

UNIVERSITY OF THE WESTERN CAPE



FACULTY OF LAW

A research paper submitted in partial fulfilment of the requirements of an MPhil in
Law, State and Multi-level Government

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Mode: MPhil (Structured)
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Research Paper Topic: Decentralisation in Zambia: An analysis of local democracy.

Keywords: Local democracy, local government, 2016 Constitution of Zambia, service delivery, decentralisation.

DECLARATION

I, Frank Kunda, do hereby declare that ‘Decentralisation in Zambia: An analysis of local democracy’ is my original work and I have properly acknowledged all sources which I have used by means of references. I further testify that it has not been submitted for another degree or to any other institution of higher learning.

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Acknowledgements

I am profoundly grateful to Dr. T. Chigwata my thesis supervisor for patiently guiding me through the process of researching and writing this paper. His comments and encouragement were invaluable.

I would also like to thank the German Development Bank (KfW) for funding my studies.

Finally I must express my deep gratitude to my family for the unfailing support and continuous encouragement throughout the period of my studies, as well as during the process of researching and writing this thesis. To God be the glory in everything.



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Dedication

To my mother and in memory of my father.



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Abbreviations and acronyms

AU	African Union
BSAC	British South Africa Company
DG	District Governor
ECZ	Electoral Commission of Zambia
FPTP	First-past-the-post
MP	Member of Parliament
SADC	Southern African Development Community
UN	United Nations
UNIP	United National Independence Party

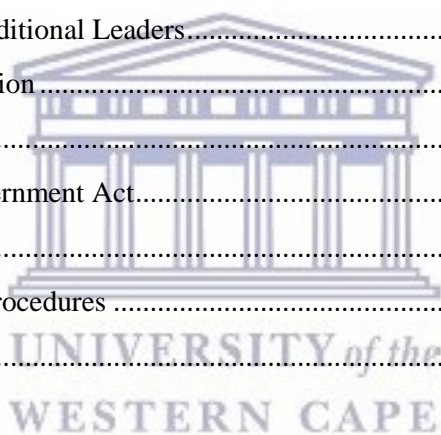


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Chapter 1: Introduction

1.1 Problem Statement

Zambia has had a system of local government whose origin can be traced back to the colonial era.¹ This system of local government, which is comprised by local authorities, did not have constitutional recognition. The 1996 Constitution of Zambia was the first to recognise the institution of local government.² Nevertheless, the only aspect of local government which was entrenched was the provision that councils were to be democratically elected by universal adult suffrage.³ Other key principles of local democracy, such as citizen participation, local accountability and transparency, that are necessary pillars to an effective system of local government, were not recognised in this Constitution. It was not a surprise that most Zambians experienced challenges in accessing basic public and social services such as water supply, sanitation, housing and health care, which are a responsibility of local government.⁴ The absence of sufficient democratic content in the 1996 Constitution and in the enabling legislative and policy framework partly contributed to the ineffectiveness of local authorities.⁵

In 2016, Zambia adopted a new Constitution⁶ which, among other things, strives to solve problems of the 1996 Constitution of Zambia. Under this new Constitution, while Zambia remains a unitary state,⁷ the Constitution organises government at multiple levels, namely: national, provincial and local government.⁸ In terms of territorial organisation, Zambia is divided into ten provinces and 116 local districts, the latter administered by local authorities.⁹ Article 151 of the Constitution provides for the establishment of a system of local government where functions, responsibilities and resources from the national government and provincial administration are transferred to local authorities in a coordinated manner. The Constitution

¹ Sakala BS 'Local government system: structure and practice' in Chitembo A (ed) *50 Years of Local Government in Zambia* (2014) 1.

² Constitution of the Republic of Zambia, Amendment, Act No. 18 of 1996, article 109(1) (here after referred to as the Constitution of Zambia 1996).

³ Constitution of Zambia 1996, s 109(2).

⁴ Ministry of National Development Planning *Vision 2030 for Zambia* (2006) 24.

⁵ Office of the President Cabinet Office *Revised national decentralisation policy* (2013) 9.

⁶ Constitution of the Republic of Zambia, Amendment, Act No. 2 of 2016 (here after referred to as the Constitution).

⁷ Constitution, preamble.

⁸ Constitution, article 147(2).

⁹ Constitution, article 266.

requires this system to be based on democratically elected councils.¹⁰ Further, the local government system must also promote a democratic and accountable exercise of power through relevant structures.¹¹ The Constitution also requires the involvement of communities and community organisations in matters of local government.¹²

From the foregoing, it is observed that the 2016 Constitution has recognised the importance of local democracy to an effective system of local government. However, the mere recognition of the principles of local democracy is not enough if not accompanied by sufficient mechanisms of entrenching, promoting and sustaining them.¹³ Some of these principles are: representative democracy, accountability, citizen participation, transparency and inclusivity.¹⁴ International literature on decentralisation suggests that a system of local government that is not anchored on these principles has limited potential to realise the benefits associated with decentralisation, such as responsive local government.¹⁵ In fact, such a system of local government may prompt corruption, inequalities and resource wastage, among other challenges, usually associated with poorly designed decentralisation programmes.¹⁶ All these challenges have characterised local government in Zambia over the past two decades.¹⁷ Thus, it is important to analyse the 2016 Constitution of Zambia in order to establish if it provides for an effective local government system that is capable of arresting these failures and problems. Attention is primarily focused on local democracy which is central to such a system.¹⁸

1.2 Significance of the Problem

As highlighted above, a system of local government which does not sufficiently entrench local democracy is unlikely to reap the benefits usually associated with decentralisation.¹⁹ Such benefits include the delivery of public services that closely match the needs and preferences of

¹⁰ Constitution, article 151(2)(a).

¹¹ Constitution, article 151(2)(b).

¹² Constitution, article 151 (2)(g).

¹³ Shah A & Shah S 'The new vision of local governance and the evolving roles of local governments' in Shah A (ed) *Local Governance in Developing Countries* (2006) 28.

¹⁴ UN *International Guidelines on Decentralisation and Strengthening of Local Authorities* (2007) 2.

¹⁵ Manor J *The Political Economy of Democratic Decentralisation* (1999) 36.

¹⁶ Oates W *Fiscal Decentralisation* (1972) 53.

¹⁷ Ministry of National Development Planning *Seventh National Development Plan 2017 to 2021* (2017) 3.

¹⁸ Glen PJ 'Institutionalising democracy in Africa: A comment on the African Charter on Democracy, Elections and Governance' (2012) 5 *African Journal of Legal Studies* 150.

¹⁹ Manor J (1999) 37.

communities.²⁰ Decentralisation also promotes accountable local government.²¹ Moreover it enhances inter-jurisdictional competition and innovation, which is expected to result in efficient and effective ways of public service provision.²² In the past decade, the local government system in Zambia failed to perform effectively on its service delivery obligations.²³ This failure is partly attributed to the 1996 Constitution which did not adequately entrench local democracy, which is a key aspect of an effective system of local government. Thus, if the 2016 Constitution does not fully entrench local democracy it cannot improve the poor state of service delivery in Zambia. If the Constitution sufficiently entrenches local democracy but it is not implemented in practice, the service delivery challenges will likely continue. Therefore, it is important to go beyond constitutional analysis to establish what is required to implement the Constitution, with particular focus on local democracy.²⁴

1.3 Research Question

The significance of local democracy to an effective decentralised system of government has been brought to light. The entrenchment of local democracy in the Constitution provides the necessary foundation for the development of such a system. The need for the implementation of the Constitution on local democracy was also emphasised. Given this background, the main research question which this study seeks to answer is: Does the 2016 Constitution of Zambia sufficiently entrench local democracy? If so, what institutional, legislative and policy reforms are required to give effect to the constitutional provisions on local democracy?

1.4 Argument for the Research Question

The 2016 Constitution of Zambia has recognised the importance of local democracy to an effective system of local government. It is argued that, while it has certain weaknesses, the Constitution provides a foundation upon which a democratic system of local government can be built. If the necessary institutional, legislative and policy reforms are implemented to give full effect to the constitutional framework on local democracy, the effectiveness of the local government system may improve. There are some experiences on the African continent which

²⁰ Rondinelli D *An Overview of Decentralisation in Developing Countries* (1986) 4.

²¹ Manor J (1999) 38.

²² Oates W (1972) 55.

²³ Ministry of National Development Planning *Seventh National Development Plan 2017 to 2021* (2017) 35.

²⁴ See Prempeh HK 'Africa's 'constitutional revival': false start or new dawn?' (2007) 5 *International Journal of Constitutional Law* 495.

show some positive effects of local democracy in enhancing the effectiveness of a decentralised system of government. It may be necessary to borrow lessons from these countries to shape the reform of policies, laws and institutions that have a bearing on local democracy. International best practices can also be emulated to achieve the same goal.

1.5 Literature Review

There is a vast amount of literature on local democracy at national, regional and international levels. It identifies citizen participation as one of the essential components of democratisation and good governance.²⁵ Van der Waldt contends that citizen participation promotes grassroots democracy through empowering all people to participate actively in the realisation of their well-being and fulfilment as active citizens.²⁶ He also argues that citizen participation enables the voices and interests of the poor to be taken into account when decisions are made.²⁷ On the other hand, De Visser argues that decentralisation will not automatically produce effective involvement of citizens and a responsive government.²⁸ Thus, there is need to ensure that the institutional framework for local government entrenches the values and principles of local democracy.²⁹ He further asserts that local governments themselves need to go beyond frameworks of statutes and come up with their own mechanisms of promoting local democracy.³⁰

Wilson has also acknowledged that local democracy must be strengthened in order to improve the effectiveness of local government.³¹ He argues that one of the reasons for the ineffectiveness of local governments is that channels of communication may be available but the public has neither adequate knowledge of what government is doing nor the understanding of issues involved.³² It is against this background that there is need for the creation of enabling mechanisms that allow for direct citizen participation.³³ Shah and Shah analysed the Swiss model of local government which is strengthened by provisions on local democracy in the Swiss legal

²⁵ UN *International Guidelines on Decentralisation and Strengthening of Local Authorities* (2007) 2.

²⁶ Van der Waldt G 'Citizen participation in developmental local government: statutory obligations' (2004) 2 *Administratio Publica* 4.

²⁷ Van der Waldt G (2004) 4.

²⁸ De Visser J *Developmental Local Government: A Case Study of South Africa* (2005) 39.

²⁹ De Visser J (2005) 39.

³⁰ De Visser J (2005) 39.

³¹ Wilson RH 'Understanding local governance: an international perspective' (2000) 40 *Revista de Administração de Empresas* 62.

³² Wilson RH (2000) 62.

³³ Wilson RH (2000) 62.

framework in relation to aspects of people's initiatives, referenda and petitions.³⁴ Mechanisms, such as local referenda, can be an effective tool of consolidating local democracy.³⁵ Local referenda has the potential to consolidate local democracy because it gives citizens the opportunity to freely express themselves and hence, exercise more direct power in decision-making.³⁶

Another important feature of local democracy is accountability. Sikhakane and Reddy argue that accountability promotes local democracy in the sense that it makes administrative and political officials answerable for the resources entrusted to them in accordance with the existing rules and regulations.³⁷ They further contend that accountability mechanisms are important to restrain and check the behaviour of these officials with a view to prevent the abuse of power.³⁸ Adagbabiri also asserts that mechanisms of enhancing the accountability of appointed public officials to the elected political executive as well as to the governed people are vital to reap the dividends of decentralisation.³⁹ In addition, a responsive and accountable government is one which provides easy access to public information, constantly listens to the people and ensures that government and its agencies are open to people's inputs and scrutiny.⁴⁰

Local elections are another core principle of democratic governance closest to the people.⁴¹ In this regard, Article 13(2) of the African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development provides that elections must be regular, free, fair and transparent.⁴² Furthermore, Adejumbi contends that, among other things, elections are likely to be free and fair if they are administered by an autonomous and non-partisan electoral body.⁴³ Yilmaz et al. argue that elections serve as a key means of ensuring public accountability, which

³⁴ Shah A & Shah S (2006) 28.

³⁵ Demalija R 'Local referendums: as a tool for promoting democracy and respect for human rights in Albania.' (2014) 3 *International Journal of Sciences* 42.

³⁶ Dibra B 'Referendum as a constitutional right of citizen participation in Albania' (2015) 6 *Mediterranean Journal of Social Sciences* 73.

³⁷ Sikhakane BH & Reddy PS 'Public accountability at the local government sphere in South Africa' (2011) 4 *African Journal of Public Affairs* 89.

³⁸ Sikhakane BH & Reddy PS (2011) 90.

³⁹ Adagbabiri MM 'Accountability and transparency: an ideal configuration for good governance' (2015) 5 *Developing Country Studies* 2.

⁴⁰ UN *World Public Sector Report – Responsive and Accountable Government* (2015) 8.

⁴¹ Ndulo M & Lulo S 'Free and fair elections, violence and conflict' 2010 *Harvard International Law Journal* 155.

⁴² African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development).

⁴³ Adejumbi S 'Elections in Africa: a fading shadow of democracy' (2000) 21 *International Political Science Review* 62.

could be attained through voting incumbents out of office if they underperform.⁴⁴ Transparency, likewise, is considered to be an essential quality of local democracy which empowers ordinary citizens to take a more meaningful role in shaping the decisions that affect their lives.⁴⁵ It can be promoted by, among other ways, putting in place policies, laws and structures that facilitate citizens' social and political judgments on the performance of local officials.⁴⁶

In his review of local government reforms in Zambia, Chikulo acknowledges the importance of legal, policy and institutional frameworks in establishing and democratising local governments.⁴⁷ His discussion however mainly covers the legislative reforms in Zambia from 1964 to 2008.⁴⁸ Lolojih, in analysing local government service delivery in Zambia between 1964 and 2014, argues that a suitable environment capable of supporting a local government system that can deliver adequate quality services had not been created.⁴⁹ He has attributed this state of affairs in part to a lack of accountability and transparency in the operations of local authorities.⁵⁰ Mukwena, also analysing local government in Zambia, asserts that for local government to operate effectively it must be centred on democracy.⁵¹ He further argues that principles for meaningful functioning of local government must include the need for local residents to participate in the decision-making process as it affects their lives.⁵²

The above discussion has shown that while there is vast literature on local democracy at international and regional level, there is limited literature on local government in Zambia. Moreover, there is no literature that provides an analysis of local democracy under the new constitutional dispensation and its importance to effective local government. Last, there is no academic scholarship which has established the necessary institutional, legislative and policy

⁴⁴ Yilmaz S, Beris Y & Serrano-Berthet R *Local Government Discretion and Accountability: a diagnostic framework for local governance* (2008) 11 World Bank social development working papers 11.

