

**DECENTRALISATION IN SADC COUNTRIES - TRANSFORMATION AND
CHALLENGES OF DECENTRALISATION**

**Submitted in partial fulfilment of the requirement for the degree LLM
(Constitutional Litigation)**

By

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DECLARATION

I, Abdul-hakim Ameir Issa, hereby declare that this work is original and the result of my own effort. It has never on any previous occasion been presented in part or whole to any institution or Board for the award of any Degree.

I further declare that all secondary information used has been duly acknowledged in the work. I am responsible for any error whatever the nature, in this work.

Student

Signed

Date.....

Supervisor

Signed.....

Date.....



DEDICATION

To my parents, the late Ameer Issa Haji and Sharifa Abdulla Omar



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CHAPTER 1

INTRODUCTION

1.1. Introduction

Decentralisation has a long tradition as a political, administrative and public sector phenomenon. It concerns the transfer of public responsibilities and powers, in different forms and formats, within the public sector. Decentralisation of powers and responsibilities to local governments is but one of the many variations in which such process may take place. It is widely believed that decentralisation gives roots to democracy, and the transfer of power and resources to the local level helps to empower communities to work together to define and resolve their problems. The decentralized structures can bring the government closer to the people and has the potential for enhancing efficiency and democratic accountability.¹



Decentralisation is not a static concept, it changes according to the conditions existing in a particular country or according to the aim it purports to serve. For instance, during colonization the aim of decentralisation was to make the people governable by giving them false belief that they are governing themselves. Attaining independence within many African countries saw a transformation of the purpose of decentralisation. In some countries it aims at empowering the people at the grass root level. While in others the transformation of local government was directed at removing the racial basis of government and making it a vehicle for the integration of society and the redistribution of resources from the rich to the poor.

1.2. Aims of the Study

Decentralisation is about the distribution of power. The general experience with African countries and decentralisation is that it is difficult to transfer functions from the central

¹ Reddy (1999) 27.

government to the regional and local governments.² In the 1990s there was a transformation to multiparty democracy in the SADC region, and the decentralisation of power to local government is an important element of democratisation. The main questions, which this essay will address are: Has democratisation in 1990s included true decentralisation? Has decentralisation helped transferring the power to the local level? It will be argued that: during the colonial rule there was a deconcentrated system of local government. During the period of single party system, local government remained much the same – a deconcentrated system. During 1990s decentralisation became part of the process of democratisation, and major change can be seen from this period. But it will be argued that the practice in the SADC countries is uneven.

1.3. Significance of the Study

The new and growing emphasis on decentralisation created potentially a new situation. In a number of countries in Africa, local governments were re-established, reformed and given new responsibilities and sometimes additional resources. In the SADC region decentralisation has been under constant transformation. The transformation has taken different forms: firstly, from the colonial forms of local government to the new institutions established after independence. Secondly, from local government under one party state to multi-party democracy, which in many instances has resulted in the transfer of power to the local level and constitutional recognition of local government. Lastly, transformation of local government from centrally planned economy to the market oriented economy.

The study of decentralisation process in SADC countries is very challenging because of the similarities and differences of the countries, which make SADC. They involve a lot of similarities, for instance, eight of the countries were colonized by the British, hence inherited the British form of local government, while two countries, Angola and Mozambique were colonised by Portuguese and Namibia was governed by South Africa. Further, nine countries have a president as head of State, while two countries, Swaziland

² Mutizwa-Mangiza et al (1996) 81.

and Lesotho have monarchy as a head of state. Furthermore, ten countries are unitary states, while South Africa is the only quasi-federal state. Hence, this study is very significant as it highlights the common trends of decentralisation in SADC countries.

1.4. Research Methodology and Literature Review

Research was confined to literature survey, which included constitutions, textbooks, journals articles, newsletters, Internet and any other relevant literature. The approach used in research is both historical and comparative. This approach will highlight the process of decentralisation as well as problems faced. There are some writers who have written on the subject of decentralisation in each country making SADC, but none has written particularly on the SADC countries and the transformation of local government institutions. Hence, the study will constitute a significant contribution in this regard.

1.5. Limitation of the Study

The Declaration and Treaty establishing the Southern African Development Community (SADC) was signed on July 17, 1992 in Windhoek, Namibia. SADC replaced the Southern African Development Coordination Conference (SADCC), which had been in existence since 1980. South Africa joined SADC in 1994 followed by Mauritius in 1995, the Democratic Republic of Congo (DRC) in 1997 and Seychelles in 1997. SADC member-states are: Angola, Botswana, Democratic Republic of Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania³, Zambia and Zimbabwe. Due to the limitation on the literature available, the focus of this paper will be limited to eleven countries in the SADC, with the exclusion of Congo (DRC), Seychelles and Mauritius. Further, the subject of decentralisation is very broad encompassing a wide range of issues that would merit a broader field of inquiry. Hence, this study will focus on the transformation of local government.

³ The United Republic of Tanzania was formed on 26 April 1964 by the adoption of an Act of Union between Tanganyika and the Island of Zanzibar. In this essay Tanzania will be used to refer to Tanzania Mainland.

1.6. Overview of the Chapters

This study will focus on the transformation of the institutions of local government from deconcentration, delegation to devolution. This transformation can be looked at starting with the institutions inherited from the colonial era, which started after the Berlin Conference of 1884, which divided Africa among the western powers. Then the transformation, which took place immediately after independence; that is the period of 1960s, the changes made in the 1980s and finally the transformation taking place following the multiparty democracy in the 1990s. The first part will look at decentralisation during colonial period. The second part will look at decentralisation after independence, with a particular focus on the institutions under a single party system. The third part will look at the transformation of local government under multiparty system, and its outcome, which in many instances it has been the constitutional recognition of local government. Finally, the conclusion examines the challenges facing decentralisation in SADC region.

1.7. Defining Decentralisation



It is very important at the outset, to define decentralisation and its related terms, which will be used throughout the essay. Rondinelli defines decentralisation from an administrative perspective as:

the transfer of responsibility for planning, management and resource raising and allocation from the central government and its agencies to: (a) field units of government agencies, (b) subordinate units or levels of government, (c) semi-autonomous public authorities or corporations, (d) area-wide, regional or functional authorities, or (e) non-governmental private or voluntary organizations.⁴

Decentralisation does not mean achieving complete autonomy but is more of a degree of roles and relationships between central and local authorities and central government and private sector as well as local authorities and the private sector. Absolute autonomy

⁴ Rondinelli (1984) 9.

equates independence whilst relative autonomy indicates a substantial amount of autonomy for local authorities to conduct their business with minimal interference from the centre. According to Mawhood, most individuals and governments favour the concept of decentralisation because it implies the unblocking of an inert central bureaucracy, curing managerial constipation, giving more direct access for the people to the government and the government to the people, and stimulating the whole nation to participate in national development plans.⁵ Mawhood, further identifies five characteristics of a decentralised body: (1) own budget, (2) separate legal existence, (3) authority to allocate substantial resources, (4) range of different functions, and (5) decisions must be made by representatives of the local people.⁶

1.8. Types of Decentralisation

Generally, there are four types of decentralisation; the type which is chosen depends on the scope, nature and purpose of decentralisation envisaged by the government. Often these models are found together in various mixes. Some governments have used all four types, simultaneously or at different times. Some began with one model and later shifted to another. Other governments have used various combinations of the four; in most cases governments start with deconcentration. These types are:



- (a) Deconcentration, which is the transfer of functions and resources to local level units of the same administrative system while power remains with the centre.
- (b) Devolution, which is the transfer by legal or constitutional provision of functions, resources and power to the community level. It is considered to be the most extensive form of decentralisation, and involves a transfer of functions and authority to local units of government, which are autonomous.
- (c) Delegation - whereby government temporarily assign specific functions to an institution such as Health and Educational Boards.
- (d) Privatisation - whereby government transfer or surrender responsibilities of state enterprises to private entities.

⁵ Mawhood (1983) 1.

⁶ Mawhood (1983) 9.

These types of decentralisation are all associated with some kind of a transfer of functions from the central government to either lower units of the government, NGO's or other organisations. However, the degree of decentralisation varies, which in turn has different impacts on the government structure, the political structure, the amount of community participation and the preconditions for successful implementation.⁷



⁷ Rondinelli (1984) 25.

CHAPTER 2

DECENTRALISATION UNDER COLONIAL RULE - 1880s TO 1960s

The transformation of local government institutions in the SADC countries can be looked at three periods. The first is the period during colonisation, which started after the Berlin Conference of 1884, which divided Africa among the western powers. The second is the period after independence, which for many countries is the period starting from 1960. Lastly, is the period of major changes in African countries which started in the 1990s.

With the exception of Angola, Mozambique and Namibia, eight members of the SADC were colonised by the British. Angola and Mozambique were governed by Portugal under *regime do indigenato*, an invidious system of economic exploitation, educational neglect, and political repression that remained in force until 1961 when a guerrilla war against the Portuguese was initiated.

