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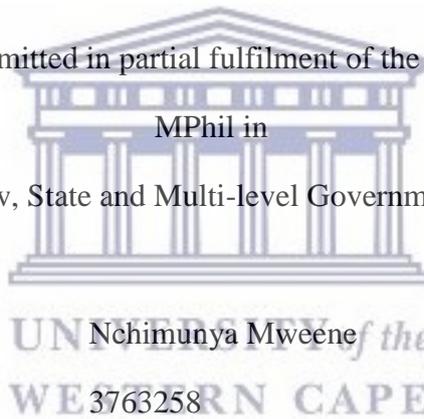


**FACULTY OF LAW**

A mini - thesis submitted in partial fulfilment of the requirements of an

MPhil in

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Keywords: intergovernmental relations, cooperation, decentralisation, development, local government, Zambian national decentralisation policy.

**Declaration**

I, Nchimunya Mweene, do hereby declare that the assessment of the impact of the 2016 Constitution on the current laws, policies and practices of intergovernmental relations in Zambia is own work and the sources of information for my research are appropriately acknowledged. It is important to note that this paper has not been submitted for another degree or to any other higher institution of learning.

Signed .....

Date .....

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Signed .....

Date .....



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## **Dedication**

This work is dedicated to my wife and my mother who supported me throughout my studies.



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## CHAPTER ONE: INTRODUCTION

### 1.1 Introduction

Decentralisation is the transfer of power, responsibilities, capacities and resources from the centre to the sub-units of the government. The main objective is to foster the capacity of local government to deliver services to the local communities in an effective manner.<sup>1</sup> In a multilevel system of government, various institutions are established at different levels of government to deliver goods and services to the people. In delivering goods and services, these institutions usually combine efforts within the same and different levels of government. As a mechanism for improved service delivery, decentralisation has become increasingly important in the recent past together with the enhanced citizen participation in decision making process in the matters that affect the people. However, for decentralisation to be effective in achieving its intended objectives, it should be supported by intergovernmental relations and cooperative governance. Intergovernmental relations exist between and across various institutions and actors.<sup>2</sup> They are relationships which develop or exist between governmental units of all types and levels in a multilevel system of government.<sup>3</sup> These relations are significant in a multilevel system of government because it is impossible to distribute powers and functions among governments within a nation state into watertight compartments.<sup>4</sup> The IGRs help in dispute resolution that may emerge from the overlap of powers and functions across tiers of government consequently hampering the smooth functioning of the government system.

### 1.2 Statement of the problem

Zambia amended its Constitution in 2016. The Constitution declares the resolve of Zambians to uphold the principles of democracy and good governance. The Zambian government has shown intentions of deepening democracy through decentralising functions, responsibilities, and resources from the national government and provincial administration to the local authorities in a coordinated manner.<sup>5</sup> Article 151(1)(a) of the 2016 Zambian Constitution establishes a local government system where co-operative governance with the national government, provincial administration and local authorities is promoted to support and

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<sup>1</sup> Article 1 African Charter on the values and principles of Decentralisation, Local Governance and Local Development, 2014.

<sup>2</sup> Geldenhuys J A 'The crux of intergovernmental relations' in De Vries S.M, Reddy S.P & Haque S.M (eds) *Improving local government: Outcomes of comparative research* (2008) 90.

<sup>3</sup> Watts L R 'Intergovernmental relations: conceptual issues' in Levy N and Tapscott C (eds) *Intergovernmental relations in South Africa*, IDASA and School of Government (2001) 22.

<sup>4</sup> Watts (2001) 22.

<sup>5</sup> Art 151(1) (a) of the Constitution of Zambia, 2016.

enhance the role of local government. However, the Constitution is not clear on how the intergovernmental relations will be managed. Hence the research paper is assessing the impact of the amended 2016 Constitution on intergovernmental relations and how they should change in line with the new Constitution. The question is whether the 2016 amended Constitution provides for effective IGR that is in line with the normative framework that is proposed in Chapter two and whether it enhances the delivery of services to the people.

At independence Zambia inherited a highly centralised system of governance. The system continued with the principles of English municipal authority and colonial indirect rule. Local government has been surviving rather than flourishing.<sup>6</sup> It is alleged that the national government has been encroaching on local government autonomy by centralising decision making. The Ministry responsible for local government and finance have constricted the local government financial, personnel and functional autonomy. The provincial administration as well sought to control various local authorities resulting in the local authorities being recipients of instructions from it.<sup>7</sup> The 1965, 1980 and 1991 Local government Acts gave more power to the national government to supervise the provincial administration and local government instead of treating them as equal partners in development. The suggestion is that the Acts have not been effective to protect the autonomy of the tiers government. Hence the 2016 Constitution provides for much more decentralised co-operative intergovernmental relations that may enhance service delivery to the people.

### **1.3 Significance of the problem**

Decentralisation of power has the potential to create fragmented subunits of the nation and inefficiency in the delivery of services. It can also create inequity in the distribution of the resources hence widening the gaps of poverty between different local authorities of local government.<sup>8</sup> These two potential dangers necessitate the intergovernmental relations between different governments. Intergovernmental Relations (IGRs) are necessary in a decentralised system of government. The relationships can shape how local authorities relate and cooperate with one another with the view of improving service delivery in Zambia. The implementation of the decentralisation process may not be complete without effective intergovernmental relations and co-operative government. An ineffective IGRs system results in lack of predictability, participation, consultation, respect, equality and transparency in the

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<sup>6</sup> Tordoff W *Administration in Zambia* (1980) 163.

<sup>7</sup> Tordoff W (1980) 163.

<sup>8</sup> Fjeldstad O 'Intergovernmental Relations in the developing world' in Levy N & Tapscott C (Eds) *Intergovernmental Relations in South Africa* ed (2001) 145.

governance system. Failure to develop relevant intergovernmental systems and processes by appropriate institutions would lead into institutions failing to initiate joint works and projects.<sup>9</sup> Uncertainty and confusion about the ground rules result in inconsistent practices, unreasonable expectations and unconstitutional behaviour.<sup>10</sup> Lack of clarity on IGRs may also create a loophole for the national government to continually pile unfunded mandates such as paving of roads, provision of health and primary education on local authorities. In a decentralised system of governance, lack of communication for example on joint programmes of governance that require harmonious interaction may pose problems to governance structures. Such problems may result in failure or delayed implementation of developmental projects and services not being delivered. As a result people end up suffering. Therefore the problem being assessed in this paper is pertinent and necessitates academic research to be undertaken.

#### **1.4 Research question**

The 2016 Zambian Constitution has enhanced the powers and autonomy of local government in order to spearhead and quicken development at local level. Meanwhile clarity on the intergovernmental relations in the governance system has not been provided. Hence the main research question which this study seeks to answer is what is the impact of the new Constitution on how the intergovernmental relations are legislated and practiced in Zambia? What foundation does the new Constitution provide for the development of intergovernmental relations?

#### **1.5 Literature review**

Intergovernmental relations are defined variously by different scholars. Anderson defines intergovernmental relations as activities or interactions that take place between government entities of all types and levels within a federal or unitary system.<sup>11</sup> IGRs also entail the interactions that happen between tiers/levels of government. Intergovernmental relations entail relationships that emerge between different governments or entities of state from different governments in order to perform their functions.<sup>12</sup> A multilevel system of government has many institutions established at different levels of government. The main objective is to deliver goods and services to the people effectively. The institutions usually

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<sup>9</sup> Malan L Intergovernmental relations and cooperative governments in South Africa: The ten-year review *Politeia Vol24 No 2* (2005) 226 - 243.

<sup>10</sup> Malan L *Politeia Vol24 No 2* (2005) 226 - 243.

<sup>11</sup> Wright D S, *Intergovernmental Relations: An analytical overview* (1974) 2.

<sup>12</sup> Fox W & Meyer I H *Public administration dictionary* (1995) 66.

deliver services and goods own their own. At times they have to join hands with institutions from different levels of government in order to accelerate development for the people. For this reason mechanisms should be established in order to facilitate interactions and cooperation between tiers of government.<sup>13</sup> Cooperation is different from supervision. Supervision entails a relationship of hierarchy where national government makes decisions and local government is compelled by law to adhere to the decisions made by the national government, be it decisions to regulate, monitor or to intervene. Cooperation on the other hand denotes a relationship where actors are equal as far as intergovernmental relations are concerned and treat each other as equal partners.<sup>14</sup> De Visser contends that relationships based on equal treatment will largely depend on political maturity, quality human interaction and genuine interests that accelerate the achievement of national and local goals.<sup>15</sup> According to Watts, intergovernmental relations significantly utilises an enabling legal institutional framework.<sup>16</sup> Watts further suggests that a good IGR system has a framework that ensures its integrated structure does not interfere with the democratic accountability of each tier of government to its electorate.<sup>17</sup> As each level remains accountable to its electorates the intergovernmental structures should account to governments at the relevant level. Although other countries like South Africa have vast literature written on intergovernmental relations, there is no such comprehensive literature on IGRs in the case of Zambia besides that of Mukwena and Chikulo. Mukwena recommends that actors in the national, provincial and district intergovernmental fora's should have their capacities built.<sup>18</sup> He contended that if actors in the various institutions that attend the IGRs fora are capacitated, there will be better coordination, monitoring and evaluation of national projects.<sup>19</sup> In 1995 the Zambian government introduced the Provincial and District Development Coordinating Committees whose key function was to provide a forum for dialogue and coordination on developmental issues between the local authority, line departments, donors and NGO in the district.<sup>20</sup> In 2000, the Zambian Government also introduced the position of the District Commissioners

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<sup>13</sup> The Aberdeen principles (2005) 6. See Steytler N (2009) 427.

<sup>14</sup> De Visser (2005) 210.

<sup>15</sup> De Visser (2005) 210.

<sup>16</sup> Watts (2005) 39.

<sup>17</sup> Watts (2005) 24.

<sup>18</sup> Mukwena Royson *Building the institutional capacity of local authorities in Zambia in the third republic: an assessment* (2002) <http://unpan1.un.org/intradoc/groups/public/documents/cafrad/unpan008115.pdf> 11 (accessed on 05/08/2017).

<sup>19</sup> Mukwena Royson (2002)12.

<sup>20</sup> Cabinet Circular No.1 1995.

(DCs)<sup>21</sup> positions which are normally filled with ruling party cadres with little or no administrative experience even up to date. These officials are appointed by the President and serves at his pleasure. They are the President's at district level, and are used by the ruling party for political mobilization during the election periods.<sup>22</sup> Chikulo argues that although the District Development Coordinating Committee was introduced to enhance a relationship where actors are equal in terms of planning at the district level, the position of the DC puts him/her above other partners.<sup>23</sup> The DC is treated as being superior to other committee members consequently undermining the principle of equality of partners as underpinned by IGRs. However, Mukwena and Chikulo's literature concentrated on evaluating the decentralisation process since Zambia gained independence in 1964 to 2014. Therefore this research aims to fill the gap in literature by providing a comprehensive analysis of IGRs in Zambia after the Constitution was amended in 2016.

### **1.6 Substantiating the argument**

International literature has shown that Intergovernmental relations are an important means of governing the nation. IGR can be practiced using different models of IGR such as coercive and cooperative model. The coercive model involves the national government largely dominating lower levels of government while cooperative model entails equal sharing of power between national government and subnational constituents.<sup>24</sup> Some countries like South Africa have chosen to use the cooperative model to accelerate development. In like manner, the 2016 Zambian Constitution was amended to enhance the powers and autonomy of local government. The enhancement of powers and autonomy was to quicken development at local level.<sup>25</sup> Local authorities are to cooperate with the central government in the delivery of services. However, it is argued that the 2016 Constitution does not give the local authorities adequate autonomy for them to practice IGR as equal partners with the national government to foster national development. When local authorities lack autonomy, IGR forums may not be established and mechanisms such as joint planning, common intergovernmental agreements among others may not be effectively utilised. As a result local authorities will not carry out their mandate effectively.

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<sup>21</sup> Cabinet Circular minute CO 101/20/1 of 2000.

<sup>22</sup> Chikulo B C 'Decentralization Reforms in Zambia 1991-2010' (2014) 95-105.

<sup>23</sup> Chikulo B C (2014) 95-105.

<sup>24</sup> Steytler N 'One party Dominance and the functioning of South Africa's Decentralised system of Government' in Rudolf Hrbek (ed) *Political and Federalism* (2004) 159.

