AIDS Council and maternal health initiatives are delivered through a clear hierarchy of health facilities. The facilities include primary health care institutions largely owned by local authorities but staffed by ministry personnel remunerated from the centre. In rural and small urban centres even community-level and primary care medical staff are part of the national health roster contradicts the 'division by magnitude' principle where relevant services are a competence of local government. Essentially from both a funding perspective and in terms of institutional relations, a critical conversation on devolution is needed to prepare the health ministry, relevant UN agencies, donors and other national level stakeholders. To date no policy has been developed in light of the Constitution. Such a policy is required to clearly define the health sector's i) financing, ii) information systems, iii) structure and management, especially of sector workforce including the role of the Health Services Board and other sector professional bodies for nurses, doctors etc, iv) service delivery systems including division of competences and v) infrastructure.

Indicative Gaps Regarding State-Owned Enterprises

Zimbabwe's state enterprises not all are decentralisation-easy. However, it is reasonable for the country to expect some clarity regarding how sub-national governments could participate in their governance and derive revenue critical for service delivery. The ones that are potentially relevant in this discussion are those that manage road and rail transport , agriculture-related enterprises, mining and energy sector companies, enterprises related to the natural environment, and among others, water and road infrastructure enterprises.⁴ Challenges involved with setting up and getting Community Share Ownership Trusts to accountably function also reflect the centralised approach that national institutions (cabinet and responsible ministries) utilise. Across central government there have been robust discussions suggesting disharmony around the extractives sector (PAC 2012) and on indigenisation, providing partial evidence of a lack of preparedness to implement devolution. On governance, most state enterprises are not currently connected and accountable to local and provincial-metropolitan authorities but yet they are critical to local service delivery and development. The performance of state enterprises has been weak, depending on the national government for financial bailouts amid corruption and mismanagement (Government of Zimbabwe 2014; PAC 2012). The level of government closest to a state-owned enterprise and its subsidiaries has most information about its performance and therefore is best placed to oversee its operations (Huang et al 2015). Society and the relevant level of government also expect the enterprise to be a resource towards local development. As such, that level of government ought to be sufficiently and formally empowered to participate in the governance of the enterprise operating in its jurisdiction thereby allowing extraction of necessary revenue for service delivery. Zimbabwe's pre and post-independence deployment of state-owned enterprises like TILCOR and UDCORP to 'develop' local areas shows the merit of clarifying how these become accountable and beneficial to sub-national tiers of government.

⁴ The respective authorities being the National Railways of Zimbabwe and the Zimbabwe United Passenger Company, Grain Marketing Board, Agricultural and Rural Development Authority, Cold Storage Company, Hwange Colliery Company, the Mining Development Corporation, the Minerals Marketing entity, Companies that are part of the Zimbabwe Electricity Supply Authority Holdings, Forestry Company of Zimbabwe, Parks and Wildlife Management Authority, and the National Water Authority, Road Authority, District Development Fund

The macro, meso and micro level governance questions and risks posed by under-performing state-owned enterprises cannot be ignored. For instance, national energy insecurity affects socio-economic enterprises hampering the realisation of basic rights. The current institutions are a product of an amalgamation of previously devolved power producers with two main ones in Zimbabwe's two urban provinces. Associated with this consolidation were policy changes particularly adoption of a pan-territorial tariff resulting in some sharing of the costs of inefficiency and creation of a 'sensitive clients' list including politicians. Some of them were exposed recently for owing the utility thousands in debt. (The Daily News 17th March 2012, 01st June 2015⁵; The Zimbabwe Independent 30th January 2015⁶, Nehanda Radio 16th March 2012⁷)

Given the clear theoretical (Huang et al 2015) and empirical basis such as cases of corruption and unaccountability, the Government of Zimbabwe needs to come up with a devolved system for governing state enterprises. To the extent that such a framework does not currently exist we suggest that state-owned enterprises remain unprepared for devolution.

Water Sector Gaps

The rising population, urban growth and competing socio-economic activities such as agriculture, industrial and household usage has made the water supply situation critical and some reforms have been implemented since independence and more intensely in late 1990s (Government of Zimbabwe 2013b). Despite early progress, the water and sanitation challenges continue to be significant, including water scarcity, frequent sewerage malfunctionality, low service quality, erosion of affordability resulting in user debts, billing and collection inefficiencies, high non-revenue water ⁸ gaps between general and active coverage and inability by service providers to expand or upgrade WASH systems (ZILGA et al 2014). For Human Rights Watch (2013) the challenges come from public sector corruption, mismanagement and lack of political will while Mapfumo and Madesha (2014) note population growth, poor and ageing infrastructure, economic challenges and climate change. Chinyama and Toma (2013) agree with the population growth and infrastructure failure explanations but further observe residents' behaviour as a key challenge. Hove and Tirimboi (2011) anchor their arguments on institutional failure showing how the takeover of WASH service delivery by ZINWA in 2005 triggered performance constraints for Harare.

The institutional framework for the water sector is generally decentralised but questions have arisen over the capacity of the Zimbabwe National Water Authority (ZINWA) in recent years. Prior to 2005 the Authority (and its predecessors) focused on the bulk water side from infrastructure development, maintenance and sale of bulk water to user institutions in mining, farming and local government. Also, the loss of commercial farming clients following the land reform programme prompted ZINWA to go beyond bulk water provision. However, being centralised some of the small centres it serves throughout the country experience problems. Rural local governments and small towns like Chirundu find difficulty synchronising their land and housing development plans with ZINWA's own strategic planning resulting in unserved settlements. In the City of Bulawayo, ZINWA's services around the Nyamandlovu Aquifer also face pumping inefficiencies betraying capacity gaps.

⁵ www.dailynews.co.zw/articles/2015/06/01/zesagate-affair-mugabe-settling-power-bill downloaded 12/10/15

⁶ www.theindependent.co.zw/2015/01/30/cabinet-ministers-bleeding-zesa-outed/ downloaded 12/10/15

⁷ <http://nehandaradio.com/2012/03/16/mugabes-shock-350-000-zesa-bill/> downloaded 12/10/15

⁸ NRW for Kadoma is 79%, Kwekwe (63%), Harare (58%), Marondera (51%), Norton (54%), Rusape (56%), Kariba (59%) and Chipinge (80%)

The role of ZINWA and other institutions in the water sector needs to be reflected upon in light of the new constitution. This is critical from both the perspective of citizen participation and of the role of provincial-metropolitan and local authorities. Administrative structures and functions of ZINWA are not always consistent with the constitution. Suffice to note ZINWA Head Office holds more decision-making power and resources than lower level officials on the ground in some local authorities which may run contrary to an expansive interpretation of devolution. Aspects of the ZINWA Act (Chapter 24:24) under which decentralised structures were created (Catchment and Sub-Catchment Councils), local government and public health legislation need to be reviewed to align them with the constitution. Further, the role of central government has been criticised recently over pre-paid water metering (BPRA 2015). Citing the socio-economic context, the system's capital intensity and among others, supply deficits residents have resisted the technology. On the other hand, local authorities seem emboldened by central government approval of the pre-paid water metering. This appears to have undermined dialogue between citizens and their local governments in a way that stifles prospects for a devolved governance system.

Gaps in Land Administration

Land reforms since 2000 have triggered far reaching changes to agrarian structure and performance with implications on both the country's politics and economy. A 2003 Presidential Land Review Committee Report observed that 'acquiring and distributing land to the people under A1 and A2 was undertaken in a complex legal framework which rendered the process both difficult and cumbersome' (Government of Zimbabwe 2003:1). The Committee was 'struck by the number and variety of legal issues that still required resolution in respect of the acquisition procedures; the allocation of land, assessment of the value of improvements, ownership and access to moveable assets' adding that 'the governmental machinery for administering these matters was taxed to the limit' (Ibid:1-2). The resilience of some of the unresolved issues around property rights and equity issues regarding land reforms have had an effect on local authority financial and overall governance viability considering the centrality of land to governance and development. Revenue from Unit Tax for rural local authorities has suffered serious strain if not near collapse in some jurisdictions. The rates databases that Councils held prior to the post-2000 land reforms have not been fully rebuilt given the centralisation of land redistribution information. Where available the centralisation of allocation reduces beneficiaries' administrative and developmental loyalty to sub-national governments. Cases of multiple and continuous allocations of some properties and refusal to pay by prominent beneficiaries are cited by many Councils. The District Land Committee decisions are not always taken into account undermining the legitimacy of local government and resulting in billing challenges.

A directive issued in June 2015 provides that A1 and A2 farmers will pay land rentals and unit tax to the Ministry responsible for lands (centralisation) rather than to local governments as was the case previously. The directive potentially contradicts the Third Schedule and Section 96 of the RDC Act (CAP 29:13) as well as Section 6.2 of the Public Finance Act of 2009. There continue to be active debates around further centralisation of revenue sources previously meant for local governments. Further, challenges with ZINARA funds where local government accountability is now to the Authority for resources previously ring-fenced for local government and loss of predictability of the source are cases in point. Evidently in both cases of land tax and the basket of sources centralised at ZINARA some 'division by exclusion' of the centre is required to ensure that local governments retain viable local revenue sources. Recognised capacities or comparative advantages of national authorities for instance in standard setting and data aggregation are insufficient justifications for appropriating revenue sources meant for and functions previously performed by local governments. To the extent that Cabinet in particular and central government Ministries generally approve measures potentially at variance with devolution their preparedness is doubtful.

A further question is whether the contested and unresolved nature of Zimbabwe's land reforms will be subjected to resolution using a devolved governance system where transparency and accountability, rule of law and respect for property rights and due process are observed. This is complicated when considered in light of the majority of the current governing class having benefited from the land redistribution and forming the core of ratepayers who owe service delivery institutions including Councils in unpaid rates and levies. The political-bureaucratic land reform beneficiaries who have resisted previous attempts at a comprehensive and transparent land audit may be expected not to support devolution in this sector.

Following an audit on land management and allocation issues in Chitungwiza Town and Seke District – and government report observed that a vacuum left by central and local government in the housing sector was occupied by 'land barons, housing cooperatives...errant Councillors and Council officials...[as] the opportunity...presented them with options for massive private gain in the face of legislative and administrative inadequacies' (Government of Zimbabwe 2013c:29). However, central government had a role in some of the allocations of state land within or adjacent to Municipal areas reflecting strategic contradictions that require untangling in the interest of good land governance.

Land administration functions and land information systems therefore need devolved management (Chatiza 2003) but that national institutions appear least prepared to devolve. The net effect is that revenue sources and management of public affairs in areas for which local governments are established as defined in the constitution will be difficult unless land administration policy aspects are devolved (Ibid). Effective addressing of the land tax question as a local government mandate will, with inevitable central resistance, set the stage for addressing the local government finance question in Zimbabwe.

Are National Institutions Prepared to Implement Devolution?

On two simple accounts this paper suggests that national institutions are not prepared for devolution. The first is that these institutions have deliberately failed to support the development of whole-of-government and sector specific policy frameworks for devolution. Further to this, legislative reforms are uncoordinated as a consequence, resulting not only in reform delays but a heightened risk of both shallow reforms and contradictory policy, legislative and institutional proposals. The second factor is that existing sector policy and programmatic log-jams including the reality that senior politicians and bureaucrats have their 'hands in the state cookie jar' as the case of land reforms show make it politically undesirable to devolve service delivery in key sectors. The self-interest obstacle is reflected in the extractives sector and in centre-local relations where some local politicians/bureaucrats act to sustain justifications for non-devolution.

As such, despite the longstanding traditions and commitments, the national political culture seems averse to devolution. Related is the observation that the pressure arising from an Inclusive Government and the political contestation it provided resulting in the hatching of the constitution has receded (Wekwete, this volume) and this explains strategic moves towards recentralisation. Readiness is undermined by lack of implementation resulting in a failure to internalise democratic principles defined in laws, policies, regulations, institutional arrangements and new government structures. The post-July 2013 government's actions have not communicated devolution implementation.

However, building on the notion of devolution as a 'governance trophy' won by the post-liberation generation in a polity where the political economy seem to conspire against those resisting devolution, there is a need to strategise towards full implementation. Critically, political will needs to be drummed up for decentralisation by devolution (CLGF 2013). As observed by Manor (2011) political pressure is needed for devolution of substantial powers and resources while building accountability mechanisms for bureaucrats to elected representatives and the latter to ordinary citizens.

Conclusion: Can Devolution Implementation become a Reality?

The normative response as to whether devolution becomes a reality in Zimbabwe, is yes and that it is inevitably. This assertion is based on the force that is currently latent in the constitution and resists timings associated with over-reading signs from the current government. The enduring aspiration to be governed well intricately fuelled by seeking a 'good life' (Sithole 2002; see also Ross 2011) more than any secessionist's agenda that some political actors fear is what keeps devolution on Zimbabwe's political agenda. Based on a comparison of international experiences Devas and Delay (2006) confirm the existence of real local demand for devolution. They cite post-Soviet Eastern Europe, parts of Latin America, post-apartheid South Africa, the United Kingdom, Spain, Northern Ireland, Uganda after the Museveni-led revolution, Kenya and Belgium, among others. As such, it is fair to reflect that Zimbabweans' desire for more devolved governance is consistent with internal pressures being placed on governments by citizens of other jurisdictions.