The Portuguese colonial administration defined land boundaries and territories for their own intents and purposes; at that time many traditional chiefs lost authority over their own population, while other chiefs gained power over a population over which they had no traditional rights. Many of the chiefs became associated with what was in effect indirect rule to undertake a number of jobs and functions. Weimer argued that:

After a generation this task of acting as middlemen came, in the collective unconscious, to form part of the very nature of being a traditional chief, even though this is not the case. These chiefs had served as assistants at the lowest level of the district administration and had been remunerated with privileges such as a share of local taxes, uniforms, housing and transport.⁸

The British followed the same tradition in their colonies; they introduced the system of Indirect Rule where traditional chiefs were used for governance. This rule offered a small degree of participation by people in the management of their affairs. The rule,

⁸ Weimer et al (1999) 157.

direction of activities and supervision were shared by the people through the traditional chiefs. In Swaziland, for instance the Tinkundla⁹ system was left to function.

In many of the British colonies:

The territorial hierarchy was headed by the governor, a civil servant seconded from the colonial headquarters, who acted as the chief representative and agent of the British Empire. Below him were the provincial commissioners. At the lowest level were the district commissioners, who were in direct contact with the local communities. The district commissioner controlled all aspects of the local administration including police and security, justice, finance and tax collection.¹⁰

The legislative and executive council were established and were headed by the Governor. The councils were composed of colonial government and other appointed officials. At the beginning there was no representation of indigenous people in these councils. For instance, in Malawi the representation of indigenous people in legislative council started in 1948 and in the executive council in 1955.¹¹ The members of these bodies were not elected but were government appointees. The councils remained dominated by the central government. The members of the councils represented the interests of the settler planters, the traders, the missionaries and the colonial administration rather than the interests of the indigenous people.

The first detailed administrative structures were introduced through the Native Authority Ordinances; in Malawi the ordinance was passed in 1912, in Zimbabwe in 1923 and in Tanzania in 1926. In Swaziland, the first step toward the integration of the Swazi kingship into the colonial administration was done in 1944 by the Native Administration Proclamation No. 44, and Swaziland's first comprehensive administrative system, defining the rights and duties of the traditional authorities and their relationship with the

⁹ Tinkundla are communal centers that in effect are meeting points for people of a particular community or chiefdom, which is essentially a group of homesteads under the authority of a chief. They are places where men come together to discuss affairs directly affecting them and to try cases on traditional lines particularly in chief's villages (Sabela (1999) 234).

¹⁰ Kaunda (1999) 114.

¹¹ Kaunda (1999) 114.

colonial administration was established by the Native Administration (Consolidation) Proclamation, No. 79 of 1950.¹²

The traditional chiefs were incorporated into the official hierarchy. They functioned as the district commissioners' assistants in the maintenance of law and order, the administration of justice and tax collection as well as in other functions as directed by the commissioner. Each of the territorial divisions (provinces, districts, sections and villages) was accordingly given clearly defined powers and duties that were aimed at centralized administrative control. The chiefs were renamed traditional authorities. Their political powers were reoriented and circumscribed in line with their official recognition. Their livelihood was also made dependent on the tax revenues they helped collect, rather than on customary tribute. The colonial authorities had thus pretended to preserve traditional institutions, whereas in effect they had captured the indigenous structure of governance and used them to pursue their own dominant interests.

The British passed a number of Ordinances, which provided for Chiefs to have responsibility for some development work and fund raising for it. The sources were mainly from poll tax, fees and fines collected from the African courts and land rents, rates imposed by native authority, licenses, permits, fees or charges specified by the native authority and interest on investment by the native authority as well as contributions from the government. The traditional chiefs were subordinated to the colonial administration, thereby losing their autonomy. They were just mere agents of the colonial administration.

Despite these additional revenue items the authorities never enjoyed any financial or political autonomy from the government. The district commissioner continued to maintain tight control over their activities. In fact it can be clearly said that decentralisation in the colonial period was introduced with three basic objectives namely: the colonial administration wanted to have an institution that would provide social services and infrastructure. They used local chiefs and other personnel to augment few

¹² Flanz et al (2003) Binder XVII.

colonial experts that were available to the government, and lastly they wanted to give the local people the impression that they were in charge of their own affairs whereas in reality the real authority laid in the hands of colonial administration officials.

The end result of these objectives can be seen in the problems faced by local authorities at the time of independence: “First, local government authorities experienced frequent financial crises because of ill-conceived decisions on the part of all concerned. Secondly, the quality of local authority employees was variable and, in general, poor at the time of independence. Thirdly, local governments were unable to improve and expand the services that were already in existence.”¹³

The development of local government in colonial Zimbabwe was largely determined by the racially based system of land apportionment between the white colonial settlers and the indigenous black population, and urban and rural areas.¹⁴ The rural areas were reserved for the African people and white commercial farmers. The urban areas were reserved exclusively for European settlement whilst the non-Europeans were restricted to the rural areas.



Namibia has a peculiar history, as it is the only country in SADC which was placed under South Africa by the League of Nation’s mandate. Before colonization there were several traditional institutions of law making such as /abe-/haos in Khoekkhogowab (Nama), Oshoongalelo in Oshiwambo, Ombungarero in Otjiherero, Kgotla in Setswana, Khuta in Silozi, etc¹⁵. These earlier councils existed and functioned on the basis of the society’s demands and needs. Their main functions were to lay down the basic rules for sharing resources, demarcating boundaries, fostering neighbourhood relations, negotiating peace treaties and overseeing system of beliefs, including taboos. Some of the traditional councils were headed by the Chief, Captain or King. Most of these institutions were

¹³ Dryden, S. (1967), Local Government in Tanzania, Part I and II, *Journal of Administration Overseas*, quoted in Liviga et al (1999) 243.

¹⁴ Pardaza (2000) 5.

¹⁵ Parliament of Namibia, www.parliament.gov.na.

suppressed by the colonialists.¹⁶ The policy of apartheid and racial discrimination was practised at all levels of governance and administration. Only the white minority was entitled to full and direct participation in local governance.

It is clear that the decentralisation during the colonial period has been deconcentration of power in the hands of the colonial officials. The chiefs were used in the system of indirect rule, but they never had a real power. On the side of Zimbabwe, South Africa and Namibia, the policy of apartheid and racial discrimination was practised at all levels, hence the concept of decentralisation was not given room to prosper in the black communities. It is only the whites who were privileged with a measure of local self-government.



¹⁶ Parliament of Namibia, www.parliament.gov.na.

CHAPTER 3

DECENTRALISATION AFTER INDEPENDENCE

3.1. Decentralisation under Single Party System - 1960s to 1990s

As with many newly independent states of this era, leadership was based on strong dictatorship style adapting from a combination of respect for a traditional authority and a controlling colonial rule. The approach apparently took the worst of both systems and created an authoritative government, which saw people as recipients rather than actors in development.

The one party state altered the nature of political and administrative relations. The move went toward further state centralization, accompanied by the growth of executive dominance in political system. Both the civil service and the local administration became politicised. The reforms carried out resulted not only in change of status from relatively more autonomous local government to an administrative arm of the central government, but also weakening of the capacity of local governments to carry out their functions.



3.1.1. Tanzania

Tanzania gained its independence in 1961 under the Tanganyika African National Union (TANU), which was the only recognised political party on the Tanzania mainland until 1977 when it merged with Zanzibar's Afro Shirazi Party (ASP) to form the Revolutionary Party (Chama cha Mapinduzi or CCM). The country continued to be governed by a single party (CCM) until the opposition was allowed in 1992. But even then CCM continues to be in power even today.

On the side of local government, the matter took a different turn in 1963 when the official chief's office was abolished together with all native authorities. These institutions were replaced by district councils. As a result, politics rather than technical competence took

command in running local government, and the central government made it difficult for local government to function. This started with the central government's decision of declaring the Arusha Declaration of 1967, which put local government on the road to bankruptcy and collapse. Further, the country's policy of socialism and self-reliance strengthened the central government rather than the local governments. Hence, in 1972 the central government formally abolished district councils and the period up to 1984 is marked as a period without local government. Regions and districts were to plan and implement local development projects as well as administer local affairs with minimum interference from the centre.¹⁷

3.1.2. Malawi

Malawi attained its independence in July 1964. The Constitution¹⁸ of 1966 proclaimed Malawi a one-party state. The implication of these provisions is that all state and local government institutions were constitutionally subordinated to the Malawi Congress Party (MCP), which was the government of Malawi. Hence, the relationship between the executive branch of government and the legislature and the local government was thus one of deliberate superiority and subordination. All the legislators and local authority councillors had to be MCP members, bound by the party's constitution and rules and regulations.¹⁹

3.1.3. Zambia

Zambia attained its independence at the same time as Malawi under the United National Independence Party (UNIP). Under the Constitution of 1972 UNIP was declared to be a sole legal political organisation, and hence Zambia became a one-party state in 1972. In July 1964 the old system of provincial and district government was abolished and, was replaced by a new, more limited structure of provincial and district government. The reformed provincial and district government arrangement was intended to coordinate and

¹⁷ Liviga et al (1999) 245.