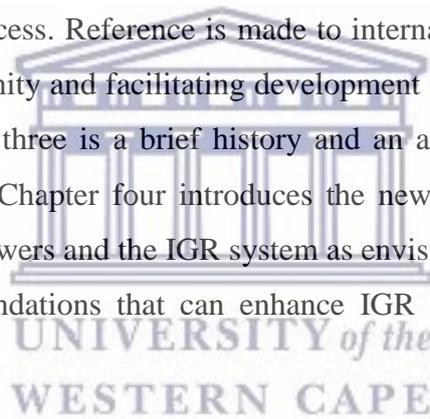
<sup>25</sup> Art 151(1)(a) of the Constitution of Zambia, 2016.

## **1.7 Research methodology**

This is a desktop based study that will use both primary and secondary data sources. It will examine different books, chapters in books and different journal articles relating to intergovernmental relations and cooperative governance. It also will focus on examining the Zambian Constitution as well as other relevant instruments that provide for intergovernmental relations in Zambia. The research makes a comparison to practice of South African IGR in order to learn lessons and provide alternative solutions to the Zambian situation.

## **1.8 Chapter Outline**

The research paper is divided into five chapters. Chapter one provides for the introduction, statement of the problem, significance of the problem, research question, argument for the research problem, literature review, and the methodology that will be used to conduct the research. Chapter two discusses the theoretical framework of intergovernmental relations as it relates to decentralisation process. Reference is made to international literature on IGRs and the role of IGR in fostering unity and facilitating development in a multilevel government or even a federal state. Chapter three is a brief history and an assessment of IGRs from pre-colonial to 1996 in Zambia. Chapter four introduces the new configuration of the various levels of government, their powers and the IGR system as envisaged in the 2016 Constitution. Chapter five gives recommendations that can enhance IGR in the governance system in Zambia.



## **CHAPTER TWO: NORMATIVE FRAMEWORK FOR INTERGOVERNMENTAL RELATIONS**

### **2.1 Introduction**

This Chapter defines intergovernmental relations and explains its origins. It discusses the necessity of the intergovernmental relations in a multi-level government. Further, it discusses principles and values that should guide intergovernmental relations. Examples of the commonly used mechanisms to practice IGRs will also be discussed. The Chapter ends with concluding remarks.

### **2.2 Intergovernmental relations**

Intergovernmental relations are defined by various scholars differently. Ogunna contends that intergovernmental relations are complex patterns of interactions, cooperation and interdependence between tiers or levels of government.<sup>26</sup> Intergovernmental relations are commonly referred to as relations between central, regional and local governments that facilitate the attainment of common goals through co-operation.<sup>27</sup> IGRs are defined as relations that exist formally or informally within institutional arrangements as well as structures for cooperation between tiers or levels of government.<sup>28</sup>

#### **2.2.1 Rationale and need for IGR**

Decentralisation of power has the potential to create fragmented subunits of the nation and inefficiency in the delivery of services. It can also create inequity in the distribution of the resources between different local authorities.<sup>29</sup> Co-operation should be fostered in order to manage the overlap of powers and functions across tiers of government. IGRs facilitate cooperation that aligns and integrates governance systems across [tiers] of government so as to ensure coherence'.<sup>30</sup> Such cooperation takes place in a context of equality with each tier of government participating in intergovernmental relations as an equal partner.<sup>31</sup> The fragmentation of subunits of the nation and inefficiency in the delivery of services and inequity in the distribution of resources between different local authorities necessitates the intergovernmental relations between different governments. In short IGRs helps deal with the

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<sup>26</sup> Ogunna, A.E.C *A Handbook on Local Government in Nigeria* (1996) 350.

<sup>27</sup> Wright D S *Understanding International Relations* (1988) 66.

<sup>28</sup> Abidoye S H 'The Nature of Governmental Relationship (Inter and Intra) In Nigeria's Fifteen-Year Old Democratization' (2015) *IOSR Journal Of Humanities And Social Science (IOSR-JHSS) Volume 20 Issue 7* 54-58.

<sup>29</sup> Watts (2001) 22.

<sup>30</sup> Department of Provincial and Local Government, South Africa *The intergovernmental relations audit: Towards a culture of cooperative government* (1999) 51.

<sup>31</sup> De Visser J *Developmental local government: A case study of South Africa* (2005) 210.

fragmented subunits, overlap of functions and competition between tiers and institutions of governments.

Intergovernmental relations exist between and across various institutions and actors.<sup>32</sup> These relationships develop and exist between governmental units of all types and levels in a multilevel system of government.<sup>33</sup> Such relations are significant in a multilevel system of government because it is impossible to distribute powers and functions among governments within a nation state into watertight compartments.<sup>34</sup> Federalism for example facilitates the process of political decentralisation resulting in a greater magnitude of autonomy to sub-national governments and effective distribution of power and resources between levels of governments.<sup>35</sup> Steytler argues that the concept of federalism has further moved from being just a classic idea of power sharing between two levels of government but also ensuring that there is cooperation between tiers of governments.<sup>36</sup> IGRs are also relevant in unitary arrangements particularly with regard to local government. The vast majority of nations are unitary and not federal. The above examples stress the point that the type of IGR is heavily influenced by the type of multilevel government that exists in a given state. The IGRs becomes relevant for coherence and interactions between institutions of varying levels of governments and facilitate the joint implementation of programmes and projects.

### **2.2.2 An analysis of IGR system**

This section gives a comparative analysis of IGR system. There are three main thematic areas that will be used to analyse IGR. These are cooperative versus coercive IGR, horizontal versus vertical IGR, and formal versus informal IGR.

#### **2.2.2.1 Cooperative versus coercive IGR**

This segment discusses the cooperative IGR system as distinct from the coercive IGR system. IGRs usually concern relations between governmental bodies in different tiers of government and these include central, provincial and local government. Cooperative IGR is the networking of relationships between the executives of central and regional government. Legislative bodies of tiers government should not confine themselves to their jurisdictions as

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<sup>32</sup> Geldenhuys J A (2008) 90.

<sup>33</sup> Anderson W *Intergovernmental Relations in Review* (1960) 3.

<sup>34</sup> Anderson W (1960) 3.

<sup>35</sup> Gibson E, 'Introduction; Federation and Democracy in Latin America: *Theoretical connections and cautionary insights in Edward Gibson (ed) Federalism and Democracy in Latin America* London (2004)2-37.

<sup>36</sup> Steytler N, *The place and Role of Local Government in federal systems* (ed) Johannesburg: Konrad-Adenaur-Stiftung.

they implement their developmental plans but are required to act jointly and complement each other.<sup>37</sup> Cooperative IGR entails that the different levels of government should not perform their unique functions and powers in seclusion or in competition with each other. Hence the distribution of power is restricted by the duty of the different government to cooperate.<sup>38</sup> The cooperative IGR system is more effective in federal political system with established orders of government and each responding to its constituency. Cooperative IGR functions on the basis of a relationship of equality between the central government and the subnational constituents. The different orders of government must cooperate with one another based on common trust and good will. The cooperative IGR model helps ethnicity, religious divisions, and many other related ills that emerge from the vastness of countries.<sup>39</sup> The coordination between orders of governments in cooperative IGR is to ensure that the different orders of government do not work at cross purposes with each other. Coercive IGR on one hand is influenced by notions of hierarchy between the orders of government. It is a hierarchical distribution of power.<sup>40</sup> National government largely dominates the nation's subnational constituents. This entails that one level/sphere of government can unilaterally intervene in the affairs of another. Intervention in affairs of another level shows that coercive IGR is not all about persuasion and dialogue but at some point, it makes itself felt when the situation is in danger of breaking down.<sup>41</sup> The overall objective of the coercive IGR is to facilitate the coordination of the policy and programmes of the various levels of government.<sup>42</sup> Other objectives include coherence in governance matters, effective provision of services, monitoring and implementation of national government policy and the achievement of national priorities.<sup>43</sup>

The underlying principle is the provision of a coherent government premised on the achievement of national priorities. Provincial and local governments become the main implementers of national policy and programmes. However, it should be noted that this paper deals only with the cooperative IGR. Cooperative IGR is an important act of aligning and integrating governance across [tiers] of government so as to ensure coherence and

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<sup>37</sup> Hogg P, *Constitutional law of Canada* (4<sup>th</sup> Edition, Volume 1(2001) 5-43-5-45.

<sup>38</sup> Steytler N & De Visser J *Local Government Law of South Africa* (2009) 16-3.

<sup>39</sup> Steytler N (2011) 413–427.

<sup>40</sup> Steytler N “ One party Dominance and the functioning of South Africa’s Decentralised system of Government’ in Rudolf Hrbek (ed) *Political and Federalism* (2004) 159.

<sup>41</sup> Department of Provincial and Local Government (2007) 34.

<sup>42</sup> Steytler N (2011) 413–427.

<sup>43</sup> Steytler N (2011) 413–427.

effectiveness.<sup>44</sup> This means that each tier of government participating in intergovernmental relations is treated as an equal partner.

### **2.2.2.2 Horizontal versus vertical IGR.**

This section introduces the two types of IGR, namely horizontal and vertical IGR. Horizontal IGR operates between governmental bodies in the same layer of government.<sup>45</sup> IGRs that operate on a Horizontal basis are for example different local authorities who are at the same level. In horizontal IGRs there is no disparity in respect of negotiating and bargaining powers of governmental bodies resulting in interdependence between governmental bodies. On the other hand, vertical IGR are practiced between governmental bodies in different tiers of government. They represent relations between the central government and sub-national governments.<sup>46</sup> The significant characteristic of the vertical IGR is that the central government wields more power than subnational bodies.<sup>47</sup> This makes sub-national governments more dependent on higher authorities' in order for them to attain their objectives. This dependence limits the autonomy enjoyed by the subordinate bodies in deciding which developmental goals are to be achieved by each level of government.<sup>48</sup>

### **2.2.2.3 Formal versus informal IGR**

Intergovernmental relations can be practiced formally and informally. Formal IGRs include the legislated intergovernmental relations, statutory procedures and structures. A major issue when designing a multilevel system of government is whether intergovernmental relations should be constitutionally prescribed, established by ordinary legislation or left to be developed in practice.<sup>49</sup> Intergovernmental cooperation does not necessarily have to be legislated. Watts argues that the best practice may be to allow a general political culture of cooperation and mutual respect to develop over time so as to create flexibility and allow innovation.<sup>50</sup> However, written rules of engagement in the constitution or legislation can provide a foundation for nurturing a culture of cooperation in countries which have recently adopted multilevel systems of government (such as Zambia) where such a culture might not

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<sup>44</sup> Department of Provincial and Local Government (2007) 51.

<sup>45</sup> Hattingh J J *The Nature and Content of Governmental Relations* [uir.unisa.ac.za/bitstream/handle/.../Hattingh\\_JJ\\_1868880621\\_\\_Section2.pdf?...2...](http://uir.unisa.ac.za/bitstream/handle/.../Hattingh_JJ_1868880621__Section2.pdf?...2...) (accessed 03.11.2017).

<sup>46</sup> Hattingh J J *The Nature and Content of Governmental Relations* [uir.unisa.ac.za/bitstream/handle/.../Hattingh\\_JJ\\_1868880621\\_\\_Section2.pdf?...2...](http://uir.unisa.ac.za/bitstream/handle/.../Hattingh_JJ_1868880621__Section2.pdf?...2...) (accessed 03.11.2017).

<sup>47</sup> Hattingh J J *The Nature and Content of Governmental Relations* [uir.unisa.ac.za/bitstream/handle/.../Hattingh\\_JJ\\_1868880621\\_\\_Section2.pdf?...2...](http://uir.unisa.ac.za/bitstream/handle/.../Hattingh_JJ_1868880621__Section2.pdf?...2...) (accessed 03.11.2017).

<sup>48</sup> Hattingh J J *The Nature and Content of Governmental Relations* [uir.unisa.ac.za/bitstream/handle/.../Hattingh\\_JJ\\_1868880621\\_\\_Section2.pdf?...2...](http://uir.unisa.ac.za/bitstream/handle/.../Hattingh_JJ_1868880621__Section2.pdf?...2...) (accessed 03.11.2017).

<sup>49</sup> Watts R (2001) 24.

