

The Context of Inter-Governmental Relations in Zimbabwe Reflections from the Constitution of Zimbabwe Amendment Number 20 Of 2013

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Abstract: Zimbabwe is politically and constitutionally a unitary, democratic and sovereign state with a three tier governmental structure: national government; provincial and metropolitan councils, and local government (rural district councils and various types of urban councils) according to the Constitution [Amendment No. 20] of 2013. This paper explores the composition, structure and the legal basis of the three tiers of government. Diagrammatic illustrations were used to depict these tiers more elaborately, highlighting focal points of power, authority, accountability and responsibility and how the system is synergised and synchronised from the national to the lower levels. Brief historical reviews are additionally used to locate the transformation of these structures through the vicissitudes of colonial discriminatory and racist structures to post independent African government supposedly modelled to dismantle the colonial system with fair, impartial and equitable structures established on the basis of human rights, improved access for all with important non racist, non ethnic codes and disregarding colour or creed.

IGR and cooperative government: A conceptual framework.

In its most elementary context, the elasticity of the term IGR can be conveniently located in Anderson's (1960;3) definition as, 'an important body of activities or interactions occurring between governmental units of all types and levels'. Wright (1988) concurred with Anderson's (1960) definition but further reinforced the centrality of interactions among various institutions at different levels in order to promote coherence, coexistence and cooperation. Cameron (1994) gave a geographical jurisdictional perspective of IGR defining it as the geographical delineation of powers among the distinct spheres of government in a government system. The division of powers implies the uniqueness and independence of different levels of government in the intergovernmental domain. To Elazar (1987), the concept is not a replacement of historical concepts as federalism and unitarism, but a supplement allowing for the growing realities of politics and administration as governments have expanded. According to Opeskin (1998), the term IGR simply refers to relations between central, regional and local governments that facilitate the realisation of common objectives through cooperation. A summation of the conceptual elasticity of IGR however reflects that it is concerned with interactions and relations of various levels of government, influenced largely by the macro political system, socio-economic and geo-political diversities and how these can be harnessed to promote cooperation and integration without compromising their autonomy.

National government

The national government of Zimbabwe is the central authority of the country and the first tier. It is made up of three arms: the executive authority, the legislature and the judiciary. This section shall explore the horizontal diffusion of authority and separation of power among the three arms of government as noted above and vertical influence of the three arms on the development and operations of sub national tiers of government

The legislature

Section 116 of the Constitution vests the legislative authority of Zimbabwe in the legislature which shall comprise of parliament plus the president of the nation. The structure and exercise of legislative authority and the delegation of legislative authority is provided in part 5 of the Constitution. In terms of this Constitution, the legislature of Zimbabwe consists of:

- (a) a Head of State and
- (b) a bicameral Chamber 'Parliament' comprising
 - The 80 member Senate – an upper house which is made up of elected senators, members appointed on the basis of proportional representation, and traditional chiefs chosen by the council of chiefs.

- The 270 member National Assembly – a lower house consisting of 210 members who are elected by voters registered on the common roll for 210 common roll constituencies and 60 women chosen on proportional representation from each of the 10 provinces.

Meetings of the national assembly are chaired by the speaker of the national assembly and those of senate by the president of senate, both elected in the first meeting after general elections of the respective bodies provided members present constitute a quorum. The major role of parliament (senate and national assembly) are: protecting the constitution and promoting democratic governance in Zimbabwe, ensuring that the state and all government institutions and agencies at every level act constitutionally and in the national interest and ensuring the accountability of all institutions and agencies of the state and government at every level.

In order to perform the above functions effectively, parliament establish such a number of portfolio committees to oversee the various state, and government agencies and departments in the exercise of their mandates. These committees are designated according to government portfolios to examine the expenditure, administration and policy of government departments and other matters falling under their jurisdictions.