With all this in mind, we suggest specific options for devolution implementation to include drawing up of a Devolution Implementation Policy, Plan and Strategy targeting key national institutions and complete with robust research and communication processes. The devolution framework should be enshrined into law and its implementation funded. Specific pilots including of setting up Provincial Councils, restructuring state-owned enterprises and remodelling national Ministries based on the national action plan should be funded from the national budget. This will constitute a critical mechanism for driving devolution implementation with capacity development as relevant.

Chapter 5: Local Government Institutions' Readiness to Live the Constitution

Stephen Chakaipa and Vincent Chakunda

Introduction

The Constitution of Zimbabwe 2013 grants local government constitutional status. It therefore provides for the sector not to operate in a delegated capacity that is largely dependent on central government. Under previous institutional arrangements local government mandate, though enshrined in law, was vulnerable to substantial variation and continued threat of re-assignment. This Chapter explores whether the various local governance institutions are prepared for the new constitutional dispensation. It builds on the debate led in previous Chapters raising questions on the legality of some institutions and processes defined in the Urban and Rural District Councils Acts which form the sector's legislative context yet to be aligned to the constitution. Laws that define the individual functions and relations across the three tiers of government and to operationalise devolution in terms of 264 and 265 (3) of the constitution are yet to be created. This scenario has stalled the preparation of local government institutions to enjoy the full impact of the constitution.

The Chapter discusses this in relation to the following institutions: i) Provincial and Metropolitan Councils in terms of section 268 and 269 of the constitution, ii) Rural and Urban local authorities in terms of sections 274 and 275 of the constitution, iii) the Local Government Board, and iv) the parliamentary portfolio committee on local government. In this discussion the Chapter makes reference to constitution and relevant provisions of existing laws (the Urban Councils Act and the RDC Act). An examination of the different tiers of government is done to establish the position of local government institutions in the national political context. An 'overlapping authority model' of intergovernmental relations underpins the analysis.

The System of Government

Zimbabwe is politically and constitutionally a unitary, democratic and sovereign state with a three tier governmental structure of i) national government, ii) provincial and metropolitan councils, and iii) local government (Rural and Urban Councils) as defined in Section 5 of the constitution. The concept of 'tier' is associated with unitary governments and denotes hierarchy and subordination generally consistent with centralist tendencies and an unwillingness to devolve power (Malan 2005). On the contrary, levels of government in federal constitutions like the U.S. and other unitary states structured in a devolved manner like South Africa are referred to as 'spheres'.

Chapter 3 of the South African Constitution states that the three spheres of government are "distinctive, interdependent and interrelated". 'Distinctiveness' means that the constitution allocates certain functions and powers to each sphere which then has the final decision making power on those matters. The 'interrelatedness' means that the exercise of autonomy by a sphere is supervised by the other spheres of government. 'Interdependent' means that each sphere must exercise its autonomy to the common good of the country by co-operating with the other spheres (Thornhill 2002). These provisions enshrined in the South African Constitution balance the 'tension' between the relative autonomy of a particular sphere and the pursuit of a coherent government. For South Africa this balance is practically facilitated through clearly defined inter-governmental relations and collaboration.

Intergovernmental Cooperation, Overlapping Authority Model and Devolution

The overlapping authority model assumes that autonomy and discretion in a single jurisdiction are constrained. Additionally, the power and influence available to any one level is significantly reduced and bargaining amongst actors as central (Wright 1988). Whilst the model was primarily designed with a focus on the federal US, it can be used to help explain inter-governmental relations (IGR) in unitary regimes such as Zimbabwe. The model (using three circles to represent the spheres) shows overlaps of all three and as pairs (Brown 2007). The model disabuses us of the static view of IGR as either or relations. It further notes that relations vary by issue or programme area and government tiers which seems consistent with the dynamism and complexity of all systems of government both unitary and federal. This Chapter applies the overlapping authority model to review influences on policy development, programme relations and administrative practices in Zimbabwe. It is sufficiently flexible to accommodate a range of third-party players beyond government. For Wright (1988) the overlapping authority model of IGR is a protracted complex process that goes beyond classic views. It “includes a range of activities and meanings that are neither explicit nor implicit in federalism” (ibid: 37). These actions include complex multi-unit interactions even beyond nation-state relationships that are also non-hierarchical in nature and form a core concern for policy development. In this respect, while “not always recognized (sic) as such and certainly not denominated” (Graves 1963: 1), IGR as a process has developed in new ways. Sections 3 and 264 (among others) of the 2013 Constitution clearly provide for a ‘devolved system’ of governance. Mapuva (2013) argues that, this system conceptually shows difference from the ‘centralised system’ of governance that existed previously as it seeks to accommodate different needs and desires of different constituencies. Devolution can be considered as the purest and most extensive form of decentralisation (UNDP, 2009). In a devolved system, sub-national government tiers have clearly and legally recognised jurisdictional boundaries within which they exercise their authority and perform their functions (Treisman 2002). The constitutional objectives of devolution are outlined in Section 264 which establishes provisions for the creation of a legal framework for the operationalisation of devolution. It is the responsibility of the state to develop supporting policies and legislation to implement a devolved system of governance to realise the objectives of the constitution.

Public Administration for Constitutionalised Local Government Institutions

Chapter 9 (Section 194) of the constitution presents the principles governing public administration. It provides the general framework for institutional conduct in the execution of mandates. The principles are anchored on the desire to achieve good corporate governance and a vibrant public administration system that assures efficient and effective service delivery to different constituents. They complement efforts towards a democratic state that upholds high ethical standards and a shared national spirit. Local governments’ preparedness for the implementation of these principles is however poor as there is absence of a coordinated approach to entrench these. This is despite national efforts led by central government such as the roll out of Integrated Results-Based Management (IRBM) and the Zimbabwe Agenda for Social and Economic Transformation (ZIMASSET). Both IRBM and ZIMASSET processes have monitoring frameworks steered by the Office of the President and Cabinet but their full implementation is undermined by existing institutional relations and performance. Section 116 of the constitution vests the legislative authority of Zimbabwe in the **legislature** (Senate, National Assembly and the national President). The structure and exercise of legislative authority and the delegation of legislative authority is provided in Chapter 6 of the constitution. Parliament (Senate and National Assembly) protects the constitution and promotes democratic governance in Zimbabwe, ensures that the state and all government institutions at every level act constitutionally, in the national interest and are accountable. Parliament’s Portfolio Committees oversee the various state, government agencies and departments in the exercise of their mandates.

The Portfolio Committee responsible for local government is a key institution responsible for Cabinet and parliamentary interventions to ensure viable and sustainable local government. Through investigations and engagements with Cabinet, especially the Minister responsible for local government, the Committee's mandate is to ensure transparent, high performing and accountable local government institutions. However, parliamentary control efforts have been weakened by the absence of viable legislation. This is in terms of sector specific laws (e.g. local government) and in terms of 'parliamentary teeth' to censure the executive. Members of the executive are known to deliberately absent themselves from Committee business even when invited. The tradition of relative powerlessness on the part of Parliament in general and the relevant Portfolio Committee makes this particular institution unable to push for effective implementation of the constitution. Parliament has also failed to give a clear timeline for the alignment of the laws to the constitution.

Under section 134 of the constitution, Parliament may delegate legislative power to subordinate institutions to pass subsidiary legislation through an Act of Parliament subject to review by Parliament. This allows for broader participation of citizens in policy and law making through parliamentary intervention and regulation of processes rather than directly pass all rules and regulations necessary to run the state (Feltoe 2006). In this case subordinate institutions include Councils which are empowered to pass by-laws as part of governing their areas and regulating local development. The reliance of Parliament on the Executive to initiate law making is one factor explaining delays in legislative alignment in Zimbabwe. As such, the Portfolio Committee responsible for local government in particular and other arms of Zimbabwe's Parliament are clearly unprepared to institutionalise the constitutional provisions relating to local government.

Executive authority is provided for in Sections 88 to 113 of the constitution. It vests in the President, who exercises such authority through the Cabinet directly appointed by him or her. Section 104 (1) provides that the President appoints Ministers and assigns functions to them such as the administration of any Act of Parliament. One key sector Ministry in Zimbabwe is that one responsible for local government. The Minister (or Ministers as currently obtains) administers all Acts of Parliament for the sector. Pre-2013 legislation like the Urban Councils Act provided the Minister with extensive powers to suspend, dismiss councillors and mayors or dissolve a Council. However, there are contestations of the legality of these powers in the context of provisions of an Independent Tribunal (Section 278;2) to exercise the function of removing mayors and councillors from office. The High Court nullified all suspensions and dismissals of councillors and mayors by the Minister of Local Government pending the alignment of local laws with the constitution. As part of local government institutions the Ministry responsible for local government is therefore currently unprepared to fully execute constitutionalised local government. Further, the absence of policy, legislative and administrative frameworks for operationalising constitutional provisions like Section 301 (Allocation of revenues between Provincial/Metropolitan and Local Authorities) makes the Ministry unable to fully implement the constitutional provisions on local government. Successful devolution implementation rests on i) the design of an appropriate policy regime compatible with constitutional provisions and acceptable to the population and ii) existence of effective legal and institutional instruments that are intended to achieve the set constitutional objectives (Mapuva 2008). These conditions are yet to be met in Zimbabwe.

Two of the three constitutionally provided tiers (central and local government) are presently established in a manner not necessarily inconsistent with the constitution. The **Provincial/Metropolitan tier** is still to be established making discussions about the readiness of this category of local government institutions difficult. This partly checks the devolution thrust and creates a perception that central government lacks the political will to fully operationalise the constitution. Civil society and other interested parties have been lobbying for operationalisation of the second tier but central government has failed to enact legislation for Provincial and Metropolitan Authorities.

A review of the hotly contested debate on the Provincial and Metropolitan Authorities with constitutionally guaranteed powers may shed some light into why it has remained controversial more than two years on. During the constitution-making process two contrasting views existed. One side viewed the provinces as critical elements for deepening Zimbabwe's democracy, directing and coordinating regional planning and implementation, improving service delivery and acting as laboratories of local decision-making and experimentation. The other understood provinces in a far less favourable light as costly, duplicative, an unnecessary middle 'layer' and a risk to national unity and integration. This Zimbabwean experience of truncated reforms is not unique to the post-2013 period, as shown in previous Chapters, it has also occurred in other African countries. Institutional transformation across Africa from colonial racist-discriminatory structures to post independent governments has not necessarily fully dismantled colonial systems. Expectations of fair, impartial and equitable structures respecting human rights, improved access for all, non racism that are non ethnic and disregarding colour or creed have been frustrated at times through violent conflicts.

While Zimbabweans have clearly articulated for a more democratic, representative and responsible state, government's inadequate modelling of the implications of these ideologies has been done. Further, there has been limited understanding of the powers and responsibilities, the historical, political and constitutional developments, structural composition and executive functioning of such provincial authorities in Zimbabwe. Section 267 lists the current provinces of Zimbabwe whose boundaries and those of the districts into which they can be or are divided are fixed and/or alterable under an Act of Parliament in a process with checks and balances involving citizen participation and the Zimbabwe Electoral Commission. Section 270 provides for the functions of Provincial and Metropolitan Councils. These two provisions, read together with other relevant Sections provide a basis for new legislation that remains to be enacted.

As stated in previous Chapters (Wekwete, Chatiza this volume) local authorities were established through various pieces of legislation. The structures modelled along racial lines were the bedrock of a high centralisation of the local government system anchored on white supremacy and the imposition of centrally defined programmes on Native Councils and African self-government (Madhlekeni and Zhou 2012). This unfettered central government dominance in local government was later condemned through organised contradiction by natives through the liberation struggle. The collapse of colonialism ushered in a local government dispensation with new institutional frameworks and the government's policy interventions establishing the impetus for manipulation of local authorities through political party ideologies (Ibid). The post-independence era has been characterised by an expansion of centralism disguised in decentralism where the purported transfer of functions and authority to local authorities was largely rhetoric (Olowu 2001). Functionally central government did not provide a facilitative framework for local government to operate (Machingauta 2010) and it simply remained appendages of central government with limited autonomy to exercise their mandate.

Zimbabwe's two types of local government bodies were established under Section 4 of the Urban Councils Act and Section 8 of the RDC Act. Once established, local authorities are given the status of a body corporate with perpetual succession and capable of suing or being sued. The implications of these provisions has been subjected to debate. One side of the debate positing that local authorities are semiautonomous entities accountable to the local tax payers and therefore should operate with minimal central government influence and the other communicating limits to Council autonomy. Under the unaligned laws, the various areas through which the central government intervenes have included i) simple reminders to local authorities, ii) informal discussions and meetings, iii) issuing guiding circulars, iv) instructions, including instructing local authorities to rescind some of their resolutions, v) imposing stringent reporting conditions and vi) issuance of warnings, suspension of councillors and actual dismissals (Zimbabwe Institute 2005 and Machingauta 2010).

Local government has the most immediate developmental mandate to achieve improved socio-economic environment for the communities it serves. This mandate is in keeping with the principle of subsidiarity which advocates that public responsibilities should be exercised by those elected authorities who are closest to the people. Local authorities in Zimbabwe have wide ranging powers and functions in their area of jurisdiction allocated in schedules. These powers and functions can be categorised as governance, administration, regulatory and service delivery functions (de Visser 2010). Section 276 of the constitution allocates power and functions to local authorities and these provisions alongside existing legislation and politico-administrative practices shows how current practice locks Councils in subservient relations with central government. Their preparedness to assert themselves remains limited in part because of having been sheltered by central government from robust engagement with the public. As such, the tradition of upward accountability in a politically polarised environment limited Councils' capacity to facilitate local democracy.