<sup>50</sup> Watts R (2001) 39.

exist because of a history of domination by the centre.<sup>51</sup> For instance the South African Constitution provides for the principles of cooperative government and intergovernmental relations.<sup>52</sup> Further, the Intergovernmental Framework Act 13 of 2005 in South Africa sets out a framework for intergovernmental planning and budgeting; intergovernmental forums; implementation protocols; and dispute resolutions. It also establishes procedures, structures, roles and functions of the IGR forums. Besides the formal structures of the IGRs, there are interactions that link officials to each other across departments, sectors and governments, and non-governmental organisations and groups. They may be composed of unstructured, infrequent meetings, contacts, emails, telephones and conference calls.<sup>53</sup> These are examples of informal IGRs. Such links and meetings facilitate the process of decision making on matters that could otherwise cause disputes between institutions of government. However, in practice, informal IGRs may not foster effective service delivery as compared to formal IGRs. This is because some individuals may spearhead personal interests resulting in competition and resentment. Individual interests may frustrate development efforts of the institutions charged with the responsibility to spearhead development. They can also be less accountable and inaccessible.<sup>54</sup> Thus informal IGRs should be bound together by trust.<sup>55</sup> Informal IGRs require commitment to the law from the various levels/tiers of government to implement the principles of cooperative governance.<sup>56</sup>

### **2.3 Principles and values that guide IGRs**

The principles and values that guide the way intergovernmental relations are done are important as they ensure effective multilevel governance. This section discusses the various principles and values that guide IGRs in a multi-level of government. The principles are discussed and their importance is explained. The principles and value are also used as points of reference when assessing the Zambian IGRs.

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<sup>51</sup> South Africa is a unique case where intergovernmental cooperation is constitutionalised and legislated. The Constitution of South Africa in chapter 3 provides the basis for cooperation among levels of government. The Intergovernmental Fiscal Relations Act, Intergovernmental Relations Framework Act and Organised Local Government Act have been enacted to give effect to the constitutional recognition of the principle of cooperation.

<sup>52</sup> S 41(1) of the Constitution of the Republic of South Africa, 1996.

<sup>53</sup> Carolyn M *et al* Formal and informal dimensions of intergovernmental administrative relations in Canada *Canadian Public Administration Journal*, Vol. 50, No. 1 (2007) 21-41.

<sup>54</sup> Carolyn M *et al* (2007) 21-41.

<sup>55</sup> Carolyn M *et al* (2007) 21- 41.

<sup>56</sup> Malan L *Politeia* Vol24 No 2 (2005) 226 - 243.

### 2.3.1 Respect for autonomy

International literature on decentralisation and best practices on IGR suggest that, if lower governments are to reach their full potential and contribute to national development, they require a certain measure of local autonomy.<sup>57</sup> One of the many principles of IGR is that of respect for autonomy. This principle reflects the protection of tiers/levels of governments in that it tends to limit the powers of national government to interfere with the autonomy of subnational units. It places a limitation or constraint on the manner in which a tier or organ of government may exercise its powers or perform its functions.<sup>58</sup> This is meant to prevent one sphere/level of government from undermining others thereby preventing them from functioning effectively.<sup>59</sup> For example, Section 265(1)(c) of the Zimbabwean Constitution provides that tiers of government must within their mandate perform their functions without interfering with the competences of another level of government. The implication is that each organ of state must respect each other's autonomy. The rules in the Constitution and statutes should set out powers that must be adhered to by various levels of government. This is particularly significant in that both senior governments and lower governments must respect the powers of each other.

### 2.3.2 Consulting one another

According to Steytler and de Visser, when tiers and agencies have common matters of interest, they must consult each other.<sup>60</sup> Consultation is defined as a process whereby the views of another on a specific matter are solicited, either orally or in writing and considered'.<sup>61</sup> The principle of consultation imposes a duty on each tier of government and their agencies to consider the views of other tiers of government and their agencies before they take a decision on the relevant matter.<sup>62</sup> Consultation could relate to law-making, policy-making and sharing of nationally raised revenue. Therefore, sub-national governments should have a way of influencing policy formulation at national level as a way of distributing powers and resources between tiers of government. Executives from different tiers of government may consult one another on matters of revenue and how it can be distributed among various institutions of government. Steytler and De Visser argue that in the context of

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<sup>57</sup> De Visser J (2005) 35. .

<sup>58</sup> *Cape Metropolitan Council v Ministry for Provincial Affairs and Constitutional Development and Others* (1999) (11) BCLR 1229, para 122.

<sup>59</sup> *Cape Metropolitan Council v Ministry for Provincial Affairs and Constitutional Development and Others* (1999) (11) BCLR 1229, para 122.

<sup>60</sup> Steytler & De Visser (2011) 134.

<sup>61</sup> S 1(1) Intergovernmental Relations Framework Act, South Africa.

<sup>62</sup> Woolman & Roux (2011) 14-17.

IGR, consultation has three basic elements, namely: an invitation to hear views of a particular party (or public in general) on a specified matter; an adequate opportunity to submit considered views; and the party inviting views must consider those views in good faith.<sup>63</sup> For example, when formulating development plans, stakeholders should not merely submit their plans but go further to consider the plans and discuss how to achieve the set targets. However, failure by one tier to consult another or to consider its views does not invalidate its plan. It should be noted that even if consultation is legally required and if not done, that decision can be illegal as it doesn't comply with procedural requirements. It nevertheless may undermine the effective functioning of the multilevel system of government since effectiveness of the system relies on constant dialogue among governmental units. In the case of consultation, the consulting tier or agency of government seeks views or information from another tier of government or agency of government to inform its own decision-making. With input from other tiers or agencies of government, the concerned tier or agency of government is likely to be in a position to make a better decision than if it had not sought views of other tiers or agencies of government. Hence, it is submitted that tiers of government and their agencies should consult each other when making decisions even though it may be time- and resource-consuming.<sup>64</sup>

### **2.3.3 Informing one another**

The tiers of government have a duty to inform each other as they perform their duties. This is done through sharing information on matters that require concerted effort. It is important to note that this duty of informing other tiers or agencies of government serves a very different function than that of consultation.<sup>65</sup> With information-sharing the tier or agency of government disseminating the information does not seek a response from the relevant tier or agency of government.<sup>66</sup> Instead, the receiving tier or agency of government may take such information into consideration if and when it makes a decision on a related matter.<sup>67</sup> For example in Zambia the Ministry responsible for Land management has to interact with the Ministry responsible for Local government on matters of land management as they execute their programmes through local authorities. Local authorities administer land on behalf of the Ministry responsible for land management. Information sharing becomes relevant to avoid misunderstandings between the local authorities, the Ministry responsible for Land

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<sup>63</sup> Steytler & De Visser (2011) 22-134.

<sup>64</sup> Article 4(6), European Charter of Local Self-Government.

<sup>65</sup> See Steytler & De Visser (2011) 22-134.

<sup>66</sup> Steytler & De Visser (2011) 22-134.

<sup>67</sup> Steytler & De Visser (2011) 22-134.

management and the Ministry responsible for Local government. Information sharing therefore is important as it fosters unity and trust between government departments as they steer development at different levels of government.

#### **2.3.4 Harmonising and coordinating activities**

Nations that have largely decentralised functions require coordination of government activities between different tiers and agencies of government.<sup>68</sup> Watts defines coordination rather generously. He states that coordination occurs ‘where governments not only consult but attempt to develop mutually acceptable common policies and objectives, which they then apply and develop within their own jurisdiction’.<sup>69</sup> It is a recognition that the achievement of national and local goals is unlikely to occur when governments operate in isolation. Thus, the duty to harmonise and coordinate activities goes beyond the duty to inform and consult one another as discussed above. Hence, there is need for the tiers of government to collaborate and work jointly in matters of common interest. Matters of common interest may include water provision, construction of schools and roads etc.

#### **2.3.5 Predictability**

The intergovernmental relations system must be predictable. Sub-national governments in particular should not be caught off guard with ever changing IGR systems, protocols and structures. This may jeopardise the effective functioning of the organisations of the governments involved. Consequently, the set objectives may not be achieved. For example intergovernmental fiscal transfers, especially unconditional grants must be predictable.<sup>70</sup> Conditional grants should be kept reasonably stable from year to year so that subnational governments can properly plan their budgets. Another method of ensuring predictability of subnational governments' shares is by publishing multi-year projections of funding availability.<sup>71</sup>

#### **2.4 Mechanisms that are used when practicing IGR**

In order for the intergovernmental relations to be effective in fostering cooperation between tiers governments certain key mechanism can be used to make cooperative IGR work. These mechanisms are; the existence of planning and budgeting mechanisms, intergovernmental agreements, and alternative dispute resolution. Therefore, the following segment of the

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<sup>68</sup> The Aberdeen Principles, (2005) 6.

<sup>69</sup> Watts R (2001) 28.

<sup>70</sup> The Aberdeen Principles (2005) 8.

<sup>71</sup> Shah (1994) 45.

Chapter discusses various mechanisms that should be used when practising intergovernmental relations.

#### **2.4.1 Joint planning and budgeting mechanisms**

One of the IGR instrument as aforementioned is the joint planning and budgeting IGR. A joint planning and budgeting IGR mechanism is a means by which two or more organs of the state in different tiers or levels of government coordinate budgets and their plans in order to execute a policy, exercise a statutory power, perform a statutory function and provide a service in a collective effort.<sup>72</sup> In sum it answers the question of who does what and when, particularly in the context of a specific joint project or programme. Budgeting for the activities to be undertaken jointly by the organs of state is required for it projects the sum total of the required cost for the activities to be performed. Each organ of the state has its own mandate and its own budget and spending outside of that budget is not permitted. However, a particular project, such as building big public infrastructure, often requires the involvement of different organs of the state who must each contribute from their budget to make the project happen. They must therefore align their budgets to ensure that the overall project make sense. For example South Africa has a legal and policy framework for development planning which envisions that municipalities play a pivotal role in achieving coherent planning that ensure joint projects are realised.<sup>73</sup> An integrated development plan is a strategic plan for municipalities which is compiled on the basis of community participation procedures to measure and prioritise the needs of the municipal communities. The IDP incorporates all the plans of all the municipal departments and forms a strategy for the municipal area.<sup>74</sup> After integrating all the plans of the municipal departments, the IDP is expected to feed into the provincial and national development plans.<sup>75</sup> The joint planning and budgeting forum expresses the objectives, policies and programmes based on the national plans and budgets.<sup>76</sup> These national plans and budgets will illustrate how the process of integrated planning fits together from lower constituents of municipalities to the national development plan. The national policies should be formulated based on the matters arising from the local needs.<sup>77</sup>

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<sup>72</sup> Department of Provincial and Local Government (2007) 72.

<sup>73</sup> Department of Provincial and Local Government (2007) 72.

<sup>74</sup> Department of Provincial and Local Government (2007) 72.

<sup>75</sup> De Visser J, Developmental Local Government in South Africa: Institutional Fault Lines; *Commonwealth Journal of Local Governance Issue 2* January, 2009.

<sup>76</sup> De Visser J, Developmental Local Government in South Africa: Institutional Fault Lines; *Commonwealth Journal of Local Governance Issue 2* January, 2009.

<sup>77</sup> Department of Provincial and Local Government (2007) 72.

### **2.4.2 Intergovernmental agreements**

In a multi-level government, each tier of government has functions it is mandated to perform effectively in order for the national government to fulfil the execution of its policies. These policies for example deal with socio-economic problems such as poverty eradication, job creation and accelerate service delivery. However, overlaps and concurrency of functions in the performance of their functions is inevitable. It should therefore be noted that to successfully implement national policies effectively, tiers of government must support each other.<sup>78</sup> An IGR agreement is an arrangement that is used where at least two organs or agents of government must manage their actions, implementing a policy, executing a statutory function or providing a service with respect to a specific project or function. The IGR agreement is a concept that is used in practice where one tier/level of government cannot successfully perform functions or policies effectively in isolation. It is usually helpful in situations where there are overlaps and concurrency in the exercise of a specific project or function. The officials prepare and negotiate for the agreements on behalf of the organs of the tiers of government. An IGR agreement should contain priorities, aims and outcomes. It also should consider obstacles to be addressed as the IGR agreement is being implemented. The agreement reflects the roles and responsibilities of each party and it also considers dispute resolution elements. The elements comprise of commitment to act reasonably and in good faith in complying with the law. Joint projects or programmes are usually agreed upon by political principals and these may include cabinet ministers and mayors whose departments and institutions have a role in implementing such a project or programme.