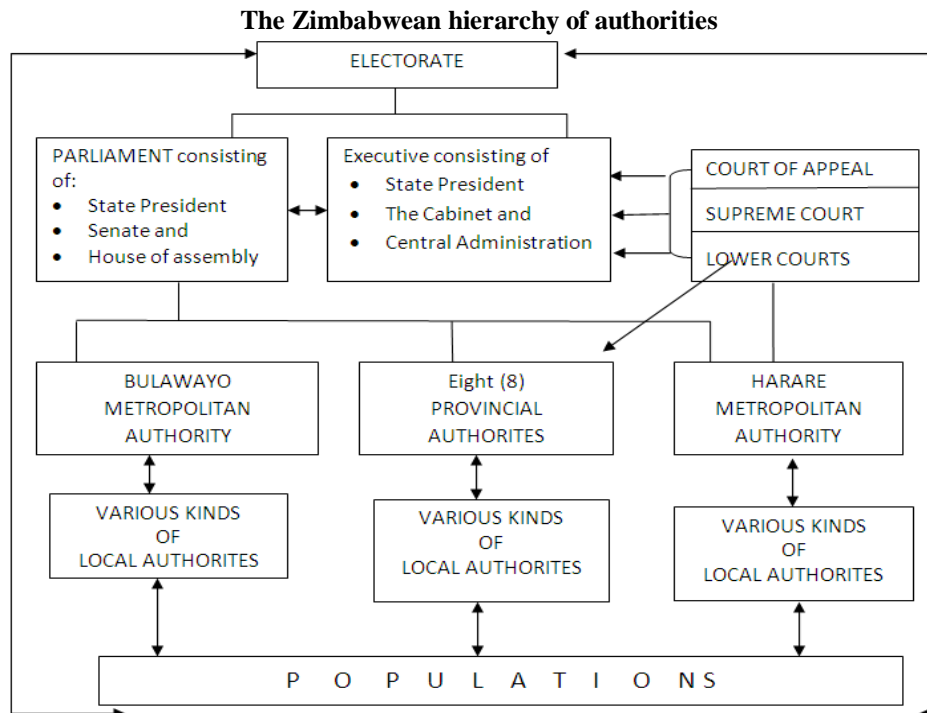
In terms of section 134 of the Constitution, parliament may, in any Act of parliament, delegate legislative power to subordinate institutions to pass subordinate or subsidiary legislation but subject to review by parliament itself. This is both inevitable and desirable, as, in the modern state, parliament intervenes and regulates a lot of different activities and therefore cannot realistically be expected to pass all rules and regulations necessary to run the state. Thus, parliament passes legislation that simply establishes broad policies and then delegates to subordinate authorities the power to pass subsidiary legislation in order to bring into effect in detailed form those broad policies. The delegates are, for instance urban councils, who, acting in terms of the above section of the Constitution and section 228 of the Urban Councils Act [Chapter 29.15] may pass by-laws to regulate local development. However, although it is undisputable that delegated legislation is inevitable, concern is centred on the possibilities of abuse of delegated legislative powers and hence parliament should institutionalise sufficient systems to safeguard delegated legislative authority against abuse to the detriment of citizens.

The executive authority

The composition and exercise of executive authority is provided in chapters, 2, 3 and 4, sections 88 to 113 of the Constitution. The Constitution vests executive authority in the president, who subject to the Constitution shall exercise such executive 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, ministry, or department. The cabinet consist of the president, as the head (chair), vice presidents and such number of ministers appointed by the president. The president preside over cabinet meetings and in his absence the vice president takes over and in the absence of both, ministers present shall elect one from amongst their numbers to be chairperson to preside over the meeting.

The Judiciary and the Courts

Chapter 8, sections 162 to 191 of the Constitution vests judiciary authority in the Supreme Court, the High Court, and subsidiary courts. The President appoints the Chief Justice, who is the head of the judiciary and Supreme and High court judges after consultation with the Judicial Service Commission. Section 164 emphasises the independence and impartiality of the courts as the cornerstone of any credible justice delivery system. The independence and impartiality of the judiciary is deemed central to the rule of law and democratic governance by the Constitution and therefore neither, the state nor any institution or agency of the government at any level may interfere with the functions of the courts.