¹⁸ Act No. 23 of 1966

¹⁹ Kaunda (1999) 117.

implement government policies and provide a link between government and the new structure of party power. The district government was stripped of most of its predecessor's functions, which were distributed among central government ministries and their agencies.²⁰

3.1.4. Lesotho

Lesotho became independent on October 4, 1966 under the Basotho National Party (BNP). The first general elections after independence was in early 1970, which the opposition BCP apparently won, but the Prime Minister Leabua Jonathan nullified the elections and declared a state of emergency and the Constitution and parliament were suspended, and he undertook to govern the country by decree until he was overthrown in 1986. The Constitutional government was restored in 1993 after 23 years of military rule. Hence, Lesotho was not different from others as there was no opposition for 23 years.

On the question of local government, in 1968 the government abolished the district councils. The emphasis was put on the district administration, where the key figures were civil servants who represented government in the districts and played a role in coordinating the various departments.²¹



3.1.5. Swaziland

Swaziland has a different story. The King suspended the Constitution in 1973 and banned all political activity. He announced that that he had assumed supreme power in the Kingdom of Swaziland and that all legislative, executive and judicial powers were rested in him. Local government was divided into two entities: the urban authorities and tinkundla. The tinkundla were established to decentralise local administration and elevate the authority of traditional chiefs. This ensured the authority of the king and the

²⁰ Zimba (1998) 4.

²¹ Wallis (1999) 94.

traditional rulers without any threat from politicians with modern political and administrative ideas.²²

It was in this period that the influence and support for the council started to decline. The single party government introduced the District Development Committees (DDCs). The DDC's were made up of party representatives of central government in the districts and thus created a deconcentrated system that operated as a parallel structure next to the Councils. The governments insisted that the district commissioner should play a developmental role in the district. This reveals that the governments had maintained the basic colonial functions of the district commissioner as the chief government agent and superintendent of local administration. At the same time, it had also conferred on the commissioner additional powers to coordinate district development. This not only strengthened the district commissioner's powers, but also increased central government penetration of the districts.

Though there were two types of councils (urban and rural councils), not much difference could be seen in terms of the structure, organization and powers. The urban councils consisted of city, municipal, and town councils with an elected legislative body. Among the duties of the urban councils were: making bylaws, adopting a budget, employing local staff and conducting meetings to pass resolutions enabling the local authorities to provide services. All the bylaws had to be approved by the governments before application. The authorities' annual estimates of revenue and expenditure also had to be submitted to the government for approval. Their expenditures were also centrally audited. The rural councils also had similar features.

It was apparent that the party wanted to break the ties with the colonialist councils and establish a system of district authority, which was more closely tied to the government in power. Council grants were reduced, services were withdrawn and many council staff left the service. A process began in which all development project funding bypassed the councils and went directly to the district development committee. The DDC's were

²² Sabela (1999) 226.

operational as the decentralized decision making authority throughout the years of the single party state and through the 1990s, while the rural councils were in decline, although they continue to exist in name only. This form of decentralisation was merely administrative deconcentration of functions rather than the genuine transfer of decision-making powers.

3.1.6. Angola and Mozambique

Angola and Mozambique followed a similar pattern. Under a Constitution promulgated in 1975 Angola was a single-party republic governed by the Popular Movement for the Liberation of Angola-Labour Party (MPLA). The country is divided into 18 provinces, each governed by a commissioner appointed by the President. These provinces are further divided into councils and communes.

Mozambique likewise attained its independence under the independence Constitution of 1975 as a single party republic governed by Front for the Liberation of Mozambique (Frelimo). Frelimo moved to establish a Marxist state, nationalizing industry and creating agricultural collectives. The Frelimo government adopted the territorial division created by the Portuguese colonisers: ten provinces sub-divided in 128 districts. They also adopted many, if not most of its capital-periphery administrative structures. The Portuguese colonial administration had created several municipalities, but these were dissolved in early 1977.²³ “Essentially, it was a greatly centralised system in which the local government structures remained as tentacles of the central government. All provincial governors and district administrators were appointed by the government. So were most of the various directors in the line ministries.”²⁴

Both countries soon after they emerged from the colonial rule they plunged straight into a devastating civil war that debilitated much of the infrastructure and undermined development efforts. Hence, most of the local government infrastructure and

²³ Braathen (2003) 5.

²⁴ Braathen (2003) 5.

administration broke down, partly or completely, during this period. A few attempts were made at decentralising during this period, but all attempts were thwarted due to the war.

3.1.7. South Africa

In South Africa a system of local government had been in place even before the formation of the Union of South Africa in 1910. In the Cape, for example, municipal councils were established in terms of the Municipal Ordinance of 1836. The coming to power of the National Party (NP) in 1948 had further implications for local government. In this regard: “As early as 1950 the first Group Areas Act made provision for a ‘new dispensation’ providing for the development of local authorities for populations groups other than White. This Act provided for the demarcation and development of separate areas for White, Black, Coloured and Indian occupation and ownership. The various separate (group) areas were to remain integral part of the local authority areas in which they were situated and under the control and administration of the local authority concerned.”²⁵



At the dawn of democracy in 1994, South Africa inherited a fragmented system of local government organised along racial lines. This system was characterised by skewed distribution of resources and uneven infrastructure development in favour of white communities. As a result, the system bequeathed the legacy of huge infrastructure backlogs, declining services, poverty and lack of legitimacy for local government among Black communities. This created high levels of resentment, and from the mid-1980's Black communities began to wage civic protests in an endeavour to demolish this racially segregated local government system.

²⁵ Ismael et al (1997) 4.

3.2. The Changes in the 1980s

To some countries the period from 1980s saw some transformation on the local government institutions. The transformation was not the result of democratisation, but it was influenced by other factors, such as realisation of the mistake made earlier, and donor driven initiatives.

3.2.1. Tanzania

In Tanzania this was a period of reintroduction of local government. In 1982 five principal statutes²⁶ were enacted by the parliament and others were amended, which formed the basis of the reform, which would follow. This local government system took off formally in January 1984. In spite of having several legislations in place, the new form of local government was suffering from four major problems, namely: insufficient human resources, inadequacy of funds, scarcity of technical equipment and materials, and inability of the local government to deliver social services to their constituencies without help from the central government. But the changes did not transfer the power to local governments; similar pattern of deconcentration of power was followed.



3.2.2. Lesotho

Lesotho also had an important development as far as local government was concerned. The Urban Government Act of 1983, which in fact was a donor-driven initiative²⁷ was enacted. The purpose of the Act was to give the minister power to create local authorities in areas designated as urban. At that time the capital Maseru was the only significant urban area in the country. The Act also prescribe mandatory duties for urban areas such as sanitation, refuse removal, market and burial grounds, and gave discretionary powers

²⁶ Local Government District Authorities Act, 1982, Local Government Urban Authorities Act, 1982, Local Government Finances Act, 1982, Local Government Negotiating Machinery Act, 1982, Local Government Service Act, 1982 and Decentralisation of Government Administration (Amendment) Act, 1982, and Local Authorities Elections (Amendment) Act, 1982.

²⁷ The Act was prepared by the assistance of UK Government and the World Bank. The Netherlands aid agencies also played a role in research and decentralisation planning.

in respect of numerous matters such as education, recreation, culture and bus terminals. But the Act was silent on how these powers were going to be divided between central and local authorities, as most of them were also performed by line ministries such as education and health. The passing of this Act by no means created autonomous local authorities, instead it placed a very substantial power in the hands of the minister. But most surprising is that the minister did not use these powers, hence no local authority came into being.²⁸

3.2.3. Zimbabwe

Zimbabwe, which attained its independence in 1980, falls straight into this period. From independence, the government declared its intention to promote decentralisation, and supported this by a series of institutional innovations. In 1980 the District Councils Act was enacted and later amended in 1981 and 1982. The Act applied to the communal lands, where it revived local government after the period of guerrilla insurgency, consolidated the previously fragmented authorities from over 220 to 55, and democratised the system of local government. The councils are the principal planning and development agencies within their jurisdictional zones. They have limited powers of taxation, implement a variety of central legislative enactments, and provide various services. The district administrator, who is chief executive of the council, is a national civil servant, responsible for overall planning, development and co-ordination.²⁹

This period has nothing significant as far as decentralisation was concerned. It was characterised by the government's determination to redress imbalances in economic development, which were enshrined in the local government system that it had inherited at independence. The new local authority did not have adequate funding to provide infrastructure and services and were as a result very dependent on central government for administrative expense. The district councils on the other hand existed to serve the

²⁸ Wallis (1999) 95.