The existing institutional environment also has a Local Government Board appointed by the Minister in terms of sections 116-130 of the Urban Councils Act [Chapter 29:15]. The Board has seven members appointed from the Urban Councils Association, Municipal Workers Union, Town Clerks Forum, Public Service Commission, and others appointed on the basis of having at least five years experience in the Public Service or local government. The Board oversees operations of local authorities but its visibility and authority is felt mainly in the appointment or dismissal of senior council employees (Machingauta 2010). Its key result areas include, guiding local authorities on the organisation and administration of personnel issues. On a number of occasions, the Minister has reinstated council staff who, in the opinion of central government have been dismissed unfairly. Invariably, this has weakened individual Councils' control of their executives throughout the whole cycle from recruitment to retirement or dismissal. In some respects this reinforces upward accountability of appointed Council officials constraining local performance monitoring. The importance of proper talent recruitment, development and management in Councils cannot be over-emphasised.

Proper industrial relations in general and central government's role in disciplining local policy makers in a context of tensions informed provisions for the Independent Tribunal. Discipline among elected officials of Council plays a very central role in sustainable local government. Cases of violation of Council procedures in tender adjudication, land development and management, housing fraud involving Council funds and related property are rampant in the sector. Section 114 the Urban Councils Act provided circumstances under which the minister could suspend or dismiss councillors from office. Such circumstances included among others, contravention of the provisions of the Prevention of Corruption Act [Chapter 9:16], failure to declare conflicting interests that prejudices council, or committing an offence involving dishonesty in connection with any funds or property of council. By invoking these provisions Ministers responsible for local government presided over the suspension and dismissal of a number of mayors and councillors.

The constitution provides that an Act of Parliament must provide for the establishment of an independent tribunal to exercise the function of removing mayors and councillors from office. It goes on to list circumstances that can warrant such removal including among others, gross incompetence, gross misconduct, inability to properly perform legislated functions due to mental or physical incapacity, conviction due to dishonesty, corruption or abuse of office and wilful violation of office. A question has arisen regarding the constitutionality of dismissals that are being carried out in line with the provisions of the Urban Councils Act and RDC Act before their alignment with the constitution. For instance, following the suspension and firing of councillors at Gweru City Councillors, the High Court, ruled that the minister erred at law by firing councillors against the constitution. This was considered it is ultra vires and voidable in light of s 278 (2) of the constitution as the minister no longer wields such powers. Following this, the ministry of local government aligned the urban councils act with section 278 through the local government amendment bill which was recently signed into law by the president.

Financial management and the Auditor General's Office

Financial management attracts significant scrutiny of local government officials and citizens alike because the quality of life of residents depends on a commitment to good long range planning and sound financial management by Council backed by continued cooperation and support of both central government and the local population. The present system of local financial management provides little fiscal accountability by or useful information from public officials. Most local governments in Zimbabwe are yet to fully understand and embrace budget development as a policy setting process with the adoption of more informative budget documents and to be responsive to public participation. Moreover, local governments lack an integrated system of budgeting, accounting and financial reporting based upon a rational chart of accounts. Failure to present audited books of accounts within the legally stipulated time is a common failing of local authorities. In the process local citizens have lost confidence in local authorities, a scenario expressed through their unwillingness to pay for services. Section 309 of the constitution provides for the Auditor General's Office in the Ministry responsible for finance, to audit local authorities, provincial and metropolitan councils. This is aimed at improving general financial management and enhancing both government and citizens' confidence in Councils.

The role of Local Government Associations

Local government associations are forums of Councillors supported by appointed Council officials. Two have existed in Zimbabwe since independence. These are the Urban Councils Association (UCAZ) and the Association of Rural District Councils in Zimbabwe (ARDCZ). UCAZ and ARDCZ were established as independent fora. However, in 2006 the two forums resolved to merge to form the Zimbabwe Local Government Association (ZILGA). The merger was expected to remove the rural and urban duality in perspectives on local government. Progress has been slower than anticipated with the two ZILGA constituent parts still running parallel programmes and fundraising separately. The associations' functions include i) lobbying government and other relevant organisations for improved local government policy and its implementation, ii) conducting research into matters of importance for members, iii) scrutinising local government legislation and policy frameworks in the light of current trends and thinking on local government and make recommendations thereon, iv) studying practices from other jurisdictions and making recommendations considered useful for Zimbabwe's local government system, and v) designing and implementing relevant local government capacity building interventions.

The associations were instrumental in articulating constitutionalisation of local government alongside other civil society organisations. Their implementation of capacity development programmes, staff forums and other structures have been critical sources of local government strengthening. They have however, been negatively affected by the party political 'fights' since the turn of the century resulting in weakened forums with often very difficult relations with the Ministry responsible for local government. This has particularly been the case with UCAZ as it was dominated by opposition politicians from the 2000 elections where MDC dominated in terms of numbers of urban councillors. The merger of UCAZ and ARDCZ was opposed in some circles based on allegations that it was a ZANU PF government's strategy to neutralise an opposition-dominated UCAZ with the numerically superior and ZANU PF-dominated ARDCZ.

The institution of Traditional Leadership

Chapter 15 of the constitution provides for the appointment of Traditional Leaders, their functions and structures including those of the National Council of Chiefs and the Provincial Assembly of Chiefs. The Traditional Leaders Act additionally provides for sub-district structures which are the ward and village assemblies. The Traditional Leaders Act [Chapter 29:17] allocated 23 functions to Chiefs. These include governance, customary and cultural custodianship, economic development and environmental management in their areas of jurisdiction. In addition, the Indigenisation and Economic Empowerment Act [Chapter 14:33] read together with Statutory Instrument Number 21 of 2010 also defined local economic development roles for them as chairpersons of Community Share Ownership Trust/Schemes. Traditional Leadership has gone through some transformation since the colonial period with some changes to their role in local governance. To consolidate colonial administration in Southern Rhodesia, successive colonial regimes suppressed the political and judicial authority of traditional leaders (Tarugarira 2010). Colonial governments changed the nature of Chieftaincy by giving them specific administrative responsibilities, incorporating them into the modern ruling apparatus and politicising them⁹. This strategically positioned traditional leaders to enhance colonial interests. The African Affairs Act which coincided with the rise of African nationalism, for example, was interpreted to mean an attempt to stem the tide of nationalism. Chiefs had some of their powers restored to hoodwink them to support the colonial regime.

The co-option of traditional leaders in post-colonial Africa in general and Zimbabwe in particular is controversial. The nationalist government in Zimbabwe deemed traditional leaders as an anachronistic vestige of colonialism that had no place in the new administration and relegated the latter to the periphery zones of governance, condemning them to play customary and cultural custodial roles through the Chiefs and Headman Act, Chapter 29.01 of 1982. Through the Chiefs and Headman Act, most of the powers allocated to chiefs were removed. The Act eliminated the office of village heads and allocated only three functions to chiefs as custodians of cultural and customary values and principles. To further exacerbate the situation, the 1984 Prime-minister's directive saw the shifting of grass root power from traditional leaders to the newly promulgated grass root planning and development structures, the Village Development Committee (VIDCO) and the Ward Development Committee (WADCO). These structures were moulded on party lines and reorganised planning and development in rural Zimbabwe.

⁹ Relevant pre-independence legislation included the 1898 Southern Rhodesia Order in Council, the 1910 High Commissioner's proclamation, restructuring of chieftainship in 1914 and 1951, the African Affairs Act of 1957, the Tribal Trust Land Act of 1967 and the African Law and Regional Courts Act of 1969 (Weinrich 1971)

However, the evident influence of traditional leaders despite efforts by government to thwart their powers was challenged by the findings of the 1994 Rukuni Commission leading to the enactment of the Traditional Leaders Act, [Chapter 29.17 of 1998]. The Commission argued that traditional leaders were the true representatives of their people, accessible and therefore essential to the politics of the nation and the building of democracy. The inextricable relationship and contribution of traditional leaders in successful implementation of development programmes was also reinforced. The 1994 Rukuni Commission further highlighted the growing recognition by African rural communities who continue to place high value on indigenous customs and traditions in their daily lives. The Traditional Leaders Act, Chapter 29.17 restored most of the powers of traditional leaders.

The current mosaic of laws governing the horizontal and vertical relations between traditional authorities and councils requires smoothing to reduce conflict and overlaps (CCMT 2015). At the same time the colonial and post-colonial abuse of the institution of traditional leadership has also eroded its uncoerced acceptance. While the institutional resilience of traditional leadership cannot be doubted (Chigwata 2015) its ability to complement constitutionalised rural local governance cannot be assumed as automatic. The preparedness of the institution needs enhancing.

Conclusion

The Chapter engaged with the key institutions with a responsibility for furthering constitutionalised local government's establishment and full functionality. It painted a picture of delayed transitioning due to historical holdbacks and resilient pre-constitution public administration traditions. The Chapter comments on the different constitutional provisions that define the minimum expectations of the identified institutions like the Legislature, Provincial and Metropolitan Authorities, Local Authorities, and among others national government (the Executive) in terms of entrenching constitutionalised local government. The provisions cited confirm the gains made in terms of constitutionalisation but cautions against undue optimism. More work is required to address challenges faced by provincial, metropolitan and local authorities for instance in inter-governmental relations.

Chapter 6: Non-state Actors and Local Government Relations in the new Constitutional Era

Edson P. Mutema, Naome Rajah and Kudzai Matsika

Introduction

Zimbabwe's constitution provides for a devolved system of governance where local government is recognised as an independent tier of government. This potentially shields local government institutions from partisan political abuse and from unlawful central government intrusions. This Chapter focuses on the role of non-state actors in devolved and constitutionalized local government system. The Chapter's focus is on whether and how the relations between non state actors and local government will change post-2013. It pursues this thrust to inform policy and practice towards creating a local government system that is effective, efficient, transparent, accountable and responsive to the needs and demands of the citizens. A major feature of political life involves non-state actors in formulation and implementation of public policies in both developed and developing countries (Bossuyt, 2000). This signifies the emergence of a new form of 'participatory democracy' where policy formulation is pursued through stakeholder involvement. There are benefits which arise from this process including but not limited to increased ownership, new public-private partnerships, consolidation of democratisation and improved sustainability (Kironde, 2007).

Ulimwengu (2000:1) notes that "it is generally recognized that the process of building a capable state requires the participation of all the vital forces of a nation. A capable state is...capable of effectively discharging its duties of delivering security, peace, prosperity and other public goods to its people". Ulimwengu (2000) further contends that non-state players have an important role to play at both central and local government level. Reddy (1999) conceptualises local government as local democratic units within the democratic system which are subordinate members of the government. They are vested with governmental powers and sources of income to render specific local services and to control and regulate the geographic, social and economic development of defined local areas. Local government is also referred as the sub-national level of government (Mushamba 2010). Non state actors and local government relations reflect the developmental health of the local working environment including the extent to which it is politically and administratively controlled. In interrogating these relations the Chapter visualizes a collaborative rather than a confrontational set up, non-partisan local governments and non-state institutions and a focus on capacity building, empowering marginalised groups, respect for basic rights, service delivery and general good governance.

Delimiting Non-State Actors

The concept of non-state actors is a generally literal one. It is used to refer to organisations between the family and state institutions. They include Non Governmental Organisations, Trade unions, the private sector, media houses, residents and rate payers associations, business associations, professional bodies and faith based organisations. This usage acknowledges scholarly controversy around the concept. For instance Porte (2012) defines non state actors as non sovereign entities that exercise significant economic, political or social power and influence at national and international level. For Wood (1990) it denotes actors pursuing organised activity between the state and the family. Blair (1997) characterises non state actors as a kind of "in- betweenness" where they lie between the state on one side and the individual or family on the other side. Non state actors have the capacity to influence and cause a change in the way local government institutions are governed and the role of these institutions shall be explained below.

Court et al (2006) present the functions of non state actors as i) representational, ii) advocacy, iii) providers of technical inputs including information and advice, iv) capacity building, and v) implementing development projects and providing services. There are many examples in Zimbabwe of non-state actors performing these roles. Women of Zimbabwe Arise (WOZA), young people's organisations, child rights agencies, those pursuing interests of the disabled and the many Residents Associations largely perform the first two functions. Previously marginalised groups get channels to participate and articulate their views in the governance process of local authorities through these organisations. A number of non-state actors (particularly CBOs and NGOs) design and fund training programmes targeting communities and local authorities. Local and international development organisations and private companies are also part of the non-state sector performing the above functions.