⁴⁵ Welch EW 'The relationship between transparent and participative government: A study of local governments in the United States' (2012) 78 *International Review of Administrative Sciences* 93.

⁴⁶ African Charter on the values and principles of decentralisation, local governance and local development (2014) article 14.

⁴⁷ Chikulo B 'Local governance reforms in Zambia: a review' 2009 *Commonwealth Journal of Local Governance* 103.

⁴⁸ Chikulo B (2009) 99.

⁴⁹ Lolojih PK 'Local government and service delivery' in Chitembo A (ed) *50 Years of Local Government in Zambia* (2014) 175.

⁵⁰ Lolojih PK (2014) 178.

⁵¹ Mukwena RM 'Decentralisation, democracy and development: the case of Zambia' in Chitembo A (ed) *50 Years of Local Government in Zambia* (2014) 31.

⁵² Mukwena RM (2014) 28.

reforms that are required to give effect to the new constitutional provisions on local democracy. This research seeks to fill the gap. The paper aims to contribute to a better understanding and implementation of the 2016 constitutional provisions on local democracy in order to strengthen the capacity of local governments in Zambia to deliver on their functions.

1.6 Substantiating the Argument

This study is divided into five chapters. Chapter One is the introductory chapter which provides the problem statement, significance of the problem, research question, argument, literature review and the methodology to be used in the research paper. Chapter Two is a theoretical discussion of what local democracy entails and why it is important to an effective local government system. The chapter is based on international best practices and literature on decentralisation as well as the relevant international and regional instruments on local government. Chapter Three is a discussion of the legal framework and practice on local democracy in Zambia. Chapter Four examines the constitutional framework on local democracy in order to understand how far the 2016 Constitution has gone in solving the challenges which were experienced at local government level before it was adopted. Chapter Five provides the conclusion and recommendations.

1.7 Research Methodology

This is a desktop-based study which analyses primary sources such as the 1996 and 2016 Constitutions of Zambia. The study will also analyse legislation and policies on local democracy in Zambia and beyond. The study further considers secondary sources in the form of relevant books, chapters in books, and journal articles on local government and decentralisation. Informal sources such as notes, newspaper articles and press statements are also utilised to complement the formal sources. In order to benefit from key lessons from various countries, the research paper will also make use of a thematic comparison research methodology where certain themes linked to local democracy rather than jurisdictions are compared. In addition, the study will make use of case law to establish how the courts have interpreted the law on government decentralisation in Zambia and beyond.

Chapter 2: Local Democracy: A Theoretical Framework

2.1 Introduction

As highlighted in Chapter One, local government is often identified as the sphere or level of government that is physically closest to the people.⁵³ It is often the entry point for people's political participation and representation.⁵⁴ It is at this level that people are likely to experience on a daily basis, the practical outcomes of political choices and the impact of decision-making on their lives.⁵⁵ Thus, it is important that local government provides the space for democracy to flourish to have the most positive impact on people's lives. The key question then is: what constitutes democratic local government? What are some of the key principles that constitute the minimum core for local democracy? This chapter surveys international literature, instruments and best practices on local government in order to identify these principles. The objective is to propose an institutional design for local democracy on the basis of which the local government system in Zambia will be measured against. This chapter discusses the pillars of local democracy. The need to define decentralisation within context, primarily focusing on the role of traditional leaders, is then discussed. Conclusive remarks are given last.

2.2. Pillars of Local Democracy

Decentralisation has the potential to enhance local accountability, increase government responsiveness, enhance sustainability of development projects, and to widen opportunities for citizen participation and inclusive government, among other benefits.⁵⁶ Equally, decentralisation may promote corruption, regional disparities, secessionism, inefficiency, and power capture that may compromise the realisation of these and many other benefits usually associated with it.⁵⁷ Given that these potential benefits and weaknesses of decentralisation are discussed widely across literature, this chapter will not engage them in detail. What is however important for this study is the identification of key design features that increases the potential to realise the benefits while also minimising the weaknesses of decentralisation. Local democracy is identified across literature, international instruments and best practices on local government as one of the key

⁵³ See UN *International Guidelines on Decentralisation and Strengthening of Local Authorities* (2009) 9.

⁵⁴ Sisk T D *Democracy at the Local Level* (2001) 12.

⁵⁵ Sisk T D (2001) 12.

⁵⁶ See Smoke P 'Decentralisation in Africa: goals, dimensions, myths and challenges' (2003) 23 *Public Administration and Development* 9 Rondinelli D (1986) 4.

⁵⁷ Manor J (1999) 101.

crucial principles that is indispensable to any system of local government that has the potential to meet service delivery and development objectives of local communities.⁵⁸ What then is local democracy? The concept of local democracy is a loose term which presents difficulties in defining it. Its minimum values are, however, generally not in dispute. They include: security of existence, representative democracy, citizen participation, accountability, transparency and inclusiveness.⁵⁹ These pillars of local democracy are discussed in detail below.

2.2.1 Security of Existence of Local Government

Security of existence of local government means that there are guarantees for local government to exist as an institution whether as a sphere or a level of government.⁶⁰ It is important to guarantee the existence of the institution of local government since local governments are unlikely to perform effectively if the existence of the institution is in constant jeopardy from higher authorities, which may abolish the institution at any time.⁶¹ Security of existence also means that each local government unit should have a certain measure of protection against arbitrary abolition, disestablishment and amalgamation, among other governance processes that undermine the status of a local unit.⁶² It is argued that local government units are also unlikely to perform effectively if they are in danger of being amalgamated and abolished or if their boundaries can be altered arbitrarily. Thus, it is proposed that a certain measure of safeguards to the existence of each local government unit, besides that of the institution, should be provided.

2.2.2 Representative Democracy

Representative democracy is perhaps the most critical element of local democracy. This section analyses the key aspects of representative democracy, namely: the election of local leaders, candidature requirements and term of office, the role of an independent body in the administration of elections, and delimitation of boundaries and wards.

2.2.2.1 Elected leaders

Local political leaders, such as councillors, mayors and chairpersons should be elected and not appointed by higher authorities to ensure their accountability to the local people.⁶³ Elections

⁵⁸ See Chigwata TC & De Visser J (2017) 4, De Visser (2005) 36, UN International Guidelines on Decentralisation and the Strengthening of Local Authorities (2007) 6.

⁵⁹ See UN *International Guidelines on Decentralisation and the Strengthening of Local Authorities* (2007) 6.

⁶⁰ Chigwata TC & De Visser J 'Local Government in the 2013 Constitution of Zimbabwe: Defining the Boundaries of Local Autonomy' 2017 *Hague Journal on the Rule of Law* 3.

⁶¹ Chigwata TC & De Visser J (2017) 1.

⁶² Chigwata TC & De Visser J (2017) 1.

⁶³ Adejumobi S (2000) 63.

enable the citizens to replace or retain their leaders based on their performance during the election term. Local leaders should be elected under an electoral field that guarantees regular, free and fair elections because that assures the elections are genuinely democratic.⁶⁴ Bishop and Hoeffler define freeness of the election in terms of rules of the election up to election day.⁶⁵ The concept of fairness is meant to refer to the events on the election day.⁶⁶ If for example elections are marred by malpractice, it means that elections are either unfree or unfair or both.⁶⁷ The concept of fairness and freeness of elections is important because good quality of elections strengthens the political legitimacy of elected officials.⁶⁸

2.2.2.2 Candidature Requirements and Term of Office

Candidature provisions are often of decisive importance to local democracy, as they define who is permitted to participate in the local political competition.⁶⁹ Of major importance are formal educational requirements for one to be elected as a councillor or a mayor. Such requirements may have the disadvantage of excluding the participation of popular or wise candidates who may not have the required qualifications.⁷⁰ However, even though they may undermine democracy, educational requirements may be important to ensure that once elected, local leaders are able to fully represent and promote the interests of their respective constituencies. It is also important that terms of office for local leaders are fixed to enable such leaders to account for their performance. If voters are not satisfied with the performance of a political leader, they may vote him/her out of office when their term expires.⁷¹ The requirement that the elections be periodic is at the centre of creating governmental accountability to the electorate.⁷² It can also be effective in reducing opportunities for local authoritarianism which usually breeds when the term of office is not limited.

⁶⁴ Commonwealth Local Government Forum Aberdeen agenda: Commonwealth Principles on Good Practice for Local Democracy and Good Governance (2007), article 2.

⁶⁵ Bishop S & Hoeffler A 'Free and fair elections: a new database' (2016) 53 *Journal of Peace Research* 608.

⁶⁶ Bishop S & Hoeffler A (2016) 608.

⁶⁷ Bishop S & Hoeffler A (2016) 608.

⁶⁸ Mapuva J 'Elections and electoral processes in Africa: a gimmick or a curse?' (2013) 5 *African Journal of History and Culture* 93.

⁶⁹ Hartman C 'Local elections and local government in southern Africa' (2004) 39 *Afrika Spectrum* 237.

⁷⁰ Hartman C (2004) 237.

⁷¹ Mapuva J (2013) 94.

⁷² SADC Principles and guidelines governing democratic elections (2015) ii.

2.2.2.3 Role of an Independent Body in the Administration of Elections

The African Charter on Democracy, Elections and Governance urges member states to establish and strengthen independent and impartial national electoral bodies responsible for the management of not only national but also local elections.⁷³ The role of an independent electoral body is important to ensure that elections are free and fair.⁷⁴ It is also crucial that members of this electoral body are appointed in a manner that assures the confidence of both the public and political parties.⁷⁵ If the electoral body is under the control of the executive, it is likely not to be impartial in its duties and the electoral outcomes are likely to lose legitimacy.⁷⁶ Electoral observation by both local and international monitors should be encouraged by the electoral body as it helps to inspire confidence in the electoral process.

2.2.2.4 Role of an Independent Body in the Delimitation of Boundaries and Wards

The outcomes of electoral processes, and therefore local democracy, are also shaped by the delimitation of local boundaries and wards. It is thus important that the delimitation of boundaries and wards is performed by an independent body in order to insulate the restructuring exercise from political interference.⁷⁷ To ensure fairness, among other objectives, there is a need to establish an objective procedural and substantive criterion⁷⁸ that is applicable to the delimitation process. Such a criterion should, among other things, require citizen participation as well as that of any other interested stakeholders in this important governance process. In *Doctors for life International v Speaker of the National Assembly and others*⁷⁹ and *Matatiele Municipality and others v President of the Republic of South Africa and Others*⁸⁰ the Constitutional Court, passed landmark judgments that are fundamental, particularly in relation to the nature and scope

⁷³ African Charter on Democracy, Elections and Governance (2004), article 17(1).

⁷⁴ Dundas CW (1997) *Let's talk about elections* 208.

⁷⁵ Dundas CW (1997) 210.

⁷⁶ Pal M 'The fractured right to vote: democracy, discretion, and designing electoral districts' (2015) 61 *McGill Law Journal* 236.

⁷⁷ Pal M (2015) 237.

⁷⁸ Substantive criteria involves the consideration of factors such as topographical and physical characteristics, patterns of settlements, transport and migration, spending within the area, ethnicity composition, financial viability, the need for redistribution, and inclusiveness of the tax base.

⁷⁹ *Doctors for life International v Speaker of the National Assembly and Others* 2006 (12) BCLR 1399 (CC).

⁸⁰ *Matatiele Municipality and Others v President of the Republic of South Africa and Others* 2007 (1) BCLR 47 (CC).

of the duty to involve the community in decision-making. The key message from these judgements is that citizen participation must be meaningful.

2.2.2.5 Single versus Harmonised Elections

There is an on-going debate on the impact of single or harmonised elections on local government. Pal contends that single local government elections have the potential to promote local accountability as voters pass a judgment on the performance of candidates during elections.⁸¹ Harmonised elections, on the other hand, may undermine local accountability because the attention of voters are likely to be drawn more to the higher level elections.⁸² As a result, voters tend to elect local leaders on the basis of the national character of a particular party or leaders and not on the basis of their performance. This then weakens the link between the voter and the elected local leader. Powell supports Pal by arguing that a separate round of local government elections allows voters the opportunity to call politicians to account on issues that most directly affect the neighbourhoods, settlements and lives of local populations.⁸³ He further maintains that in harmonised elections, the local citizens' rights to directly hold local leaders to account is limited because the local content in harmonised elections will be drowned altogether by the noisier national politics.⁸⁴ Since local elections are about the local citizens calling local politicians to account for their performance, it is observed that high importance needs to be attached to single elections.



2.2.3 Citizen Participation

It is important that representative democracy is complemented by citizen participation given that this form of direct democracy provides an avenue for the expression of needs and preferences by citizens in between elections.⁸⁵ Rower and Frewer define citizen participation as the practice of involving members of the public in the agenda-setting, decision-making, and policy-forming activities of institutions for policy development.⁸⁶ This understanding entails that citizen

⁸¹ Pal M (2015) 237.

⁸² Dundas CW (1997) 211.

⁸³ Powell D 'Why a single election for all three spheres would be a bad move' (2011) 13 *Local Government Bulletin* 2.

⁸⁴ Powell D (2013) 2.

⁸⁵ Van der Waldt G (2004) 5.

⁸⁶ Rower G & Frewer LD 'A typology of public engagement mechanisms' (2005) 30 *Science Technology and Human Values* 253.

participation is an innate human right in which local government is squarely held responsible and accountable to the public for the fulfilment of such rights and also obligates the public to participate actively and responsibly.⁸⁷ Greater involvement of the public, which is enhanced under a decentralised system of government, brings with it a wider range of relevant views, needs and preferences about understanding of problems and the scope of solutions.⁸⁸ Development plans produced through such a participatory process are likely to enjoy full support and commitment of the local community, thus enhancing the sustainability of development projects.⁸⁹

The importance of citizen participation is recognised by the African Union Charter, which requires local governments to promote participation of all segments of society in planning, implementation, monitoring and evaluation of policies, programmes and projects through structured community platforms and other forms of participation, to ensure the delivery of quality services.⁹⁰ There are a number of practical mechanisms through which citizen participation can be promoted. These include participatory budgeting; the establishment of ward, village and neighbourhood committees and requirements for the consultation of citizens on key governance processes (establishment of a local authority, boundaries and ward delimitations). In Porto Alegre, Brazil,⁹¹ key elements of participatory budgeting include the creation of thematic assemblies in which every citizen can participate and vote on budget issues. The principle of self-regulation, whereby the rules for participation and deliberation are defined by participants, is also a key feature of participatory governance.⁹²

2.2.4. Accountability

Accountability can be defined as a relationship in which an individual or body, and the performance of tasks or functions by that individual or body, are subject to another oversight, direction or request that they provide information or justification for their actions.⁹³

⁸⁷ Rower G & Frewer LD (2005) 254.