²⁹ Helmsing (1993) www.utoronto.ca/env/lib.

poorer communal African farmers. The district councils were impoverished and were administered by the Ministry of Internal Affairs.³⁰

Rural councils on the other hand were under the central government ministry of Local Government and Town Planning. They served the interests of white commercial farmers. The councils had a strong financial base, better skilled staff and their Act (Rural Councils Act) gave them the power to make decisions just like the urban local authorities.

But even in Zimbabwe the role of politics in shaping the decentralisation process cannot be over-emphasized. The ruling party Zimbabwe African National Union Patriotic Front (ZANU PF) dominates the political scene. It has a hierarchy of command, which runs parallel to the governing system from the parliament right down to the village level in rural areas. The party's supreme body is the contributors for community projects that are carried out by party functionaries. More often than not, the leaders of the party structures are the same people as those who lead parallel local government structures.³¹ This is typical of the “one party state approach” to decentralisation, which was common in Africa.

The cases of Namibia and Botswana are different because since their independence they have followed a multi-party democracy. Hence, decentralisation in these two countries will be discussed in the coming chapter. The focus will be whether by starting with multi-party democracy, the process of decentralisation is different from those countries, which followed a single party system soon after their independence. Has democracy lead to true decentralisation.

3.3. Conclusion

The process of decentralisation under single party system has revealed that there was no true decentralisation. The local government never enjoyed substantive power. The distribution of power was top heavy. All major decisions were taken by the central government and the local governments were to implement them without questioning the

³⁰ Helmsing (1993) www.utoronto.ca/env/lib.

³¹ Helmsing (1993) www.utoronto.ca/env/lib.

authority. The committees which were established at the regional and district level were dominated by experts and civil servants who are virtually in all cases centrally employed. Further, the resources were controlled centrally. Basically, the decentralisation took the form of administrative deconcentration.

This is the trend, which is vividly seen in the SADC region. Even in those countries, which attained their independence very late, for instance, Angola and Mozambique in 1975 and Zimbabwe in 1980 could not escape this route. With the former two following the single party system the result was obvious, but Zimbabwe which followed multi-party democracy from the time of its independence has demonstrated that the growth of decentralisation depends on the democratisation process, the domination of ZANU PF has hampered the true decentralisation process. With the union of ZANU PF and Zimbabwe African People's Union (ZAPU) the country was heading toward single party system, it was only in 1989 that other opposition parties began to emerge.



CHAPTER 4

DECENTRALISATION UNDER MULTI-PARTY DEMOCRACY

In the late eighties and early nineties, authoritarian leadership in Africa was changing. People were beginning to question the single party or authoritarian form of leadership and were making demands for multi party democracy that allowed for open discussion of political views and elections of leaders from several diverse candidates. The whole of SADC region was strongly affected by this movement. In 1991 the first multi-party election was held in Zambia, followed by Angola in 1992, Lesotho, and Swaziland in 1993, Malawi, and Mozambique in 1994, and Tanzania in 1995. In South Africa 1994 marked the starting of the new dawn. Botswana, Zimbabwe and Namibia followed multi-party democracy from the time they attained their independence. The important question, which will be examined here is, did this democratisation process also entail genuine decentralisation?

4.1. Zambia



With the victory of the Movement for Multi-Party Democracy (MMD) in the 1991 general elections in Zambia, the Public Sector Reform Programme (PSRP) was launched in 1993 which practically reflects Government's commitment to decentralisation. The objective of the reform is to provide direction in the effective deconcentration of certain functions and responsibilities from the central government to the provinces and districts and thereafter devolve selected functions to local authorities as their management capacities improve. This is in order to facilitate democratic governance and delivery of high quality and demand-driven services and development to local communities.³²

Zambia enacted a new Constitution in 1991, which provided for multi-party system. This Constitution had no provision regarding local government, hence it was amended in 1996 to introduce, among other provisions, Article 109, which now provides that there shall be

³² Zimba (1984) 7.

such a system of local government as may be prescribed by an Act of Parliament and that such system shall be based on democratically elected councils on the basis of universal adult suffrage.

Following the reintroduction of multi-partism in 1991, decentralisation has taken three forms namely, deconcentration, delegation, and privatisation.³³ Further, two major Acts were passed: the Local Government Act No. 22 of 1991 and Local Government Elections Act. No. 21 of 1991. The major changes that came with these Acts were the clear institutional divorce of party structures from the council, the abandonment of the integrative role of the district councils and the reintroduction of representative local government based on universal adult suffrage. But despite the changes Members of Parliaments (MPs), especially where these happened to be ministers still dominate council proceedings and affairs. Such MPs have, for instance, taken leading roles in deciding whom councils employed in senior positions. Indeed, the continued membership of MPs on councils has enhanced the political control of local councils by national politicians.³⁴ It is submitted that this attitude has hampered the process of decentralisation in Zambia; the local governments could work without their presence.

On the financial side, the National Assembly introduced a new innovation to the financing of local development known as Constituency Development Fund (CDF). Under this initiative, the government allocates development funds on an annual basis to all constituencies under the control of the local MP. In theory, the CDF was supposed to enhance local development. But in practice, it appears that its introduction was driven more by political concerns than economic considerations. Indeed, since its introduction many MPs have sought to divert the funds to projects that further their political careers to the detriment of other, more useful projects. Mukwena argued:

If central government were concerned with genuinely decentralising local development funding, it would have been desirable if the constituency funds were channelled through local

³³ Zimba (1984) 7.

³⁴ Mukwena (2001) 14.

councils. This could have boosted the finances of local councils and enhanced their role in local development³⁵.

The Constitution and the legislations are set to the right direction, but decentralisation is still in the early stages in Zambia. It has not yet reached the stage of devolution. More are needed to be done to remove the negativity on the attitude of government officials and members of parliament, and true financial decentralisation is required.

4.2. Angola

One legacy of civil war in Angola is that a structured local government system has never taken a firm hold. The acceptance of the Lusaka Protocol in 1994 created the Government of National Unity (GURN) and established in theory a structured local government system. The most important aspect of the peace process for local government, and perhaps the most significant remaining hurdle to peace is the extension of state administration throughout the country, as UNITA formally cedes the territory it controls to the government.



In Angola, local government is recognised in Chapter VII of the Constitution,³⁶ which provides that: State organization at local level shall comprise of local government agencies and local administrative bodies.³⁷ Further, local government agencies shall be territorial corporate bodies for the purpose of pursuing the interests of the population, and shall for this purpose have elected representative bodies and freedom to administer their communities. It provides further that the constitution, organization, powers, functioning and regulametary powers of local government agencies shall be specified by an appropriate law.³⁸ Article 147 provides that local administrative bodies shall be local administrative units decentralized from central government for the purpose of achieving the specific attributes of the state administration at local level, guide economic and social

³⁵ Mukwena (2001) 14.

³⁶ Constitution of 1992

³⁷ Article 145

³⁸ Article 146

development and ensure the provision of communal services in the respective geographical area.

As the administration of GURN is gradually extended throughout Angola, decentralisation and deconcentration are to occur with provincial and municipal authorities assuming responsibilities over administrative, financial, and economic matters including the attraction of foreign investment. However, while legislation to put these matters into practice has been drafted, it has yet to be promulgated into law. Angola's government structures remain highly centralised. All provincial and local officials are appointed by the central government, and local government as a whole is beholden to the national government.

4.3. Lesotho

Lesotho in 1993 adopted a new Constitution that redefined the role of the monarchy and altered the legislative branch of the government. The new government seemed to be committed to changes, the most important being the re-establishment of local government. The foundation of this is found in the new Constitution, which in section 106 provides:



- a) Parliament shall establish such local authorities as it deems necessary to enable urban and rural communities to determine their affairs and to develop themselves. Such authorities shall perform such functions as may be conferred by an Act of Parliament.
- b) Any enactment which provides for the establishment of a local authority and in force immediately before the coming into operation of this Constitution shall continue in force subject to repeal or modification by Parliament.

The process of planning for local government started soon after the 1993 elections. A ministry responsible for local government was created. The government saw the holding of local elections as an urgent matter since they expected this to consolidate their power base in the country. At the same time, the required planning and administration processes

could not be achieved with the speed and effectiveness necessary for the establishment of appropriate local government structures with adequate staffing, finance and infrastructure. Pursuance to this objective, the white paper was prepared and its contents were debated in various forums around the country, culminating in legislation being enacted in 1996. With the Local Government Act of 1996 in place, a task force was created which its main function was to recommend the central government functions that could be decentralised to the local councils, bearing in mind such constraining factors as human resources and finance.³⁹

The White Paper and the subsequent Act provides for the establishment of local authorities throughout the country. Provisions are also made for mechanisms by which coordination and control may be achieved. The Act contains detailed provision on the formation of local government. The minister responsible for local government is empowered to declare areas to be served by a variety of councils. These are community councils, rural councils, urban councils and municipal councils. The composition of these authorities is based on the democratic principle of election. However, in each case a minority of positions is reserved for gazetted chiefs (other than principal chiefs). In each category of councils gazetted chiefs who wish to become councillors also have to be elected. The functions of these councils are also set out in the schedules to the Act. The first schedule, which applies to the three larger councils, lists 27 functions and provides for what could prove to be a massive reorganisation of service delivery, which is very challenging.