Non Governmental Organisations (NGOs) are perhaps the most identifiable grouping of non state actors. This category varies in terms of size, scale of operations, themes of focus and geographical coverage from local to international. Activities also vary from direct service delivery to research and policy advocacy. NGOs usually address issues of poverty, women and children's rights, protection and promotion of political rights and help victims of war and natural disasters (Davis and Fernlund, 1996). Ulimwengu (2000), notes that some NGOs focus their work on complementing grassroots organisations doing similar work. Some form national umbrella organisations. Some of the NGOs select more broad-based areas like human rights, political liberalisation and economic governance (Ulimwengu, 2000). NGOs are invariably defined as part of **civil society organisations (CSOs)**. This classification puts them alongside other variations of CSOs including private foundations, charitable trusts, media organisations and social movements. Zimbabwe has many **Faith-Based Organisations (FBOs)** helping members of their congregations and society broadly to tackle common socio-economic problems and addressing rights violations. FBOs have sponsored adult literacy classes, trained citizens in basic trades and skills. Bossuyt (2000) asserts that FBO financial sustenance is assured by the confessional centre around which they operate such as a church and mosque. At national level the Zimbabwe Council of Churches (ZCC), the Evangelical Fellowship of Zimbabwe (EFZ), the Union for the Development of Apostolic Churches and Zionists in Zimbabwe and Africa (UDACIZA), the Zimbabwe Catholic Bishops' Conference (ZCBC) and other national bodies representing different faiths have become important in Zimbabwe's social development processes. ZCC, ZCBC and EFZ run national programmes directly as well as through subsidiaries. Further, individual denominations and local churches undertake social development work and invariably mobilize citizens to participate in local and national development. For instance, ZCC, ZCBC and EFZ coordinated a national dialogue process culminating in 'The Zimbabwe we Want: Towards a National Vision for Zimbabwe' in 2006. Founded in 1974, the Zimbabwe Association of Church-related Hospitals (ZACH) is one faith-based institution steering the role of FBOs in the health sector. ZACH member institutions number some 126 hospitals and clinics providing 38% of national hospital bed space. In the education sector, FBOs have played an important role especially in rural areas where they run schools.

The **Private Sector** encompasses a wide range of for-profit institutions with commercial and trading interests in many sectors (Ulimwengu, 2000). It ranges from large corporate entities to small and medium entrepreneurial actors providing a variety of services to the community. It is also a sector that, on a very basic level, provides gainful employment for a huge number of citizens. It includes peasants, artisans, petty traders, vendors and hawkers (Ibid). The **media** is one of the most important private sector non state actors in African governance (Ulimwengu, 2000). Ulimwengu (2000) further asserts that in a number of countries, the media has been instrumental in sensitizing public opinion against corruption, offering a platform to alternative political and social views. This is also corroborated by Stapenhurst (2000) who argues that the role of the media is critical in promoting good governance and controlling corruption. The media raises public awareness about corruption, its causes, consequences and possible remedies while investigating and reporting incidences of corruption. The effectiveness of the media depends on access to information and freedom of expression, as well as a professional and ethical cadre of investigative journalists. The 1988 Zimbabwean Willowgate scandal which was exposed by the Chronicle Newspaper shows the role played by the media in exposing corruption among government officials. The Newspaper exposed high level corruption involving government officials in the purchase and resale of motor vehicles (Nhema 2002). The media has also critically exposed mismanagement and failure to provide services by local government institutions.

An overview of non-state relations with local government

This paper identifies two specific periods of i) 1980 to 2013 and ii) post-2013. The first period is considered as the old paradigm era, which is further subdivided into three periods. First is 1980 to 1987 or early-independence era. White privilege sat uneasily with black majority rule based on racial reconciliation with limited socio-economic transformation. Real rights were not delivered to the black majority. The collapse of a government of national unity (formed by ZAPU, ZANU-PF and white Zimbabweans with 20 reserved seats) in 1982 sparked conflict in the Matabeleland and Midlands (Sachikonye, 2005), which only ended with the signing of a unity agreement in 1987 to end the civil war. The signing of the unity accord led Zimbabwe to become a de facto one-party state which was later challenged by former ZANU-PF Secretary General when he formed his own political party, the Zimbabwe Unity Movement (ZUM).

During this era the labour movement, Zimbabwe Congress of Trade Union (as a key non-state player) was close to the state. Nhema (2002) argues that the labour movement remained subordinated to the state with the union leaders failing to toe the party line being harassed. The labour relations act of 1985 weakened the bargaining power of workers through removing the right to strike was enacted. The repressive law and the intolerant political environment weakened the labour movement. This period also witnessed a non conflictual relationship between the student union bodies and the state. Non-confrontation was also possible given the relatively stable economy where public and private sector graduate employment was high. The media was controlled by the state, as government monopolised both the electronic and the print media (Nhema 2002). Government had monopoly and control over radio and television broadcasting through the Zimbabwe Broadcasting Corporation (ZBC). A business weekly (the Financial Gazette) and monthly magazines (the Parade and the Moto) offered alternative voices.

The second period is the 1988 to 1999 era. This is the liberalisation era which saw anti-government demonstrations mounting from a number of non state actors. After signing of the Unity Pact with ZAPU in 1987 the government reaffirmed its commitment to create a one party state. Amendment No. 7, Act of 1987 introduced the Executive Presidency (Makumbe and Companion 2000). The move faced resistance from a number of non state actors. This marked the beginning of tense relations between the state and the student movement as well as other non-state actors opposed to repressive governance. The state reacted to student dissent by passing the University of Zimbabwe Amendment Act in December 1990 which was heavily criticised as draconian by the student union body. Government also adopted the Economic Structural Adjustment Programme (ESAP), which promoted market-based reforms that, among others, minimized government intervention in the general welfare of citizens, the market including removal of subsidies and saw monopolies being dismantled.

Politically ESAP meant that the government of Zimbabwe was to embrace civil liberties. This background explains among others the democratisation push during this period. The government's popularity was waning amidst increasing levels of unemployment due to ESAP-inspired retrenchments, prevalence of corruption among top government officials and deteriorating service delivery in health, agriculture (extension as well as input-output markets) and health due to reduction of public sector expenditure. Grants to local governments also disappeared during this period. With retrenchments, the state lost its grip on the labour movement with new leadership being elected. The 'new ZCTU' worked towards establishing its independence from the state and focused on issues of interest to workers (Nhema 2002). The state reacted by passing legislation in 1992 which gave the Minister responsible for labour sweeping powers to control union activities. State and labour relations became more tense and confrontational.

Working with other civil society organisations the 'new ZCTU' galvanised efforts around constitutional reforms resulting in the birth of the National Constitutional Assembly (NCA). The NCA was formed as a civil society organisation in 1997 on a platform of mobilizing for a new constitution. NCA member institutions and activists argued that the existing constitution prevented needed political, social and economic development in Zimbabwe. The alternative was for the country to have a people driven constitution delivering good governance, justice and transparency. Subsequently, a political party (the Movement for Democratic Change, MDC) was formed from labour and the students movement to directly contest for power and the attendant bitter and often violent conflict between the major political gladiators, notably President Mugabe and the MDC leader Mr Morgan Tsvangirai (Masunugure, 2009). The 1988-2000 period is thus one where non-state action defining alternative governance frameworks and directly responding to state failure became most visible.

Lastly the period between 2000 and 2013 is characterised by the state's inability to facilitate meaningful civil society participation in governance. The relations between the state and the non state actors was characterised by limited collaboration with more confrontation evident. This is in agreement with Chatiza (2010) who argues that civil society has gone through a polarising and traumatic experience characterised by disruption of operations, harassment, blanket banning of activities (e.g. between June and September 2008), and centrally fettered engagement with local government. Such relations between non state actors and local government are attributed to the legislative environment which became restrictive to civil society organisations. Of particular note are the three legal instruments which were passed in 2002, the Access to Information and Protection of Privacy Act (AIPPA), the Public Order and Security Act, (POSA) and the Private Voluntary Organisations Act (PVOA).

AIPPA was criticised for imposing harsh restrictions on media freedom (MISA-Zimbabwe, 2004). The Media Monitoring Project Zimbabwe (2006) shows how POSA impacted on the way in which the civil society operated, in particular and the limitations on freedom of assembly. Under POSA public gatherings or political rallies are allowed only if the Police are given seven days' notice and if they consent to the gatherings. The perceived political relationship between the Zimbabwe Congress of Trade Union, some civil society organisations and Movement for Democratic Change also poisoned state-civil society relations. Events post-2000 like rejection of constitutional draft of 2000, land occupations, Operation Murambatsvina, the price controls, the Save Zimbabwe Campaign [led by the Crisis in Zimbabwe Coalition, a network of more than 200 CSOs contributed to the defeat of the state in 2008] and subsequent strife following the disputed 2008 elections leading to the signing of the Global Political Agreement and formation of the Government of National Unity all paint a trajectory of a state in active confrontation with citizens over governance.

Over the three sub-periods it is clear that Zimbabwe saw an initially gradual growth in civil society. The 1990s saw growth in numbers of non-state actors resulting in clear sites of struggles between the government and society in general. At the same time, the government's ability to deliver services was significantly reduced. Groupings initially wedded to the government began processes of independent existence, such as the Zimbabwe Congress of Trade Unions (ZCTU), while others clamoured for direct benefits, such as the veterans of Zimbabwe's liberation war. The disentanglement with ZANU PF politics crystallized around constitutional reforms steered under the banner of the NCA. These processes weakened 'normal state business' and forced the executive to govern ever more repressively further deepening tensions and mistrust. The mistrust openly flared into incidences of violence during elections and around land reform activities. The tensions had a bearing on and played out in state-local government and civil society-local government relations.

Non state actors and local governance relations in the new era

Zimbabwe's constitutional reform processes were inspired and shaped by socio-political tensions and agitations for change from the 1990s. As such, the post 2013 period is built around expectations of good governance, justice and transparency. Local government is enshrined in the constitution enjoining relevant institutions (the Ministries responsible for local government, provincial-metropolitan councils and local authorities) to operate in a devolved governance system where the basic rights of citizens are delivered (see Makanza and Banga, this volume). As noted by Chirisa et al (2013) popular participation and transfer of powers to the local people in their quest for identity and self determination are integral to the devolution philosophy.

Public participation is the foundation of the Constitution of Zimbabwe 2013. Miller (2002) is of the view that enshrinement of local government in the constitution must facilitate full participation of all citizens, especially traditionally marginalised groups such as women, youth in the processes of nation building and governance. Chapters 2 and 4 of the Constitution of Zimbabwe 2013 are particularly important in this respect as they lay out the national objectives and citizens' rights that local government institutions have to deliver on. Critical to citizen participation are Sections 13:2 on involvement of people in the formulation and implementation of plans, 20-22 on organisations by and of young people, the elderly and people with disability and 58 to 62 on different freedoms and access to information.

Local government institutions should come up with participatory frameworks with sufficient capacity to tap innovativeness, talents and problem-solving capacities of Zimbabwean citizens directly and through non state actors. The frameworks should guarantee that non state actors and the private sector to participate in local development planning and participatory budgeting processes. Non state actors should have access to processes of formulating and implementing policies, council by-laws including the approval of development proposals, projects and budgets (Handbook on Kenyan Devolution: 2013). Partnerships should also be promoted through memorandums of understanding (MOUs) and Public-Private Partnerships between local government and non state actors. Local government should also promote the participation of non state actors by engaging in free and fair elections at sub-national level, regular information disclosure, council meetings that are open to the public and media, providing forums for community and civic meetings (REPOA: 2008).

Promoting a participatory culture at the local level requires that the sub-national legislature has Councillors who are free from national control and elected in free and fair elections where members of the public are free to choose their local leaders without fear and compulsion. Further, the media should be robust, probing and independent of state control. Such an environment allows the devolved local government system to reduce the risk of local elite capture and corruption. Since a devolved local government system assigns considerable discretionary powers to public officials, non state actors are therefore critical in terms of performing an oversight function. The local media in particular should play an important role of investigating and exposing cases of mismanagement and corruption in provincial-metropolitan and local councils. For the media and related non state actors to be effective in their oversight roles, local councils should be accountable, transparent and open such as opening council meetings to the public and press, discussing budget options with residents and rate payers and publishing audited annual financial reports. The capacity of residents and ratepayers' associations to hold Councils accountable should also be enhanced through training and funding. Councillors and elected officials should acknowledge that they are stewards who manage Councils on behalf of the residents. Non state actors should monitor the performance of local government institutions in terms of decisions and actions. This is possible only where Councils give interested persons access to important information.

Non-state actors partnering local governments in local economic development (LED)

Wekwete (2014) identifies LED as a process which allows local governments and other key stakeholders to work together in their localities to stimulate and maintain business activity to stimulate local employment. Kanyane and Koma (2014) understands LED as a bottom-up or community -driven instrument for socio-economic development i.e. creation of employment, improving quality of life and to establishing conducive business environments. LED is about sub-national actions meant to ensure that local authorities can develop their own strategies to meet local needs and promote the development of communities and improve the day to day lives of citizens (CHRA 2014).The overall outcome envisaged here is in line with the objectives of a devolved state enshrined in section 264 (2) of the Zimbabwean constitution.

In this new constitutional dispensation local authorities should conceive LED as a decentralised mechanism which allows local and provincial governments and their communities to partner and ensure that the local economies are vibrant. This requires collaboration with the business sector, NGOs, professional bodies and labour organisations to steer local economies. Local governments need to create favourable conditions for business development and to ensure that infrastructure and services work well for industry and society. The relationship between local government and other LED actors should be complimentary. An inclusive approach is necessary as LED is compatible with devolved local government systems i.e. it is antithetical to a top-down development approach. It recognises shifting of responsibilities from national to lower tiers of government. New sector legislation should have a national local economic development framework for provincial-metropolitan councils and local authorities. Further, both urban and rural local authorities should be encouraged to create LED Units to steer collaboration with non state actors. The Units will be responsible for developing strategies for harnessing and managing local resources for development.

Conclusion

There is evidence that some of the civil society organisations are not funded locally but depend on international donors, though less so with residents associations and faith-based organisations. Further, the high numbers of CSOs is difficult to sustain with reductions in donor funding. In the absence of clear frameworks and against a history of conflict between state and non-state agencies the functionality and oversight competences of non-state actors is limited overall and in local government particularly. This affects CSO's representative and advocacy roles. Residents Associations play a complimentary role by encouraging their constituents to participate including in terms of paying for services.