⁸⁸ Nour AM 'Challenges and advantages of community participation as an approach for sustainable urban development in Egypt' (2011) 14 *Journal of Sustainable Development* 85.

⁸⁹ Smoke P (2003) 10.

⁹⁰ The African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development (2014), article 12(3). See also the Commonwealth Aberdeen Agenda, article 5.

⁹¹ Sintomer Y et al 'Transnational models of citizen participation: the case of participatory budgeting' (2012) 8 *Journal of Public Deliberation* 1.

⁹² Van der Waldt G (2004) 6.

⁹³ Sikhakane BH & Reddy PS (2011) 90.

Accountability is important as a control measure for the monitoring of activities in order to determine whether or not elected and appointed officials in local government are utilising available resources economically, efficiently and effectively.⁹⁴ The local citizens need to be assured that public authority and local resources are not abused.⁹⁵ Hence, accountability is an important aspect of local democracy. One mechanism through which citizens can hold officials accountable are democratic elections, which enables citizens to vote underperforming and corrupt councillors and mayors out of office as discussed above.⁹⁶ Another mechanism through which officials can be made answerable for their actions is through the code of conduct for councillors.⁹⁷ Furthermore, international instruments and best practices suggest that oversight institutions, such as municipal oversight committees, form an essential mechanism of accountability to ensure the work of the executive is subject to scrutiny.⁹⁸ Oversight committees which report to the council, play an important role in overseeing the performance of the executive and municipal administration.⁹⁹

2.2.5 Transparency

The UN has defined transparency to mean adherence to rules as well as the making of information freely available and accessible to the public.¹⁰⁰ Thus, transparency refers to notions of open decision-making.¹⁰¹ Citizens' easy access to information about the processes, structures and public service provision by local government is important for many reasons, including holding local officials to account.¹⁰² Hence, transparency can be effective in the fight against corruption and wastage of resources, among other dangers usually associated with decentralisation. Transparent local governance empowers citizens with information to question

⁹⁴ Sikhakane BH & Reddy PS (2011) 90.

⁹⁵ Adagbabiri MM (2015) 3.

⁹⁶ Adagbabiri MM (2015) 3.

⁹⁷ Dibra B (2015) 73.

⁹⁸ See the Local Government Municipal Structures Act (South Africa) Act No. 117 of 1998 s 79. See the Commonwealth Local Government Forum Aberdeen Agenda: Commonwealth Principles on Good Practice for local Democracy and Good Governance (2007), article 8.

⁹⁹ Faguet JP 'Does decentralisation increase government responsiveness to local needs? Evidence from Bolivia' (2004) 88 *Journal of Public Economics* 870.

¹⁰⁰ UN (2009) *What is good governance* 2.

¹⁰¹ Yilmaz S, et al (2008) 14.

¹⁰² Welch EW (2012) 93.

the decision-making of local officials so as to make them more accountable and exposed to the judgment and evaluation of citizens.¹⁰³

The African Charter on Decentralisation implores member countries to come up with practical mechanisms that can be employed in the promotion of transparency by way of opening up governance structures and procedures to public scrutiny.¹⁰⁴ For instance, meetings of key governance structures such as the council and its committees can be made more open to the public. Other major governance processes such as the adoption of strategic plans and budgets should occur openly to foster transparency.¹⁰⁵ Legislation must make provision for easy access to information through websites, notice boards, radio and television, among other platforms. The need for local governments around the world to make financial information accessible is gaining ground. For instance, practices such as depositing financial information in public agencies and libraries (New Zealand) or publication in the media (United Kingdom) have helped to promote financial transparency in these countries.¹⁰⁶ Financial reporting and auditing of financial statements by an independent body are some of the mechanisms which have proved to be effective in promoting transparency at all levels of government.

2.2.6 Inclusiveness

Questions can be asked if a local government that is not inclusive can be considered to be democratic. The UN defines inclusiveness as a process in which all people – including the poor, women, ethnic and religious minorities, indigenous peoples and other disadvantaged groups – have the right to participate meaningfully in governance processes and influence decisions that affect them.¹⁰⁷ It is a multi-dimensional process aimed at creating conditions which enable full and active participation of every member of the society in all aspects of life, including civic, social, economic, and political activities, as well as participation in decision-making

¹⁰³ Welch EW (2012) 93.

¹⁰⁴ African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development (2014), article 14.

¹⁰⁵ Transparency International & UN *Tools to support transparency in local governance* (2004) 21.

¹⁰⁶ Carcaba-Garcia A et al 'Improving the disclosure of financial information in local governments' (2002) 3 *International Public Management Review* 22.

¹⁰⁷ UN *Towards Inclusive governance: promoting the participation of disadvantaged groups in Asia - Pacific* (2007) 1.

processes.¹⁰⁸ Inclusiveness is also important to ensure governance institutions, processes and policies are accessible, accountable and responsive to disadvantaged groups.¹⁰⁹ From these definitions it can be observed that a local government that is exclusive cannot be considered to be democratic. The question then is how to promote inclusive local government.

Inclusive electoral systems such as a proportional representation system, can enable inclusion of groups that are normally excluded from political participation by majoritarian electoral systems.¹¹⁰ Such systems may be particularly important for African countries considering the fact that they are deeply heterogeneous and ethnic conscious.¹¹¹ Inclusive local politics likely to be brought about by inclusive electoral systems can help reduce feelings of marginalisation which are normally a recipe for ethnic conflict and even secession.¹¹² International instruments emphasise the need for local governments to develop pro-poor initiatives that target disadvantaged groups including women, youth, minority groups and people with disabilities in policy development and service delivery.¹¹³ They also require member states to use electoral quotas as a mechanism to increase the inclusiveness of political structures.¹¹⁴ A threshold can be raised on the percentage of marginalised groups in decision-making structures such as the council.

2.3. Defining Decentralisation within Context

While the above discussed principles of local democracy are crucial to any system of local government, it is important to appreciate the significance of the local environment. In some cases, these principles might have to be adjusted depending on the local environment. In the African context, the role of traditional authorities and their alignment with modern day state structures and norms of democracy remains under scrutiny. The institution of traditional

¹⁰⁸ UN *Creating an inclusive society: practical strategies to promote social integration* (2009) 3.

¹⁰⁹ UN *Towards inclusive governance: promoting the participation of disadvantaged groups in Asia - Pacific* (2007) 1.

¹¹⁰ Norris P 'Proportional, Majoritarian and Mixed Systems' (1997) 18 *International Political Science Review* 301.

¹¹¹ Norris P (1997) 301.

¹¹² UN *Creating an inclusive society: practical strategies to promote social integration* (2009) 37.

¹¹³ See the African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development (2014), article 10. See Commonwealth Local Government Forum Aberdeen Agenda: Commonwealth Principles on Good Practice for Local Democracy and Good Governance (2007), article 9.

¹¹⁴ See SADC Protocol on gender and development 2008, article 4, 12, 13; AU Gender Policy 2009, article 1(1).

leadership has been the basis of local government in most of Africa throughout history.¹¹⁵ Even today, traditional governance structures continue to have the closest interactions with the citizens, especially in rural areas.¹¹⁶ They still command a lot of legitimacy, influence and respect in some parts of Africa and can therefore play an important role in local government.¹¹⁷ However, traditional leaders have their own flaws such as corruption, autocracy and marginalisation of women.¹¹⁸ These weaknesses have made some view the institution of traditional leadership as a major obstacle to democratization and development, and thus, they believe it should be abolished. Makumbe contends, however, that in the interest of democracy and development traditional leaders should play a role in local governance despite the challenges they are associated with.¹¹⁹ His argument is supported by Chigwata who argues that where traditional authorities are still relevant, there may be need to integrate them with modern state structures.¹²⁰ If that is not possible, mechanisms and procedures of promoting cooperative relations between traditional authorities and modern day structures, particularly at the local level, should be established.¹²¹ Thus, defining decentralisation in some parts of Africa may involve the recognition of the role of traditional authorities given their relevance.

2.4. Conclusion

Local democracy is one of the many factors that shapes the extent to which a system of local government can realise service delivery and development objectives. While local democracy encompasses a number of aspects, its minimum core was identified in this chapter as security of existence, representative democracy, citizen participation, accountability, transparency and inclusiveness. It was submitted that these pillars of local democracy should form part of the legal and institutional design of a decentralised system of government if it is to be effective. While acknowledging the importance of local democracy, it was submitted that it is also important to recognise the importance of the local environment. The role of traditional leaders in this respect,

¹¹⁵ Rugege S 'Traditional leadership and its future role in local government' 2009 *Law, Democracy and Development* 171.

¹¹⁶ Chigwata TC 'Decentralisation in Africa and the resilience of traditional authorities: Evaluating Zimbabwe's track record' (2015) 25 *Regional & Federal Studies* 439.

¹¹⁷ Logan C *Traditional leaders in modern Africa: Can democracy and the chief co-exist?*(2008) Working Paper No. 93 23.

¹¹⁸ Chigwata TC (2015) 439.

¹¹⁹ Makumbe J 'Local authorities and traditional leadership' in De Visser J, Machingauta N & Steytler N (eds) *Local Government Reform in Zimbabwe* (2010) 87.

¹²⁰ Chigwata TC (2015) 450.

¹²¹ Rugege S (2009) 198.

particularly in an African context, suggests that decentralisation and local democracy in particular must be defined in context. Where they are still relevant, there may be need to recognise the role of traditional leaders in local government.



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Chapter 3: Local Democracy in Zambia: An Historical Analysis

3.1 Introduction

This chapter examines the legal and policy framework on local government in Zambia before the adoption of the new Constitution of Zambia in 2016. It seeks to establish the extent to which this framework entrenched local democracy, which has been identified in Chapter Two as a crucial element of a system of local government that has the potential to meet the service delivery and development needs of local communities. The colonial system of local government during the period 1890 to 1963 is analysed first, followed by a discussion of the independence system of local government up to the adoption of the 2016 Constitution (1964 to 2016). It is argued that in the period 1890 to 1963 the governance system was highly centralised and undemocratic, particularly with respect to local government institutions established for black people. While elements of local democracy were entrenched between 1964 and 2016, the system of local governance still lacked certain key values of local democracy. This could partially be the reason why the local government system was not effective even after independence had been attained.

3.2 Local Democracy under the Colonial Period

Zambia was colonised in 1895 by Britain through the British South Africa Company (BSAC). Before colonisation, Zambia was governed by the institution of traditional leadership comprising village headmen, minor chiefs and senior or paramount chiefs.¹²² Traditional leaders were appointed following traditional practices which were largely participatory.¹²³ These practices also ensured that once appointed traditional leaders remained accountable to their local people as well as to other traditional leaders.¹²⁴ Thus, elements of local democracy, although not along the model of modern democratic norms, were present.¹²⁵ With the coming of colonisation, the traditional governance system was significantly altered both under the reigns of the BSAC and British government.

¹²² Gann LH *A History of Northern Rhodesia* (1969) 4

¹²³ Gann LH (1969) 4.

¹²⁴ Gann LH (1969) 5.

¹²⁵ Abebe SG 'The relevance of African culture in building modern institutions and the quest for legal pluralism' (2013) 57 *Saint Louis University Law Journal* 436.

3.2.1 Company Rule (1895-1924)

Zambia was formerly known as Northern Rhodesia. The BSAC administered the territory of Northern Rhodesia on behalf of the British Government from 1895 to 1924.¹²⁶ The Company formally established village management boards in the emerging urban centres under Proclamations number 6 of 1911, number 11 of 1913 and number 48 of 1913.¹²⁷ Village management boards were established following demands from early European settlers for some form of local government that would cater for their interests at the local level.¹²⁸ The boards, which formed the embryo of local government in Zambia, comprised two or three local residents appointed by the BSAC.¹²⁹ They were not inclusive and representative of the entire urban population particularly blacks. They were also primarily accountable to the Company administrator, raising questions about the extent to which they could be referred to as a genuine democratic local government.

In rural areas which were inhabited by blacks, the BSAC established what were known as fiscal districts.¹³⁰ A European district commissioner was appointed to govern each fiscal district.¹³¹ The fiscal districts were sub-divided into sub-districts called native divisions.¹³² Each native division was governed by a European native commissioner (later known as district commissioners).¹³³ To cater for the governance of those divisions in rural areas, a proclamation was passed in 1916 which established the BSAC's system of indirect rule over the indigenous people (Black Africans).¹³⁴ The proclamation empowered the European native commissioner to exercise all political and administrative powers in his district. It also authorised the native commissioners to appoint tribal chiefs to administer native affairs in rural areas. The appointment of tribal chiefs to assist the BSAC in the administration of rural areas meant that the allegiance and accountability of these traditional leaders was to the appointing authority and no longer to the local people whom they were supposed to serve. Thus, it can be observed that the early system of modern

¹²⁶ Gann LH (1969) 58.

¹²⁷ Gann LH (1969) 141.

¹²⁸ Gann LH (1969) 164.

¹²⁹ Vosloo WB *Local Government in Southern Africa* (1974) 271.

¹³⁰ Tordoff W *Politics in Zambia* (1974) 107.

¹³¹ Fiscal districts were forerunners to the present provinces in Zambia.

¹³² Gann LH (1969) 101.

¹³³ Sub-districts or native divisions were forerunners to the present districts in Zambia.

¹³⁴ Proclamation No. 8 of 1916, ss 3, 4.

local government in Zambia, under the BSAC rule, was undemocratic and merely used as a tool of controlling blacks.

3.2.2 British Protectorate Rule (1924-1965)

In 1924, the British government assumed full responsibility for the governance of Northern Rhodesia from the BSAC. The Northern Rhodesia Order in Council of 1924 established the office of the governor, who became the chief executive officer in charge of the territory. The Order empowered the governor to constitute and appoint or authorise the appointment of such public officials for the governance of the territory.¹³⁵ Such appointed officials were accountable to the governor and not to the governed. Different structures were established for urban and rural areas and between white and black areas.