### **2.4.3 Alternative Dispute resolution**

In a multi-level system of government disputes are unavoidable because of the overlapping functional areas between jurisdictions of governments. They can arise from the different constitutional or statutory interpretations of the respective limits of the national, provincial and local powers.<sup>79</sup> However, there should be a way of resolving disputes amicably and thus avoid litigation. This means that governments should at all times avoid taking disputes to court. Taking disputes to courts disadvantages all parties in the dispute as resolving such disputes take longer to resolve. The longer it takes to resolve disputes, the longer it will also take to perform the disputed function. Therefore to avoid such a scenario, there should be a dispute resolution mechanism. The mechanism should involve elements such as choosing a

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<sup>78</sup> Chigwata T C (2014) 447.

<sup>79</sup> Watts R (2001) 27.

dispute resolution process, description of a procedure for choosing a mediator or arbitrator if necessary, deadlines for different parts of dispute resolution process and dedication to act reasonably and in appropriate faith without violating the clause. A good IGR system will have mechanisms for dispute resolution.<sup>80</sup> Dispute resolution mechanisms endeavour to resolve conflicts at minimal costs to the public of which these conflicts may derail or compromise the quality of service provision.<sup>81</sup>

## **2.5. Types of intergovernmental forums**

Intergovernmental forums are consultative forums where executives of various levels of government converge to discuss matters of mutual interest. Executives of institutions from various levels government may consult each other and coordinate on matters of policy, legislation and implement joint programme based on values of cooperative government.<sup>82</sup> IGR forums are the backbone of an effective system of intergovernmental relations. The key role of the IGR forums is to be a platform where constituent organs of the state interact, consult and coordinate their activities. IGR forums play a significant role in planning and coordinating of government policies and programmes.<sup>83</sup> IGR forums are therefore not decision making bodies.<sup>84</sup> It should be noted that the decisions of the IGR forums must be ratified or affirmed by the constituent organs of state before they are implemented by organs of the state. Forums are vital platforms that help avoid public confrontation and judicial action where conflicts may arise between levels of government. Often times, IGR forums are supported by technical structures as officials of the different levels of government converge to prepare and support the political counterparts. There are various forums for intergovernmental relations. Below are some of the forums that are relevant for the effective system of intergovernmental relations.

### **2.5.1. General IGR forums**

General forums are consultative platforms in which matters of mutual interest are discussed. The forums are not sectoral in nature and they comprise politicians and not officials. They deal with cross-sectoral issues. General forums permit different levels of government to contribute to national policy and ensure that there is coherence in the implementation of

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<sup>80</sup> Watts R (2001) 8.

<sup>81</sup> Chigwata T C (2014).

<sup>82</sup> Department of Provincial and Local Government, South Africa (2007) 63.

<sup>83</sup> Department of Provincial and Local Government, South Africa (2007) 65.

<sup>84</sup> Department of Provincial and Local Government, South Africa (2007) 63.

national policies and programmes.<sup>85</sup> General forums are found at the heart of the intergovernmental system, assisting to establish programmes of actions at provincial level and local strategic plans.<sup>86</sup> Besides implementing national policy and legislation, general forums assist in prioritising objectives and strategies at national level,<sup>87</sup> and form channels of communication across tiers of government. Learning from the South African context, the President's Co-ordinating Council (PCC) is an example of a general forum at the apex of the system of IGR. It is composed of the President (chair), Deputy President, the Minister in the Presidency, the Minister responsible for provincial government and local government.<sup>88</sup> Others members include cabinet ministers responsible for finance and public service, provincial premiers and a municipal councillor nominated by the national organisation representing organised local government.<sup>89</sup> General forums identify the needs of the tiers of government and assist in communicating the policies and strategies of national government to the other levels of government. Hence general forums become an interactive forum for developmental issues for different levels of government.

### 2.5.2 Sectoral forums

Sectoral forums are composed of representatives from tiers/levels of government. These forums have particular competences shared across these levels of government. Examples may include water and finance. The provision of such services may be done by combining efforts of two or more tiers of government.<sup>90</sup> Policy and legislation may be recommended during the meetings of sectoral forums. Strategies and priorities in certain functional areas across all levels of government may be aligned by the sectoral forum.<sup>91</sup> For example a finance forum can provide a platform for the Minister responsible for finance to interact with representatives from other tiers government and consult on the fiscal, budgetary and financial matters.<sup>92</sup> A forum for water and energy may also enable the Minister in charge of electricity and water affairs consult representatives from different levels government on the challenges they face as regards to electricity and water distribution in the nation.

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<sup>85</sup> Intergovernmental Relations Framework Act No 13 of 2005, South Africa.

<sup>86</sup> Department of Provincial and Local Government, South Africa (2007) 65.

<sup>87</sup> Department of Provincial and Local Government, South Africa (2007) 65.

<sup>88</sup> Intergovernmental Relations Framework Act S 6(1).

<sup>89</sup> Intergovernmental Relations Framework Act No 13 of 2005, South Africa.

<sup>90</sup> De Visser (2005) 244.

<sup>91</sup> Department of Provincial and Local Government (2007) 66.

<sup>92</sup> Department of Provincial and Local Government (2007) 67.

### 2.5.3 Bureaucratic or technical forums

Technical or bureaucratic forums are generally held in preparation of meetings of political functionaries. The forums are platforms which consist of government officials who meet to discuss, consult and make recommendations on matters that may be technical in nature.<sup>93</sup> Technical forums comprise of technical experts (civil servants) from various government institutions that cooperate among themselves when it comes to implementation of joint programmes. They have an in depth understanding of the competences they perform from their various departments. Hence, they discuss and analyse developmental issues and make recommendations to the politicians. In short they provide technical support and prepare for decision making in the political structure.<sup>94</sup> In South Africa, an example of a technical forum is the Forum for South African Directors-General (FOSAD).<sup>95</sup> FOSAD is composed of Directors-General of national departments and the heads of each of the provincial governments. The purpose of the forum is to bring valuable practical experience to intergovernmental issues. It improves the co-ordination of policy-making and implementation across government.

### 2.6 Conclusion

IGRs play a valuable role in coordinating different institutions from varying levels of government to ensure that services are delivered, national policies and programmes are implemented. Intergovernmental relations can foster the achievement of development, democracy and peace in a country that has decentralised functions to the sub-governments. This Chapter defines IGRs as complex patterns of interactions, cooperation and interdependence between levels of government so as to ensure coherence. IGRs can be practiced formally and informally. Formal IGRs involve legislated intergovernmental relations, statutory procedures and structures. Informal IGRs involve a multitude of interactions that link officials to each other across departments and sectors of various levels of government. The principles and values that guide IGRs include: respect for autonomy; different levels of government consulting one another, informing one another, harmonising and coordinating government activities and predictability. For the IGR system to be effective, it needs to be supported by the Constitution or an Act of Parliament. This means that IGR are more effective when they are conducted in a system that significantly adheres to the rule of

<sup>93</sup> De Villiers Codification of Intergovernmental Relations by Way of Legislation: The Experiences of South Africa and Potential Lessons for Young Multi-tiered Systems.

[www.zaerv.de/72\\_2012/72\\_2012\\_4\\_a\\_671\\_694.pdf](http://www.zaerv.de/72_2012/72_2012_4_a_671_694.pdf) (accessed on 14.09.2018).

<sup>94</sup> Intergovernmental Relations Framework Act No 13 of 2005, South Africa.

<sup>95</sup> Department of Provincial and Local Government (2007) 71.

law. Mechanisms for practicing IGRs have been identified and discussed and these include general forums, sectoral forums, bureaucratic forums, joint planning and budgeting agreements and alternative dispute resolutions. This chapter provided some core attributes of an effective system of intergovernmental relations and cooperation.

Chapter Three gives a brief history of the local government in the pre-independence era and the different post-colonial periods. Further, it assesses the Zambian governance system as whether it contains the aforementioned necessary elements for a good IGR system.



## **CHAPTER 3: THE PRACTICE OF INTERGOVERNMENTAL RELATIONS BEFORE THE ENACTMENT OF THE 2016 CONSTITUTION**

### **3.1 Introduction**

This chapter discusses the legal framework and practice of intergovernmental relations in Zambia. It covers the period just before independence in 1964 and the post-colonial era which began in the year 1964 to 2016. The Chapter is assessing the IGRs that existed in the colonial government from 1889 to 1963. The period of concentration for the colonial era is from 1924 to 1963. The Chapter also evaluates the practice of IGRs provided in the Local Government Act No 69 of 1965. Next is the Local Administration Act No 18 of 1980. The final Act to be evaluated is the Local Government Act No 22 of 1991 which was amended in 1996. As a result it introduced a few changes that are discussed in this Chapter. The Chapter also discusses the shortcomings of the various IGRs as provided in the various Acts mentioned above. The Chapter ends with the conclusion.

### **3.2 Intergovernmental Relations in the colonial era (1889-1964)**

In order to comprehend the current intergovernmental relation system as it relates to the concept of autonomy, it's imperative to discuss Zambia's IGR system before independence. This was the period that stretched from 1889 to 1964 when the British South African Company imposed its administration on Zambian people.<sup>96</sup> During this period, the country was subjected to an indirect rule of government where the British ruled through the chiefs. Below are the forums that existed as platforms for IGRs.<sup>97</sup>

#### **3.2.1 National Level (1924-1963)**

At national level there was a Legislative Executive Council which comprised of the Governor, five official members and four unofficial members. The Governor was an appointed representative of the British government. The three official members were elected members. The other unofficial members represented all the Africans in the country. They were nominated by the Council.<sup>98</sup> The Legislative Executive Council was responsible for various ministerial positions. They were a cabinet which reported to the Governor.<sup>99</sup> The Legislative Executive Council permitted the establishment of the Ministry of Local Government and Social Welfare. The main responsibility of the Ministry of Local

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<sup>96</sup> Simmanace J.F in Hawkeworth, *Local Government in Zambia* (1974) 1.

<sup>97</sup> Tordoff W, in W.B. Vosloo, *Local Government in Southern Africa* (1974) 271.

<sup>98</sup> Sakala J, *Local Government Service Delivery in Chitembo A* (ed) *50 years of Local government in Zambia* (2014)3.

<sup>99</sup> Chapter 119 of Municipal Corporations Ordinance, Laws of Northern Rhodesia.

Government and Social Welfare was to administer urban and local government.<sup>100</sup> The national government supervised the provincial administration and local government.

### **3.2.2 Provincial Level**

The provincial administration was headed by the Provincial Commissioner who was the representative of national government at the provincial level. He was an intergovernmental link between the national government and local government.<sup>101</sup> His main objective was to ensure that policies of national government were implemented through the District Commissioner (DC).

### **3.2.3 Local level.**

At the district level, there was the District Commissioner. The District Commissioner was assisted by the traditional leaders to achieve the objectives of national government. He worked with the traditional institutions.<sup>102</sup> The aim was to assist the government to maintain order and ensuring that natives resided within their jurisdictional areas. The traditional leaders were also charged with the responsibility of imposing rates, manufacturing liquor and sale of liquor licenses, preservation of natural resources, control of agricultural practices, construction of roads, sanitation and destruction of pests.<sup>103</sup> Unfortunately, intergovernmental principles were not practiced in a cordial manner because the colonial government just imposed its wish on traditional authorities without treating them as equals and did not consult the natives on communal matters. Hence, the intergovernmental relations were the extreme form of coercive IGR. For instance the Provincial and the District Commissioners were mainly used as a means for giving directives to promote and preserve peace and order in the country.<sup>104</sup> During the colonial government there was no autonomy for local government. The Provincial and District Commissioners did not stimulate and enhance the participation of subnational governments in decisions made by the centre. The DC supervised the traditional authorities so that they would achieve the objective of maintaining peace and order. Further, the Governor supervised local authorities. He would adjudicate on appeals from local authorities and had authority to grant and review various loans and licences.<sup>105</sup> The Governor would make important decisions that would affect the provision of services to the local

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<sup>100</sup> Chapter 119 of Municipal Corporations Ordinance, Laws of Northern Rhodesia.

<sup>101</sup> Chapter 157 of Municipal Corporations Ordinance, Laws of Northern Rhodesia.

<sup>102</sup> Tordoff W, (1974) 21.

<sup>103</sup> Tordoff W, (1974) 21.

<sup>104</sup> Tordoff W, (1974) 13-16.

<sup>105</sup> Mumba D.C, A Critical Assessment of the impact of lack of autonomy in the Management of Local Government system in Zambia: *A Case study of Lusaka City council and Chongwe District Council* (2003)8.

communities. The white communities were provided with effective services while the black communities were poorly serviced in terms of water, street lighting, schools and clinics despite paying taxes.<sup>106</sup> This entails that the blacks were not included in planning in matters that concerned them such as toilets, houses and roads. Hence, transparency and accountability were not considered as matters that were important in development. Cooperation and interdependent relations between different levels of government were not treasured as means of fostering development in the areas occupied by the blacks. Consequently, local communities lacked autonomy. Central government could not negotiate and consult with local communities on matters of governance.