Overall, the non state actors and local government relations in post-2013 era should not be confrontational but collaborative. Perceived and actual alliances between civil society and opposition political parties should not be unduly focused on given citizens' rights as provided for in Sections 58-61. An over-emphasis on civil society-opposition political parties constructed as 'regime change' is largely a self-protection device of the government used to deflect criticism for misgovernance. Further, alliances of this nature benefited government before and during the early years of independence when the party literally appropriated key civil society organisations as demonstrated in this paper. Since civil society organisation is around interests, it will be unhelpful for this paper to conclude by parroting a non-partisanship line because development and politics are by their nature partisan. The question is whether the party a social movement supports or advances is consistent with 'the common good' in terms of social justice, institutional integrity and transparency.

Devolution entails democracy, participation, accountability and transparency among other attributes, so local government should enact policies and mechanisms to promote these mechanisms. Non-state actors can support processes of regenerating local institutions, societies and economies working closely with Councils (provincial, metropolitan and local). In this context local economic development strategies become critical as opposed to traditional top- down approaches. Local governments should coordinate activities of all non state actors in their localities under clear socio-economic development frameworks. The new era need LED than before which is participatory, inclusive and that will drive the economy and development from a local perspective. In this context non state actors' role in local governance become critical and their role should not to be underestimated.

Chapter 7: Service Delivery in an Era of Rights

Virginia Makanza and Patrick F. Banga

Introduction

Local governments around the world increasingly play key roles in the delivery of basic public services and infrastructure necessary for business development (GOLD III). This is because local government is the sphere closest to the people. These roles of local governments are developing against a backdrop of multiple challenges including environmental and natural resource crises, increasing urbanisation, and growing backlogs of infrastructure demands. The challenges aggravate the financial difficulties faced by local governments affecting their ability to plan and deliver services. The framing of service delivery in Zimbabwe has gone through various phases before and after independence. In the 2013 Constitution of Zimbabwe, specific services are defined as rights that the state should provide within the limits of its capacity and that citizens should enjoy starting in Section 8(1). This requires a rethink of the modus operandi of service delivery institutions. Provision of services that fulfil citizens' rights as outlined in the constitution has raised the profile of the planning and implementation process. In Section 13 of the constitution mention is made of the need to involve citizens in the formulation and implementation of development plans for and in service delivery. The rights dispensation is what this paper analyses to illuminate the changes that have occurred. By reviewing some experiences from pre to post independence Zimbabwe the paper makes suggestions on how local authorities can deliver and meet the demands of citizens.

Understanding services and service delivery

UN Habitat (2009) defines services as the goods that are created, provided and managed to support productive and reproductive societal activities, contributing to human dignity, quality of life and sustainable livelihoods. Services are both material/ tangible and non-material/ intangible whose provision requires capital and frequent investments to establish and maintain or run them (Chatiza 2012). Service delivery can be usefully conceptualised as the relationship between policy makers, service providers, and consumers of those services and encompasses both services and their supporting systems. The process itself involves needs assessment, planning, design, execution and post-implementation maintenance (Ibid). As such it involves a suite of interconnected activities or processes in which both service providing institutions (public, private or other) and citizens (service users or recipients) take part (Ibid). Definitions of 'basic' services vary but commonly refer to primary health and education, water and sanitation, roads and bridges, rule of law and justice that promote personal security. Another common concept is that of 'pro-poor service delivery'. This refers to interventions that maximise the access and participation of the poor by strengthening the relationships between policy makers, providers, and service users (DFID, 2003). Pro-poor service delivery approaches also combine both targeting of those considered poor, using methods that enhance the poor's access and directly involving them.

Why states provide services

There are a range of different rationales for why the state should deliver services to their population. These can be categorised as economic, rights-based and state legitimacy justifications. The economic argument for state delivery of goods or services is premised on the idea of market failure. Leaving things to the market will result in an under-supply or under consumption because there are public benefits that go beyond the personal. For example, while individuals benefit from being immunised against polio, the benefits for society as a whole are much greater if there are high levels of immunisation – there are positive externalities. Public health and welfare programmes, education, roads, research and development, national and domestic security, and a clean environment are some of the commonly listed 'public goods'.

Rights-based arguments are founded on the idea of a set of universal and indivisible rights that all individuals hold and that are or should be backed by national legislation. Some of these rights are provided for in international conventions, charters, protocols and commitments like the Convention on the Rights of the Child (CRC), African Charter on the Rights and Welfare of the Child (ACRWC) and Youth, Convention on the Elimination of Discrimination against Women (CEDAW) and, among others the International Covenant on Economic, Social and Cultural Rights (UN, 1966). The latter details states' obligations in the social sectors and includes an obligation to progressively realise these rights. While this takes into account resource constraints, it is combined with 'minimum standards' that are not subject to progressive realisation. Rights-based arguments are underpinned by assumptions about obligations to respect the principles of non-discrimination and accountability, as well as the right to participation. A basic needs approach on the other hand is not necessarily associated with an obligation on the part of the government to cater to needs and cannot be enforced.

State legitimacy justifications start from the observation that historically the development of the state was based on the extraction of resources and personnel largely for military purposes. In return, the state would provide external and internal security. As societies modernise and became more complex, the role of the state and the range of services provided expand, whilst expectations of citizens vis-à-vis the state increase. The problem facing many developing states is that while they make promises to both external actors and their own populations, their ability to deliver on these promises is often limited. The disparity between expectations and delivery undermines their legitimacy both internally and externally. The government of Zimbabwe's initiatives in the area of health and education sought to deliver free services up to the adoption of market-based economic reforms that removed subsidies and introduced user fees. However, provision of subsidised services has continued over time in ways reflecting the Zimbabwean state's focus on retaining legitimacy. Land redistribution and agricultural input management post 2000 exhibited a similar thrust.

Generally, the responsibility for financing and regulating basic services lies with the state, which is the entity with the legal responsibility for realising their population's human rights. However, the state is sometimes unable or unwilling to assume these functions or responsibilities, making non-state or external support necessary. This is the case in humanitarian situations which have been frequent in Zimbabwe since the turn of the century due to persistent political and economic crises. In such circumstances, local and international non-state support to failed and failing states attempt to anchor local state institutions to the extent they are available. Where these do not exist, special coordination structures are set up to ensure delivery effectiveness without completely circumventing the state.

The history of service delivery in Zimbabwe

Service delivery in Zimbabwe has pre-colonial, colonial and post-colonial trajectories. Before colonialism there was a modicum of service delivery from community to chieftainship level including defence and security, livelihoods or food security, education (largely by mentors e.g. in pottery, by black smiths, hunting etc) and health (traditional healers). These services were paid for communally (e.g. participation in Zunde RaMambo planting, weeding, harvesting and threshing) or individually in-kind (e.g. animals exchanged for traditional healers' services). The difference between pre-colonial and colonial service delivery frameworks related to spatial coverage or level of provision, provider institutions, targeting and overall regulation. In colonial Zimbabwe service delivery was based on segregation, with whites receiving better services than blacks. This cut across the whole spectrum of services: healthcare, housing, education, water provision etc.

The education system for blacks was bottle-necked so as to at best provide dead-end functional skills suitable to produce clerks and messengers, while that of whites provided life skills that gave them opportunities to access the job market as supervisors over their black counterparts in any organisation. The Asian and Coloured communities accessed medium range services. In some ways racial segregation resulted in enforced resilience and adaptation of some traditional (pre-colonial) service delivery mechanisms. The colonial administration's co-option and invariable abuse of traditional institutions including chiefs and their subsidiary institutions bear testimony to this institutional resilience.

Generally, colonial service budgets in black areas were small, and reached a smaller proportion of the population, with the bigger chunk of resources going to the whites who had civic and political rights. Blacks were regarded as second class citizens with no constitutional rights. They were not encouraged to build a permanent residence in urban areas, but rather in their rural areas where they would retire at the end of their working lives. This disconnection with the urban environment, in a way, led to blacks being allocated low cost services, mostly of a communal nature, for example, tower lights not street lights, barrack type single accommodation versus spacious low density suburban housing units, public instead of individual toilets, stand pipes instead of taps in houses etc.

At a general level, services were always available in their rudimentary form. By and large local authorities were able to raise sufficient funds to meet both their administrative budgets and to provide basic services. Colonial constitutional provisions and local government statutes were therefore basically instruments serving white hegemony. The legislation provided for racially divided urban and rural areas and these divisions were both spatial and institutional.

Independence brought great expectations to black Zimbabweans. New legislation was enacted which brought together the three types of local government institutions (for urban, commercial farming and former Tribal Trust Lands under a single Ministry of Local Government. Participation for blacks was opened up through the Prime Minister's directive of 1984 which created organs of participatory democracy at sub district level in the form of Village and Ward development Committees (VIDCOs and WADCOs). The Directive was enacted into law in 1985 in the Provincial councils and Administration Act. The amalgamation of rural and district councils in 1993, was a further attempt at equitable distribution of resources between the privileged white rural areas and the underprivileged blacks.

Development continued on a model left by the whites and with time, the model was filled with tension as blacks who were before denied involvement in the governance system, were now city dwellers and were beginning to mark their spaces in these urban areas. Changes started creeping in – representation at local government level shifted from the “real” ratepayer who owned a house to someone who had nothing to their name but who was popular with the people. The informal sector started to expand, as did informal housing. The quality and quantity of services deteriorated as the small cake was now spread over a larger population. The trend has continued to a point where service delivery by local authorities has become one of the biggest challenges in post 2000 Zimbabwe.

Delivering services in terms of the Constitution

The Constitution of Zimbabwe amendment 20 of 2013 articulates citizen's rights from section 48 to 78: basic economic, social and political rights. The concept of citizen rights is traceable to the 1948 United Nations General Assembly's Universal Declaration of Human Rights. This declaration, which was crafted on the ashes of the Second World War, sought to identify those basic rights and services, the provision and recognition of which underlie humanness and which could not be taken away from any human being. These basic rights and services safeguard the essence of human dignity, ensure continuity of the human race (support reproductive activities) and maintenance of acceptable standards of living for individuals and communities. Critical pre-requisites include food, clothing, housing security and healthcare and related social services. Zimbabwe, as a member state of the United Nations, has adopted these basic rights and services in its governance structures, including the constitution and guarantees reasonable legislative and other measures, within the limits of the resources available, to achieve their progressive realisation.

There is need to articulate what it means for local governments to deliver on the rights as espoused in the constitution. For example, water is a right that is delivered by central government at one level in terms of ownership of water bodies. In terms of the national objectives, the rights stipulated in the constitution include work (S24), education (S27 and S75), shelter (S28), social security and care (S30), legal aid (S31), sporting and recreational facilities (S32), agricultural land (S72), environmental rights (S73), right to healthcare (S76) and the right to food and water (section 77). Constitutional rights bring issues of citizen empowerment, expectations and to some extent, confusion as on the role of national government and local authorities in the provision of these basic services. Three main questions need to be unpacked following the constitutionalisation of local government. The questions relate to whether:

1. Constitutionalisation will change anything with respect to the functions performed by local authorities;
2. Inclusion of basic rights in the constitution means that the state will provide them as free services to the citizens; and
3. Local authorities are expected to change how they deliver services in this era of rights.

Constitutionalisation of the functions of Local Authorities

At face value, constitutionalisation represents recognition of the role of this lower tier of government in service delivery. Local authorities have however already had a statutory responsibility to provide services through the Rural District Councils Act and Urban Councils Act. The constitutionalisation of local government should therefore be seen as an acknowledgement and a realignment of the new constitution to the realities on the ground: the functions of local authorities that were merely statutory provisions. Except for a few sections relating to the funding of local authorities, the rest of the functions remain undisturbed. It is also critical to note that no section of the constitution provides for free services other than basic education. What has changed therefore is that the functions of local authorities are now recognised by the constitution, and have become a constitutional issue, unable to be changed simply by a legislative change.

On whether the constitutionalisation of basic rights has changed the modus operandi of service provision by local authorities, section 276 (2) (b) states that “An act of Parliament may confer functions on local authorities, including... power to levy rates and taxes and generally to raise sufficient revenue for them to carry out their objects and responsibilities”. The import of this is that local authorities are empowered to deliver services based on a cost recovery framework. The constitution does not promise citizens free basic services. As such, it is fair to assert that the general import of Chapter 14 is to establish local democracy by empowering citizens to make decisions on issues to do with their own governance.

This takes away unilateralism from the local authority decision making framework. Issues of preservation of peace and unity, transparency, accountability and the right of communities to manage their own affairs and to further their development, equitable sharing of local and national resources have become the key areas for enhancing local democracy. In pursuit of these goals, local authorities should also be guided by the provisions of section 265 (1) (f) which states “(1) ... local authorities, must within their spheres- ... secure the public welfare...”. It becomes important that local authorities do not saddle citizens with the burden of funding of service delivery. It becomes imperative that local authorities should think outside the normal ‘funding’ box, in order to come up with alternative ways of raising funds to meet their constitutional responsibilities of providing basic services, rather than relying solely on the user-pays principle or centre-local transfers. There is need for local authorities to strike a balance between the funding of their administrative functions and the delivery of goods and services to the citizens.

