

UNIVERSITY OF THE WESTERN CAPE



FACULTY OF LAW

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Research Paper Topic: The administrative autonomy of local authorities in Zambia under the 2016 Constitution.

Keywords: local government, administrative autonomy, decentralisation, accountability, devolution, 2016 Constitution.

Declaration

I, Chilumbwa Maambo declare that ‘The administrative autonomy of local authorities in Zambia under the 2016 Constitution’ is my own work, that it has not been submitted before for any degree or examination in any other University, and that all the sources I have used or quoted have been indicated and acknowledged as complete references.

Student: Chilumbwa Maambo

Signed:



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Dedication

This thesis is dedicated to my loving parents Buxton and Grace.



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Table of Contents

Declaration	i Error! Bookmark not defined.
Acknowledgement	iii Error! Bookmark not defined.
Dedication	iv Error! Bookmark not defined.
Table of Content	v Error! Bookmark not defined.
Chapter 1:Introduction	8
1. Background and problem statement of the study..	Error! Bookmark not defined.8
2. Research Questions	Error! Bookmark not defined.10
3. Argument	Error! Bookmark not defined.11
4. Literature Review.....	Error! Bookmark not defined.11
5. Substantiating the argument.....	Error! Bookmark not defined.14
6. Research Methodology	Error! Bookmark not defined.14
7. Terminologies	Error! Bookmark not defined.14
7.1. Local government	15
7.2. Decentralisation	15
7.2.1. Deconcentration	16
7.2.2. Delegation	16
7.2.3. Devolution.....	16
7.3. Administrative autonomy.....	17
7.3.1. The separate system	17
7.3.2. The integrated system	17
7.3.3. The unified system.....	18
Chapter 2: Decentralisation and Administrative autonomy: A theoretical framework	19 Error! Bookmark not defined.
1. Introduction.....	Error! Bookmark not defined.19
2. Advantages and disadvantages of decentralisation.....	Error! Bookmark not defined.19
2.1. Advantages of decentralisation	Error! Bookmark not defined.19
2.2. Arguments against decentralisation	20
3. Administrative autonomy.....	21
3.1. How administrative autonomy supports decentralisation	21
3.1.1. Power to determine internal administrative procedures.....	22
3.1.2. Discretion to appoint, remunerate, discipline and dismiss staff	22
3.1.3. Monitoring and supervision.....	23
3.2. Dangers of administrative autonomy	23
3.2.1. Constricting interregional mobility of civil servants	23
3.2.2. Nepotism, corruption and favouritism	24
4. Institutional framework for effective administrative autonomy	24
4.1. The power to determine own organisational structure.....	25
4.2. Power to hire, oversee and discipline their own personnel.....	25
4.3. Power to set salary levels	26
4.4. Flexible institutional framework.....	26
4.5. Capacity building	26

4.6.	Supervision framework and reporting mechanism	27
5.	Concluding remarks	27
Chapter 3: Features of the Zambian system for local government administration		
		Error! Bookmark not defined.29
1.	Introduction.....	29
2.	Local government in Zambia.....	29
2.1.	Local government administration before independence	29
2.2.	Local government administration between independence and the 2016 Constitution.....	32
2.2.1	1964 to 1965: Separate system.....	33
2.2.2.	1965 to 1980 : Unified system.....	34
2.2.2.1.	1965 to 1975 : Part-time LGSC.....	35
2.2.2.2.	1975 to 1980 : Full-time LGSC.....	35
2.2.3.	1980 to 1986 : One party system and integrated administration.....	36
2.2.4.	1986 to 1991 : Separate administration.....	38
2.2.5.	1991 to 1996 : Integrated system.....	39
2.2.6.	1996 to 2010 : Separate administration.....	41
2.2.7.	2010 to 2016 : Unified system.....	41
3.	Composition, powers and functions of the LGSC in the Local Government (Amendment) Act No. 10 of 2016.....	43
4.	Conclusion	43
Chapter 4: Administrative autonomy in the 2016 Zambian Constitution Error! Bookmark not defined.45		
1.	Introduction.....	45
2.	Background to the 2016 constitutional amendment.....	45
3.	Relevant provisions on local government autonomy.....	46
3.1.	Democratic nature of local government.....	46
3.2.	Powers of local government.....	47
3.3.	Financial powers.....	47
3.4.	Prohibitions to interfere.....	48
4.	Constitutional provisions and legislation on the functions of the LGSC..	48
5.	Reflections on the functions of the LGSC	49
5.1.	Contradictory and unclear provisions	49
5.2.	Implications on autonomy and accountability of local government staff..	50
5.2.1.	Implications on staff transfers.....	50
5.3.	Implications on the power to determine own organisational structures....	51