### **3.3 Intergovernmental Relations in the first post-colonial era (1965-1980)**

The first post-colonial era whose period is from 1965 to 1980 is discussed below. A year after Zambia became independent in 1965; the Local Government Act No 69 was enacted and became Chapter 480 of the laws of Zambia. The Act replaced the Native Authority Ordinance.<sup>107</sup> The objective was to establish local authorities in rural areas that were to be upgraded to District councils. The government was to apply more effort in developing them to a level of the urban councils that had already developed by 1965.<sup>108</sup> The IGRs consisted of the following structures that acted as forums of communication and implementation of government programmes and activities.

#### **3.3.1 National Level**

At national level, there was a Ministry for Local Government. It was responsible for the administration of all local authorities in the country.<sup>109</sup> Relations between the Minister and the local authorities were effectively maintained by the Minister and the bureaucrats that supervised and inspected the local authorities. The 1965 Local Government Act gave powers to the Minister responsible for local government to appoint councillors.<sup>110</sup> Further, the Minister approved the decisions<sup>111</sup> and financial estimates of the councils.<sup>112</sup> The Minister also had authority to approve grants and public notices. Subnational governments were

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<sup>106</sup> Mumba D C A *Critical Assessment of the impact of lack of autonomy in the Management of Local Government system in Zambia: A Case study of Lusaka City council and Chongwe District Council* (2003).

<sup>107</sup> Tordoff W, (1974) 21.

<sup>108</sup> Tordoff W, (1974) 273.

<sup>109</sup> Tordoff W, (1974) 272.

<sup>110</sup> Section 16 of Local Government Act, 1965.

<sup>111</sup> Section 38 of Local Government Act, 1965.

<sup>112</sup> Section 43 of Local Government Act, 1965.

implementers of government policies. The national government considered itself as superior to the other levels of government.

### **3.3.2 Provincial level**

Zambia was known as Northern Rhodesia before independence. At the time Zambia became independent, it was divided into eight provinces. Each province was run by the Provincial Administration. The Provincial administration was headed by the Minister of State. The Minister of State was not a member of the national cabinet. His/her main role was to ensure that the affairs of the ruling party (UNIP) were effectively coordinated.<sup>113</sup> Additionally, the Minister was supported by a civil servant known as a Resident Secretary who replaced the provincial commissioner.<sup>114</sup> The Resident Secretary was appointed by the National Public Service Commission. There was no link with the local government.<sup>115</sup> The Provincial Minister and the Resident Secretary's offices above provided a platform for IGRs between national government and the provincial administration.

### **3.3.3 District Level**

At the District level there were Mayors/Chairpersons as political heads of the councils. They were assisted by Town Clerks/Council Secretary who were the administrative heads of councils and were appointed by the councils.<sup>116</sup> However, in 1968 the President started appointing the District Governors as political heads of the districts. The appointment of District Governors by the President meant that local government was answerable to the national government and not the people. Meanwhile the District Secretaries continued as head of the administration and were appointed by the Public Service Commission.<sup>117</sup> District Governors implemented government policies and programmes. In 1979, the government enacted the Village Development and Registration Act No 30. Through the Act, the Ward Development Committees and Village Development Committees were established. The

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<sup>113</sup>Mukwena R, *Situating Decentralization in Zambia in a Political Context of Administration Studies* (2001) No 57.

<sup>114</sup> Mukwena R, *Situating Decentralization in Zambia in a Political Context of Administration Studies* (2001) No 57.

<sup>115</sup> Ministry of Local Government: *The National Decentralisation Policy, Towards Empowering the people*, Revised Edition (2013)1.

<sup>116</sup> Ministry of Local Government: *The National Decentralisation Policy, Towards Empowering the people*, Revised Edition (2013)1.

<sup>117</sup> Ministry of Local Government: *The National Decentralisation Policy, Towards Empowering the people*, Revised Edition (2013)1.

object was to foster local development with emphasis being put on self-reliance and cooperation among stakeholders.<sup>118</sup>

The 1965 Local Government Act could not enhance development because local authorities engaged themselves in corruption as they were providing services to citizens. This was compounded by political interference by the senior government politicians. Local authorities could not make binding decisions without consulting national government. Local authorities lacked autonomy and the impact was negative on local development and service delivery. The President appointed the District Governors and the District Political Secretaries who took over the running of the local of authorities. The District Governors and District Political Secretaries were accountable to the President. Political cadres were also included in the structures of local authorities. As a result some members of the ruling party engaged themselves in corruption during the allocation of development funds and contracts being given to people who had connections within the party instead of competent ones.<sup>119</sup> The Ministry of Finance had authority over taxing powers of local authorities in many ways. For instance in the case of property rates the Ministry of Local Government appointed valuers for the rates for the councils. Local authorities could not make a final resolution on the rate levy. The Minister in charge of local government had to make a final decision over financial matters.<sup>120</sup> In sum local authorities lacked financial autonomy resulting in ineffective service delivery.<sup>121</sup> The second post-colonial era deals with IGR which dates from 1980 to 1991.

### **3.4 Intergovernmental Relations in the second post-colonial era (1980-1991)**

Before the government enacted the 1980 Local Government Act, the attitudes and behaviours of politicians and bureaucrats were extremely negative towards decentralisation and popular participation.<sup>122</sup> They viewed the question of transferring power to masses with serious misgivings. Increased mass participation was seen as an attempt to erode their decision making power, by extension of their social status at local level. Coupled with the activities of top party and government officials who were devoted to transmitting party orders or Presidential directives rather instead of spearheading participatory approach to development

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<sup>118</sup> Ministry of Local Government: *The National Decentralisation Policy, Towards Empowering the people*, Revised Edition (2013)1.

<sup>119</sup> Loloji P K *Local Government System in Zambia* (2007).

<sup>120</sup> Masemola N M, *Local Government in Zambia: Lusaka City Council* (1973).

<sup>121</sup> Mukwena R *Situating Decentralisation in Zambia a Political Context: African Administration Studies* (2001)12.

<sup>122</sup> Galatian F L, *Administrative Decentralisation in the Zambian Bureaucracy: An Analysis of Environmental Constraints* (1985) 48.

led to competition and conflicts for power and positions and favours from the President consumed most of its members' energies.<sup>123</sup> Hence the second post-colonial era experienced bureaucratic in-fighting between the District Governor appointed by the President and the elected representatives of the people. The District Governor would overrule the elected representatives in the council and impose policies and appointments of staff which elected representatives would not favour as councillors. This resulted in enactment of the 1980 Local Government Act which merged the Local Government Administration with the structures of the ruling party.<sup>124</sup> The Act did away with city, municipal and township councils in both urban and rural areas. The President appointed District Governors who headed the District councils together with elected councillors.<sup>125</sup> The 1995 Local Government Act listed the functions for local authorities. Some of the functions included housing, waste management and road maintenance. The Act also emphasised district political programmes of the United National Independence Party.<sup>126</sup> Formally, the Act had three main objectives: (a) mirror government and the ruling party's intentions to devolve power to the people (b) incorporate primary political positions of the ruling party into local government and (c) empower local government to perform a significant role in fostering development.<sup>127</sup> The following forums were to play a pivotal role in co-operating and supporting government programmes.

### 3.4.1 National level

At national level a Cabinet Minister headed the Ministry of Decentralisation. He/she reported to the Prime Minister and Minister of State.<sup>128</sup> The Ministry for Decentralisation was a link between the central government and local government. Meanwhile the Minister of State supervised the Provincial Administration and local authorities.<sup>129</sup>

### 3.4.2 Provincial Level

The Provincial Administration was headed by the Member of Central Committee (MCC). The MCC was appointed by the President. The Central committee was the highest decision making body of the ruling party. The Central Committee was composed of the executive leaders of the United National Independent Party (UNIP). The Provincial Minister had two

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<sup>123</sup> Galatian F L (1985) 48.

<sup>124</sup> Office of the President *The National Decentralization Policy. Towards Empowering the People* (2002) 3.

<sup>125</sup> Sakala J 'Local Government Service Delivery' in Chitembo A (ed) *50 years of Local Government in Zambia* (2014).

<sup>126</sup> Part 1 Local Administration Act, No 18 of 1980.

<sup>127</sup> Office of the President (2002) 3.

<sup>128</sup> Ministry of Local Government: *The National Decentralisation Policy, Towards Empowering the people*, Revised Edition (2013)2.

<sup>129</sup> Office of the President (2002)3.

assistants namely the Provincial Political Secretary (PPS) and the Permanent Secretary (PS) who was responsible for administration at the province.<sup>130</sup> The Provincial Political Secretary coordinated the various structures of the party and linked them to the District Secretary.

### **3.4.3 District Level.**

At the district level there was the office of the District Governor who was appointed by the President. His/her main role was to supervise the integrated district administration. The District Governor was assisted by the District Executive Secretary (DES). The DES was appointed the President. The District Governor chaired the District Council while the District Executive Secretary headed the District Secretariat. Both the District Governor and the District Executive Secretary were district political leaders. The above political leaders provided a platform for IGR at the District level.<sup>131</sup> It should be noted that there were other structures at sub-district level. The structures comprised of Ward, Branch and Section Committees.<sup>132</sup> The existence of the structures was mainly for political purposes. It can be argued that there was no respect for autonomy, consultation and coordination of developmental policies and functions of local government. This resulted in failure by local authorities to deliver goods and services effectively to the local communities. High levels of political interference were experienced consequently denying people a platform to participate in decision processes of local development. Other challenges included lack of qualified staff, misappropriation of government resources and inadequate financial capacity.<sup>133</sup>

### **3.5 Intergovernmental Relations in the third post –colonial era (1991-1996)**

When Zambia became independent in 1965, it operated under a banner of multi-party politics. In 1973 the ruling party (UNIP) introduced a one party system which barred other political parties from taking part in general elections. This resulted in centralisation of most of the government functions. After the Movement for Multi-party Democracy (MMD) government took over power in 1991 they enacted the Local Government Act of No. 22 of 1991. The main objective of the 1991 Local Government Act was to decentralising government functions. So, the practice of the current intergovernmental relations in Zambia begins with the enactment of the 1991 Local Government Act No 22. The Act ushered a third Republic and de-linked local authorities from the central government. The local government

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<sup>130</sup> Office of the President (2002) 3.

<sup>131</sup> Office of the President (2002) 4.

<sup>132</sup> Ministry of Local Government: The National Decentralisation Policy, *Towards Empowering the people*, Revised Edition (2013)2.

<sup>133</sup> Mumba D.C, An Assessment of the impact of lack autonomy in the management of local government system: *A case study of Lusaka City council and Chongwe* (2003)12, UNZA.

system was given a wide range of autonomy. This was an ongoing process of democratisation.<sup>134</sup> The Local Government Act No 22 of 1991 introduced a three tier system of government and empowered local authorities with their own functions.<sup>135</sup> The major implication of the 1991 Local Government Act was the removal of party structures from local government. The removal of the party structures in the local government system enhanced the operations of the local authorities since politicians could not interfere with their functions. The removal of the District Governor and the District Political Secretary in the local government system gave way for the re-introduction of representative local government founded on universal adult suffrage.<sup>136</sup> Local authorities started electing councillors and the councillors elected the Mayors. Due to the changes that came along with the 1991 Local Government Act, the Ministry of Decentralisation was transformed and became the Ministry of Local Government and Housing. The intergovernmental relations are discussed below.

### **3.5.1 National Level**

The Minister and the Permanent Secretary for Local government and Housing at national level were instrumental in spearheading IGRs with other systems of government. Local authorities engaged the Minister and the Permanent Secretary on matters of local government. All the disputes, consultation on finances and other delegated functions were resolved through the Ministry of local government and Housing. The Ministry itself constituted the forum through which all issues were settled.<sup>137</sup>

### **3.5.2 Provincial Level**

The Provincial Administration was headed by the Provincial Minister. The Provincial Minister was assisted by a Permanent Secretary. The Provincial and District administration were supervised by the Cabinet Office.<sup>138</sup> Each Provincial Administration had Provincial Local Government Officers (PLGOs). The PLGOs were appointed by the national government through the Ministry of local government and housing. The PLGOs were consulted on various issues regarding local government by local authority officers. PLGOs provided support and professional advice to councils in matters relating to technique, finance

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<sup>134</sup> Chikulo B 'Local Governance Reforms in Zambia: A Review' (2009) 98 (2) *Commonwealth Journal of Local Governance*.