3.2.2.1 Local Government in Urban Areas

The growth of urban local government came with the enactment of the Municipal Corporations Ordinance of 1927 and the Township Ordinance of 1929.¹³⁶ These pieces of legislation provided for the establishment of municipal and township councils to administer the affairs of whites in municipal and township areas. These councils were constituted by both elected and appointed councillors.¹³⁷ The appointment of a certain number of councillors by the central government meant that the democratic content in councils was compromised even though it enabled the representation of specific interests that might not have been possible by means of the ballot. The electoral system was however perhaps the biggest threat to local democracy. The common voters' roll had a qualified franchise rights embracing residential and literacy requirements together with an income qualification or a property qualification.¹³⁸ In order to stand as a councillor, one was required to own a property or business and be a resident in the relevant area.¹³⁹ These electoral requirements ensured that the majority of black Africans were completely ruled out of participating in local government elections as voters or councillors, given

¹³⁵ Northern Rhodesia Order in Council, 1924, (s 15). Note: The real local government system which connotes an element of local democracy where local structures are elected did not exist under the British protectorate. What was referred to as administration was simply the management of the territory.

¹³⁶ Vosloo WB (1974) 171.

¹³⁷ Gann LH (1969) 142.

¹³⁸ Gann LH (1969) 142.

¹³⁹ Franck TM *Race and nationalism: The struggle for power in Rhodesia-Nyasaland* (1960)176.

that they owned no property or business and neither were they literate. This situation was compounded by restrictions placed on black Africans in terms of freedom of movement and their classification as temporary residents in urban areas.¹⁴⁰

Africans working in urban areas resided in native urban locations which fell into two categories: municipal projects and territorial government projects.¹⁴¹ Services to African locations were mostly provided by central government through the Ministry of Local Government and Social welfare, as municipalities in urban areas served the interests of white settlers.¹⁴² Both municipal and territorial locations were governed by racial policies that precluded Africans from owning land in native locations and they were reminded that they were essentially a transient.¹⁴³ In mining areas, mine townships were being built for Africans who worked in the mines. The Mine Township Ordinance of 1933 established mine township management boards. These boards which were established by mining corporations were required to administer mine townships including building houses for African employees working for the mines.¹⁴⁴ They were constituted by white members only who were nominated by the mine management and approved by the colonial government.¹⁴⁵ The members of these boards represented the interests of the mining companies and the colonial government with accountability following representation. It was only in 1962, two years before independence, that the colonial government accepted the principles of direct African representation in local government through the Local Government (Elections) Ordinance.¹⁴⁶ To this effect, municipal elections were contested on a party basis under this Ordinance in November 1963.¹⁴⁷ Thus, up to the final stages of the colonial era, the urban local government only represented and served the minority whites.¹⁴⁸

3.2.2.2 Local Government in Rural Areas

As noted above, before the colonisation of Zambia, traditional leaders governed in accordance with customs and traditions of the respective communities. They had legitimacy to govern and

¹⁴⁰ Vosloo WB (1974) 170.

¹⁴¹ Franck TM (1960) 139.

¹⁴² Vosloo WB (1974) 172.

¹⁴³ Franck TM (1960) 139.

¹⁴⁴ Gann LH (1969) 142.

¹⁴⁵ Vosloo WB (1974) 272.

¹⁴⁶ Vosloo WB (1974) 272.

¹⁴⁷ Vosloo WB (1974) 272.

¹⁴⁸ Mukwena RM (2014) 43.

commanded huge support and loyalty from their subjects. The British government sought to maximise on these strengths of the institution of traditional leadership by legalising the status of chiefs as executive and judicial authorities in tribal and customary matters.¹⁴⁹ This system of indirect rule provided an arrangement in which local government in rural areas was conferred upon tribal chiefs and village headmen.¹⁵⁰ The Native Authorities Ordinance and the Native Courts Ordinance, both of 1929, regulated rural local government. Chiefs who were appointed by the governor, along with native councils, were declared as native authorities in rural areas.¹⁵¹ The native authorities, which were ethnic based, consisted of chiefs, traditional councillors and a certain number of appointed councillors who were government employees.¹⁵² It is observed that, since these councillors were employees appointed by the colonial government, they fell short of democratic representation. Moreover, it meant that the appointed councillors represented government interests and remained accountable to the colonial government through the district commissioner. Thus, under the British colonial rule, the system of local government was undemocratic and racially and ethnically based. It distorted the traditional system of governance which was used as a tool for local administration. It was not a surprise that the local government system failed to respond to the needs of Africans.

3.3 Local Democracy under the Independence Era

Zambia attained independence from Britain in 1964 after a protracted non-violent struggle for freedom. It was the negotiations in London between the United National Independence Party (UNIP) and the British government that paved the way for independence.¹⁵³ The leader of the UNIP, Kenneth David Kaunda, became the first Prime Minister of independent Zambia. The majority-led government of UNIP was confronted with many challenges, such as an undemocratic governance structure, unequal development and disparities in access to public services.¹⁵⁴ The government immediately instituted a number of reforms, including legislative and institutional restructuring to address these and many other challenges. Some of the reforms were targeted at the local government level. Several other local government reforms were

¹⁴⁹ Vosloo WB (1974) 273.

¹⁵⁰ Vosloo WB (1974) 272.

¹⁵¹ Native Authorities Ordinance, No. 32 of 1929, (ss 2, 3).

¹⁵² Vosloo WB (1974) 273.

¹⁵³ Tordoff W (1974) 107.

¹⁵⁴ Tordoff W (1974) 107.

adopted as Zambia walked the journey of independence. This section discusses these reforms to the extent that they promoted or hindered local democracy.

3.3.1 Local Government Reforms at Independence

On gaining independence in 1964, Zambia inherited a dual system of governance which comprised central government field administration and elected local government.¹⁵⁵ In 1965, the Local Government Act¹⁵⁶ was enacted which, among other things, abolished the colonial system of local government. It established a system of democratic local government across the entire country which was based on city, municipal, township and rural councils.¹⁵⁷ These councils administered municipal, township and rural areas respectively, which were divided into wards.¹⁵⁸ The Act provided for universal adult suffrage and a common voters' roll.¹⁵⁹ Any citizen aged twenty-one years and above was eligible to vote as well as to stand for election as a councillor.¹⁶⁰ Thus, the new electoral rules afforded the opportunity to vote to the majority of black Africans who had previously been disenfranchised in the colonial era.

The 1965 Local Government Act also empowered the minister responsible for local government to appoint a certain number of councillors, including chiefs, as he or she considered it desirable in the interests of local government.¹⁶¹ Thus, the colonial practice of appointing a certain number of councillors in urban areas continued in the independence era. It is argued that one probable reason behind this continuation was the UNIP's fear of competition from the opposition, particularly the African National Congress (ANC), which was evident between 1964 and 1972.¹⁶² Hence, the system of appointing a certain number of councillors allowed UNIP to increase its representation and control at the local level following local elections. This is because in most cases the loyalty and accountability of the appointed councillors remained with the UNIP-led central government rather than to the local people. In this regard, the democratic content at the local government level was compromised.

¹⁵⁵ Chikulo B (2009) 99.

¹⁵⁶ Local Government Act No. 69 of 1965.

¹⁵⁷ Local Government Act of 1965, ss 3, 7.

¹⁵⁸ Local Government Act of 1965, s 7(1).

¹⁵⁹ Local Government Act of 1965, s 15.

¹⁶⁰ The minimum age was later changed to eighteen years, where it remains to date (As amended by Act No. 18 of 1996 Constitution, article 75(1)).

¹⁶¹ Local Government Act of 1965, s 16.

¹⁶² Tordoff W (1974) 107.

City and municipal councils were headed by mayors, while rural and township councils were headed by chairmen.¹⁶³ Both mayors and chairmen were elected every year by fellow councillors from their membership in their respective councils.¹⁶⁴ Thus the mayor was not directly elected by the people, a development which compromised his full accountability to the electorate in the whole city or municipal area. The mayor owed allegiance to his or her fellow councillors in the council chambers due to the method of his or her appointment. The mayor lacked executive decision-making powers since he or she could only chair council meetings, among other ceremonial functions. This weak mayor was vulnerable to undue central government interference and commanded less respect from appointed officials of the local authority.¹⁶⁵ It can be concluded that the Local Government Act of 1965 provided a basis for democratic local government in independent Zambia even though it carried some of the undemocratic remnants of the colonial era.

3.3.2 Local Government Reforms of 1968

In 1968, the UNIP-led government instituted the Mulungushi policy reforms which deconcentrated the governance structure of the central government.¹⁶⁶ These reforms entailed the appointment of provincial cabinet ministers and district governors (DGs) as political heads at provincial and district levels, respectively. Their responsibility was to supervise, direct and coordinate activities of all government agencies, including popularly elected municipal, rural and township councils.¹⁶⁷ At the district level, DGs were appointed to head each of the 53 districts.¹⁶⁸ The DG became the political-administrative head of the district.¹⁶⁹ This meant that democratically elected councils were now supervised by appointed officials who were directly accountable to the President. The centralisation of authority meant that the autonomy of councils was gradually eroded. The accountability of the elected council was no longer to the people but

¹⁶³ Local Government Act of 1965, s 20.

¹⁶⁴ Local Government Act of 1965, s 20.

¹⁶⁵ Lolojih PK (2014) 157.

¹⁶⁶ Zambia's Guidelines for the Next Decade Address by President Kaunda to the National Council of UNIP, 9th November 1969 23.

¹⁶⁷ Mukwena RM (2014) 44.

¹⁶⁸ Chikulo B (2009) 99.

to the DG. Responsiveness of council to the needs and preferences of the people became only a pipe dream because authority for development decisions now rested with the DG.

The political control of councils by central government was tightened to the extent that the ministers and governors could, at their pleasure, intervene in the activities of councils. The governance system became so centralised to the extent that genuine local government was almost absent. In 1970, the 1965 Local Government Act was amended to give the minister responsible for local government powers to appoint the mayor (and deputy mayor) of every municipal council and the chairman (and vice chairman) of every township and rural council from among the membership of the council.¹⁷⁰ This implied that local democratic content was further battered as central government sought to exert more control in local affairs. The gradual extension of control by the party on government structures in districts and provinces culminated into the creation of the one party state in 1972.¹⁷¹ As will be observed below, the situation worsened when the local government reforms of 1980 were adopted.

3.3.3 Local Government Reforms of 1980.

As observed above, the 1968 local government reforms, introduced by the UNIP-led government, partially reversed the local democratic benefits realised soon after independence. The reversal continued when the government enacted the Local Government Administration Act in 1980.¹⁷² The Act sought to integrate the UNIP, central government, and local authority structures into a new combined institution of local government at district and provincial levels.¹⁷³ The created institutions were district committees, provincial committees and district councils. The Act redefined the roles and composition of these structures. Attention in this section will be given to the district council which was the main institution of local government.

The Local Government Administration Act provided for the establishment of a district council for every district. The district councils (DCs) replaced municipal councils, township councils,

¹⁶⁹ Chikulo B (2009) 99.

¹⁷⁰ Mukwena RM (2014) 43.

¹⁷¹ Constitution of the Republic of Zambia, Amendment No. 3 of 1972, article 4 (1).

¹⁷² Local Administration Act No. 15 of 1980 (hereafter referred to as the Local Administration Act).

¹⁷³ Statutory Instrument No. 171 of 1980, The Local Administration (Commencement) Order of 1980.

and rural councils.¹⁷⁴ DCs were assigned the mandate to deliver public services in their respective areas. They were however not democratically elected given that local government elections were abolished and replaced by party elections.¹⁷⁵ A DC was now composed of:

- a) the DG, who was the chairman of the DC;
- b) the district political secretary;
- c) two district trustees appointed by the provincial committee and approved by the central committee;
- d) all chairmen of ward committees in the district;
- e) all members of parliament in the district;
- f) one representative from each of the mass¹⁷⁶ organisations operating in the district;
- g) one representative from each of the trade unions operating in the district;
- h) one representative from each of the security wings in the district; and
- i) one chief elected by all chiefs in each district.¹⁷⁷

District trustees, chairmen of ward committees and chiefs served as members (also known as councillors) for three years, after which they were still eligible to be re-appointed as councillors. Ward chairmen were elected in terms of the party constitution and therefore became councillors by virtue of their party office. They were only elected by members of the party against the principle of adult universal suffrage which is a key feature of multi-party democracy. The accountability of these officials to the local people was therefore questionable. The tenure of office of the rest of the district council was at the pleasure of their appointing authorities which included provincial committees, the central committee and the President.¹⁷⁸

There were three qualifications which had to be satisfied before a person could be selected as a member of the DC.¹⁷⁹ First, membership of the party UNIP was required. Second, one had to qualify for election as a member of the National Assembly in terms of Article 68 of the Constitution (1973) of Zambia. Last, one's membership to the DC had to receive prior approval

¹⁷⁴ Local Administration Act, s 3(1).

¹⁷⁵ Chikulo B (2009) 101.

¹⁷⁶ The Women's League and Youth League were designated as mass organisations under article 59 of the Constitution of UNIP.

¹⁷⁷ Local Administration Act, s10(1).

¹⁷⁸ Local Administration Act, s 13(1)(2).

¹⁷⁹ Local Administration Act, s 1(1).

of the central committee of the ruling party. It can be observed that the appointment or election of members to the DCs was undemocratic as it denied people a basic and essential right to elect their local leaders on the basis of universal adult suffrage. The 1980 local government reforms, therefore, shattered prospects for representative democracy in Zambia. In practice, those elected to serve on the DCs made no difference in improving the livelihoods of ordinary citizens. With no significant competition brought about by the absence of multiparty democracy, the councillors served as they pleased.¹⁸⁰ This was all because the political system at the local level lacked mechanisms for holding these officials accountable, besides political party procedures, which were inaccessible to ordinary Zambians who were not members of the ruling party. Hence, it can safely be concluded that days of the one-party state in Zambia (1972 – 1991) were perhaps some of the darkest in as far as local democracy is concerned. This explains why the system of local government was unresponsive.

3.3.4 Local Government Reforms of 1991

In 1991 a new political party, the Movement for Multi-party Democracy (MMD), came into power. Its first challenge was to destroy the remnants of the one-party state and reintroduce democratic governance at all levels of government. The Frederick Chiluba-led MMD government enacted the Local Government Act¹⁸¹ with an objective to reintroduce democratic local government, among other goals. Notable changes brought by the 1991 reforms included a clear separation of party structures from local government structures and the re-introduction of representative local government based on universal adult suffrage. In this section, the chapter discusses some of the key institutions and procedures introduced by the 1991 Local Government Act which is still operational at the point of writing.