6.	Conclusion.....	51
Chapter 5: Conclusion and recommendations		Error! Bookmark not defined.52
1.	Introduction.....	52
2.	Major findings of the study.....	52
3.	Recommendations.....	54
3.1.	Devolved local government system.....	54
3.2.	Organisational structure.....	55
3.3.	Staff matters.....	55
3.4.	Staff transfers.....	56
3.5.	Filling vacancies.....	56
3.6.	Supervision.....	57
3.3.	Answering the research question.....	57
References.....		Error! Bookmark not defined.59



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WESTERN CAPE

Chapter One

Introduction

1. Background and problem statement of the study

Zambia has, since independence in 1964, endeavoured to build an effective local government system anchored on decentralisation in an effort to attain the values and principles of democracy, autonomy and transparency. These values and principles are essential in enhancing service delivery and development. Within the South African context, De Visser and May argue, in keeping with the developmental imperatives for decentralisation, that local governments should be entrusted with fundamental powers and functions related to basic service delivery.¹ A local government entrusted with fundamental powers is said to be the best foundation for building democracy, social and economic development.² Therefore, the desire to build a strong foundation for an effective local government system is what motivates the design of local government administrations in many countries. One of the essential aspects in the design of a local government system is administrative autonomy.

Administrative autonomy is important because it plays a complementary role to the realisation of political and fiscal autonomy. Administrative autonomy refers to the discretion to appoint, remunerate, discipline and dismiss staff as well as determining internal administrative procedures.³ It further ensures that the implementation of local policies is locally directed and driven by promoting accountability of local administrative officials to sub-national governments.⁴

In an effort to have a local government system that promotes accountability of local administrative officials to sub-national governments, Zambia has over the years employed three systems of local government administrations from 1964 to 2016 namely, the separate, unified and integrated systems.

¹ De Visser J & May A 'Functions and powers of South Africa's Provinces and municipalities' in Steytler N & Ghai Y (eds) *Devolution in Kenya and South Africa* (2015) 159.

² Myerson R 'Empowered local government is the best foundation for building democracy' available at www.huffingtonpost.com/roger.../empowered-local-government_b_4715746.html (accessed on 20 June 2017).

³ Chigwata TC *The law and policy for provincial and local government in Zimbabwe: The potential to realise development, build democracy and sustain peace* (unpublished PhD thesis, University of the Western Cape, 2014) 69.

⁴ Chigwata TC (2014) 69.

The change in systems of local government administration was in an effort to make local government democratic and ensure that relevant personnel policies are developed. As a result, the country has been enacting various pieces of legislation on local governance since 1964 to date as will be discussed in Chapter three of this thesis. Notable among the legislation on local governance was the 2010 Local Government (Amendment) Act. The 2010 amended Act provided for the Local Government Service Commission (LGSC) with powers to hire, transfer, fire and discipline staff.⁵ Subsequently, the powers and functions of the LGSC to administer council staff matters were maintained in the 2016 amended Zambian Constitution.

The 2016 Zambian Constitution provides for, *inter alia*, a devolved local government system through the establishment of autonomous local governments charged with the management and administration of state affairs at local level.⁶ To this end, the 2016 Constitution contains provisions which guarantee autonomy and respect for the constitutional jurisdiction of local authorities in several ways. For instance, each local authority is required to administer local affairs⁷ without the national government interfering or compromising a local authority's ability to perform its functions.⁸

The 2016 Constitution also provides for the establishment of democratically elected councils based on universal suffrage,⁹ and also guarantees autonomy in the exercise of executive and legislative powers.¹⁰ The Constitution further empowers councils to oversee programmes and projects in the districts and encourages the involvement of communities in local government matters.¹¹

Therefore, the letter and spirit of the 2016 Zambian Constitution seems to provide a firm foundation for local government based on the principles of devolution.¹² The provisions on a devolved local government system seem to have a great potential in as far as guaranteeing local

⁵ The Local Government Amendment Act, the Act, Act 6 of 2010 Ss 93 and 94.

⁶ Constitution of the Republic of Zambia: Constitution (Amendment) Act No.2 of 2016 Art 147(1).

⁷ Art 147 (3)(b)(c) Constitution (Amendment) Act No.2.

⁸ Art 152 (2) Constitution (Amendment) Act No.2.

⁹ Art 151 (2) Constitution (Amendment) Act No.2.

¹⁰ Art 152 (1) Constitution (Amendment) Act No.2.

¹¹ Art 151 (2)(b)(g) Constitution (Amendment) Act No.2.