<sup>135</sup> Chikulo B 'Local Governance Reforms in Zambia: A Review' (2009) 98 (2) *Commonwealth Journal of Local Governance*.

<sup>136</sup> Mukwena R, *Situating Decentralization in Zambia in a Political Context of Administration Studies* (2001) No 57.

<sup>137</sup> Office of the President (2000).

<sup>138</sup> Ministry of Local Government: *The National Decentralisation Policy, Towards Empowering the people*, Revised Edition (2013)2.

and management matters.<sup>139</sup> PLGOs used to monitor the developmental programmes of local authorities, financial management, and service provision and did audit all councils in the province. They also ensured that local authorities adhered to the requirements, regulations and instructions among other functions.<sup>140</sup>

### **3.5.3 District Level**

The 1991 Local Government Act did not return the position of District Governor and District Secretary. Consequently, there was no head of district administration to coordinate all sectors of government.<sup>141</sup> The local government structures were the only platforms that were mature enough to be IGR partners. The IGRs were exercised by the Town Clerk at City councils who convened meetings at regular intervals with various Heads of departments from other line ministries at local level. The objective was to harmonise and coordinate the activities of government in the district. Meanwhile the District Secretaries at the Municipal and District Councils implemented the resolutions of the councils and the policies of the national government.<sup>142</sup> The Act also provided for the District Local Government Officer (DLGO). The DLGO was appointed by the Ministry of local government. The DLGO's function was to advise the District council as far as the functions of local authorities were concerned. Local government lacked autonomy as it implemented its functions. Local government was given some autonomy to perform their functions as far as delivery of services was concerned. The national government would also issue policies and programmes that would be implemented by local authorities. The IGR period for the fourth post-colonial period stretches from 1996 to 2016 and it is discussed below.

### **3.6 Intergovernmental Relations in the fourth post-colonial era (1996-2016)**

In 1996 the Local Government Act was amended. The Act transformed the local government system from being a mere creature of central government to a tier of government.<sup>143</sup> The structure at national and provincial levels remained the same. It should be noted that the 1996 Local Government Act did not bring forth many changes. The changes that took place at District level involved the election of the Mayors and Deputy Mayors for the city councils

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<sup>139</sup> Local Government Act No 22 of 1991.

<sup>140</sup> Local Government Act No 22 of 1991.

<sup>141</sup> Ministry of Local Government: The National Decentralisation Policy, *Towards Empowering the people*, Revised Edition (2013) 2.

<sup>142</sup> Ministry of Local Government: The National Decentralisation Policy, *Towards empowering the people*, Revised Edition (2013)2.

<sup>143</sup> Sakala J 'Local Government System: Structure and Practice' in Chitembo A (ed) *50 years of Local government in Zambia* (2014) 10.

and Chairmen and their deputies for district councils. The Mayors and Deputy Mayors were elected amongst the councillors themselves.<sup>144</sup> Local authorities were no longer headed by Ministerial appointees. Local autonomy was enhanced and it impacted on intergovernmental relations because local democracy was enhanced by the creation of the positions for mayors and chairpersons for local authorities. This meant that local communities were able to identify and relate to local leadership as opposed to dealing with centrally or regionally appointed leaders. It also accelerated the delivery of services to local communities by local authorities. Additionally, the Act provided for the District Local Government Officer (DLGO) the position that never existed before. The DLGO was an appointee of national government. The DLGO played a pivotal role in advising council staff on local government matters.<sup>145</sup> The rest of the IGR system remained as envisaged in in the Local Government Act of 1991. The country has been operating on the same system until the Constitution was amended in 2016.

### **3.7 An Assessment of the 4<sup>th</sup> post-colonial era (1996 – 2016)**

The Zambian Government has endeavoured to foster political, social and economic development in many regions in Zambia. However, its efforts have not been fruitful due to some of the shortcomings in the manner in which the IGRs are practiced in Zambia.

#### **3.7.1 Principles**

In reference to principles and values of IGR explained in Chapter two, the IGR in the post-colonial era is assessed below.

##### **3.7.1.1 Is there respect for autonomy?**

The intergovernmental relations were not effective as far as enhancing development in the sense that local authorities had very limited autonomy during the colonial era. The colonial government left a legacy where the provincial government and local authorities were used as implementers of national government policies and programs.<sup>146</sup> However, the 1991 local Government Act provided for autonomy of local authorities. The Act introduced a three tier system of government aimed at devolving many functions to sub-national governments. Unfortunately, the national government did not respect the autonomy of local government. National government interfered in the affairs of local authorities. The 1991 Local

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<sup>144</sup> Sakala J ‘Local Government System: Structure and Practice’ in Chitembo A (ed) *50 years of Local government in Zambia* (2014) 10.

<sup>145</sup> Constitution of the Republic of Zambia, Amendment, No 18 of 1996.

<sup>146</sup> Tordoff W, in W.B. Vosloo, *Local Government in Southern Africa* (1974) 271.

Government Act gave absolute power to the Minister in charge of local government to suspend or dissolve the councils without consulting local authorities.<sup>147</sup>

### **3.7.1.2 is there a practice of consultation?**

The practice of consultation entails one tier soliciting the views of another on a specific matter either orally or in writing.<sup>148</sup> The national government in the post-colonial era did not consult on matters that affected the local authorities. Instead national government imposed laws and policies on local government. For instance the Local Government Act of 1991 empowered the Minister responsible for local government to use his/her discretion to revoke or amend the by-law of a particular local authority.<sup>149</sup> The Minister responsible for local government use discretion to consult local authorities on the design of the grants or constituency development fund when making a decision on it.<sup>150</sup> Sub-national units should have had a way of influencing policy formulation at national level as a way of distributing power and resources between tiers of government. Tiers of government should have consulted each other on matters of national development such as policies and programs that are meant to enhance service delivery.

### **3.7.1.3 Is there a practice of informing one another?**

Information sharing is the duty of the tiers of government. Each level of government should be in a position to inform other tiers of government on issues of policies, activities and other programs aimed at accelerating development.<sup>151</sup> The local authorities under the 1996 Local Government Act have been treated as implementers of national government policies and programs. The national government communicates to lower organs of government through letters, circulars, emails and formal meetings where leaders of local authorities are invited and briefed on the way forward as regards government plans and projects. The stated methods of communication above have been the means of informing the provincial administration and local government on the plans, activities and projects of the national government.

### **3.7.1.4 Is there a practice of harmonising and coordinating actions?**

It was argued in Chapter two that in terms of coordination, governments not only consult but also endeavour to develop mutually acceptable common policies and objectives that they

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<sup>147</sup> S88 (1) of Local Government Act No 22 of 1991.

<sup>148</sup> S 1(1) Intergovernmental Relations Framework Act, South Africa.

<sup>149</sup> S83 of Local Government Act No 22 of 1991.

<sup>150</sup> S45 of Local Government Act No 22 of 1991.

<sup>151</sup> See Steytler & De Visser (2011) 22-134.

then apply and develop within their own jurisdiction'.<sup>152</sup> As regards the IGR in the fourth post-colonial era the practice of harmonising and coordinating actions is done through the Ministry of Local government and Housing. The Provincial Administration is also used as a conveyer belt for the passage of information for the local authorities and also coordinating and harmonising activities of local authorities.<sup>153</sup> Provincial Local Government Officers ensure that local authorities adhere to the directives, regulations and policies of national government. Therefore, harmony and coordination of actions at local level is done in a coercive way.

### **3.7.1.5 Is the IGR system predictable?**

Policies and programs of government should be reasonably predictable to enable all tiers of government to align their plans in a way that does not conflict with other programs of other tiers. The alignment of plans by tiers of government fosters unity and harmony in service delivery in a predictable approach. The 1991 Local Government Act No 22 introduced a multi-party system which empowered the national government to formulate policies that were predictable especially where devolution of functions was concerned. But the government policies have not been predictable. For example, since 1965, the intention of national government has been to devolve some functions to local government. In 2002, the national government adopted the National Decentralisation Policy (NDP) which was later revised in 2013. The NDP defines the roles and responsibilities of local authorities, provinces, and national government. The object of the NDP is to address, among other things, the problem of poor service delivery in Zambia that is partially attributed to the high concentration of power at the centre. For instance local government does not supply quality water, maintain roads, provide proper sanitation and collect refuse on time, among other service delivery failures. The implementation of the NDP could spark the process of devolving functions to councils with matching resources resulting in effective service delivery. However, the decentralisation policy has not been implemented at the time of writing this paper. Failure to implement the 2013 NDP has resulted in insufficient revenue collection by local authorities. As a result local authorities could not provide services effectively. Added to that is the powers that are vested in the Minister in charge of local government to revoke the functions delegated to local authorities without consulting the local authorities.<sup>154</sup> For example in 2017 the Minister of

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<sup>152</sup> Watts R (2001) 28.

<sup>153</sup> Ministry of Local Government: The National Decentralisation Policy, *Towards empowering the people*, Revised Edition (2013)12.

<sup>154</sup> S83 of Local Government Act No 22 of 1991.

local government revoked the function of allocating land by the Kabwe Municipal because of suspected corruption.<sup>155</sup> The powers given to the Minister responsible for local government to revoke functions of local authorities endangers the local autonomy. Hence it makes it difficult for local authorities to plan and implement programs in a predictable manner. Additionally, the Minister supervising local authorities may overturn the plans of local authorities and impose different operational plans. The changes that are imposed on local authorities by the responsible Minister may jeopardise the effective functioning of local authorities. The mechanisms for central-local relations have not been outlined in the 2013 Decentralisation Policy. The policy advocates for devising mechanisms for strengthening the linkage between local government and national government in the budgeting process.<sup>156</sup> The NDP states that councils will be given more autonomy while maintaining sufficient linkages with the centre.<sup>157</sup> The Provincial Administration will be the link between the national and the district level. The council through the Mayor/Council Chairperson shall report to the Provincial Administration. The Mayors for city councils and Chairpersons for District councils will coordinate with the Provincial Administration in all matters of local governance in the district.<sup>158</sup> By reporting to the Provincial Administration, the policy retains the status-quo of coercive nature of IGR. Consequently, the set objectives may not be attained.

### **3.7.2 Assessing the using of IGR mechanisms in the post-colonial era**

Chapter two provides means by which two or more organs of government plan and coordinate their activities in order to implement policy and exercise statutory power to implement their functions and provide services collectively. Below is an assessment of the IGR mechanisms used in the post-colonial era.

#### **3.7.2.1 Is there joint planning and budgeting?**

Joint planning and budgeting has not been common in the post-colonial era. The Provincial Administration and local authorities planned and budgeted separately. The plans and budgets for the Provincial Administration and local authorities are submitted to the Ministry of finance through the Ministry of Local Government. The Minister of local government is

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<sup>155</sup> Government Suspends Kabwe and Ndola councils' land agency (June 19, 2017) available <https://www.dailynation.info> (accessed 05.10.2018).

<sup>156</sup> Ministry of Local Government: The National Decentralisation Policy, *Towards empowering the people*, Revised Edition (2013)17.

<sup>157</sup> Ministry of Local Government: The National Decentralisation Policy, *Towards empowering the people*, Revised Edition (2013)17.

<sup>158</sup> Chikulo B C „Decentralization Reforms in Zambia 1991-2010“ (2014) 40(1) *Journal of Social Sciences* 95-105.

empowered to approve the budgets for local authorities and formulates the terms and conditions for the utilisation of finances by councils.<sup>159</sup> The authority that the Minister in charge of local government enjoys to approve and disapprove the plans and budgets for local authorities compromises the autonomy for the local authorities. The Minister for local government approves infrastructure development that may take place at a local authority.<sup>160</sup> Further, the Minister responsible for local government submits the proposed infrastructure development to the Minister in charge of infrastructure and housing for consideration and implementation. The post-colonial era is premised on the top-down approach in terms of steering development. The top-down approach does not help tiers of government to treat each other as equals. Instead the local government is treated as a junior government that receives instructions from the senior government.