3.3.4.1 Establishment of Districts and Councils

The Local Government Act provides for the establishment of districts by the President.¹⁸² The President is also empowered to establish a new district, alter the area of any district and abolish

¹⁸⁰ Chikulo B (2009) 99.

¹⁸¹ Local Government Act No. 22 of 1991 (here after referred to as the Local Government Act).

¹⁸² Local Government Act, s 5(1).

any district.¹⁸³ Once the President has established a district, the minister responsible for local government is then required to establish a council for that district.¹⁸⁴ The actual establishment of councils takes place when the minister issues a statutory order establishing a city council, a municipal council, a district council, a township council or management board, as the case may be.¹⁸⁵ However, a township council or management board can only be established at the request of the appropriate city council, municipal council or district council.¹⁸⁶ Hence, the councils as well as the districts they preside over are creatures of statutes.

The President can by statutory instrument proclaim on any council the status respectively of a management board, township, municipality or city.¹⁸⁷ This means the various categories of local authorities can be promoted to higher levels. The name of the district determined by the President on its establishment automatically becomes the name of the relevant district, municipal, city, or township.¹⁸⁸ The absence of the role of an independent demarcation body in the establishment and abolishing of districts and their respective councils, as well as in the alteration of district boundaries and the naming of councils, means that there is very little, if any, that prevents these governance processes from being solely driven by the executive. Thus, there is nothing that can prevent the incumbent President from abusing these processes to gain political advantage.



3.3.4.2 Composition of Councils

The Local Government Act restored representative democracy at the local level by reintroducing directly elected councillors for all councils.¹⁸⁹ Thus, local accountability of the councils and councillors to the local people was promoted. Members of Parliament (MPs) however, remain part of councils in their respective districts.¹⁹⁰ The inclusion of MPs in the council undermines the accountability of the councils to the people as MPs tend to pull in the direction of central

¹⁸³ Provincial and District Boundaries Act Chapter 286 of 1996.

¹⁸⁴ Local Government Act, s 3.

¹⁸⁵ Local Government Act, s 3.

¹⁸⁶ Local Government Act, s 3.

¹⁸⁷ Local Government Act, s 4(1).

¹⁸⁸ Local Government Act, s 5(3).

¹⁸⁹ Local Government Act, s 9(c).

¹⁹⁰ Local Government Act, s 9(1)(a).

government.¹⁹¹ At the same time, MPs dominate deliberations in council chambers and other relevant structures because of their elevated status and superior information relative to locally elected councillors.¹⁹² They often drive the agenda of the central government at the expense of those of the local people.¹⁹³ The ability of the system of local government to meet the needs and preferences of respective communities has over the years been compromised as a result. Thus even though MPs are indirectly elected officials, their role in the council undermines local democracy in many respects.

3.3.4.3 The Place and Role of Traditional Leaders in Local Government

The Local Government Act requires two representatives of the chiefs to serve on the council in each district.¹⁹⁴ The inclusion of traditional leaders on the council was out of the recognition that traditional leaders are still relevant particularly at the local level.¹⁹⁵ They provide guidance and leadership on many issues including on matters of governance but not necessarily limited to traditional beliefs and norms.¹⁹⁶ Thus, development without chiefs is unimaginable in rural parts of Zambia where these leaders form the immediate form of local government. In practice over the years the inclusion of chiefs in the composition of councils has increased stakeholder participation in the affairs of the council beyond that of elected representatives.¹⁹⁷ Chiefs participate fully in deliberations and even vote on the basis of legal recognition as councillors at par with the elected councillors. The role of traditional leaders in the council has promoted citizen participation and inclusive local governance.

3.3.4.4 Election of Mayors and Chairpersons

The Local Government Act requires the councils to be led either by a mayor (for city and municipal councils) or a chairperson (for town or district council).¹⁹⁸ Mayors, deputy mayors,

¹⁹¹ Hartmann C (2004) 230.

¹⁹² Mukwena RM 'Situating Decentralisation in Zambia in a political context' (2001) 57 *African Administrative Studies* 46.

¹⁹³ Mukwena RM (2001) 47.

¹⁹⁴ Local Government Act, s 9(1)(b).

¹⁹⁵ UN *Harnessing traditional governance in Southern Africa* (2007) 21.

¹⁹⁶ Erk J 'Iron Houses in the Tropical Heat: Decentralisation Reforms in Africa and their Consequences' 2015 *Regional and Federal Studies* 6.

¹⁹⁷ UN *Harnessing traditional governance in Southern Africa* (2007) 18.

¹⁹⁸ Local Government Act, s 16(1).

chairmen and deputy chairmen are elected from amongst the membership of the council.¹⁹⁹ Members of Parliament are not allowed to contest for the position of mayor, deputy mayor, chairperson, or deputy chairperson.²⁰⁰ The election of these officials by members of the council implies that these officials are accountable to the council and not directly to the local people. In this regard, the method of electing these officials provided by the Local Government Act undermines local democracy. The position of a mayor or chairperson is also weak given that these officials only perform ceremonial functions.²⁰¹ Under the Act, the mayor merely performs ceremonial functions, including chairing council meetings and authorising the town clerk to take action on any matter of extreme urgency on the recommendation of a standing committee or its chairperson as may be appropriate in the circumstance.²⁰² The Act limits the term of office of mayors and chairpersons to one year.²⁰³ It can be argued that this term of office is too short for a mayor or chairperson to make a meaningful contribution. Thus, the office of the mayor provided under the Act is somewhat a dormant one, which is not helpful in the enhancement of a vibrant and prolific local democracy. In practice, the lack of executive decision-making powers undermines the effectiveness of mayors and chairpersons.²⁰⁴ For example in 2017, Kitwe mayor, Christopher Kangombe, complained that he was facing challenges in terms of making decisions as some of his fellow councillors opted not to support most of his development agenda.²⁰⁵ Therefore, in practice, even though mayors and chairpersons are the face of local government their performance is inhibited by the absence of executive powers.

3.3.4.5 Local Elections

Another positive aspect brought about by the Local Government Act of 1991 is that it requires the establishment of the Local Government Electoral Commission, charged with the supervision of local elections.²⁰⁶ The role of the Commission is commendable with respect to promoting the independence of the electoral process. The Local Government Elections Act was enacted in 1991

¹⁹⁹ Local Government Act, s 16(1)(b).

²⁰⁰ Local Government Act, s 16(1)(b).

²⁰¹ Local Government Act, s 25.

²⁰² Local Government Act, s 25.

²⁰³ Local Government Act, s 16(2).

²⁰⁴ Lolojih PK (2014) 158.

²⁰⁵ Mwenya G 'Kangombe faces resistance in Kitwe' *Zambia Reports* 31 October 2017 13 .

²⁰⁶ Local Government Act, s 12(1).

to regulate the administration of local elections.²⁰⁷ Among other things, the Local Government Elections Act provides for universal adult suffrage at the local level whereby each person who is a registered voter in a ward can participate in local elections, either as a candidate or a voter.²⁰⁸ The Act also stipulates that an ordinary election of councillors is to be held every five years.²⁰⁹ Local government elections were thus harmonised with presidential and parliamentary elections. The impact on local democracy of such harmonisation is that during the general elections candidates at local level are generally voted into office on the basis of the national party to which they belong and not on the basis of their performance. Therefore the principles of accountability and responsiveness which are crucial in a decentralised system of government are compromised. A person qualifies for election as a councillor if he or she is a citizen of Zambia, attains the age of twenty-one years and is ordinarily resident in the area of that council.²¹⁰ Even though the the minimum age limit for participation in local elections was higher compared to the international norms, the reintroduction of the universal adult suffrage enhanced local democracy.

The Local Government Elections Act provides for the delimitation of wards in each council area by an independent electoral body.²¹¹ The delimitation of wards has an impact on the electoral outcomes, especially in a country like Zambia where political parties tend to have regional and ethnic base.²¹² The more wards a political party has in its stronghold, the more chances it has of enhancing its share of seats in the councils. The role of an independent body in the delimitation of wards is commendable. However, the Act does not provide for a rational substantive criterion to be followed by the electoral body when delimiting these wards. For instance, there is no requirement for the consideration of demographic and geographical issues. The electoral body nevertheless is required to consult the relevant council when delimiting wards.²¹³ Legislation also does not require broader public consultation and participation in the delimitation of wards. It can be argued that the absence of a legal requirement for the role of the general public in the

²⁰⁷ Local Government Elections Act No. 21 of 1991 (here after referred to as the Local Government Elections Act) s 14(1).

²⁰⁸ Local Government Elections Act, s 14.

²⁰⁹ Local Government Elections Act, s 10(1).

²¹⁰ Local Government Elections Act, s 16.

²¹¹ Local Government Elections Act, s 9.

²¹² Kaela CW 'Zambia's electoral system in perspective' in Momba J C & Kalabula M D (eds) *Governance in Public Services Delivery in Zambia* (2007) 7.

²¹³ Local Government Elections Act, s 9.

delimitation of wards undermines local democracy given that this governance process has an implication on the exercise of their democratic rights.

3.3.4.6 Inclusive Governance

It was argued in Chapter Two that inclusiveness is important to ensure governance institutions, processes and policies are accessible, accountable and responsive to disadvantaged groups.²¹⁴ Inclusive electoral systems such as a proportional representation system, can enable inclusion of groups that are normally excluded from political participation by majoritarian electoral systems.²¹⁵ The 1991 local government electoral reforms did not provide for any special quotas for marginalised groups such as women, youth, minorities and persons living with disabilities. Councillors were elected under a majoritarian electoral system which is not so representative of all sections of the local population. This electoral system tends to favour front-runners' parties while disadvantaging smaller parties. Due to the exclusionary nature of the electoral system adopted in Zambia, certain ethnic groups have over the years failed to acquire representation in local government structures.²¹⁶ For example, successive independent governments in Zambia have failed to effectively address the source of claims of marginalisation by the Lozi-speaking people which have resulted in this ethnic group demanding to secede from Zambia.²¹⁷ This implies that the governance structures are not inclusive enough in terms of accommodating the representation of all ethnic groups.

3.3.5 Constitution of Zambia of 1996

In 1996, Zambia adopted a Constitution which required the establishment of a system of local government in Zambia to be prescribed by an act of Parliament.²¹⁸ It further required the system of local government to be based on democratically elected councils on the basis of universal adult suffrage.²¹⁹ It is commendable that the 1996 Constitution gave recognition to the institution of local government for the first time since independence and protected universal adult suffrage.

²¹⁴ See paragraph 2.4.4 of Chapter Two.

²¹⁵ Norris P (1997) 301.

²¹⁶ Musonda A 'Perceptions of Tribalism in Zambia' *Zambia Reports* 19 June 2015 44.

²¹⁷ Englebert P 'Compliance and Defiance to National Integration in Barotseland and Casamanse (2005) 39 *Afrika Spectrum* 32.

²¹⁸ Constitution of Zambia 1996, s 109(1).

²¹⁹ Constitution of Zambia 1996, s 109(2).

Furthermore, the Constitution minimised the legal voting age from twenty-one years to eighteen years.²²⁰ Thus, more Zambians became enfranchised. This encouraged the development of local democracy in the country. However, there was no constitutional entrenchment of key principles or mechanisms that safeguard or promote local democracy. For example, the 1996 Constitution did not provide guarantees against arbitrary dissolution of councils. As such, there were many instances of dissolution of local councils and appointments of administrators by the minister responsible for local government for long periods of time. Such conduct deprived the citizens of the opportunity to exercise their right to elect their local leaders.²²¹ Thus besides recognising the institution of local government, the 1996 Constitution did not bring much value in as far as local democracy is concerned.

3.4 Conclusion

This chapter discussed the legal and policy framework of local government in Zambia before the adoption of the new Constitution in 2016. It was observed that the system of local government during the colonial era was undemocratic in many respects. For instance, the majority of black Africans were disenfranchised. The system was also racially and ethnically based. In rural areas where the majority of black Africans resided, local government was merely used as a tool of local administration rather than as a genuine tool of service delivery and development. At independence a democratic system of local government was established which was deliberately weakened around ten years into independence. The system of local government was further weakened during the days of the one-party state, by among other things, the abolishment of the principle of universal adult suffrage and its replacement with party elections. In 1991, the MMD government enacted the Local Government Act which brought about the most significant benefits to the local government system in the history of local government. However, a number of democratic deficiencies characterised the system which constrained its effectiveness. As observed above, the 1996 Constitution did not go far in entrenching local democracy. The question is how far has the 2016 Constitution gone in addressing the deficiencies experienced prior to its adoption. This question will be answered in the following chapter.

²²⁰ Constitution of Zambia 1996, s 75(1).

²²¹ Kapende M 'Dissolution of 3 councils wake-up call' *Zambia Daily Mail* 19 January 2016 2.

Chapter 4: Local Democracy under the 2016 Constitution of Zambia

4.1 Introduction

It was noted in Chapters One and Three that the failure of local government in Zambia to deliver on its service delivery and development objectives can be partly attributed to the constitutional and legal framework which did not adequately entrench local democracy. The adoption of the new Constitution of Zambia in 2016 was motivated by, among other things, the desire to improve the decentralised system of government. The 2016 Constitution recognises the various principles of local democracy to improve the system of local government.²²² However, the mere recognition of these principles is not enough if not accompanied by sufficient mechanisms of entrenching, promoting and sustaining them.²²³ This Chapter analyses the 2016 Constitution to establish the extent to which it has entrenched local democracy. The analysis is carried out against the background of the institutional design for local democracy proposed in Chapter Two. This Chapter is also organised along the key pillars of local democracy proposed in Chapter Two.

4.2 Security of Existence of Local Government

Security of existence of local government means that there are guarantees for local government to exist as an institution whether as a sphere or a level of government.²²⁴ It is important to guarantee the existence of the institution of local government since local governments are unlikely to perform effectively if the existence of the institution is in constant jeopardy from higher authorities which may abolish the institution at any time.²²⁵ Security of existence also means that each local government unit should have a certain measure of protection against arbitrary abolition, disestablishment and amalgamation, among other governance processes that undermine the status of a local unit.²²⁶ This section establishes the extent to which the existence of both the institution of local government and individual local units is guaranteed by the 2016 Constitution.

²²² Constitution, article 151(2).

²²³ Shah A & Shah S (2006) 28.

²²⁴ Chigwata TC & De Visser J (2017) 3.