Source; Marume (2013)

Provincial governments

The second tier of government consists of provincial and metropolitan government and administration system. This section shall explore the development and existence of provinces, on the one hand, and, on the other hand, the operation of the provincial authorities through a cross-examination of their historiography. These provincial authorities are the second level of authority in terms of the Constitution.

The provinces and provincial authorities, developed in Zimbabwe over the years, for example, by 1890, Zimbabwe (then Southern Rhodesia) was made up of two roughly equal provinces; namely, Matabeleland and Mashonaland. Between 1972 and 1985 Zimbabwe had been divided into eight provinces as follows: Mashonaland East; Mashonaland West; Mashonaland Central; Masvingo; Midlands; Matabeleland North; Matabeleland South and Manicaland (Marume 2013). It should be pointed out that in each of the 8 former provinces there had been a provincial authority with jurisdiction over African tribal trust and purchase lands and only over African local councils between 1972 and 1985. They did not have jurisdiction over the European areas and urban local authorities. In 1985, government passed the Provincial Councils and Administration Act, Chapter 29.11 establishing Provincial Councils chaired by the Provincial Governor and Resident Minister appointed by the president. Other members were: all mayors and chairpersons of councils in the province, one councillor for each local authority (council) in the province, one traditional chief representing the interests of the provincial assembly of chiefs and three other persons appointed by the president of the republic, each to represent the following interests: politics, youth, women.

But this has changed in terms of the Constitution of Zimbabwe (Amendment No. 20), 2013 which provides for eight provincial and two metropolitan councils [Bulawayo and Harare].

The development and operation of the provincial government and administration system in Zimbabwe has always been a centre of controversy and debate. This is precisely because, Zimbabwe became bedevilled between 1985 and 2012 by an acrimonious political debate regarding the need for a new and home grown constitution and the related factors of decentralisation and devolution of power from the strong centralist government. Some people were thinking of breaking up the country into a federation. Others were contemplating secessionism (Kurebwa 2009). Still others were thinking of more of a unitary state with a representative three-tier governmental structure (Marume 2013). Thus, some few decades after attaining independence, people were raising serious questions about the kind of the political system which Zimbabwe needed to adopt. Fundamentally, people wanted a more democratic state and a representative and responsible government. And yet, most surprisingly, nobody seemed to have given clear and reasonable explanations of the political implications of such ideologies. It has been established that, over and above this, there was an apparent lack of proper understanding of the powers and responsibilities; the correct historical, political and constitutional developments; structural composition, and executive functioning of such provincial authorities in Zimbabwe. It has been further established that a comprehensive and scientific study of IGR addressing as well the

administration of the provincial authorities in Zimbabwe in the context of the Constitution of Zimbabwe (Amendment No. 20) has not yet been undertaken. This paper could thus, be regarded as a practically useful and pioneer investigation into this particular area.

In terms of the Constitution of Zimbabwe (Amendment No. 20) section two hundred and sixty seven (267), provinces of Zimbabwe are identified as: Bulawayo Metropolitan Province, Harare Metropolitan Province, Manicaland Mashonaland Central, Mashonaland East, Mashonaland West, Masvingo, Matabeleland North, Matabeleland South and Midlands; whose boundaries are fixed under an Act of Parliament [section 267 (1)]. An Act of Parliament (a) must provide for the division of provinces into districts and (b) may provide for the alteration of provincial and district boundaries; after consultation with the Zimbabwe Electoral Commission and the people in the provinces and districts concerned [section 267 (2)].

Local government

This section outlines and cross-examines the constitutional, legislative and institutional environment and framework of local government in Zimbabwe. The endeavour is to determine the co-existence of local government and other tiers of government as shaped by the governing legislation and enforced through the established institutions.