### **3.7.2.2 Are intergovernmental agreements common?**

IGR plays a significant role in resolving socio-economic problems in a country. As tiers of government foster development they need to agree on how they will carry out projects which may overlap. For example, the Ministry of Housing and Infrastructure Development and local government can agree on a number of houses and roads they may construct in a year. They can also agree on the percentages of resources each one of them will contribute towards the construction of the houses and roads. Sometimes the projects may be implemented concurrently.<sup>161</sup> It is worth noting that intergovernmental agreements have not been common in Zambia since independence. Instead there has been a superior- subordinate relationship between national government and local government. Local authorities have been on the receiving end in terms of national policies as well as programs that should have been undertaken in agreement between tiers of government. For instance, two ministries may agree through the responsible Ministers or Permanent Secretaries to undertake joint ventures. For example, the Ministry of lands and the Ministry of Local Government through the Lands Development Funds (LDFs) may agree on constructing roads for a particular local authority.<sup>162</sup> Once an agreement is made instructions are given to the local authority through a circular on how they should collaborate with the parent ministries in undertaking such a project. This was some kind of IGR agreement but rather coercive in nature. However, IGR

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<sup>159</sup> S46 of Local Government Act No 22 of 1991.

<sup>160</sup> S39 of Local Government Act No 39 of 1991.

<sup>161</sup> Department of Provincial and Local Government (2007) 72.

<sup>162</sup> S16 (1) Land Act of 1995. The land Development fund is meant to assist City, Municipal and District Councils to open up new areas for development.

agreements where politicians or executives from different tiers of government meet and prepare and negotiate for agreements on behalf of their governments are not common.

### **3.7.2.3 How are IGR disputes resolved?**

Chapter two states that in multi-level system of government, disputes and overlaps in functions are unavoidable between jurisdictions of governments. Dispute resolution is necessary in order to avoid differences between levels of government that may delay or hinder effective service delivery.<sup>163</sup> The tiers of government in the post- colonial era resolved their disputes between national government and local government through the Ministry of local government. The Ministry of local government receives complaints from local authorities and resolves some of the disputes amicably without the involvement of the courts.<sup>164</sup> However, it should be noted that the Ministry of local government is not an IGR forum but an internal structure that is important for IGR. On the other hand, the 1996 Local Government Act propagates that a local authority is an institution that can be sued and also sue other institutions that may offend it if the dispute cannot be resolved amicably between the two.<sup>165</sup> Though in practice, it has not been experienced that the local authorities or local government takes any of the higher levels of government to court on a matter pertaining a dispute between the two. Section six of the Local Government Act empowers local authorities to settle the matter in court if the local authority is not satisfied with the manner in which the Minister has dealt with the dispute.

### **3.7.2.4 Are there IGR forums in place?**

The following were the internal structures of government used as means of consulting, formulating and implementing policies and programmes.

#### **3.7.3.1 Cabinet**

The Cabinet is convened by the President who chairs the cabinet meetings, the Vice President, Secretary to the cabinet and all Cabinet Ministers.<sup>166</sup> The Cabinet is made up of politicians and not officials of government. It also includes the Secretary to the Cabinet. The Secretary to the Cabinet supervises all the civil servants in the country. He supervises all Permanent Secretaries in charge of civil servants for the line ministries. He is appointed by the President. During Cabinet meetings the Secretary to the Cabinet records all the

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<sup>163</sup> Watts R (2001) 27.

<sup>164</sup> S93 of Local Government Act No 22 of 1991.

<sup>165</sup> S6 of Local Government Act No 22 of 1991.

<sup>166</sup> Cabinet Circular No 1 of 1995.

resolutions of Cabinet. The main role of the cabinet is to make national policy and ensure that there is coherence in the implementation of national policies and programs. Cabinet formulates national objectives and strategies for the implementation of national programs. It is not common that Cabinet establishes joint programmes of action at provincial and local strategic plans.

### **3.7.3.2 Sectoral Forums**

The post-colonial governments did not establish IGR at sectoral level. The national government performed its functions through a committee of Permanent Secretaries of all line ministries.<sup>167</sup> The committee was an internal structure of national government. The committee was chaired by the Secretary to the cabinet. It included country representative for private organisations such as the National AIDS Council and Churches Association of Zambia. It had no representation from local government. It recommended policy and legislation to the national government and aligned functional areas across the levels of government.<sup>168</sup> In 1995, the Committee of Permanent Secretaries influenced cabinet to establish the Provincial and District Development Coordinating Committees to coordinate development activities. The key function of these committees was to provide a forum for dialogue and coordination on developmental issues between the local authority, line departments, donors and NGO in the district.<sup>169</sup> However, the sectoral forums experienced a phase of centralised authority which became a bottleneck for effective decision making at lower levels. For example, the Provincial heads of departments were controlled from the centre and their budgetary allocations determined from the centre.

### **3.7.3.3 Bureaucratic or technical forums**

Bureaucratic or technical forums are found at two levels of government. There is a Provincial Development Coordinating Committee. It is chaired by the Provincial Secretary. Other members are the Provincial Local Government Officer, Provincial heads of government departments, the District Chair persons and Town Secretaries.<sup>170</sup> The other technical forum is the District Development Coordinating Committee found at district level. It is composed of the District Commissioner who is the chair of the technical forum. Other members are the Town Secretary, District Administrative officer and the District Heads of department. The role of the technical forum is to discuss, consult and make recommendations to the Ministry

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<sup>167</sup> Cabinet Circular No 1 of 1995.

<sup>168</sup> National Decentralisation Policy of 2002 para 1.1.12(a).

<sup>169</sup> National Decentralisation Policy of 2002 para 1.1.12(a).

<sup>170</sup> Cabinet Circular No 1 of 1995.

of local government on matters that are technical in nature.<sup>171</sup> For instance the technical forum can discuss, consult and make recommendations on the Integrated Development Planning to Ministry of local government. The technical forum may consider requirements for infrastructure, expansion areas for housing, business, service facilities and economic development. Members interact and engage in matters of development as it relates to their various entities they represent. The technical forum facilitates dialogue and gives feedback to the national government. It also coordinates national policy and implementation across government as well as sharing best practice experience in public service delivery. It is worth noting that there is no political forum that brings together national politicians and local politicians.

IGR forums are established platforms for consultations, planning and coordinating programs of the constituent organs of the government. There has been no IGR that has existed at national level, provincial level and district level. Instructions, policies and programmes were given by the national government through top-down approach to the provincial administration and local government. The IGR was not cooperative, but just coercive in nature.

### **3.8 Conclusions**

The legal framework and practice of intergovernmental relations in Zambia has evolved quite significantly from the time Zambia became independent. The beginning point is the year 1889 when the country was under the British South African Company (BSAC). The relationship between the BSAC and the indigenous people did not foster development for the indigenous people in the sense that the indigenous people worked as labourers for the BSAC. They had no negotiating power. The BSAC imposed its policies on them. From 1924 to 1964, Zambia as a nation became a British colony. During that period traditional authorities implemented policies of the colonial government through an indirect rule system of government. The colonial masters coerced traditional authorities to implement colonial policies on the people of Zambia. From 1964 to 2016, the IGR was practiced without it being enshrined in the Constitution. The local government system as a tier of government remained as an instrument of central government that implemented policies and programmes of central government. The Provincial Local Government Officers in each Provincial Administration advise local authorities on technical, managerial and financial matters. The platform for the IGRs at local level was the council. The IGR were not cooperative but coercive in nature. The

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<sup>171</sup> Cabinet Circular No 1 of 1995.

District Commissioner and other senior civil servants conducted IGR on matters of service delivery and the implementation of government policies and projects. The District Commissioner chaired the District Development Coordinating Committee comprised of the Town Clerk/ Council Secretary and other senior civil servants in the district. The District Commissioner was appointed by the President to supervise civil servants at district level. At the grass root level were the Ward Development Committees which were participatory platform for local communities. The main challenge of the IGR in the post-colonial was lack of autonomy. The post-independence governments inherited a system of governance where local authorities were used as means of implementing the policies and programmes of national government. This resulted in failure by local government to deliver services effectively to local communities because the IGRs were not considered to be vital in facilitating and implementing national and provincial programmes through local government



## **CHAPTER 4: INTERGOVERNMENTAL RELATIONS UNDER THE 2016 CONSTITUTION**

### **4.1 Introduction**

Before analysing IGR relations under the 2016 Constitution, it is important to provide a background to the enactment of the 2016 Constitution. By 2011, a lot of people were unhappy with the failure by the MMD government to enact a new constitution which entrenched fundamental principles of decentralisation. The widespread discontentment among citizens led to the defeat of the ruling MMD by the Patriotic Front (PF) in the 2011 general elections.<sup>172</sup> During the 2011 presidential and general elections campaign and in line with its manifesto, Patriotic Front PF promised the electorates that they would change the Constitution if elected into government. In 2011, the Patriotic Front won the elections and formed government. In order to overcome the challenges stated above, the new Constitution was adopted in 2016. The 2016 Constitution guaranteed local authorities with autonomy to deliver services effectively.

### **4.2 2016 Constitutional provisions as regards central-local relations**

The 2016 Constitution provides that Zambia is a ‘unitary’ state.<sup>173</sup> The implication of this provision is that governmental power is decentralised from central government through provincial administration to local governments. Therefore, Zambia has adopted a multilevel system of government. The Constitution under Article 147(1) envisages a system of governance where political, social, legal, and economic affairs of the state are devolved from the national government to local government. The requirement for devolution as defined in Article 266, entails that local authorities in Zambia must have clear and legally recognised geographical boundaries over which they exercise political, administrative and financial authority with a certain level of discretion. Thus, the requirement points to a minimum level of autonomy local governments must enjoy. Articles 147(3)(b)(c) also support Article 147(1) by providing that different levels of government should respect the constitutional jurisdiction of each level of government through the observance and adherence to the principle of autonomy of sub-structures. Article 152(2) of the 2016 Constitution also states that, when local authorities perform their functions, the national government and/or the provincial administration are prohibited from interfering with or compromising their ability or right to do so. Local autonomy is the extent to which local governments have discretion when

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<sup>172</sup> Madhekeni A (2017) 14.

<sup>173</sup> Article 4(3).

carrying out their functions within given jurisdictions. With regards to the above provisions it should be commended that local government autonomy is now constitutionally protected in Zambia. Article 147(1) further suggests that the different levels of governments in Zambia are arranged in a hierarchical order with local government being the junior tier of government. Furthermore aforementioned provision clearly suggests that the national government and/or the provincial government have the duty to supervise local governments. However, it should be noted that of the three tiers of government, the provincial administration is a deconcentrated structure of the national government rather than a government as it is the only tier with no elected officials.<sup>174</sup>

The objective of the following analysis is therefore to show the extent to which the 2016 Constitution of Zambia operates as regards IGRs system in relation to other central-local provisions.

#### **4.3 An assessment of the 2016 Constitution as it relates to central –local relations**

The 2016 Constitution provides several provisions that relate to central-local relationship. In terms of IGR principles and mechanisms, Chapter two provides the main yardstick upon which the principles and mechanisms provided for in the 2016 Constitution are to be measured against as regards to central local relations. Where necessary, reference to other countries with similar multilevel systems of government will also be made to guide the interpretation of the Constitution.

##### **4.3 1 Respect for autonomy**

Article 147(2) of the 2016 Constitution gives powers to local governments to perform their exclusive functions as listed in part C of the annex. Article 152(2) further prohibits the national government and/or provincial government from interfering or compromises a local authority's ability to performing its functions. The Constitution should be commended for having such provisions that empower local governments to perform their functions without impediment. The 2016 Constitution, while progressive in suggesting the need for the respect of local autonomy, leaves a lot to be desired in as far as personnel issues at the local level is concerned. For example, Article 228(2)(a) empowers the LGSC to appoint Town Clerks and Council Secretaries of local authorities. It also empowers the Local Government Service Commission (LGSC) to hear appeals and settle disputes involving officers of Local

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<sup>174</sup> Article 150(1).

Government.<sup>175</sup> The office of the Town Clerk, Council Secretary and other senior members of staff for local authorities are members of the Local Government Service. Articles 228(2)(a)(c) hence literally empowers the LGSC to intrude on personnel functions reserved for local governments. However in other countries like South Africa, such personnel matters are the preserve for the council.<sup>176</sup> The above analysis shows that Article 228(2) contradicts Article 147(2) read with Article 152(2) which protects the autonomy of local authorities. This means that the contradiction makes it difficult under the latest constitutional era to achieve the IGR principle of autonomy as was before enactment of the 2016 Constitution.