²²⁵ Chigwata TC & De Visser J (2017) 1.

²²⁶ Chigwata TC & De Visser J (2017) 4.

4.2.1 Existence of the Institution of Local Government

The institutional design proposed in Chapter Two highlighted the importance of protecting local government as an institution.²²⁷ It was contended that constitutional recognition of local government provides the highest level of security to the existence of the institution of local government, given the cumbersome procedures usually involved when amending a constitution relative to an ordinary act of parliament.²²⁸ The 2016 Constitution of Zambia has recognised the need to provide the highest protection to the existence of the institution of local government. Article 147(1) of the Constitution of Zambia requires the management and administration of the political, social, legal and economic affairs of the state to be devolved from the national government level to the local government level. The Constitution has explicitly established a devolved system of government organised at the national, provincial and local government.²²⁹ Article 147(3)(b) requires the different levels of government to promote good governance, democratic and coherent government as well as respect the constitutional jurisdiction of each level of government.²³⁰ Thus, local government is recognised in the Constitution as a level of government that is separate from the national and provincial governments.²³¹ Hence, the 2016 Constitution has provided the highest level of security to the existence of the institution of local government.

4.2.2 Existence of Individual Local Authorities

The institutional design proposed in Chapter Two also stressed the importance of putting in place mechanisms which can provide a certain measure of security of existence to individual local authorities.²³² Such a measure of existence can be provided by certain procedural and substantive requirements applicable to how a council is established, disestablished, merged and named, as well as how its boundaries and wards jurisdictions are determined.²³³ The role of an independent body, citizens and affected local authorities in determining the course of such governance processes also enhance the security of existence of local units.²³⁴ This section seeks to establish

²²⁷ See paragraph 2.2.1 of Chapter Two.

²²⁸ Hatchard J, Ndulo M & Slinn P (2004) 9.

²²⁹ Constitution, article 147(2).

²³⁰ Constitution.

²³¹ Constitution, article 147(3).

²³² See paragraph 2.4.1.4.

²³³ Pal M (2015) 236.

²³⁴ Paddison R (2004) 31.

the extent to which some of these safeguards to the existence of individual local units are entrenched in the 2016 Constitution of Zambia.

4.2.2.1 Establishment, Disestablishment and Naming of Local Authorities

Article 266 of the Constitution provides the various categories of councils, namely: city, municipal or town council.²³⁵ However, the 2016 Constitution does not provide for a procedure to be followed when establishing or disestablishing or merging these councils. Thus, the processes of establishment, disestablishment or merging of councils have been left to the determination of national legislation. The challenge with legislative regulation is that it does not adequately safeguard the existence of each local unit in comparison to constitutional regulation because statutes can easily be changed.²³⁶ Thus, there remains room for establishment, disestablishment or merging of councils to further political and individual interests at the expense of local interests.

4.2.2.2 Demarcation of Local Boundaries

The institutional design proposed in Chapter Two underscored the importance of putting in place procedural and substantive requirements applicable to local boundary demarcation. It was argued, among other things, that local boundary changes should not be wholly decided by either central or local political elites.²³⁷ Other interested stakeholders such as citizens and relevant local authorities should have the opportunity to determine the course of these key governance processes. As observed above, local authorities in Zambia are required to administer districts.²³⁸ The 2016 Constitution does not provide a procedure to be followed when demarcating the boundaries of these districts. The Constitution only stipulates that the procedure to be followed when demarcating the district boundaries should be regulation by national legislation.²³⁹ As the boundaries of districts are not guaranteed in the Constitution, it means that the number and size of municipalities may thus change without a need for a constitutional amendment. This is in line with international practice where boundaries of local authorities are left to the determination of legislation in order to create the necessary flexibility to adjust local boundaries in response to the local, political and economic demands of the day. It is important, however, that the relevant

²³⁵ Constitution.

²³⁶ Chigwata TC & De Visser J (2017) 1.

²³⁷ Paddison R (2004) 33.

²³⁸ Constitution, article 152(1)(a).

²³⁹ Constitution, article 149(4).

piece of legislation provides for consultation and participation of communities and traditional leaders, among other relevant stakeholders.²⁴⁰ The substantive criteria to be considered when (re)demarcating local boundaries can include factors such as financial viability, inclusiveness of the tax base, topographical and physical characteristics, patterns of settlements, transport and migration, spending within the area and ethnic composition.²⁴¹

It was observed in paragraph 3.3.3 of Chapter Three that one of the challenges experienced during the period from 1972 to 1990 was the arbitrary change of boundaries of local authorities by the executive for political expedience.²⁴² This was made possible by the fact that boundary alterations were not independent processes separated from politics. Thus, the procedural and substantive criteria alone are unlikely to promote the independence of governance processes relating to local boundary (re)demarcation. Given this background, it is suggested that legislation should make provision for an independent body that exercises the function of altering boundaries of districts. South Africa is one of the countries that has made provision for the role of such an independent body in the demarcation of municipal boundaries.²⁴³ Another country where constitutional provision has been made for an independent body in boundary demarcation is Kenya.²⁴⁴ The role of the independent tribunal reduces the (re)demarcation processes from being a complete process overseen only by politicians who more often than not have political interests to protect.

4.2.2.3 Delimitation of Wards

It was argued in paragraph 2.2.2.4 of Chapter Two that there is need to put in place procedural and substantive requirements applicable to the delimitation of ward boundaries given their significance to local democracy. A role for an independent body in the delimitation exercise was suggested, among other things, in order to insulate the restructuring exercise of wards from political interference.²⁴⁵ The 2016 Constitution of Zambia recognises the need to regulate the process of delimiting of wards.²⁴⁶ It further requires the establishment of an electoral commission

²⁴⁰ Paddison R (2004) 99.

²⁴¹ Paddison R (2004) 30.

²⁴² Chikulo B (2009)100.

²⁴³ Constitution of South Africa 1996, s 155(3)(b).

²⁴⁴ Constitution of Kenya 2010, s 88.

²⁴⁵ Pal M (2015) 61.

²⁴⁶ Constitution, article 149(4).

to determine boundaries and names of wards in a council area.²⁴⁷ The Constitution further imposes on this electoral body the duty to review at intervals of not more than ten years the names and boundaries of these wards.²⁴⁸ The role of the independent body is commendable as it has the potential to enhance the fairness of local elections and thus, local democracy. Its effectiveness in achieving that end will, however, largely depend on the level of independence it enjoys in practice and the resources it has at its disposal.

When delimiting the wards, the Constitution provides procedural and substantive criteria that the electoral commission must abide by. While the Commission is empowered to determine the names and boundaries of wards as well as review them at intervals of not more than ten years,²⁴⁹ its decisions are however subject to scrutiny by different stakeholders.²⁵⁰ The right of citizens to participate by making written presentations and views on the ward delimitation process is guaranteed in the Constitution.²⁵¹ However, this mode of participation – written representations – is likely to be utilised more by members of the public who are able to read and write. Thus, there is need to put in place other mechanisms to gather the input of citizens who cannot read and write to ensure inclusivity. The Constitution also gives the right to any person who is aggrieved by a delimitation decision to raise objections.²⁵² This measure enhances citizen participation and accountability.

The Constitution also provides substantive criteria to be considered by the commission when delimiting the wards. The criteria include consideration of factors such as history, diversity, cohesiveness of the ward,²⁵³ population density, trends and projections.²⁵⁴ In addition, there should be a reasonable number of inhabitants in each ward, taking into account the means of communication and geographical features.²⁵⁵ The Constitution also requires that the wards be wholly within a district²⁵⁶ and there must be an approximate equality of ward population, subject

²⁴⁷ Constitution, article 58(4).

²⁴⁸ Constitution, article 58(5).

²⁴⁹ Constitution, article 58(4).

²⁵⁰ Constitution, article 58(7).

²⁵¹ Constitution, article 58(7).

²⁵² Constitution, article 58(7).

²⁵³ Constitution, article 59(a).

²⁵⁴ Constitution, article 59(b).

²⁵⁵ Constitution, article 59(c).

²⁵⁶ Constitution, article 59(d).

to the need to ensure adequate representation for urban and sparsely populated areas.²⁵⁷ Consideration of these factors is significant for a number of reasons including ensuring easy articulation of local preferences and needs, as well as establishing a direct link between the council and voters.

4.3 Representative Local Government

An effective system of local government is also one that upholds representative democracy at the local level. It was submitted in Chapter Two that local leaders should be elected directly by the local people rather than appointed by higher authorities.²⁵⁸ The direct election of local leaders, among other benefits, promotes local accountability. Democratic elections enable citizens to replace or retain local leaders based on their performance in between elections. This section discusses constitutional provisions on representative local government in Zambia focusing on the election of councillors, mayors and chairpersons. It also analyses provisions on the role of an independent body in local government elections and the impact of single versus harmonised elections on local democracy. The term of office of locally elected leaders, the code of conduct of councillors, and the local government elections tribunal are also analysed as they all have an impact on local democracy.

4.3.1 Election of Councillors

The 2016 Constitution acknowledges the importance of having local leaders directly elected by citizens in respective local communities.²⁵⁹ It requires all councillors to be directly elected by registered voters resident in the relevant district.²⁶⁰ This provision is significant in the sense that, as argued above, the direct election of councillors has potential to engender the accountability of these leaders to the electorate. The Constitution further provides that councillors must be elected under a first-past-the-post (FPTP) electoral system.²⁶¹ The implications of this for local democracy are that on one hand FPTP promotes a link between wards and their representatives, thereby enhancing accountability; on the other hand, FPTP has the disadvantage of alienating some voices in the electorate as they are systematically excluded from representation in the council. Nonetheless, the requirement for the direct election of councillors promotes local

²⁵⁷ Constitution, article 59(e).

²⁵⁸ See paragraph 2.2.2.1 of Chapter Two.

²⁵⁹ Constitution, article 151(2)(a).

²⁶⁰ Constitution, article 153(1).

²⁶¹ Constitution, article 47(3).

democracy in as far as there is no room for the appointment of certain councillors by higher authorities.

4.3.2 Candidature Requirements Applicable to Councillors

Candidature provisions are often of decisive importance, as they define who is permitted to participate in the local political competition.²⁶² Of major importance are formal educational requirements for one to be elected as a councillor or a mayor. Such requirements may have the disadvantage of excluding the participation of popular candidates who may not have the required qualifications.²⁶³ Such formal educational requirements may however ensure that once elected, local leaders are able to fully represent and promote the interests of their respective constituencies. The educational requirements were not part of the electoral system in Zambia before the 2016 Constitution was adopted. Any citizen of Zambia who has reached the prescribed age was free to exercise their democratic right to run for the office of councillor. The 2016 Constitution has moved away from this position. Under the new Constitution, for one to qualify as a candidate in local government elections, he or she must have a minimum academic qualification of a grade twelve certificate or its equivalent.²⁶⁴ This new educational requirement means that the playing field is not open for anyone vying for the position of councillor. Many of the leaders, especially in rural areas, may not have grade twelve qualifications. This implies that the Constitution excludes some who may be popular and/or capable as leaders, even though they may not have the minimum educational qualifications. Nonetheless, the requirement may help improve the quality of local decision-making.

4.3.3 Election of Mayors and Chairpersons

It is also important that the political leadership of the council, such as mayors and chairpersons, are directly elected by the citizens in the respective communities.²⁶⁵ The Constitution recognises the importance of the direct election of mayors and chairpersons by voters in the various districts.²⁶⁶ It requires each council to be presided by a mayor or council chairperson who is deputised by a deputy mayor or deputy chairperson, as the case may be.²⁶⁷ Article 154(2) provides that the mayor and chairperson 'shall be directly elected' during the elections for

²⁶² Hartman C (2004) 237.

²⁶³ Hartman C (2004) 237.

²⁶⁴ Constitution, article 153(4)(c).

²⁶⁵ De Visser J (2005)37.

²⁶⁶ Constitution, article 154(1).

²⁶⁷ Constitution, article 154(1).

councillors.²⁶⁸ This requirement is a significant benefit for local democracy as it has potential to enhance citizen participation and accountability. Mayors and chairpersons are now directly answerable to the electorate for the performance of their respective councils in the delivery of services. The Constitution requires that deputy mayors and deputy chairpersons are to be elected from amongst the membership of the council.²⁶⁹ Hence, relative to mayors and chairpersons their accountability is likely to be more to the council rather than to the general electorate except in their respective wards where the direct accountability channel through elections remains unchanged.

4.3.4 Role of an Independent Electoral Body

Chapter Two emphasised the importance of democratic elections to local democracy.²⁷⁰ It was submitted that the freeness and fairness of elections are likely to be improved if such elections are managed by an independent body. The 2016 Constitution of Zambia makes provision for an independent body to administer elections in line with international best practice.²⁷¹ The functions of this body, the Electoral Commission of Zambia (ECZ), are explicitly recognised in the Constitution.²⁷² The provision of the role of an independent electoral body in the Constitution is commendable. It has the potential to generate confidence in the administration of elections. It was further observed in paragraph 2.4.1.5 that the manner in which members are appointed to the electoral body should inspire confidence of both the public and political parties regarding the independence of the institution. Article 240 of the 2016 Constitution provides objective qualifications of members of the ECZ. The Constitution further directs parliament to provide other qualifications for members of the ECZ.²⁷³ These measures enhance the independence of the ECZ and therefore contribute to the promotion of local democracy.

4.3.5 Role of the Local Government Elections Tribunal

It was contended in Chapter Two that local leaders should be elected under an electoral field that guarantees regular, free and fair elections to promote genuine local democracy.²⁷⁴ If, for

²⁶⁸ Constitution.

²⁶⁹ Constitution, article 154(3).

²⁷⁰ See paragraph 2.2.2.1 of Chapter Two.

²⁷¹ Constitution, article 229(1).

²⁷² Constitution, article 229(2).

²⁷³ Constitution, article 240(h).

²⁷⁴ See paragraph 2.2.2.3 of Chapter Two.

example, elections are marred by malpractice, it means that such elections cannot be considered to be either free or fair or both.²⁷⁵ Thus, there is need for mechanisms of checking if elections are carried out in line with the relevant constitutional, legislative and international rules. The Constitution makes provision for the establishment of ad hoc local government elections tribunals whose purpose is to hear petitions arising from the election of councillors.²⁷⁶ The tribunal is constituted by a magistrate of competent jurisdiction, sitting with two legal practitioners appointed by the Chief Justice.²⁷⁷ Thus, the independence of these tribunals has been enhanced. Any person may file an election petition with a local government elections tribunal to challenge the election of a councillor.²⁷⁸ The decision of the tribunal is reviewable by the Constitutional Court.²⁷⁹ All these measures improve confidence in how local elections are administered in Zambia with an objective of enhancing local democracy.