The transfer of functions from the centre to local authority is also complicated, as the Act does not provide clarity on how the allocation of functions will be shared. Further, the Act has not made any provision for districts councils. “An obvious option would have been to create one council per district (ten in all plus possibly the city of Maseru). Instead it is now open to the minister to establish what is likely to amount to over 200 local

³⁹ Wallis (1999) 100.

authorities, an extraordinary large number for a small state with limited resources and development potential.”⁴⁰

The District Development Coordinating Committee (DDCC) is one of the bodies, which is expected to exist in each district when local authorities are fully established following elections. The main purpose of the DDCC is to provide a framework that links local authorities to line ministries. It also receive and approve district plans, and there is a possibility that DDCC will acquire decentralised financial powers in the future. The Act is not clear on the powers of the committee.

The Act, further in section 39, created a senior post, district administrator to replace the district secretaries arrangement. From this provision it is clear that the Act does not wish to eliminate the notion of strong central representation in the districts. “This is a strong indication of how important it is for government to be strongly represented so that the new emphasis on devolution is tempered by central authority exercised in the districts.”⁴¹

The practice of local government in Lesotho is that the new government has succeeded to create a climate in which the concept of the local government came to the fore. A number of initiatives have been taken, but have yet to bring about the genuine local government.

4.4. Swaziland

Swaziland for a long time existed without a Constitution. This followed the abolition of the Constitution in 1973 by King Sobhuza II. The Constitution, which was abolished, had no provision regarding local government. After series of discussion and debates following the changes in the 1990s finally Swaziland drafted a new Constitution but it has not yet been adopted. The draft Constitution has entrenched provisions laying down details about local government. The draft Constitution provides that Swaziland is a democratic, participatory, *tinkhundla*-based system, which emphasises devolution of state

⁴⁰ Wallis (1999) 105.

⁴¹ Wallis (1999) 107.

power from central government to *tinkhundla* areas and individual merit as a basis for election or appointment to public office.⁴² Further, in chapter XIV it provides for the establishment of a single country wide system of local government which is based on the *tinkhundla* system of government, hierarchically organised according to the volume or complexity of service rendered and integrated so as to avoid the urban/rural dichotomy. The primary objective of the *tinkhundla* – based system of government is to bring government closer to the people so that the people at sub-national or local community level progressively take control of their own affairs and govern themselves.⁴³

The Draft Constitution further provides that the primary duty of a local government authority is to ensure, in accordance with the law, the efficient management and development of the area under its jurisdiction. Depending on its level of development, a local government authority shall determine, plan, initiate and execute policies, taking into account national policy or development plan.⁴⁴ Further a local government has power to levy and collect taxes, rates, duties and fees as may be specified for the execution of its programmes and policies; and to formulate and execute plans, programmes and strategies for the effective mobilisation of the resources necessary for the overall benefit and welfare of the people within its area.⁴⁵



Swaziland in 1996 adopted Urban Government Policy, which applies to the two cities of Mbabane and Manzini, the three municipalities and to all future incorporated municipalities. All local authorities are organized in the same manner and have the same powers. Under the policy the cities, municipalities and towns will have authority to undertake the following urban service function within their defined urban areas namely:

- a) Infrastructure – roads, drainage, footpaths, street lightning, water, sewerage, electricity, telecommunication and transport planning.

⁴² Section 80

⁴³ Section 219

⁴⁴ Section 222

⁴⁵ Section 223

- b) Public facilities – bus terminal, cemeteries, sport facilities, community centres, public toilets, parks and open space.
- c) Environmental Services – solid waste, landfills, septic services, and environmental control.
- d) Regulatory/Law Enforcement Functions – local ordinance enforcements, licences, nuisance abatement, land use control, building control, traffic and parking regulation.
- e) Economic Development – land development, residential development, public information, markets and abattoirs.
- f) Social and Human Services – recreation, libraries, public health, day care, children and family services and education.

In addition the Urban Government Policy provides for the authority to raise local revenues. The government intends to increase the financial accountability of all local authorities by increasing the share of local authority revenue attributable to the recipients of local authority services; and establishing a revenue sharing formula. The policy also established a relationship with traditional authorities. That is no actions will be taken that are inconsistent with the principle of the tinkhundla system. Hence, this dualism of authority is recognized as appropriate and will continue to exist.

The practice of local government in Swaziland is that it is still in the early stage; the true decentralisation will take a long time to be achieved. With respect to the reform which has been carried out, much has been done with respect to the urban authority, but very little has been done to the tinkhundla system. In fact, the system has not changed much. The only apparent change is with respect to the election exercise.

4.5. Malawi

In Malawi's election, the party that had ruled for 30 years lost to a new party that promised pluralism, participation and an open democracy. The new Constitution,⁴⁶ which was signed into law on 17 May 1994, provides in Chapter XIV for the establishment of local government authorities that shall be responsible for the representation of the people over whom they have jurisdiction, for their welfare. The Constitution enumerates a number of responsibilities for local government.⁴⁷

Further, the Constitution stipulates that parliament shall provide that issues of local policy and administration be decided on at local levels under the supervision of local government authorities.⁴⁸ Local government officers shall be elected by free, secret and equal suffrage.⁴⁹ In addition the Constitution establishes a National Local Government Finance Committee (NLGFC), which has a broad representation. The powers of the NLGFC are set out as follows:

- a) To receive annual estimates of revenue and expenditure from local authorities.
- b) To supervise and audit accounts of local authorities.
- c) To make recommendations relating to the distribution of funds allocated to local authorities by central government and to vary from time to time the amounts of allocation in accordance with economic realities on the ground.
- d) To prepare a consolidated budget for all local authorities annual revenue and expenditure estimates in consultation with the Ministry of Finance, for presentation to the National Assembly by the Minister responsible for Local Government; and
- e) To make application to the Minister for supplementary funds where necessary.⁵⁰

The Constitution, furthermore, provides that the Government shall be under a duty to ensure that there are adequate provisions of resources necessary for the proper exercise of local government functions and to this effect shall allow a local government authority to

⁴⁶ Act No. 20 of 1994

⁴⁷ Section 146 (2) of the Constitution

⁴⁸ Section 146 (3) of the Constitution

⁴⁹ Section 147 (1) of the Constitution

⁵⁰ Section 149 of the Constitution

keep such proportion of the revenue collected by that authority as shall be prescribed by NLGFC.⁵¹

In July 1994 the cabinet directed a comprehensive review of all decentralisation initiatives, including the district focus for rural development⁵², supported by UNDP/UNCDF. In 1998 the cabinet approved the decentralisation policy and the parliament subsequently passed a Local Government Act (LGA) in December of 1998. The objectives of the decentralisation policy are: to develop the local level and facilitate the participation of the grassroots in decision making, to eliminate dual administration at the district level with the aim of making the Public Service more efficient, more economical and cost effective, to promote accountability and good governance at the local level, and mobilize the masses for socio economic development.⁵³

The LGA is the foundation document for the legal implementation of decentralisation in Malawi. The LGA enshrines key elements of the decentralisation policy including structure of government (district assemblies), composition of the assemblies, powers of the assemblies, functions, and financing. But the LGA does not define structures below district level, instead it says that the assembly may establish such other committees at ward, area or village level as it may determine. In January 2001, the LGA was amended so that Local Authorities Service Commission became the institution responsible for the recruitment of management level staff for the assemblies. All lower level staff would continue to be recruited by the assemblies.

Fiscal decentralisation is another essential component for the decentralisation agenda if true devolution is to take place. But this part is still not well addressed in Malawi. The LGA gives local assemblies the power to levy and collect a short list of revenues, including property rates, ground rent, fees and licenses, commercial undertakings and service charges. In addition, it provides that the government may cede certain revenue

⁵¹ Section 150 of the Constitution.

⁵² Many features of the district focus development were borrowed from Kenya in 1993 when Malawi officially adopted the District Focus concept.

⁵³ Local Governance and Development Management Programme (2001) 6.

sources to local governments. The Act is silent on which revenue sources are to be ceded to the assemblies. On the other hand the policy statement states that these revenues will continue to be collected by the government and the proceeds will later be redistributed to district assemblies using a formula to be approved by Cabinet. The mechanisms for ceding revenues, including the institutional mechanisms, steps to be taken in the form of legislative processes or budgeting processes and the revenue distribution mechanisms are yet to be worked out. Hence, it can be said decentralisation in Malawi has not yet reached the stage of devolution. There are still several issues to be addressed.