The history of organised and legislated local government in Zimbabwe dates back to 1890s with the arrival of the British South African Company (BSAC) and the subsequent establishment of the Salisbury Sanitary Board as the first formal local authority (Jordan, 1984). Municipal Ordinances, Advisory Boards in African townships and African Councils under the direct rule of the District Commissioner's Office were later established. According to Madhlekeni and Zhou (2012), these structures modelled along racial lines laid the foundation of a highly centralized local government system based on white supremacist policies and characterized by the imposition of substandard and centrally defined programmes on African and Native Councils and denial of African self-government.

This manifestation of central government dominance in local authorities through entrenched draconian and racial legal and institutional frameworks was later on met with strong resistance and contradiction by the black populace through the liberation struggle (Makumbe 2001). The demise of the colonial regime ushered in a new twist in the local government arena with the installation of new institutions, structures, expanded decentralization of local government structures and ZANU PF's liberation interventions sowing the seeds for political party intervention and control over local authorities (Madhlekeni and Zhou 2012).

The advent of independence in 1980 saw the creation of a single local government Ministry and the amalgamation of African Councils into District Councils and the establishment of new legislation (Rural District Councils Act and the Urban Councils Act) in 1988. In spite of Zimbabwe's independence from the colonial regime, the new legal and institutional framework of local government did not depose nor loosen the central government's stranglehold on local authorities (Madhekeni and Zhou (2012). The post-independence era has been characterized by what Olowu (2001) refers to as expanded centralization through decentralization where central government purports to promote the principles of decentralization by transferring tasks and responsibilities to local authorities whilst retaining decision making power and authority. Machingauta (2010) seems to concur with the above argument and added that functionally, the central government is supposed to provide an enabling or facilitative framework within which local government operates. In practice, however, the Ministry of Local Government, Public Works and National Housing (MLGPWNH) has increasingly played a controlling and directive role especially since the emergence of a formidable opposition Movement for Democratic Change (MDC) with a significant control over local government authorities in the urban areas.

The Minister administers all the Acts and Statutory Instruments promulgated in the local government area. The Minister retains a substantial supervisory role over all local government units and enjoys the ultimate power of intervention and suspension of any local council. Thus to Machingauta (2010), local government in Zimbabwe operate at the behest and suffering of the centre as the main legal instruments of local government invest the President and the Minister of Local Government with the power to suspend or act in place of a local authority and the power to nullify some decisions of local authorities. For instance, in the RDC Act alone, there are more than 250 instances where the Minister can intervene in the day to day running of Rural District Councils. As Minister of Local Government, Public Works and National Housing, Ignatius Chombo has explained in the past: "local councils enjoyed delegated authority and thus should follow government, and by extension, ZANU PF policies." (The Daily Mirror, 30.08.04.)

From 1980 to 2013, the local government system in Zimbabwe was a legislative rather than a constitutional creature, a tradition of most former British colonies. Machingauta (2010) stressed that, although they were body corporates, local authorities remained creatures of statutes with no constitutional recognition of their existence. In essence this implies that local government in Zimbabwe was a decentralised level of government which derived its authority from Acts of Parliament and not from the Constitution. The Constitution [Amendment No. 20] 2013 ushered in a new dispensation enshrining local government in Part two (2), sections two hundred and seven four

(274) to two hundred and seventy nine (279). According to the above sections, there shall be urban local authorities and rural local authorities whose powers shall be subject to the Constitution and the Urban Councils Act [Chapter 29.15] and Rural District Councils Act [Chapter 29.13] The Constitution in chapter one, section one 1(1) states that the constitution is the supreme law of Zimbabwe and if any other law is inconsistent with this constitution that other law shall, to the extent of the inconsistency, be void.

Conclusion

This paper explored the vertical and horizontal diffusion of power among the three constitutionally entrenched tiers of government. However, issues of cooperative government remains a missing link towards mutual interdependence among the different tiers of government.

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