4.3.6 Single Versus Harmonised Elections

The institutional design proposed in Chapter Two underlined the importance of separating local government elections from national and provincial elections.²⁸⁰ Separating local elections from national and provincial elections has the potential to improve the chances of local citizens holding local leaders closely accountable.²⁸¹ Unfortunately, the 2016 Constitution provides for harmonised national and local government elections which should be held every five years.²⁸² The impact is that national elections are likely to receive more attention than local government elections.²⁸³ The choice of a presidential candidate and/or members of parliament in national elections will likely drive decision-making by voters at the local level. The result is that the decision to reject or vote into office councillors is likely to be made on the profile of political parties and senior political leaders rather than on the performance of the individual councillor during the term of office. Local accountability which is at the centre of local democracy will be

²⁷⁵ Bishop S & Hoeffler A (2016) 608.

²⁷⁶ Constitution, article 159.

²⁷⁷ Constitution, article 159(2).

²⁷⁸ Constitution, article 159(3).

²⁷⁹ Constitution, article 159(5).

²⁸⁰ See paragraph 2.2.2.5 of Chapter Two.

²⁸¹ See Steytler N 'Republic of South Africa' in Kincaid J & Tarr A (ed) *Constitutional Origins, Structure and Change in Federal Countries* (2005) 343.

²⁸² Constitution, article 153(6).

²⁸³ Carrares M (2017) 4.

compromised. Thus, harmonised elections in Zambia will likely replace democratic benefits with administrative ones that include reduced costs of organising elections.

4.3.7 Term of Office of Locally Elected Leaders

Chapter Two stressed the importance of the term of office of local leaders to be limited.²⁸⁴ It was argued that fixed terms of office are important so that local leaders can account for their performance. If voters are not satisfied with the performance of a political leader, they may vote him or her out of office when their term expires.²⁸⁵ The fixed term of office has also been found to be effective in reducing the chances of local authoritarianism. Chapter Three exposed that under the 1996 Constitution of Zambia and previous constitutions, the tenure of office of three years for councillors was too short for local leaders to make a meaningful contribution. Thus, it is important that the term of office, while limited, should not be too short so that local leaders have sufficient time to make a meaningful contribution. The 2016 Constitution requires the term of a council, mayors and chairpersons to be five years commencing from the date the councillors are sworn into office after a general election and ending on the date council is dissolved.²⁸⁶ Thus, the Constitution has extended the duration of the term of office of the council. The extension may have positive effects on local democracy by allowing a reasonable period within which locally-elected leaders can account for their performance to the local people.

4.4 Participatory Local Government

It was stressed in Chapter Two that representative democracy, discussed above, should be complemented by direct democracy.²⁸⁷ Direct democracy entails that citizens have the right and mechanisms to directly participate in local government in between elections.²⁸⁸ Direct participation of citizens in local government brings with it a wider range of relevant views. It provides a platform for citizens to directly express their needs and preferences and for local government officials to appreciate local problems from the 'horse's mouth' and the scope of solutions required.²⁸⁹ Citizens can participate in a number of local governance processes including budget making and development planning. This section seeks to establish if the 2016

²⁸⁴ See paragraph 2.2.2.2 of Chapter Two.

²⁸⁵ Kluvers R (2010) 47.

²⁸⁶ Constitution of Zambia 1996, article 153(6).

²⁸⁷ See paragraph 2.2.3 of Chapter Two.

²⁸⁸ Van Waldt G (2004) 3.

²⁸⁹ Nour AM (2011) 85.

Constitution guarantees citizen participation which, as observed in Chapter Two, is one of the key principles of local democracy.

The 2016 Constitution provides for the establishment of a local government system where ‘the people’s participation in democratic governance is promoted’.²⁹⁰ Article 151(2)(g) of the Constitution requires the involvement of communities and community organisations in matters of local government. This means that the Constitution guarantees the citizen’s right to participate in matters of local government. The Constitution further imposes an obligation on local authorities to ensure that the right is fully realised and promoted.²⁹¹ The right to participate in local government matters extends to communities at large.²⁹² The requirement for citizen participation is commendable as citizens should have a continuous mechanism of influencing decision-making at the local level. What is now required is the development of mechanisms to ensure the realisation of this right. There is need to enact relevant legislation and adopt policies that provide for citizen participation mechanisms such as the requirement for consultations when making by-laws and budgets; when delimiting local boundaries and wards and when establishing or disestablishing local authorities and districts. The participation of citizens in council meetings, among other local structures, becomes essential.²⁹³ The establishment of participatory structures including ward, village and neighbourhood committees, can be effective in promoting citizen participation.

4.5 Accountable Local Government

The institutional design proposed in Chapter Two emphasises the importance of putting in place mechanisms of promoting accountable local government.²⁹⁴ Such mechanisms are important to detect and expose the abuse of public authority and resources.²⁹⁵ They ensure that locally-elected local government officials remain primarily answerable to the local people while local administrative officials account to local politicians. The 2016 Constitution has provided the foundation for accountable local government in Zambia which was perhaps not available under the previous Constitutions. Article 151(1)(i) of the Constitution imposes an obligation on both

²⁹⁰ Constitution, article 151(1)(b).

²⁹¹ Constitution, article 151(1)(b).

²⁹² Constitution, article 151(2)(g).

²⁹³ *Coglianesse C* (2006) 943.

²⁹⁴ See paragraph 2.2.4 of Chapter Two.

²⁹⁵ *Sikhakane BH & Reddy PS* (2011) 91..

the national government and local government to ensure that local authorities are accountable. The Constitution further requires democratic and accountable exercise of powers.²⁹⁶ This entails that local authorities must justify their policies, actions and utilisation of resources to the local population. The Constitution also requires councillors to be collectively and individually accountable to national government and residents in their wards and districts for the performance of their functions.²⁹⁷ The implication of this provision is that councillors will likely be more inclined to be answerable to national government rather than to the local people, thereby undermining local democracy.

One of the mechanisms recognised in the Constitution through which citizens can hold local officials responsible for their actions is elections.²⁹⁸ This mechanism has already been discussed above, thus it will not be discussed here. Another mechanism through which locally elected officials can be held accountable, discussed in Chapter Two, is the code of conduct for councillors. Article 155 of the Constitution requires councillors to act in a manner that is consistent with councillors' civic duties and responsibilities to the local people. It further envisages the establishment of a code of conduct for councillors.²⁹⁹ The Constitution states that a councillor may be removed from office if he or she acts contrary to this code.³⁰⁰ Thus, the Constitution has provided a reasonable base upon which an accountable system of local government can be built. The national government should now develop the necessary legislation, policies and institutions to give effect to this constitutional framework. Such a piece of legislation can provide for the role of oversight committees which can play an important role in overseeing the performance of the executive and municipal administration.³⁰¹

4.6 Transparent Local Government

A transparent local government is a key character of a developmental local government whose institutional design was proposed in Chapter Two.³⁰² Among other things, transparency means that citizens have easy access to information about the governance processes and structures at the

²⁹⁶ Constitution, article 151(2)(b).

²⁹⁷ Constitution, article 156.

²⁹⁸ Constitution, article 151(2)(a).

²⁹⁹ Constitution, article 155.

³⁰⁰ Constitution, article 157(e).

³⁰¹ Faguet JP (2004) 870.

³⁰² See paragraph 2.2.5 of Chapter Two.

disposal of local government.³⁰³ Transparency is particularly important in the fight against weaknesses usually associated with decentralisation, such as corruption and wastage of resources. Transparent governance empowers citizens with information to question the decision-making of local officials so as to make them more accountable and exposed to the judgement and evaluation of citizens.³⁰⁴ The 2016 Constitution recognises the importance of transparent local government in a number of provisions.

The Constitution provides that a council may invite a person, whose presence in its opinion is desirable, to attend and to participate in the deliberations of the council but that person shall have no vote.³⁰⁵ This means that the Constitution allows council meetings and those of its committees to be open to the public. However, the Constitution gives the council the power to decide which of its deliberations should be open to the public and which should not.³⁰⁶ Some councils may use this power to restrict access to council and committee meetings, a development which is likely to undermine transparency. In order to promote transparency, it is suggested that legislation should restrict the number of issues which can be considered by the council or its committees in closed sessions.

The Constitution requires a state organ, state institutions and public officials to procure goods or services in accordance with a system that is fair, equitable, transparent, competitive and cost effective.³⁰⁷ This provision, among other benefits, enhances transparency in the procurement of goods and services and it is therefore commendable. The Constitution also requires the Auditor-General, a constitutional body, to audit the financial accounts and systems of local authorities.³⁰⁸ This is applicable because local authorities receive various funds and grants from central government.³⁰⁹ The auditing of financial statements and systems enhances transparency in the expenditure of public resources of local authorities. Thus, just as with accountable and participatory local government, the 2016 Constitution has provided the necessary framework to ensure transparency at the local level. What is left is for the national government to develop

³⁰³ Welch EW (2012) 93.

³⁰⁴ Welch EW (2012) 94.

³⁰⁵ Constitution, article 153(5).

³⁰⁶ Constitution, article 153(5).

³⁰⁷ Constitution, article 210(1).

³⁰⁸ Constitution, article 212.

³⁰⁹ Constitution, article 163.

legislation that provides detailed mechanisms of promoting transparent local government such as the publication of annual reports, budgets, strategic plans and service charters.

4.7 Inclusive Local Government

It was argued in Chapter Two that a system of local government is not democratic if it is not inclusive.³¹⁰ Inclusiveness means that governance institutions, processes and policies are particularly accessible, accountable and responsive to disadvantaged groups.³¹¹ Inclusive electoral systems such as a proportional representation system can enable inclusion of groups that are normally excluded from political representation under majoritarian electoral systems.³¹² Besides the inclusive electoral systems, the reservation of seats for marginalised groups on the council and on its key governance structures is another mechanism of ensuring inclusive local politics.³¹³ How inclusive is the local government system provided for in the 2016 Constitution of Zambia? The Constitution recognises and upholds the multi-ethnic, multi-racial, multi-religious and multi-cultural character of the nation in a devolved system of governance.³¹⁴ This means that the local government system is required to embrace diversity in terms of interests and preferences of different groups of local populations. In this manner, the Constitution has the potential to promote inclusiveness.

Another mechanism of promoting inclusive politics in the 2016 Constitution is the electoral system. Article 45(1)(c) of the Constitution provides that the electoral system ‘shall ensure’ fair representation of various interest groups in society.³¹⁵ Article 45(1)(d) requires gender equity in the council.³¹⁶ These constitutional requirements can enhance inclusiveness in local governance. The challenging question becomes that of ensuring that there is fair representation of various interest groups in the society, including marginalised groups. Article 47(3) of the Constitution requires elections to councils to be conducted under a first-past-the-post electoral system. Thus, this electoral method, which favours front-runner parties and dominant ethnic groups is unlikely to produce inclusive local councils. Thus, the challenges of marginalisation of certain groups

³¹⁰ See paragraph 2.2.6 of Chapter Two.

³¹¹ UN *Towards inclusive governance: promoting the participation of disadvantaged groups in Asia - Pacific* (2007) 1.

³¹² Norris P (1997) 303.

³¹³ Norris P (1997) 303.

³¹⁴ Constitution, preamble.

³¹⁵ Constitution, article 45(1)(c).

³¹⁶ Constitution.

experienced under previous constitutions in some areas may persist if there are no other mechanisms of ensuring inclusiveness.

It is against the background of a history of marginalisation of certain groups that this paper suggests that there is need to enact a piece of legislation that provides for electoral quotas to enhance inclusiveness. The Southern African Development Community (SADC) and African Union gender parity requirement is fifty percent at all levels of decision-making for women, for example.³¹⁷ Elsewhere on the African continent, the trend towards inclusive governance is becoming central in constitutional reform, as is seen in recent processes in Kenya and Zimbabwe.³¹⁸ For example the Zimbabwean Constitution of 2013 requires that women constitute at least half the membership of all commissions and other elective and appointed governmental bodies established by or under the Constitution or any act of parliament.³¹⁹ Similar approaches of ensuring balanced representation can be adopted with regards to the representation of ethnic groups on the council and its key governance structures, in line with the constitutional requirement of ensuring representativeness.

4.8 The Place and Role of Traditional Leaders in Local Government

It is argued in Chapter Two that when designing a decentralisation system of government, it is imperative to define decentralisation in context given the differences in local environments, including the role and relevance of traditional leaders.³²⁰ The 2016 Constitution of Zambia has defined decentralisation in the Zambian context by, among other ways, recognising the role of traditional leaders. Article 165(1) of the Constitution states that ‘[t]he institution of chieftaincy and traditional institutions are guaranteed and shall exist in accordance with the culture, customs and traditions of the people whom they apply’. These traditional leaders include paramount chiefs, senior chiefs, chiefs or sub-chiefs³²¹ and village headmen.³²² This constitutional recognition guarantees the existence of the institution of traditional leaders given its relevance in the Zambian society, particularly in rural areas. What is the place and role of traditional leaders in local government?

³¹⁷ See SADC Protocol on gender and development 2008 article 4, 12, 13. AU gender policy 2009, article 1(1).

³¹⁸ See Constitution of Zimbabwe 2013, s 17(1)(b)(ii). See Constitution of Kenya 2010, s 81 (b).

³¹⁹ See Constitution of Zimbabwe 2013, s 17(1)(b)(ii).

³²⁰ See paragraph 2.3 of Chapter Two.

³²¹ The Chiefs’ Act No. 287 of 1965, s 3(1)(b), Zambia.

³²² The Registration and Development of Villages Act No. 289 of 1971, s 2, Zambia.

Traditional leaders have been assigned a variety of responsibilities which impact on people's lives. The Constitution provides for a role of traditional leaders in the management, control and sharing of natural and other resources in their respective jurisdictions.³²³ The details of this and other roles are to be provided under an Act of Parliament. The Constitution has also assigned a role for traditional leaders in the council which governs a local authority area. Article 153 (1)(c) of the Constitution requires a council to consist of councillors including not more than three representatives of chiefs in the district. The Constitution requires national legislation to determine the procedure to be followed when appointing chiefs to the council.³²⁴ On the basis of being members of the council, the Constitution accords traditional leaders voting rights in the council just like the elected members. This means that the rights of traditional leaders to participate in the decision-making processes in local councils on an equal footing with elected councillors is guaranteed in the Constitution. This provision will enable chiefs to effectively represent and protect the interests of their respective traditional communities. Thus, it is submitted that even though the role of traditional leaders may seem to be in conflict with modern democracy roles, the 2016 Constitution has correctly provided their roles given their continued relevance in the Zambian society, particularly in rural areas.