#### **4.3.2 Consulting one another**

It was submitted in Chapter two that the principle of consultation imposes a duty on each tier of government and their agencies to consider the views of other tiers of government and their agencies before take a decision on a matter relevant to them.<sup>177</sup> It further stated that consultation could relate to law-making, policy-making and sharing of nationally raised revenue. The sub-units of government are not only affected by the legislation enacted by higher levels of governments but also by the policies government makes.<sup>178</sup> It was further argued in Chapter two that failure to consult may undermine the effective functioning of the multilevel system of government.<sup>179</sup> This is because without the input from other tiers or agencies of government, better decision may not be made.

Article 151(1)(c) of the 2016 Constitution envisages a devolved system where the national government, provincial administration and local government cooperate among each other so as to enhance the development role of local governments. This provision suggests that the national government, provincial administration, and local governments need to consult each other on matters of policy formulation and implementation so as to bring development. However, the 2016 Constitution does not provide for IGR principles or mechanisms that go beyond the general cooperative governance instruction given.

Legislation, should therefore, provide for specific procedures on how the tiers of government should consult each other and avoid higher governments imposing their policies on the local government. Some of the policies imposed on local government may impact negatively on

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<sup>175</sup> Article 228(2)(c). Officers of the Local Government Service are those in Division (i-iii) excluding those in Division (iv). Division (iv) are the support staff who are employed by the Town Clerk or Council Secretary.

<sup>176</sup> Municipal Systems Act s 54A.

<sup>177</sup> Woolman & Roux (2011) 14-17, Steytler & De Visser (2011) 134.

<sup>178</sup> Gibson E (2004)2-37.

<sup>179</sup> Geldenhuys (2008) 104.

service delivery thereby hampering development at local level. Without specific procedures enacted in legislation, lack of consultation between levels of government is likely to reinforce problems that were earlier identified in Chapter three. This is because the actors at higher levels of government will have no legislation hinder them from imposing their policies, creating a case of old habits die hard.

#### **4.3.3 Informing one another**

It was contended in Chapter Two that it is important for tiers of government to share information. Each level of government should be in a position to inform other tiers of government on issues of policies, activities and other programs aimed at accelerating development.<sup>180</sup> The 2016 Constitution is however silent on the principle of sharing information. In the absence of a provision that guides tiers of government on information sharing between or among different levels of government that is likely to perpetuate the top-down approach flow of decisions and information. The higher governments may continue with the traditional methods of giving information through letters, circulars, emails and formal meetings where leaders of local authorities are invited and briefed on the way forward as regards government plans and projects. The local authorities under the 2016 Constitution may continue being treated as implementers of national government policies and programs. Chapter two emphasises that information sharing is significant as it takes care of the misunderstandings that may occur between tiers governments. If information is not shared between and among tiers of government, there will be no unity and trust between and among the tiers of government.

#### **4.3.4 Harmonise and coordinate activities**

It was argued in Chapter two that coordination should occur ‘where tiers governments do not only consult but attempt to develop mutually acceptable common policies and objectives, which they apply and develop within their own jurisdiction’.<sup>181</sup> National and local goals are unlikely to be achieved when different levels of governments operate separately from one another. Article 117(3)(b) empowers the Provincial minister to ensure that the implementation of both the concurrent functions of the province and the exclusive functions of local governments are performed with accordance with the constitution and other laws. The provision further suggests that the national government and/or provincial administrations make sure that functions of various provinces and local governments are performed in a

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<sup>180</sup> See Steytler & De Visser (2011) 22-134.

<sup>181</sup> Watts R (2001) 28.

harmonious and well-coordinated standard manner. Harmony and coordination of actions of tiers of government will therefore continue to be achieved through coercive means of IGR. The actions of tiers of government will be coercive because of the hierarchical arrangement of governments, and that clearly indicates that the national government and/or the provincial government have the duty to supervise local governments.

#### **4.3.5 Predictability**

It was argued in Chapter two that an intergovernmental relations regulatory framework system must be predictable in its practical use.<sup>182</sup> Sub-national governments in particular should not be caught off guard with ever changing IGR systems, protocols and structures.

Article 198(b) (ii) stipulates one of the guiding principles of public finance that ensures the revenue raised nationally is shared equitably among the different levels of government. The constitution should be commended for having such a provision because it gives financial predictability to all the three tiers of government. The sharing of revenue raised gives different levels of government predictable inflow of revenue and hence allowing them to properly plan their budgets. This means that the three tiers are able to make their expenditure budgets well in advance and accurately. Legislation should further enact other provisions that should guide predictability in terms of other administrative policies other than financial ones only.

#### **4.4 Mechanisms that are used when practicing IGR**

It was contended in Chapter two that in order for the intergovernmental relations to be effective in fostering cooperation between tiers governments certain key mechanism can be used to make cooperative IGR work. The following mechanisms are assessing whether the Constitution provides for an effective practice of IGR.

##### **4.4.1 Joint planning and budgeting**

Article 205(d) stipulates that all levels of government are to publicly participate in the formulation of financing frameworks, develop plans, and preparation of annual budgets. The provision is a progressive one in terms of improving the IGR system. The provision suggests that all levels of government should strive to participate in the national planning and budgeting process. Therefore what remains now is for the enactment of legislation and policies that give effect to this joint planning and budgeting mechanism. In the danger of this

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<sup>182</sup> De la Harpe S, Rijken C & Roos R „Good Governance“ (2008) 11(2) *Potchefstroom Electronic Law Journal* 3.

becoming top down, the mechanism to be enacted should be such that participation of the tiers of government must be on equal basis.

#### **4.4.2 Common Intergovernmental agreements**

Articles 151(1)(j) of the 2016 Constitution states that local authorities have a right to manage their affairs and form partnerships, networks and associations to assist in the management of their respective districts and further their development is recognised. IGR agreements play a significant role in resolving socio-economic problems in a country. As tiers of government foster development they need to agree on how they will implement big projects that may require joint effort. Sometimes the projects may be implemented concurrently.<sup>183</sup> Articles 151(1) (j) is not really a provision on IGR agreements but can certainly be interpreted as permitting local authorities to engage in IGR agreements. With the Constitution having such a progressive provision, the superior- subordinate relationship as experienced before the enactment of the 2016 Constitution may diminish. What will be of help now is to enact legislation that would allow tiers of government to relate as partners in development.

#### **4.4.3 Dispute resolution**

It was argued in Chapter two that disputes are unavoidable in a multilevel system of governance. This is because of the overlapping functional areas between jurisdictions of governments.<sup>184</sup> However it is advisable that disputes should be resolved amicably without litigation.

There is no provision in the 2016 Constitution that makes mention of how IGRs disputes may be resolved. This therefore means that dispute resolution may be carried out as was earlier done in Chapter three. First, the Ministry responsible for local government will continue resolving disputes between national government and local government. Second, local authorities as institutions will still strive to resolve their disputes through the courts.<sup>185</sup>

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<sup>183</sup> Department of Provincial and Local Government (2007) 72.

<sup>184</sup> Watts R (2001) 27.

<sup>185</sup> S6 of Local Government Act No 22 of 1991.

## **CHAPTER 5: WAY FORWARD ON THE PRACTICE OF IGR**

### **5.1 Introduction**

Chapter one gave background to the amendment of the Constitution of Zambia in 2016. The main objective was to deepen democracy by decentralising functions, responsibilities and resources from the national government to the local authorities. Chapter one poses a question as to whether the 2016 Constitution provides for effective IGR that accelerates the decentralisation process resulting in effective performance of local authorities in service delivery. Chapter two proposed a normative IGR framework for the practice of IGR. The historical perspective of IGR in Zambia was discussed in Chapter three in which the legal framework and the practice of IGR from 1964 to 2016 were explained. The practice of IGR in the post-colonial era was coercive in nature resulting in inadequate and ineffective service delivery.

The question answered by this research is what impact the 2016 Constitution has on intergovernmental relations as legislated and practiced in Zambia. In Chapter four, the background and analysis of the 2016 Constitution was provided. The Constitution has given power to the local government to perform a wide range of functions autonomously. Chapter four has also conducted an assessment of the 2016 Constitution and found that a few provisions contradict each other in terms of the autonomy of the local government. Some provisions give more authority to local government to operate autonomously while other provisions give more power to the higher levels government to supervise and treat local government as a junior government. These contradictory provisions will hamper development at local level. Therefore, the IGR will not be effective in fostering development through local authorities. In answering the research question the study proved that there are shortcomings in the Constitution to give proper effect to IGR. Chapter four has therefore recommended the enactment legislation on IGR that should establish an effective IGR system that will enhance the governance system and improve service delivery. The 2013 National Decentralisation policy should be reviewed as well to include principles and mechanisms of IGR to enhance the delivery of services as contended in Chapter two. The recommendations below may help improve service delivery hence accelerating at local level.

### **5.2 Enactment of legislation on IGR**

The 1991 Local Government Act empowered the national government through the Ministry of local government to make decisions on behalf of local authorities. Consequently, the autonomy of local authorities was endangered. Therefore, the Act should be amended to

ensure that tiers of government enjoy a certain level of autonomy required by the Constitution. The IGR legislation should set procedures and parameters within which autonomy is exercised responsibly and interactions take place between entities and levels of government without coercion. Local authorities should perform their functions without being coerced to implement policies and programmes from the higher levels of government. Local government legislation should be amended to reduce the powers of the Minister responsible for local government to enable local authorities to approve, confirm and determine matters pertaining to the delivery of services to communities. Further, the Constitution should be amended in order to empower local authorities to perform functions of employing senior staff such as Town Clerks and Directors.<sup>186</sup> The LGSC is under the Ministry of local government at national level. The employment of senior staff for local authorities makes them to be accountable to the employer instead of the people they serve at local level. It also upholds a coercive nature of IGR where the national government begins to give instructions, and policies that are to be executed by local authorities due to the authority the senior government has over councils.

### **5.3 Reviewing the National Decentralisation Policy**

The 2013 National Decentralisation Policy (NDP) does not outline the principles and mechanisms of effective IGR. In order for the decentralisation process to be effective in its implementation, it should be reviewed in order to accommodate the principles of IGR such as respect for autonomy, tiers of government consulting and informing one another, predictability of policies, harmonising and coordinating activities. It should also include mechanisms such as joint planning and budgeting, intergovernmental agreements and alternative dispute resolution. In addition to enshrining some legal frameworks in the Constitution, there is need to effectively strengthen capacity in staff to manage IGR. Chapter two advocated for the IGR system that utilises principles and mechanisms as effective tools as far as delivery of services is concerned.

### **5.2. IGR forums**

The legislation should establish IGR forums that enable tiers of government interact, communicate, consult each other and even undertake joint ventures with the objective of enhancing development. The legislation should establish the following IGR forums:

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<sup>186</sup> Article 228 of the Constitution of the Republic of Zambia (2016).

### **5.2.1 Presidential consultative forum.**

The members of the forum should consist of the following; (a) the President as Chairperson (b) Vice President (c) the Minister in the Presidency (d) Minister of Finance (e) Minister of Local Government (f) Secretary to the Cabinet (g) Ministers of the 10 provinces and (h) an executive member for Local Government Association of Zambia (LGAZ).

### **5.2.2 Joint Planning and budgeting IGR forum**

The Ministry that is responsible for local government should be meeting other departments with vested interest in local government at least once in a year. The members of the meeting should include participating departments and the Executive for Local Government Association of Zambia. The Minister responsible for local government should; (1) convene and chair the meeting (2) determine the agenda.

### **5.2.3 Provincial Minister's IGR Forum**

At the provincial level there should be a Provincial Minister's forum composed of (a) the Provincial Minister (b) Executive council of the province responsible for local authorities in the province (c) mayors of the district and city councils (d) a councillor assigned to be in charge of organised local government in the province. The Provincial Minister may use his discretion to invite any other person he or she deems may add value to the discussion on the consultative matters of development in the province. The Provincial Minister should chair the forum.

### **5.2.4 District Intergovernmental forum**

At the district level, there should be a district intergovernmental forum to stimulate and facilitate IGRs between the district municipality and the local municipalities in the district. The District IGR forum should have the following members; Mayors/ Chairpersons of the City/ District councils respectively, Town clerks/ District Secretaries, elected Councillors and District Commissioners. The chairperson the District IGR Forum should be the Mayor of local authority.

In summary, the research paper has provided an assessment of how the IGRs have been practiced in Zambia from 1964 to the time of writing this paper. The assessment has shown that the IGR system has not been very effective in fostering development. Therefore, the above recommendations are meant to close the gaps identified. The changes suggested will hence go a long way towards assisting Zambia in implementing its development plans.

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