4.6. Mozambique

Following many years of civil war between Frelimo and Mozambique National Resistance (Renamo), the government in its attempt to neutralise the situation adopted a new Constitution in 1990, which provides for a multi-party system. In 1992 a peace treaty formally ending the civil war was signed and Renamo won a full recognition as a first opposition party.

The Constitution embodies in Chapter IX provisions for a model of organisation and operation for local government. Article 185 provides that the local organs of state shall organise the participation of citizens in solving the problem of their communities and shall promote local development. The local organ of the State consists of executive organs and representative organs, which consist of citizens elected by voters of a particular area⁵⁴. The decisions of representative organ are binding within their area of authority⁵⁵, and hence the executive organs are accountable to the representative organs.⁵⁶ The duties of the executive organs are to ensure that economic, cultural and social programmes and obligations of local interest are carried out in accordance with the Constitution.⁵⁷ The Constitution was further amended in 1996 and 2004, which provide more detail to the provisions, but the structure is almost the same as in 1990 Constitution.

⁵⁴ Article 186

⁵⁵ Article 187

⁵⁶ Article 189

⁵⁷ Article 188

Following the multi-party democracy and the constitutionalisation of local government in 1990, the new government continued with administrative reform within the framework of Government Programme of Local Government Reform (PROL) as established in 1991 and funded by World Bank. The aim was to pursue the following objectives:

- a) strengthening national unity;
- b) deepening democracy;
- c) reconciliation of the Mozambican nation; and
- d) political and economic stability.⁵⁸

The Law on the Institutional Framework for the District Municipalities (Law 3/94) legally defined autonomy for the district municipalities. The law was actually passed by the one-party legislative assembly before the multiparty elections. After the election steps were taken to initiate power sharing, including swearing in Renamo officers as local state administrators. The guerrillas who are now turned into an opposition party received authorised control of seven districts and 53 administrative posts.⁵⁹

Although the process of decentralisation was agreed in principle, there are some forces in the present government of Mozambique which did not welcome it in its original form. These officials would rather see decentralisation for improving administrative capacity but not allowing a large-scale devolution of power. The matter was aggravated by a constitutional amendment in 1996, which fundamentally changed the nature of the decentralisation process. The most notable change was that the autonomy of the new local bodies was substantially limited. According to the constitutional amendment, the new autonomous local bodies were to supplement instead of replacing the centrally nominated local bodies. This form of dual-administration would mean, in practice, that the administration of rural areas would consist of a centrally nominated district administrator alongside a decentralised representative and executive bodies.

The constitutional amendment, which was passed by the government, and the new law on local governments, also limited the number of areas where new bodies would be

⁵⁸ Weimer (1999) 154.

⁵⁹ Braathen (2003) 6.

established. Most of the rural population has been left out of the reform package, and will consequently be subjected to continued central rule. This proved to be a central weakness of the reform seen in a systemic perspective.

The decentralisation process in Mozambique aims at creating and establishing new autonomous local bodies called '*autarquias locais*', comprising municipalities, towns and villages which were proclaimed to have the status of an '*autarquia*'. The reform includes other components, such as fiscal decentralisation and the redesign of the provincial and district authorities. In other words, decentralisation involves the deconcentration of state functions by redefining their relationship with new local structures.⁶⁰

The practice emerging in Mozambique is of a highly selective commitment to democratic decentralisation and a hesitant central government, entrenched in a long tradition of centralised party-based control. The result is that Mozambicans not living in the *autarquias* are by constitutional provision, deprived of the right to participate in local elections and will have to continue to content themselves with district administrators. In contrast, the urban population is privileged by constitutional order to have their own local government. The same colonial scenario is emerging where the urban classes have significant privileges and rural majority having fewer privileges.



4.7. Tanzania

In 1992 Tanzania followed the wind of change and accepted the multi-party democracy, which was preceded by the Constitutional amendment to allow the establishment of opposition parties. With respect to the local government; it is recognised in the Constitution.⁶¹ Section 145 of the Constitution stipulates that local government authorities shall be established at all levels in accordance to laws passed by Parliament. Section 146 states the primary objectives of local governments is devolution of powers to the people. The provision stipulates the functions of local government as follows:

- a) to perform the functions of local government within its area;

⁶⁰ Soiri (1998) www.euforic.org/by_place/mz.

⁶¹ The provisions on local government were introduced in the Constitution of the United Republic of Tanzania of 1977 in 1984, which is before the introduction of multi-partism in 1992.

- b) to ensure the enforcement of law and public safety of the people; and
- c) to consolidate democracy within its area and to apply it to accelerate the development of the people.⁶²

Following the multi-party election in 1995, the local government reforms were announced in June 1996. The main features of the reform are defined in the Local Government Reform Agenda (LGRP) 1996 – 2000, and the Government Policy Paper on Local Government Reform of October 1998. In line with the vision, the new role of the Central Government institutions includes:

- a) facilitation of the local government authorities in their responsibility to provide services;
- b) development and management of the national policy and regulatory framework;
- c) monitoring accountability by the local government authorities;
- d) financial and performance audit, and
- e) provision of adequate resources (human and financial) to enable the local government authorities to deliver services.⁶³

In order to affect the objectives outlined above the legal regime for local administration has undergone substantial changes. The 1982 local government Acts were amended in February 1999 through Act 6 of 1999 to give effect to new central-local relations which will allow smooth implementation of the LGRP. The local government laws as amended stress good governance calling for democratically elected local leaders and enhanced transparency in the conduct of council affairs as well as greater accountability of the council to the people. In particular, the revised laws provide for decentralized management of staff and finances by local government authorities both for which significantly underpin a largely autonomous local government system.

On the decentralised financial management, the Local Government Reform aims at increasing the resources available to local government authorities and improving the management of those resources. This is being pursued by improving the revenue base.

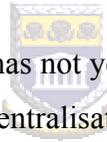
⁶² The Constitutional provisions were introduced in the Constitution by Act No. 15 of 1984.

⁶³ Ngwilizi (2001) 3.

The sources of public revenues are being revisited in order to develop a fairer sharing of revenue and revenue sources between central and local government. Further, guidelines have been developed to assist local authorities to improve on revenue collection from the existing sources and to improve control and management of their financial resources.

But according to the research done by Odd Helge the problem is bigger than improving the revenue base. He argued:

... the claim that increased fiscal autonomy will improve the efficiency and responsiveness of the public sector has to be taken with caution. Sustained development in local governments cannot grow from an institutional framework, which encourage coercion and extra-legal tax enforcement. Furthermore, attempts to raise additional revenues from poorly designed taxes may aggravate the negative effects of the tax system on the economy and the society in general. It is unrealistic to expect that the present staff in many councils have adequate capacity and the required integrity to manage increased fiscal autonomy. In fact, there is a real danger that, in the absence of substantial simplification and restructuring of the current revenue system combined with capacity building and improved integrity, increased autonomy may cause greater mismanagement and corruption in local authorities.⁶⁴



The transformation process in Tanzania has not yet resulted in the devolution of power to the local level; specifically the fiscal decentralisation has not yet taken place. Tanzania is continuing with deconcentration and delegation of power to the local level.

4.8. Zimbabwe

The Constitution of Zimbabwe of 1974 as amended to 2000 does not have any provision recognising local government, but a series of legislative enactments and directives have sought to democratise and strengthen local government. An attempt to draft a new constitution, which has detailed provisions regarding local government as well as recognition of the traditional leadership was made, but the draft was rejected by opposition as it vests more power to the executive President.

⁶⁴ Fjeldstad (2001) 18.

In this period Zimbabwe has made important changes in the structure of government, broadly favouring decentralisation. First, there has been significant deconcentration of sectoral ministries to the local level. Second, democratic structures have been established at the district level, which will be further improved by the District Administrator becoming responsible to the District Council, and not a centrally appointed official, and amalgamation of district and rural council was completed. Third, participatory structures were established to allow local participation in national planning from the village level upwards.

But the real extent of decentralisation has been limited by a number of factors: first, by lack of financial autonomy of the district councils, second, by moves by important sectoral ministries to recentralise activities; third, limited influence of the local authorities over the national plan in practice; fourth, by excessive focus on the provincial level, which has no directly elected representatives, and no powers of taxation; and finally, political factors, including the dominance of a centralised single party structure. For instance, the mayor of Harare was dismissed just because he was not the member of ZANU PF.



The lesson from the Zimbabwean decentralisation system is that it has not resulted in the evolution of a meaningfully democratic political system. As Makumbe puts it:

Thus, rather than resulting in the empowerment of the people at the local level, decentralisation has created a highly dependent local mass which looks up to central government for basically all its needs. Central government has maintained a stranglehold on national resources by insisting that the national budget should not be decentralised, and local government units should only have extremely limited authority to raise and allocate local resources.⁶⁵

⁶⁵ Makumbe (1999) 287.