4.9 Conclusion

The 2016 Constitution of Zambia has recognised the importance of local democracy to a decentralised system of government. It requires the establishment of a participatory, accountable and transparent system of local government. While the Constitution should be commended for recognising local government as a level of government, it has not gone very far in providing a certain measure of existence to each local government unit. The Constitution upholds representative democracy by requiring the direct election of councillors, mayors and chairpersons. The role of an independent electoral body in the management of elections and delimitation of wards promotes democratic elections. On the other hand, the constitutional requirement for the harmonisation of national and local elections may have the negative effect of weakening local democracy. The extension in the tenure of office of councillors to five years, brought by the 2016 Constitution, is commendable as it gives local leaders ample time to make a

³²³ Constitution, article 168(3).

³²⁴ Constitution, article 153(3).

meaningful contribution. While there are constitutional requirements for gender equity and the adequate representation of the diversity of the Zambian society, the Constitution has not provided mechanisms of ensuring that these objectives are achieved at the local level. This gap can, however, be filled by national legislation and policies. The Constitution should be commended for having recognised the role of traditional leaders, particularly at the local government level. It is therefore submitted that the 2016 Constitution has provided a sufficient base upon which a democratic system of local government in Zambia can be built, even though it has certain weaknesses.



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Chapter 5: Conclusion

5.1 Introduction

Zambia adopted a new Constitution in 2016, which among other things entrenches local government as a level of government.³²⁵ The principal aim of this research paper was to assess this Constitution in a bid to establish the extent to which it deepens local democracy. This is against the background that, as submitted in Chapter Two, local democracy is an important aspect of a system of local government capable of meeting service delivery and development requirements of local communities. An institutional design for local democracy informed by international best practice, international instruments and literature on decentralisation was proposed in that chapter. Chapter Three assessed the system of local government prior to the adoption of the 2016 Constitution with particular focus on local democracy. Chapter Four then examined the 2016 Constitution, among other things, to establish if it has rectified the challenges relating to local democracy which were prevalent prior to its adoption. This Chapter provides the major findings of this study. It also answers the research question posed in Chapter One, before proposing a set of recommendations with an objective to deepen local democracy in Zambia.

5.2 Major Findings of the Study

It was argued in Chapter Two that the potential of a system of local government to meet service delivery obligations and development mandates, partially depends on whether it is democratic or not. A democratic system of local government was identified in Chapter Two as one that protects the existence of local government. It is also one that promotes representative democracy, citizen participation, accountability, transparency and inclusiveness. The importance of defining decentralisation within context, with particular reference to the role of traditional leaders on the African continent, was also emphasised. The major findings of this study on these various aspects of local democracy will be presented in this section.

5.2.1 Security of Existence

The security of existence of local government is one of the factors that shapes the performance of local governments. Thus, it was contended in paragraph 2.3 of Chapter Two that some form of security of existence, not only to the institution of local government, but also to individual local

³²⁵ See article 147(2).

units, should be provided. The 2016 Constitution of Zambia recognises local government as a level of government and not as an extension of the national or provincial government.³²⁶ Thus, the institution of local government has been accorded the highest level of protection given the cumbersome procedures applicable to a constitutional amendment.³²⁷ The security of existence of individual councils or local authorities is however weak, given that the Constitution does not regulate the processes of establishing or disestablishing them.³²⁸ This is left to the determination of national legislation. Thus, the challenge experienced under the previous constitutional orders where councils were established, merged and disestablished for political convenience may continue given that it is generally easy to amend national legislation.

5.2.2 Representative Local Government

Representative local government is arguably the most important aspect of local democracy. The 2016 Constitution of Zambia recognises the importance of representative democracy at the local level.³²⁹ It requires councils to be constituted by councillors, mayors and chairpersons directly elected by the people under an electoral system that guarantees regular, free and fair elections.³³⁰ This requirement is a significant benefit for local democracy as it has the potential to enhance citizen participation and local accountability. Unlike under the previous constitutional orders, mayors and chairpersons are now directly answerable to the electorate for the performance of their respective councils in the delivery of public services. The Constitution also provides for an independent body with the mandate of managing local elections as well as the delimitation and naming of boundaries for wards.³³¹ The role of the independent body is likely to improve the freeness and fairness of local elections which are at the centre of local democracy. The effectiveness of this body will however largely depend on the level of independence it enjoys in practice and the resources it has at its disposal. What may also undermine local democracy is the new constitutional requirement of minimum educational qualifications for councillors. This requirement may have the negative effect of excluding popular leaders who do not have the minimum educational qualifications from contesting in local elections. Another weakness of the 2016 Constitution is that it provides for harmonised national and local elections. The impact of

³²⁶ See article 147(2).

³²⁷ See article 147(1).

³²⁸ See article 149(4).

³²⁹ See article 151(2)(a).

³³⁰ See article 153, article 154.

³³¹ See article 229(1).

this harmonisation is that national elections are likely to receive more attention and therefore, overshadow local government elections. Thus, it may be difficult for citizens to hold local officials more closely accountable. The 2016 Constitution has extended the term of office of councillors, mayors and chairpersons from the previous three years to be five years. The extension may have positive effects on local democracy by allowing a reasonable period within which locally elected leaders can account for their performance while also limiting opportunities for local authoritarianism.

5.2.3 Participatory Local Government

Under a democratic system of local government citizens have the right and mechanisms to directly participate in local government matters in between elections. Thus, it is important that the constitutional and legislative content that seeks to nurture a democratic local government provides for the various mechanisms of promoting direct democracy.³³² The 2016 Constitution recognises the need for direct democracy at the local level in Zambia. It guarantees the citizen's right to directly participate in matters of local government.³³³ The Constitution further imposes an obligation on local authorities to ensure that the right is fully realised and promoted.³³⁴ The right to participate in local government matters extends to communities at large.³³⁵ This constitutional requirement for citizen participation is commendable as citizens and communities have a continuous and direct mechanism of influencing decision-making at the local level. What is now required is the development of legislative, policy and institutional mechanisms to ensure the realisation of this constitutionally guaranteed right.

5.2.4 Accountable Local Government

When designing a system of local government it is important to put in place mechanisms of promoting accountability at the local level. As submitted in paragraph 2.4.3 of Chapter Two, such mechanisms are important to ensure that locally elected local government officials remain primarily answerable to the local people while local administrative officials account to local politicians. The 2016 Constitution has recognised the importance of an accountable system of local government. It imposes an obligation on both the national government and local

³³² See paragraph 2.2.3 of Chapter Two.

³³³ See article 151(2)(g).

³³⁴ See article 151(1)(b).

³³⁵ See article 151(2)(g).

government to ensure that local authorities are accountable.³³⁶ Moreover, local authorities are directed by the Constitution to be accountable both to communities and to national government.³³⁷ While this constitutional requirement is likely to promote accountability to communities, on the other hand the requirement has the potential to weaken local democracy as councillors will feel compelled to be more accountable to the national government than to local communities. One of the mechanisms recognised in the Constitution through which citizens can hold local officials responsible for their actions is through elections, as discussed above. Another mechanism through which locally elected officials can be held accountable, as required by the Constitution, is the code of conduct for councillors.³³⁸ Thus, the Constitution has provided a reasonable base upon which an accountable system of local government can be built upon.

5.2.5 Transparent Local Government

The need for transparent local government was identified in Chapter Two as a fundamental pillar of local democracy.³³⁹ Transparent local government means that the citizens have easy access to information relating to the governance processes and structures on local public service provision. One of the key objectives of local government in the Constitution is transparent local government.³⁴⁰ Therefore, local authorities and national government have an obligation to ensure that the activities of councils are transparent. The Constitution also provides various mechanisms of ensuring and promoting transparency. These include requirements for opening up of council meetings³⁴¹ and auditing of financial statements by the Auditor General.³⁴² However, the constitutional framework on transparency at the local level is inadequate. For example, there is a lack of content relating to requirements for the publication of annual reports, budgets, strategic plans and service charters which can promote transparent local government. These gaps can however be covered by legislative enactments.

³³⁶ See article 151(2)(b).

³³⁷ See article 156.

³³⁸ See article 155.

³³⁹ See paragraph 2.2.5 of Chapter Two.

³⁴⁰ See article 151(2)(b).

³⁴¹ See article 153(5).

³⁴² See article 250(a)(i).

5.2.6 Inclusive Local Government

Chapter Two stressed the significance of inclusive local government.³⁴³ In particular, it was argued that governance institutions, processes and policies should be accessible, accountable and responsive to marginalised groups such as women and minority groups. One of the objectives of the 2016 Constitution is the promotion of inclusive governance at all levels of government.³⁴⁴ This means there should be gender equity even on the council. This constitutional requirement can enhance the representation of women in local decision-making structures. What seems not to be adequately catered for in the Constitution is the representation of other marginalised groups, such as people with disabilities, youths and minority ethnic groups in local councils. The Constitution provides for elections to councils to be conducted under a first-past-the-post electoral system.³⁴⁵ This electoral method, which favours front-runner parties and dominant ethnic groups, is unlikely to produce inclusive local councils. Therefore it becomes essential that, among other mechanisms, national legislation is enacted to provide for other ways of ensuring inclusiveness at the local level.

5.2.7 The Place and Role of Traditional Leaders

It was submitted in Chapter Two that, where relevant, there may be need to explicitly recognise the place and role of traditional leaders, particularly at the local level where they tend to be the immediate form of government. The 2016 Constitution has appropriately recognised the role of traditional leaders in Zambia.³⁴⁶ This recognition is significant given that traditional leaders are a key part of the Zambian society particularly in rural areas, where, like in many parts of Africa, they have more immediate interaction with citizens than any other governance structure. The Constitution has empowered traditional leaders to participate in local councils on an equal footing with elected councillors.³⁴⁷ This means that chiefs can vote in the council, a development which is likely to enhance their ability to represent and protect the interests of their respective traditional communities.

³⁴³ See paragraph 2.2.6 of Chapter Two.

³⁴⁴ See preamble of the Constitution.

³⁴⁵ See article 47(3).

³⁴⁶ See article 165(1).

³⁴⁷ See article 153(1)(c).

5.3 Answering the Research Question

The main research question which this study sought to answer is ‘Does the 2016 Constitution of Zambia sufficiently entrench local democracy? If it does, what institutional, legislative and policy reforms are required to give effect to the constitutional provisions on local democracy?’ It is clear from the above findings that the 2016 Constitution has gone very far in entrenching local democracy in Zambia. It has provided the foundation upon which a democratic system of local government in Zambia can be built. Thus, it may be safe to conclude that the 2016 Constitution is the most progressive Zambia has ever had in as far as local democracy is concerned. Consequently, the effectiveness of the system of local government is likely to improve if all other relevant factors are in place. A number of weaknesses were however identified, most of which can be addressed by legislative, institutional and policy reforms. The danger remains that legislative and policy entrenchment of local democracy is likely to be threatened by changes in politics at the national level, which, as observed in Chapter Three, has been largely followed by changes to local government legislation.

5.4 Recommendations

This research paper discussed the strengths and weaknesses of the 2016 Constitution of Zambia in as far as local democracy is concerned. The purpose of this section is to propose a set of recommendations necessary to deepen local democracy in Zambia given its importance to an effective system of local government. Some of the recommendations are designed to remedy weaknesses of the 2016 Constitution identified in the previous Chapter. These particularly relate to areas impacting on local democracy which are not regulated or adequately prescribed by the 2016 Constitution. Other proposals are necessary to implement the Constitution. The recommendations are broadly classified into three, namely: legislative reforms, institutional reforms and reforms relating to governance procedures or processes. The list of these recommendations is not exhaustive but meant to shed light on the reform process.

5.4.1 Reforming the Local Government Act

As highlighted above, the 2016 Constitution is the most progressive Constitution Zambia has ever had with particular reference to local democracy. The Constitution provides the foundation upon which a democratic system of local government can be built. What is now required is the realignment of the Local Government Act with this Constitution. The review of the Local

Government Act should focus on, among other issues, governance structures, institutions and procedures, some of which are discussed below. The legislative review process should be guided by the objectives and principles of local government which are discussed throughout this paper. These include the need for an accountable, participatory and transparent system of local government.

5.4.2 Institutional Reforms

The effective implementation of the 2016 Constitution may require institutional reforms relating to various aspects of local government. It is advisable, for instance, that an independent body that exercises the function of (re)demarcating boundaries of districts, which are administered by the councils, be established. This is important in order to ensure that the (re)demarcation process is not a governance process determined and driven solely by politicians. It is also important to establish or review oversight committees of councils that can effectively oversee the performance of the local executive and municipal administration. Other institutional reforms may relate to the role of ward, village and neighbourhood committees and other structures of promoting citizen participation. Inclusive local government may require that in cases where a mayor or chairperson is a male, there is a requirement that the deputy mayor or chairperson be a female. Electoral quotas may guarantee the representation of women, minority ethnic groups, and youths on the council. Reserving certain seats for marginalised groups on major decision-making bodies, such as chairpersons of committees of the council, may ensure that these groups have a voice in the higher echelons of power at the local level.

5.4.3 Reforms of Governance Procedures

Local democracy is likely to be enhanced in Zambia if citizens have the mechanisms of influencing and shaping local governance processes. These may relate to by-law making, budget formulation, development planning, the delimiting of local boundaries and wards, and the establishment or disestablishment of local authorities and districts. The processes of establishing, disestablishing or merging of councils should be regulated to ensure that they are as participatory, inclusive and transparent as possible. The relevant policies and legislation should provide for procedural and substantive criteria that ensures that there is sufficient democratic content at the local level. This is important in order to provide guarantees on the security of existence of individual local government units. Furthermore, it is suggested that legislation and policies that promote transparent, accountable, inclusive and participatory local government be

adopted. These may include the requirement for the auditing of financial statements of local government and periodic performance reporting. The requirement for the publication of audit reports, budgets, strategic plans and service charters can be effective in promoting transparency, accountability and citizen participation. The limitation of the number of issues which can be considered by the council or its committees in closed sessions is another mechanism of promoting participatory and transparent local government.



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