With a significant shortage of accommodation in urban areas, one right that needs to be highlighted is the Right to the City. The concept was first developed by French sociologist Henri Lefebvre in 1968 (Harvey 2008). The right proscribes exclusion of other citizens from urban society as well as the qualities and benefits of urban life based on socio-economic segregation and its phenomenon of estrangement. The result is that people are forced into residential ghettos far from the city centre. Against this backdrop the right to the city demands collective reclamation of the urban space by marginalised groups living in the outskirts of a city. Since the 1990s the idea has been taken up in the fields of geography and urban planning becoming a slogan for a number of urban social movements. The global network of slum people’s organisations (Slum Dwellers International) is testament to how anti-eviction and pro-poor housing social movements have grown around the right to the city.

These movements deal with a market-centric urban governance culture and process new methods of urbanscape production, segregation and exclusion. There is limited participation in shaping cities for those excluded from economic development, displaced through gentrification and suffering from exclusionary immigration policies. Harvey (2008) observes that the right is a common rather than an individual one and that it embodies liberty, access to urban resources and influencing the future of the city. Such transformation depends on the exercise of a collective power to reshape processes of urbanisation. Pursuing the right is often seen as a social utopia and collective claim inspiring ideas and suggestions by social movements for a better world. It is a slogan for movements worldwide which fight against the manifestations of many modern cities in which public processes and utilities have been privatised.

Improving access to services: Alternative ways of providing services

Local governments can employ different models of service provision to residents in many different ways. This sub-section discusses some of the suggested ways of improving service delivery. These include efforts at connecting the state/local government to the citizens based on a conversation between citizens and their local authority. An inclusive service delivery model will make this relationship work. Inclusive service delivery encompasses the following concepts:

- Provision of basic services for and with disadvantaged groups in society, in ways that are in line with their aspirations and needs to enhance capacities. This entails providing services needed by the poor in ways that are socio-economically and politically appropriate
- Making services more equitable and easily accessible to citizens. This includes correcting past injustices and removing institutional bottlenecks
- Involving more actors and creating space for greater participation across a wide range of stakeholders and the introduction of other models of delivery.

One way in which to look at improving access is a community approach to providing services. If well designed, community-based projects have the potential to be more inclusive and empower communities including poor and marginalised groups. They also strengthen linkages between civil society and government (Narayan 1998, Cooke & Kothari 2001), and can improve efficiency, effectiveness and sustainability of interventions. There is a broad agreement that community-based interventions have the potential to be more responsive to the needs and priorities of beneficiaries (allocative efficiency) and are comparatively cost effective (productive efficiency) because of lower levels of bureaucracy and better knowledge of local costs (McLeod, 2003; Rawlings et al., 2004). The approach also builds local organisational capacity, which is necessary for collective action beyond the scope of an initial project (McLeod & Tovo, 2001, Das Gupta et al., 2004; Binswanger & Aiyar, 2003). Emerging demand-driven approaches theoretically 'empower' communities to demand services and provide a mechanism for (re)building trust and accountability and re-establishing the 'social contract' between communities and government

Many local governments choose to provide a needed service themselves while others seek to limit or reduce demand for the service through educational programs and use of their regulatory and taxing powers. When it is appropriate for a particular service, some governments provide the service and charge a fee, to recover some or all of the cost and reduce demand for or excessive use of the service. Other models include outsourcing or subcontracting delivery to civil society and private sector groups, and joint ventures between a public agency and a private or civil society actor to provide a service has also become a growing model. In some instances the Joint Venture focuses on a purely commercial enterprise with the justification being that dividends accruing to the public agency would be applied towards service delivery.

Management contracting is another model where a non state actor is given responsibility to run a service such as a hospital or school. Commercialisation including setting up Business Units is also being applied in some Zimbabwe local authorities. This is where a business model is developed for a public enterprise to allow it to run on a commercial basis. Water sector commercialisation and sometimes full privatisation, is one example.

Other models include entering into strategic/long term partnerships usually for huge infrastructure investments and leveraging which is where a public agency cedes or offers rights in return for civil society or private sector financing and implementation of specific services. Public-Private Partnerships (PPPs) have also been popular in Zimbabwe. Generally, any collaboration between public bodies and private enterprises can be referred to as a public – private partnership (PPP). This collaboration may include a wide range of activities from technical assistance to private investments and provision of services or managing assets. PPPs is a broad term that can be applied to anything from a simple short term management contract (with or without investment requirements) to a long term contract that includes funding, planning, building, operation, maintenance and divestiture. A PPP is a contractual agreement between a public agency (national, regional or local) and a private sector entity. Through this agreement, the skills and assets of each partner (public and private) are shared in delivering a service or facility for the use of the general public. In addition to the sharing of resources, each party shares in the risks and rewards potential in the delivery of the service and/or facility.

Structuring of PPPs varies and includes sub-models like i) Design and Build (a private entity designs and builds the infrastructure to local government specifications often for a fixed price assuming all risks and transferring ownership on completion), ii) Operation & Maintenance (O&M) contracts (a private entity operates publicly-owned facility for an agreed period with government retaining ownership), iii) Turnkey Operation (a contracted private partner designs, builds and operates facility to completion), iv) Build-Own-Operate (BOO) and v) Build-Own-Operate and Transfer (BOOT). In these two models the difference is in whether or not a private entity transfers after operation of has an open-ended agreement to operate the service. However, in most instances there is transfer usually once the private entity has recovered its investment plus a profit. Roads, dams and related water works are often delivered using BOO/BOOT models. Another variant is the Build-Lease-Operate-Transfer (BLOT)/concession for instance in Safari/Tourism, vehicle parking and public transport nodes and shopping malls in upmarket areas.

Funding for service delivery

The fundamental problem most local authorities are facing is the widening gap between the availability of financial resources and expenditure needs. Up until the 1990s, rural local authorities in particular depended largely on central government transfers and to a lesser extent on local revenues derived from property taxation and service charges. With the economic downturn and the resultant decrease or disappearance of government grants, local authorities have been pushed to raise their own funds. Meanwhile, more reliable sources of revenue potentially suitable for financing local development such as income, sales and business taxes are reserved for central government. Where local authorities are able to derive revenues from property taxes and service charges, upward revisions are sometimes refused or delayed by either central governments or by the local authorities themselves for fear of eroding political. These challenges create imbalances in terms of sharing responsibilities and resources between central governments and local authorities. Stated differently, many central governments continue to refuse to pay the financial costs of the decentralisation of roles and responsibilities. Section 301 of the constitution provides for the sharing of revenues between the centre and sub-national structures. However local resources should play an integral part of the local authority revenue sources.

The local government fiscal framework relates to a local authority's service delivery responsibilities in a number of ways. i) community demand for services that a local authority is responsible for providing versus the local government fiscal framework, ii) local government fiscal framework and actual revenue collected, iii) local authority choices regarding use of available resources (i.e. structure of the actual budget) including proportion recurrent to capital expenditure, iv) strength of local authority governance and management systems to implement set budget and implement agreed plans, and v) value for money in terms of actual delivery and citizen feedback or satisfaction. These five components have a bearing on service provider effectiveness and efficiency. A number of variables can be tracked to evaluate the extent to which equity in service delivery is achieved.

Governance Models

Improving the level of service delivery is not always a question of technical, financial and other material resources but is also a question of governance. The quantity and quality of local public services and the efficiency with which they are delivered in a local authority depend on governance capacity. This is especially critical in terms of the formal structures as well as how civil society and business associations function on their own and in collaboration with public agencies. Governance determines how efficiently costs are shared throughout the local authority area, how service delivery is coordinated across local government boundaries, how effectively local residents and businesses can access governments and influence their decisions, how accountable local governments are to their citizens, and how responsive they are to their demands.

Conclusion

It is possible for local authorities to deliver on citizen's rights defined in the constitution using various models. The challenges facing local authorities demand that they think outside the box as the traditional way of doing things might no longer be relevant. The importance of local economic development cannot be overemphasized. The articulation of rights suggests the need for new and more effective models that are inclusive. While some models have been successfully implemented in other countries it is imperative that more analytical work be done in Zimbabwe to arrive at adapted or new models suited to the country's national and local political economies. In this context more inquiry is needed in terms of i) sharing of resources between the centre and sub-national structures, ii) citizen and community participation and iii) actionable knowledge on local economic development. Strategic transformation of the fiscal frameworks of service providing institutions particularly Councils is critical.

Chapter 8: Developing the Capacities of Local Government in Zimbabwe. What Changes After Constitutionalisation?

Kudzai Chatiza and Virginia Makanza

Introduction

Building on the other papers in volume, this paper focuses on defining local government capacity development in general and draws out the implications of constitutionalisation for the process and content, beneficiaries and outcomes, institutional relations and sustainability of local government capacity development. The paper takes the view that, capacity development initiatives implemented in Zimbabwe since 1980 were in preparation for local government constitutionalisation. This is because their design and delivery as well conversations on inter-governmental relations were generally framed as about preparing local governments to take over more responsibilities. Agitations for more transfers were always met with the refrain that local governments lacked adequate capacity. It is therefore not surprising that Section 264(1) of the Constitution of Zimbabwe 2013 states as follows:

‘Whenever appropriate, governmental powers and responsibilities must be devolved to provincial and metropolitan councils and local authorities which are competent to carry out those responsibilities efficiently and effectively’ (Government of Zimbabwe 2013a).

The underlined part of this constitutional provision is very helpful in terms of defining provincial and metropolitan councils and local authorities’ capacity as ‘the competence to carry out governmental powers and responsibilities efficiently and effectively’. The paper shows how pre-2013 local government capacity development was towards constitutionalisation or put differently as ‘to justify transfer of power and responsibility’ (devolution). By extension post-2013 local government capacity development is about enabling local government institutions to deliver constitutionalism at the local level. The new dispensation has created a public administration system where local government is an established governance tier. Prior to the 2013 Constitution, local government operated in a delegated capacity, performing functions conferred upon it by central government. The diffused nature of local government and its place at the bottom of the hierarchy of government weakened its position and capacity.

Defining capacity

The general conceptualisation of capacity relates to the ability of individuals, institutions and societies to perform functions, solve problems, set and achieve objectives. On capacity, Agenda 2063 (AU 2014) makes reference to appropriate infrastructure, skilled personnel, well-functioning institutional structures, competent leadership and conducive policy and legal environments. Further, in qualifying national government capacities mention is made of policy design and planning capacities with functional linkages to local governance systems to ensure that plans reflect the priorities of citizens (Ibid). Other capacities mentioned relate to monitoring and evaluation, robust statistical capabilities and results oriented programmes. Greijn et al (2015) observe that capacity resides in people, organisations and society, which are three distinct but nested levels. The African Capacity Building Foundation (ACBF, 2013:xi) expands on this notion by referring to the need for superior and balanced capacity amongst actors and stakeholders noting that ‘capacity imbalance...can result in mismanagement, abuse of office, corruption, criminality and exploitation’.

Relevant to a developing context like Zimbabwe, Greijn et al (2015) trace the influences towards conceptualising capacity and its development to decolonisation and state building where concepts like self-determination (*kuzvitongalukuzibusisa*) or defining and managing one's destiny through appropriate administrative and political systems was critical. State-making in Zimbabwe has gone through cycles characterised by slow and rapid political contestations with implications for the conceptualisation and operationalisation of local government which Hammar (2003) defines as making and unma(s)king. Further influences on capacity development relate to conceptual and practical progress in community and participatory development including concepts like self-help, empowerment, sustainable livelihoods and societal resilience (Ibid) which reconfigure state-society relations and public institutions. These evolving concepts influence how capacity is defined, whose capacity gets prioritized and the processes of capacity development.

Olowu (2009:102) clarifies the relationship between decentralisation and local self government noting that 'the totality of local governing (government, private, civic, community) organs in a community constitutes the local governance architecture'. Good governance flows from local government by i) increasing participation in governance processes, ii) forming the basis for more coherent representation in national institutions like the legislature, iii) increasing governmental accountability by virtue of proximity to citizens, and iv) providing a framework for experimentation, innovation, partnership and for more meaningful citizenship (Ibid). The more diffuse architecture for local or community governance presents possibilities for empowerment and effective governance capacities.

Capacity is about aptitudes, resources, relations and facilitating conditions for defining and pursuing desired change. Often the change is defined based on institutional performance challenges. Sako (2003:6) observes that institutional challenges in Africa relate to 'oversized, patrimonial and predatory organisations riddled with corruption, mismanagement, ineffectiveness and inefficiency'. The Africa Progress Panel (2014) conceptualises institutional challenges as being behind natural resource plunder through illegal and shadowy practices that store up future problems prolonging poverty amidst plenty. ACBF (2013: xi) notes that 'capacity is lacking on the part of the international investor, who is in many cases unable to read local socio-political, ethno-cultural and economic environment'. The former Mayor of Harare observes the need for a 'cross cultural and cross-disciplinary approach [to] tackle old problems in new ways...look at new challenges as opportunities for growth' (Masunda 2014:7). What is critical in this construction of capacity is that it is defined and developed in relation to existing (and old) institutional challenges and development gaps. Further, the aptitudes, resources, relations and facilitating conditions are important for private, public and civil society sectors individually and collectively.

Huff et al (2001) suggest that credibility and reputation particularly in relation to interacting with the private sector are important qualities and capacities of a developmental state. These capacities enable governments to go beyond political pronouncements to delivery. Further, a credible state avoids indiscipline, collusion with powerful persons and groups of persons (Ibid; Fombad 2011). The presence of determined and developmental elite, relative state autonomy (un-captured by elites or party political institutions) and competent and insulated bureaucracy are some of the qualities of a developmental state. For Leftwich (2009) human agency (leaders, elites and coalitions) constitutes an important capacity construct in that it mediates political processes at different levels in all sectors to determine development outcomes.