4.9. South Africa

In South Africa, 1994 marked the end of apartheid era and the beginning of the establishment of the democratic country where the Constitution is supreme. Both the Interim Constitution of 1993 and final Constitution of 1996⁶⁶ have entrenched the institution of local government with its powers and functions. The Constitution clearly recognises local government, which is a fully-fledged sphere of government, as a third tier of government, the other two being the national and provincial. These three tiers are interrelated, interdependent and interconnected.⁶⁷ The enhanced status of local government is manifested in a number of provisions. In a lengthy chapter on local government, the Constitution provides that the local sphere consists of municipalities covering the entire country and that a municipality “has the right to govern, on its own initiative, the local government affairs of its community, as provided for in the Constitution.”⁶⁸ The importance of this right is that “the national and provincial government may not compromise or impede a municipality’s ability or right to exercise its powers or perform its duties.”⁶⁹

The transformation of local authorities after 1994 followed a three-phased process. The first, pre-interim phase commenced with the replacement in 1994 of race-based local authorities in cities and towns with non-racial Transitional Local Councils. The second, interim phase of transformation was the demarcation of the country in 843 municipalities during 1995. The third is the 1996 constitutionalisation of three categories of municipalities – A, B and C. Category A comprised of self-standing municipalities, subsequently referred to as metropolitan municipalities. Categories B and C municipalities have "shared" authority over areas falling outside the metropolitan areas. The basic unit is a local municipality (Category B), with a number constituting a district municipality (Category C). A metro exercises all local government powers, while these powers are divided among the district and the local municipalities. The Constitution

⁶⁶ Act 108 of 1996

⁶⁷ Section 40(1)

⁶⁸ Section 151(3).

⁶⁹ Section 151(4).

further required local government for the entire surface of the country – establishing the principle of so-called wall-to-wall local government.⁷⁰

The demarcation process, which was conducted in 2000 demarcated six metropolitan municipalities and 231 local municipalities, which are grouped together to constitute 47 district municipalities. The local government election of 5 December 2000 brought into existence the first fully democratically elected 284 municipal councils.⁷¹

In terms of the Constitution, a municipality has the original revenue raising powers of imposing rates on property and surcharges on fees for services provided by or on behalf of it.⁷² However, all other taxes, levies and duties may only be imposed if authorized by national legislation. Excluded from local government's reach are income tax, value-added tax, general sales tax or customs duty. Municipalities may also raise loans for capital or current expenditure, but in the latter case must be for bridging purposes only and be repaid within twelve months.⁷³ A further source of revenue is transfers; municipalities, along with provinces, are entitled to “an equitable share of revenue raised nationally to enable it to provide basic services and perform the functions allocated to it”.⁷⁴ In addition the national government may give further conditional or unconditional grants. Importantly, though, municipalities' equitable share may not be affected by them raising additional own revenue, or conversely, failing to exploit their fiscal capacity and tax base.⁷⁵

The national statutory regulation of local finances is extensive. The recently enacted Municipal Finance Management Act of 2003 and the Property Rates Act of 2004 regulate in detail both the expenditure and revenue raising activities of municipalities. The national Minister of Finance is empowered, for example, to provide guidelines on budget

⁷⁰ Steytler (2004) 5.

⁷¹ Steytler (2004) 5.

⁷² Section 229(1) (a) Constitution.

⁷³ Section 230A of the Constitution.

⁷⁴ Section 227(1) of the Constitution.

⁷⁵ Steytler (2004) 14.

growth parameters and to cap an annual increase in property rates. However, the overall policy is that municipalities are responsible for their own financial well-being.

In spite on these extensive provisions in the Constitutions, there are still some municipalities which are struggling financially, and there have been situations where the provincial governments were forced to intervene in the municipalities using section 139 of the Constitution.⁷⁶ But to a large extent, devolution of powers is seen in practice in South Africa, although there is an extensive supervisory framework covering almost every aspect of local government.

4.10. Namibia

Namibia was governed by South Africa until 1990 when a Constitution was adopted which established Namibia as an independent country. In the same Constitution which established its independence also enshrined local governance in Chapter 12, which provides for the system of regional and local government in the country. Article 102 (1) specifically provides for structures of regional and local governments. It states:

For purposes of regional and local government, Namibia shall be divided into regional and local units which shall consist of such region and local authorities as may be determined and defined by an Act of parliament.

In the same year, a Delimitation Commission was appointed to subdivide Namibia into regions. The commission established thirteen regions. In the same chapter, the powers of regional councils and local authorities are prescribed covering such areas as raising revenue and sharing in the revenue raised by the central government.⁷⁷

With the objective of introduction and implementation of decentralisation in the country, the government of Namibia formulated a decentralisation policy, which was adopted by

⁷⁶ There has been an intervention in Butterworth, and Lekwa Teemane municipal councils.

⁷⁷ Section 108(c) of the Constitution.

the National Assembly in 1997. The effective date for beginning the implementation of the policy was 1 April 1998.

The policy of decentralisation aimed at devolution of power within the framework of a unitary state. But this is not a one-day task, especially taking into account its historical background of colonial over-centralisation of power and the Bantustan policies. Such a process has to pass through other two stages of decentralisation, namely deconcentration and delegation. Hence, the implementation of the policy is to be phased in systematically.⁷⁸ Functions to be decentralised are categorised into three groups: some functions, which are easy to decentralise will be decentralised immediately, other complicated functions in the medium term and the rest, which are either because of their complexity or national nature will need a long time to assess, will be decentralised in the long term or never at all.

Local authorities in Namibia range from those being independent of financial support by central government and thus to a large extent autonomous, to those which are fully dependent on government support. The Local Authority Act, 1992 as amended thereafter several times, provides for the determination of the powers, duties and functions of local authorities. It is upon the central government to provide for the establishment of a local authority and the control of administration of its council and to assist local authorities in performing their duties and functions efficiently by providing necessary resources, facilities and training.

The form of decentralisation taking place in Namibia is delegation, but what is surprising is the low degree of delegation.⁷⁹ It is evident that regional councils are under the control of the central government. The pace and direction of the first phase of the decentralisation process, which one day might become devolution, has not proceeded as planned. This leads us to the question: why has the decentralisation process proceeded the way it has? The answer is that the members of SWAPO did not approve of the plans for

⁷⁸ MRGLH (1998) 10.

⁷⁹ Larsen (2002) 11.

decentralisation. The regions and regional councils were a compromise between SWAPO and the opposition during the drafting of the Constitution. The opposition at that time was more powerful. One of the main reasons for not supporting these regional councils was the fear of becoming a federation. The lack of political support is one of the main reasons for the slow pace of the decentralisation process in Namibia.⁸⁰

4.11. Botswana

Botswana is a success story as far as decentralisation is concerned. Local authorities are nowhere mentioned in the Constitution and have no inherent competence derived from the Constitution. All local authorities exist by virtue of ordinary Acts of Parliament and, at least in theory, any of them could be abolished at any time by Parliament.

At independence Botswana established a two tiers system of Government made of the Central and Local Government. The local government was made up of four local authorities namely: (a) District and Urban Councils, (b) Land Boards, (c) District Administration, and (d) Tribal Administration. The Act⁸¹ set out 11 statutory functions of District Councils, namely: primary schools; sanitation, public health, public lavatories; ungazetted public roads; rural village water supply; markets, parks, cemeteries, relief services, recreation and welfare; contracts for sale of land, by-laws, council staff, regulatory and licensing of traditional beer, donkey carts, bicycles, herbalists and brick-makers; abattoirs; and beer halls.

The form of decentralisation, which took place in this period can be called deconcentration of power, but legal authority in the form of devolution has remained mostly unchanged. There was a rather indistinct phase from 1970 to 1975/76 in which the government, disillusioned by the inefficiency and ineffectiveness of the new councils, centralised some of their powers and shifted its support more towards a system of deconcentration through the district administration and other departmental officers in the field. By 1970, central

⁸⁰ Larsen (2002) 12.

⁸¹ Local Government (District Councils) Act, no.35 of 1965.

government, in its pragmatic way had realised the inefficiencies of centralisation. The release of a White Paper on Rural Development and the administrative decision to create District Development Committees (DDCs) was coupled with the strengthening of Councils as providers of essential services via delegation of responsibility and vast increases in capital expenditure budgets. During the 1970s, Councils were devolved no real additional authority, but they were delegated increasing responsibilities.⁸²

All along local authorities have mostly been dependent on central government for their development as well as their recurrent budgets. Since this has proved not to be sustainable in the long run, the government has been frantically looking for ways to strengthen local authorities. The period starting from 1980 marked a revival of decentralisation. During the 1980s, and up until today, the statutory local authorities certainly have seen real growth in the size of both their recurrent and development budgets. They have been delegated increased responsibilities.⁸³

In the National Development Plan 7 (1991-1997) decentralisation was one of the top priorities. The Plan emphasised the need to delegate greater responsibilities for development planning and implementation to local authorities. In particular emphasis was placed on local level development plans, local authority finances and personnel development, local authority service provision and communal area development and participation. Furthermore, the Decentralisation Policy Paper and Action Plan of 1993 laid down a comprehensive plan of decentralisation of responsibilities to local authorities.⁸⁴

The minister of Local Government, Lands and Housing argued: “It is the view of the Government of Botswana that the powers and responsibilities currently devolved to local authorities, at least in the area of functional responsibility for service provision, do not need to be increased, at least for the foreseeable future.”⁸⁵ The five functions of councils (primary education, primary health care, tertiary roads, rural village water supply, social

⁸² Ministry of Local Government, Lands and Housing (1999) 11.