The agency of women, young people, the elderly, disabled persons and other social groups frames (and is framed by) the context as seen in the structures of power, authority and legitimacy. For instance, in explaining one of the weaknesses of the state in Africa Sako (2003) notes that the capacity of professionals and managers not holding membership cards of the ruling majority is often sterilised and thus becomes unavailable for national and local development. The mobilisation and deployment of human agency is therefore a function of the political economy of a state at all levels. Beall and Ngonyama (2009) acknowledge institutional multiplicity and competing claims in hybrid political orders where different institutions act as channels of ambitions and grievances. These institutions combine indigenous and non-indigenous actors and cannot be ignored (Ibid). In Zimbabwe's recent politically polarised history, as Mutema shows in this volume, over-simplified labels of affiliation have been used to define and dispense legitimacy in ways that mobilised or sterilised human agency depending on the labels.

The above debate provides some useful insights into seeing capacity in different ways. In this paper the version of capacity relevant to local government systems goes beyond receiving, interpreting and complying with central government instructions particularly in a constitutionalised system. Further, the paper advances notions of **capacity to do, to be, to relate, to influence and public policy reforms**. Capacity is invested in and therefore deployed by people, organisations and society. The paper takes forward the notion of multi-level and interconnected capacities (Greijn et al 2015) as well as the concept of balanced or different yet complementary capacities resident in different people, organisations and societies (ACBF 2013). Aspects of complementarity arise from our definition of capacity in relation to pursuing real changes often in response to challenges or opportunities. To the extent that facilitating conditions are critical when discussing capacity it becomes critical to bring in aspects of public policy reforms as capacity development. These reforms are important at all three tiers of government.

In the context of Zimbabwe it is important to distinguish between the **capacity of/in local government institutions** and the **local government capacity of/in society**.

The **capacity of/in** local government institutions can be looked at in terms of ability to define, plan and implement programmes, engage stakeholders, recruit and retain staff, raise and effectively deploy financial and other resources. This also combines Leftwich's (2009) notion of 'institutional integrity and the integrity of institutions'. When a local government system has institutional arrangements that sustain the integrity of its personnel (elected and appointed) and processes for effective, locally appropriate and legitimate delivery of goods and services then it has institutional integrity. Grebe and Woermann (2011) further this concept as being about coherence, legitimacy and promotion of development. This is somewhat related to Huff et al's (2001) credibility and reputation and whether individual Councils in Zimbabwe are known to be credible or lacking credibility. To maintain institutional integrity a governance system requires legal rules, moral codes and norms of behaviour (Grebe and Woermann 2011), which are the institutions of integrity that hold an institution's personnel and processes in check.

Local government **capacity in/of society** arises to the two-fold conceptualisation of devolution (political decentralisation) as i) transfer of power to select political leadership and representatives and ii) transfer of decision making to local governments and communities (Kauzya 2007; Ribot 2001, 2011). This is within the context of modern state legitimacy being based on the promotion of participation and accountability to citizens (Rao et al 2014; Michels 2011; Development Research Centre on Citizenship, Participation and Accountability 2011). Put another way, under devolution the transfer of power to a sub-national politically and administratively designated area such as Zaka is simultaneously to the political or governmental institution for the area (Zaka Rural District Council) and to the different communities (individual and collective, private, public, traditional, religious and other) residing in the area. These different local communities and their various members, individually and collectively require capacity to make the best use of their political institutions while relating horizontally and vertically amongst themselves effectively. Further, they also need capacity to hold their political institutions accountable. Local government capacity in/of society therefore becomes about engaged citizens that demonstrate developmental ownership of their social, economic and political institutions including protecting their tangible and intangible assets. This is about meeting their obligations including active participation in governance and general observance of the rule of law. The recent history of urban, peri-urban and rural informality, conflict and disengagement have ripped apart social and political capital essential for good local governance (see Marongwe et al 2011; Marongwe 2002, 2003; Musekiwa and Chatiza 2015; Hammar 2003; Government of Zimbabwe 2013b). Stitching back such multiple-capitals is what building local government capacity of/in society entails.

On capacity development and its key drivers

Capacity development is therefore about conscious processes of understanding, navigating and responding to contextual factors (internal and external to an organisation, sector, etc) that hinder or enhance achievement of desired change. It is a change process where new skills, knowledge, attitudes, practices, formal rules and conventions are introduced (internally or externally) to influence the way people, organisations and societies behave (Greijn et al 2015) and relate pursuant to desired external social change (Thomas 1996). We deliberately draw on Greijn et al (2015) and Thomas (1996) to highlight two strategic points about capacity development that we believe are critical. First, capacity development is deliberate and interventionist, which often explains the existence of covert and overt resistance. Second, capacity development is neither value-neutral nor apolitical. It's sponsors/implementers and beneficiaries often strong views and promote declared or undeclared interests in the definition of capacity gaps and the capacity development strategies.

As a consequence, one way to tame conflict over capacity development goals and processes is to focus on organisational mandate or in Thomas' (1996) construction external social goals thesis i.e. why the organisation exists, what society seeks to achieve or the desired change rather than internal goals and interests. This notion is consistent with our argument that capacity is defined in relation to issues or problems that need to be addressed. As such capacity development has to similarly be focused on enhancing the ability of a person, organisation or society to deal with the challenges faced, seize presenting opportunities and expand ability to resolve constraints. In practical terms capacity development of local government institutions and communities within local government areas should focus on well-being changes at societal level.

A reference to Chapter 2 particularly Section 8 of the constitution (Government of Zimbabwe 2013a) is quite instructive in this respect. Any changes within local government or relevant community institutions are a means to the desired change rather than an end. This conceptualisation is concretised using a capacity development by driver model to elaborate why different sponsors of capacity tend to focus on their own interests more than societal well-being, creating shallow transformations of local government and related community institutions. Figure 1 below shows four principal drivers or framers of capacity development in local government.

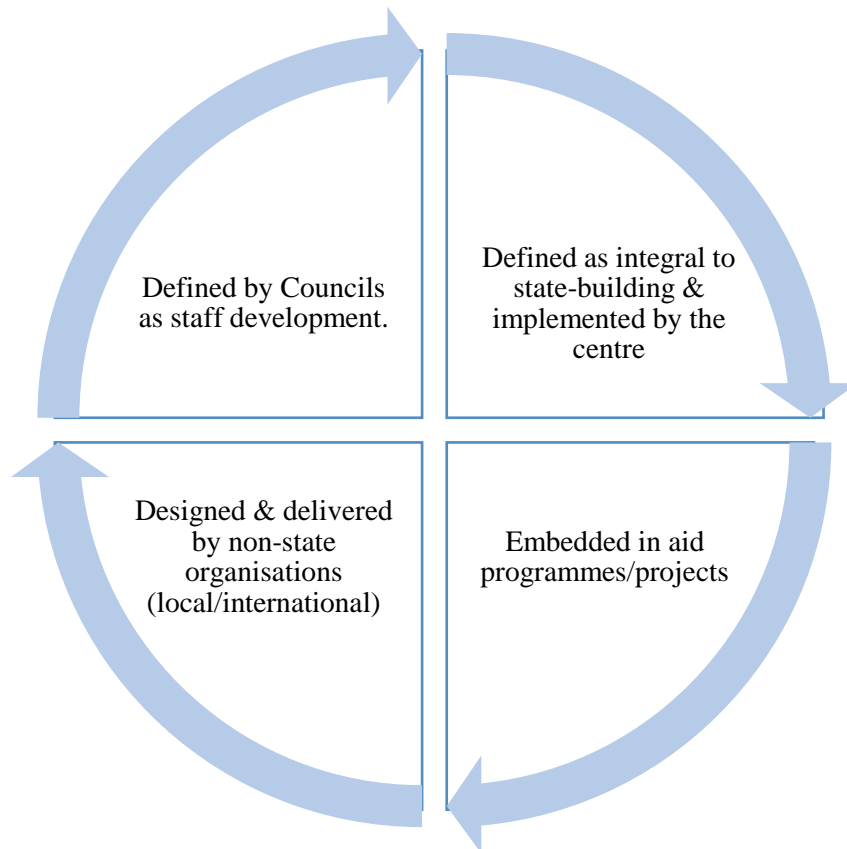


Figure 1: Common sponsors/drivers of local government capacity development

The above figure is a simplification of how the framing of capacity development for local government and community institutions has generally evolved in Zimbabwe since 1980. We identify four driver-clusters of i) central government, ii) donors, iii) local and international development organisations, and iv) individual Councils and/or their Associations. In Zimbabwe's context most early-independence capacity development initiatives were designed as an integral part of state building. For rural Zimbabwe this was part of supporting the newly established District Councils. These were a consolidation of African Councils deliberately decimated during the liberation war which made rural areas ungovernable. In urban areas the 'one city concept' was also part of making the new state politically and administratively visible in all parts of the urban areas. At the height of state-sponsored and led capacity development of local government a Training Unit existed in the Ministry responsible for local government and public institutions like the Zimbabwe Public Administration and Management (ZIPAM) and Domboshawa Training Institute provided critical skills and knowledge to sector professionals.

Up to and including the Rural District Councils Capacity Building Programme and Urban I and II an overlap occurred between capacity development driven as part of state-building and that embedded in aid programmes as seen in a number of rural and urban development programmes. The Dutch and British Governments for instance and NGOs like SNV and Urban Institute were quite active in supporting local government strengthening. The Communal Areas Management Programme for Indigenous Resources (CAMPFIRE), the Financial Management (FINMAN) Programme, Community Action Project, Smallholder Dry Areas Resource Management Programme (SDARMP), the South East Dry Areas Project (SEDAP), the Pilot District Support Programme (PDSP), the Zimbabwe Decentralized Cooperation Programme (ZDCP), District Environmental Action Planning (DEAP) and the Integrated Rural Water Supply and Sanitation Programme (IRWSSP) are some of the national donor-supported programmes which had elements of local government capacity development (Chatiza 2008).

With the particular decline in multi-donor local government development programmes, international and local NGOs increasingly filled the gap in terms of capacity development. This phase is characteristic of the post-2000 period and saw overlaps between capacity development through introduction of new skills and knowledge on one hand and doses of advocacy and lobbying. For urban areas, this also saw a growth in the number and diversity of Residents Association (Musekiwa and Chatiza 2015) as service delivery collapsed. At the same time, service delivery models changed. There was increasing non-state delivery in many sectors including urban areas where for instance water and sanitation technology traditionally for rural areas like boreholes started being introduced to augment stressed urban systems or to service un-reached peri-urban areas. All along a number of Councils have had clearly defined and funded human capital development programmes for their elected officers and appointed officials. This has also been complemented by Associations' (Urban Councils Association of Zimbabwe,UCAZ and the Association of Rural District Councils, ARDCZ) staff forums and tailor-made capacity-building programmes for policy makers.

The delivery of capacity development responses has been mixed. Critical service providers for capacity development include central government (mainly Ministry responsible for local government), individual Councils (through internal mentorship initiatives), knowledge institutions, local civil society organisations, local and international private sector including consultants and the UN, especially the UNDP and the UNICEF. Since the establishment of the National University of Science and Technology (NUST) in 1991, Zimbabwe's knowledge institutions have increased in terms of number and also relevance in terms of meeting self-defined capacity development needs of local government practitioners. The Midlands State University (founded in 2000) now leads responses to the local government sector's capacity development needs through its Department of Local Government Studies.

Presenting capacity development issues and some responses

This section of the paper discusses some of the blockages to the delivery of capacity to local government institutions and communities. We focus on strategic or conceptual gaps that any design of capacity development initiatives should do well to consider. The gaps are i) in leadership, ii) local government supportive agency at community level, and iii) the development functionality of central government. The figure shows the interconnections across these three aspects.

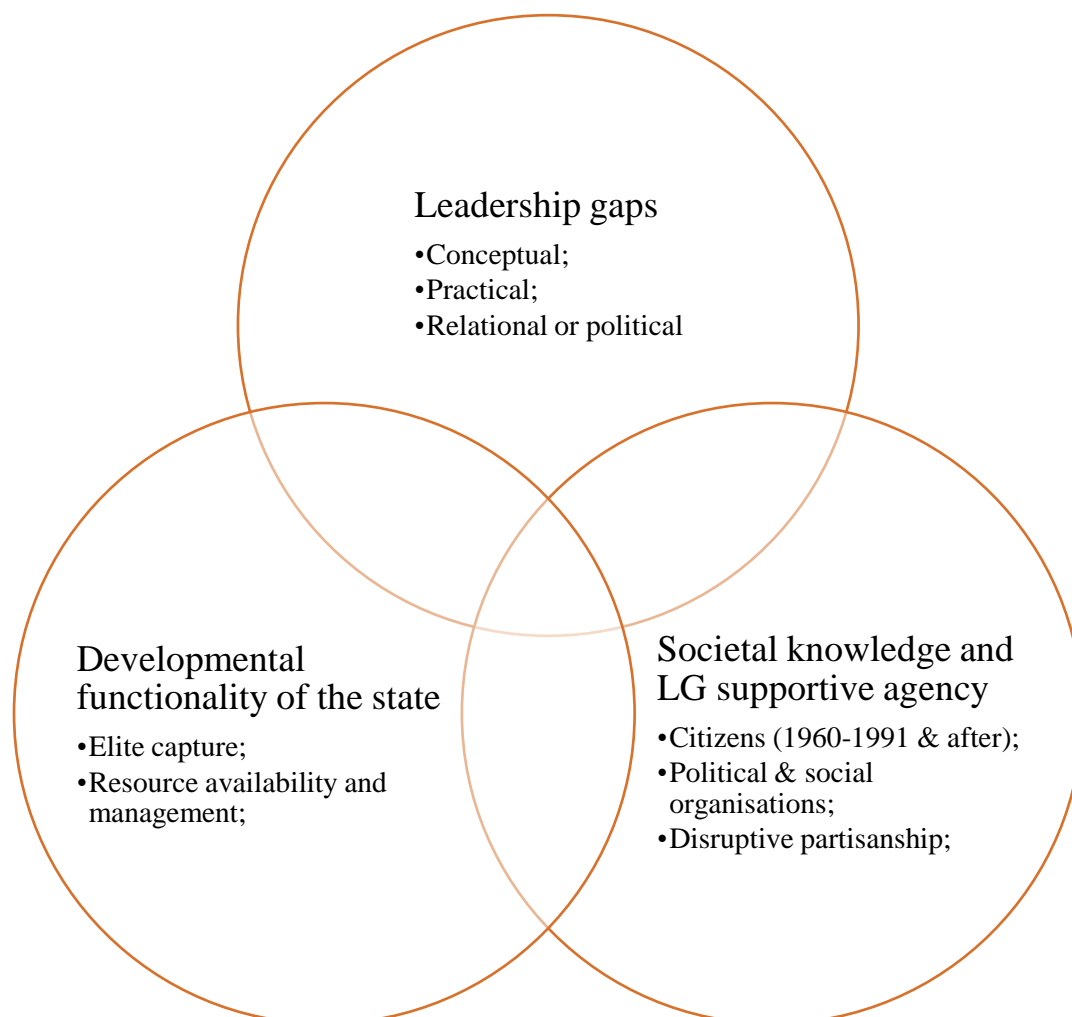


Figure 2: Critical gaps in local government capacity development

1. Conceptual, practical and relational leadership

At central, provincial and local levels there is a visible dearth of local government champions able to articulate and lead local government development. This is manifest in the delays in articulating a national local government policy and vision even before the adoption of the Constitution of Zimbabwe 2013. Further, there is inadequate sector support, protection and promotion of local government from central government in general and the Ministry responsible for local government in particular. Within individual Councils, capacity assessments and Audits have established weak leadership of both the technical and political sides (see Government of Zimbabwe 2014). The overall role of local government in Zimbabwe is now poorly articulated and reputation of the sector at its lowest. Conceptual, practical, relational and political leadership of local government is inadequate at all levels currently. This affects the conceptualisation and implementation of capacity development. One reason for loss of leadership is the sector's weak knowledge management capacity (DEGI 2013).

2. Societal knowledge and local government supportive agency

Capacity development of the local government sector (political institutions and communities) requires fresh and rigorous analyses of citizens' ambitions including developmental grievances that inspire disengagement or outright mistrust of the local state. In essence new capacity development models should not be premised on the assumption of unchallenged local government hegemony. Rather a premise of political and social plurality appears to be a sensible one. It is important however to consider how did Zimbabwe get to a point where trust in the state by the citizens is so low? This has to be considered in light of early independence local government promotion that was largely driven by governments desire to appropriate all forms of civil society in its nation building project. The consolidation of ZANU PF structures into local government structures through Village Development Committees (VIDCO's) and related governance structures was progressively undone as traditional leaders in rural areas and civil society and the private sector in urban areas reasserted their agency. This focus to fully appropriate citizens' agency has never been successful. Many groups and individuals who perceived themselves as or were actually excluded continued to challenge central government's political ideals (Muzondidya 2009). Critically, the importance of the political party and political representatives in Councils may as well not be something to over-emphasize.

At the same time, old liberation war strains between the political and military wings particularly within ZANU PF alongside post-independence civil society spaces that increasingly grew giving birth to the opposition party Movement for Democratic Change in 1999 created new governance tensions and new actors (Muzondidya 2009). All these existed under a veneer of shallow reforms to the colonial economy perpetuating economic inequality which deepened under the early-1990s economic reforms. State building was also devoid of political tolerance, inclusion and has been clearly informed by unresolved regionalism, race, class, gender and ethnicity questions leaving notions of citizenship quite precarious. Clearly therefore local government capacity development requires that some of these big questions are addressed at local level. The ongoing social, political and economic struggles amongst citizens, between citizens and the state through their organisations are characterized by something of 'disruptive partisanship' bordering on criminality injurious to good local democracy. It seems therefore that society is not only socially and politically disengaged from government but financially also resulting in models of service delivery that at once uncoordinated and unsustainable.

3. Developmental functionality of central government

As already observed by Huff et al (2001) central government's image or reputation and its developmental credibility have a bearing on local government capacity development. To the extent that Zimbabwe's central government lacks fiscal and general policy competences, that its key institutions are not effective and political relations are weak at the centre local government capacity development equally suffers. Central government reforms for performance are therefore critical for ensuring appropriate frameworks for local capacity development. The disruptions by some national coalitions identified in peri-urban land transactions are equally undermining the performance of national and local planning institutions for instance. As such, to the extent that Zimbabwe's developmental state attributes are weak at the moment local government capacity development remains constrained. A key ingredient for the restoration developmental functionality of the state could be clear delineation of roles regarding performance of strategic public affairs amongst the three tiers of government.

Conclusion and a note on prospective models

The tsunamic transformation of local government post-2013 constitution requires new capacity development strategies and delivery arrangements. This paper has presented an optimistic perspective on the prospects of capacity development for a constitutionalised local government. This is based on an analysis that takes pre-2013 local government development as preparation for constitutionalisation and post-2013 capacity development requiring a strategically different focus. By defining two variants and principal focus of i) capacity of/in local government and ii) local government of/in society the paper presents an alternative framing of programmes. Our aim has been to project the three weaknesses of local government capacity development as relating to i) conceptual, practical and relational leadership, ii) societal knowledge and local government supportive agency and iii) restoring the developmental functionality of central government.

An evolutionary and iterative driver-based conceptualisation of capacity development was used to reflect the political contestations over capacity. We suggest a taming of this challenge by critically and continuously flagging the focus on socio-economic well-being and local control of political institutions. In this construction the relevance and effectiveness of self-defined or collective local government sector capacity development (the two principal foci) will be measured using poverty and service delivery indices. The Service Level Benchmarking (ZILGA et al 2014) presents an important model consistent with the AU's (2014) urging use of robust statistics which could be used in local dialogues to address performance leakages.

A number of delivery avenues appear clear from our analysis. These include the self-defined and self-funded market where knowledge institutions can provide conventional or tailor-made courses to groups and directly to individual Councils in action-oriented learning. This can be effectively coordinated by the local government associations and in a country with a number of Universities, local government officials (elected and appointed) should be encouraged to acquire and apply relevant knowledge at their expense. A second avenue is targeted leadership or executive development for technical and political leaders of the three tiers of government involved with local government. A competitive bidding process could be used to identify the best local knowledge institution (with or without an international partners) to design and deliver the course on an ongoing basis. Stream three focuses on community capacity development to generate critical local governance awareness provided by state and non-state actors on the basis of an agreed framework. The fourth pillar relates to local government information management systems, monitoring and evaluation, communication and public engagement.

Chapter 9: Conclusion and some suggestions for next steps

Kudzai Chatiza

The constitutional provisions around which the chapters in this publication are built constitute a corpus of reform triggers that will, if fully implemented, radically transform local governance. They also inevitably touch on needed macro or national governance reforms. The papers consolidate the history of local government development, which has been captured in relevant constitutional provisions. The constitution codifies aspirations formed as part of or inspired by the struggle against colonial and post-colonial political struggles. The desire to be governed well as a source of reforms is clearly captured in these papers. This is characterised as an inexhaustible source of the drive for reforms. An essential challenge identified is the political ineffectiveness of sub-national institutions at both executive and policy-maker levels. Captured by national political institutions the sub-national spheres of government become devoid of the capacity to motivate, let alone coordinate, local development. By focusing on what the constitutional provisions mean for local government more than dictating what legislative reforms are needed the papers provide an important repository of knowledge that will inspire ongoing and broader debate on constitutionalism critical for Zimbabwe at present.

Alignment of laws to the constitution has been piecemeal. The ministry responsible for justice is leading the process at structural level but sector ministries also play a key part. The ministry responsible for local government prepared a Local Authorities Bill (combining the rural and urban local government laws), Provincial and Metropolitan Councils Bill (to repeal the Provincial Councils and Administration Act) and a Traditional Leaders Bill. These draft laws were subjected to stakeholder consultation in August and September 2014. This preparatory work guided engagement at a Government of Zimbabwe/UNDP supported dialogue session. Stakeholders raised concerns about structural inadequacies in the draft laws with the general verdict being that the proposed laws potentially offended the Constitution of Zimbabwe 2013. Revisions were to be made following which improved draft laws would be submitted for further formal development into Bills for Parliamentary debate and eventual passing into laws.

Besides the Ministry-led process civil society organisations (WiPSU, CHRA, LGCCBDT, CCDZ, CALR, among others) involved with local government conducted relevant analyses and convened dialogue sessions with central government, Parliament's Portfolio Committee responsible for local government and other stakeholders. CHRA for instance sponsored preparation of a private member's Provincial and Metropolitan Councils Bill based on a highly publicised 2014 Green Paper on Local Government. The Local Governance Community Capacity Building and Development Trust (LGCCBDT) sponsored national workshops and policy research that consolidated input which it submitted to the responsible Ministry.

However, in the absence of a policy framework and laws consistent with the Constitution of Zimbabwe 2013, the sector has continued to be administered based on existing legislative and administrative practices. The recent suspension of officials elected to represent and manage the affairs of the people of Gweru City is a case in point where the suspensions cited section 114 of the Urban Councils' Act. The elected officials took the Ministry to court. The High Court in Bulawayo, citing Section 278 of the constitution declared the dismissal of Gweru councillors by the Minister null and void. The ruling thus cited relevant provisions to show the Minister's actions as *ultra vires* the constitution. While this signifies a new dawn for local government in Zimbabwe the underlying governance culture and system remains untransformed.

It is clear that, moving forward, local governments will be in a better position to rebuff unreasonable interference in their affairs by the centre. Civil society organisations have also assumed a lead role in ensuring that the local governance ideals enshrined in the constitution are realised. In the Green Paper for Local Government in Zimbabwe (2014), for instance, the Combined Harare Residents Association (CHRA) and the Bulawayo Progressive Residents Association (BPRA) have both vigorously advocated for devolved local governance in Zimbabwe, publishing critical policy reviews. BPRA also challenged administrative and policy decisions around pre-paid water meters in Bulawayo in what, alongside actions in Harare and elsewhere, reflect renewed active citizenship critical for sector reform implementation. These key actions signify modest attempts that have been made by stakeholders in the sector for the fulfilment of the provisions of the constitution. Whilst these efforts are inadequate, they will ultimately prompt central government to accede to implementing principles of devolved governance. The implementation of the provisions of the constitution has been affected by a series of drawbacks. These challenges could be conceptualised as legal, institutional and political. In order for local governance to be steered effectively, the constitution stipulates the Acts of Parliament that must be passed. However, the relevant statutes have taken long to be concluded. The current stage of the bills is unclear.

An alternative implementation framework

The research found that implementation of constitutional provisions on local governance, particularly devolution, will require consistent citizen agitation complemented by political will. Currently both are low. Most actors with interests in the sector are insufficiently trained on ensuring implementation. An alternative implementation framework is needed. The study findings point to the need for a i) devolution implementation policy, ii) relevant law (intergovernmental relations legislation), iii) a devolution strategy that has sector details (e.g. health sector, education, land and water devolution strategies), and iv) an implementation plan with a resource mobilisation framework. Implementation strategies also ought to speak to state-non state institutional interaction considering the role played by civil society in constitutional debates to date. An appropriate institutional anchor at national government level is critical. This Chapter makes recommendations in this regard suggesting a leadership role for the Office of the President and Cabinet. Later sections of the Chapter detail this aspect.

Agitation for devolution was framed and pursued from below. As such, the actions of organised citizens and local authorities (staff structures and associations of politicians, ZILGA) need to pursue the above agenda. Citizens (individuals, households and corporates) and organisations that represent them have a right to participate in how their affairs are managed by the state. Residents Associations, the media, local NGOs, faith based organisations, research institutions and community based organisations can engage with government institutions at appropriate levels to focus on implementation of constitutional provisions on local government. Without consistent actions and provision of alternative models or implementation strategies the Government of Zimbabwe appears at a loss regarding devolution. This goes beyond political actors within the state who may have other interests. Bureaucrats need support from outside to steer state-level devolution implementation debate and actions.

How the state interacts with non-state actors is also key. Post-independence institutional relations between the central state and local authorities have been skewed against the latter. Experience shows that locally elected officials were dismissed for incompetence and indiscipline while various administrative instruments are used to curtail local self-government. State and civil society relations are characterised by mutual mistrust and lack of cooperation. Many local CSOs were formed after 1990 with the majority exploring democratisation initiatives including agitation for a new constitution. The MDC party itself was born out of the National Constitutional Assembly (NCA). This partly explains why the state saw CSOs as part of the opposition (i.e. the regime change agent allegations) further spoiling centre-local and state-civil society relations. These have remained fragile.

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