⁸³ High Level Seminar on Experiences of Decentralisation in Eastern and Southern Africa (1999) 7.

⁸⁴ High Level Seminar on Experiences of Decentralisation in Eastern and Southern Africa (1999) 7.

⁸⁵ Ministry of Local Government, Lands and Housing (1999) 13.

and community development) by themselves cover much of what is usually understood by rural development.

In terms of financial relationship the current arrangement is such that central government still controls the way money allocated to local authorities should be spent. The control involves grant money, taxing powers, access to credit and management of development funds. The inability of local authorities to control their own budgets and dependence upon central government for the vast majority of their revenue are perhaps the greatest factors limiting the full success of decentralisation in Botswana. The capacity and autonomy of local authorities in the area of local government finance and personnel administration is not yet strengthened. The main sources of council's direct income include: property taxes (rates and service levies), land and housing rents, water fees, stock sales commissions, trading licences, health fees, abattoir fees, matimela fees, and bank interests.⁸⁶

Another measure to increase local authority revenue is the development of new revenue sources for local authorities. At the present time, MLGLH is considering five potential sources of new revenue for local authorities, namely: reintroduction of local government tax, extension of property rates to district council areas, a hotel occupancy tax a petroleum fuels tax and a retail turnover tax.

Local Authorities in Botswana are already strong and confident, but they are still faced with many problems that hinder them from good performance. These range from lack of planning and budgeting skills, lack of personnel, and follow up of project. It is not only the inability of councils to cope with more financial management responsibilities, which is inhibiting an effective decentralizing reform, but also the lopsided relationship in terms of power between MLGLH and the local government authorities. A structural reform of local government in Botswana would require the devolution rather than the deconcentration of power- as it is apparently intended with the current reform approach.⁸⁷

⁸⁶ High Level Seminar on Experiences of Decentralisation in Eastern and Southern Africa (1999) 16.

⁸⁷ High Level Seminar on Experiences of Decentralisation in Eastern and Southern Africa (1999) 32.

4.12. Conclusion

The analysis of the period of 1990s has demonstrated that it was the democratisation process, which brought the true decentralisation. First, eight countries namely: Zambia, Angola, Lesotho, Swaziland, Malawi, Mozambique and Tanzania are all unitary state, which followed a single-party system until 1990s. The result is that there was no true decentralisation, as the power was controlled by the centre and the local governments were mere agents of the central government. With the beginning of multi-party democracy we saw major changes: first with the recognition of the local government in the Constitutions of all these countries, the only exception being Swaziland. But even Swaziland the draft Constitution has detailed provisions on local government. Hence, it can be concluded that the process of recognition of local government in the Constitution is linked to the process of democratisation.

Second, South Africa which emerged out of apartheid in 1994 and enters the new dawn of democracy has extensive provisions in its Constitution. It does not only recognise local government, but it is a third tier of government, which enjoy a degree of autonomy in its sphere of competence. The powers and functions of local government have been entrenched in the Constitution. Hence, again it is demonstrated that although local government existed for a long time in South Africa. It is only with the process of democratisation in the 1990s that true decentralisation, with the entrenched powers to the local government is seen.

Third, with the focus being those three countries: Zimbabwe, Botswana and Namibia, which started with multi-party democracy from the time of its independence. It has been demonstrated that true decentralisation come with the democratisation. Zimbabwe did not have much to show as far as decentralisation was concerned even though it followed multi-party. The reason is Zimbabwe's democracy is questionable, the dominance of ZANU PF was overwhelming, it can be easily said that the country was ruled as if it was under single party system. Further, with the union of two major political parties in 1987 many writers believed Zimbabwe was heading toward single party system. It is only in

1989 that several opposition parties emerged and in 1990s the reforms towards further decentralisation were carried out. Botswana and Namibia did not follow the route, which many countries in the SADC followed. With multi-party democracy existing from the time of their independence, the process of decentralisation went ahead with democratisation. Hence, there is a strong link between the democratisation and the process of decentralisation in the SADC region.

Lastly, it is important to examine whether the democratisation process has brought the real power to the people. The practice in the SADC region is uneven. This is due to several factors, which some are peculiar to particular countries. Mozambique and Angola being devastated by many years of civil wars the decentralisation reforms have not been easy to be carried out. Zimbabwe, South Africa and Namibia, which first had to break down the racial based institutions before decentralising the power to local level, the task has not been easier. Lesotho and Swaziland had to find a way to strike the balance between the power of the monarch and the traditional chiefs and what has to be decentralised to the local government. Zambia, Malawi and Tanzania, the struggle was more of divorcing the politics and central government domination from the local government institutions. Botswana is the only country, which had a smooth transition. The result is that all countries have not reached the devolution stage, with the exception of South Africa and to some extent Botswana, but all have policies, and legislations directed toward that goal.

CHAPTER 5

CONCLUSION

The process of democratisation and decentralisation in the 1990s has affected all countries in the SADC region, but the impact of decentralisation is uneven. There are two countries, namely South Africa and Botswana, which are far a head. South Africa has reached the devolution stage and Botswana is following suit. The majority of the remaining countries despite taking the transformation seriously and entrenching in their Constitutions provisions which recognise local government, are still struggling with deconcentration and delegation. The countries that are lagging behind are Swaziland and Angola.

The discussion on transformation of local government in SADC countries has revealed that although the target of decentralisation is the devolution of powers to local government, most of the countries have not reached that stage. They seem to stop at the deconcentration and delegation of powers, and even in those countries where local government is very strong for instance,  South Africa and Botswana fiscal decentralisation has been a problem, which hampered the complete devolution of powers to the local government.

There are many challenges a head, and there are many problems and obstacles associated with the decentralisation, which the SADC countries have to recognise. Firstly, although many counties in SADC have embarked on the implementation of decentralisation reforms, it is submitted that these reforms are costly and it is questionable whether many of these countries have the necessary resources. The result is that decentralisation measures are implemented under severe economic constraints. Secondly, there is a shortage of skilled and trained personnel and insufficient capacity for the implementation of reforms.

Lastly, in many instances it has been demonstrated that the central government may not be willing to give full-scale rights to the local or regional level. In the absence of such delegation, effective administration is impossible and some forms of superficial decentralisation occur. The issues of revenue sharing and other financial consideration have to be addressed.

Rondinelli believes “decentralisation is not a ‘quick fix’ for the management problems of developing countries. The factors that make it such an attractive policy are usually the same ones that make it difficult to implement”.⁸⁸ With the above-mentioned adverse conditions, the capacity of governments in the SADC countries to formulate and realistically implement the complete decentralisation policies does not seem likely to happen any time soon.

One of the outcomes of decentralisation and democratisation, as we have seen, is the constitutional recognition of local government. The above discussion confirms that the recognition of local government really matters. We have seen that in the period of 1970s many of the local governments were either abolished or their powers and status were severely diminished. This was possible because the constitutions of those countries had no provision for safeguarding the existence of local government. In this respect Reddy argued that “it is imperative that the general principles of local government democratisation and decentralisation be constitutionalised”.⁸⁹

Hence, constitutionalisation of local government does guarantee the existence of local government, and any encroachment against it can be taken to the superior courts, as they would amount to violation of Constitution. But there is no guarantee of the true decentralisation. This has been demonstrated by the case of Tanzania and Botswana. In Tanzania the provision recognising local government were introduced in the Constitution in 1984, but there were no genuine decentralisation reforms, which took place until the introduction of multi-party democracy in 1992. In Botswana local government is not

⁸⁸ Rondinelli (1984) 4.

⁸⁹ Reddy (1999) 27.

recognised in its Constitution, but it is far ahead as far as decentralisation is concerned. The reason is that it pursued multi-party democracy from the time it gained its independence. Another case is that of Swaziland, which lacked both the Constitution and the multi-party democracy, which was introduced in 1993. The local government existed only in name there was no true devolution of power to the local level. The reforms which were carried under multi-party democracy at least has created a climate under which decentralisation can take place. Hence, it can be concluded that in SADC countries “decentralisation is a natural, indispensable counterpart to pluralistic democracy”⁹⁰.



Word Count 13,626

⁹⁰Reddy (1999) 21.

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