¹² Art 147 Constitution (Amendment) Act No.2.

government autonomy and fostering social and economic development of local communities are concerned.

However, despite the 2016 Constitution laying a firm foundation for a devolved local government system, the current practice of local governance, especially in matters relating to administrative autonomy, raises serious concerns regarding the extent to which local authorities in Zambia actually have autonomy. Instead of decentralising, the national government has centralised many of the local government functions. For instance, the national government has, through some legislative amendments, institutional frameworks and other mechanisms, centralised the recruitment, transfers and disciplining of council staff.¹³ As a result, local authorities now have to rely on higher levels to implement local policies, thereby making it difficult for local governments to adapt their internal administrative procedures to the local environments.¹⁴

2. Research question

The study seeks to establish whether the legal and institutional framework in the devolved local government system under the 2016 Constitution is consistent with principles of decentralisation and administrative autonomy. In answering this main question, the study will address the following sub-questions:

- a) What are the key design features of decentralisation and administrative autonomy which enable sub-national governments to play a pivotal role in the delivery of basic services effectively and efficiently?
- b) What kind of institutional arrangements must be made to capitalise on the benefits of administrative autonomy yet not suffer negative effects?
- c) How does the Zambian system of local government administration work and what challenges are experienced in practice?
- d) Why was the centralised system of local government administration adopted in Zambia?
- e) How does the centralised system of personnel administration impact on local authorities in terms of discharging their developmental mandate?

¹³ Art 227 Constitution (Amendment) Act No.2.

¹⁴ Chigwata TC (2014) 279.

3. Argument for the research question

The thesis argues that in order to enhance performance and service delivery, local governments should have the autonomy to determine their own organisational structures and exercise power to employ personnel a council needs. Therefore, it will be suggested that the precepts of decentralisation and administrative autonomy should be adhered to in order to build an efficient administration which responds to the needs of communities. However, institutional frameworks on decentralisation must be set within the boundaries of reasonable national limits to avoid the negative effects of administrative autonomy.

It will be argued that the re-establishment of the LGSC in Article 228 of the 2016 Constitution has a number of implications. First, the establishment of the LGSC in Article 228 contradicts the principles and values of a devolved local system envisaged in Article 151 of the same constitution. Second, the functions of the LGSC constrain the administrative autonomy of local authorities thereby inhibiting service delivery and development. Third, the power conferred on the LGSC to appoint, transfer and discipline staff and setting of council's internal procedures negatively impacts on the performance of councils. Therefore, as a result of increased control over sub-national governments by the centre, the national government has provided a weak decentralisation framework and restricted local autonomy, thereby negatively affecting service delivery.¹⁵

4. Literature Review

This section analyses literature that covers themes related to the main topic of this research. The available literature focuses on the principles of decentralisation which underpins the entire practice of how decentralised sub-national units enhance autonomy, accountability and development. For instance, Zahara claims that promoting social and economic development in matters of local government is only possible under a decentralised system which ensures “recognition of autonomy in administrative territorial units”.¹⁶ This line of reasoning is also echoed by Steytler and De Visser who argue that autonomy does not only provide democratic

¹⁵ Madhekeni A *Local multiparty democracy with no right to govern: The conundrum of constitutionalism in Namibia, Botswana and Zambia* (unpublished PhD thesis, University of the Western Cape, 2016) 19.

¹⁶ Zahara P ‘Autonomy and decentralisation: Current priorities in the local public administration management’ vol 2(14) (2011) 288 *Fascicle of the Faculty of Economics*.

and accountable government for local communities, but also ensures the provision of services to communities in a sustainable manner.¹⁷

Further, autonomy promotes the involvement of communities and community organisations in matters of local government.¹⁸ This view is supported by Shah who contends that a democratic and strong local government system enhances efficiency, responsiveness and accountability with a greater degree of autonomy and community participation.¹⁹

In addition to autonomy and community participation, a decentralised local government system enhances the capacity of local authorities to initiate and plan for activities that foster local development. A number of scholars argued that there seems to be a connection between decentralisation and development. Scholars such as Ababio argue that having a decentralised local government system allows local authorities the autonomy to adapt their internal administrative procedures to the local environment whereas a centralised system tends to stifle local initiative.²⁰ Further, Madhekeni contends that decentralising local government enhances development whereas centralisation of local government powers and functions is detrimental to development.²¹ Equally, Fessha and Kirkby submit that local government autonomy frees sub-national units from reliance on the central government and its bureaucracy to implement their local policy decisions.²² Therefore, decentralisation enhances development at sub-national level whereas centralisation may pose challenges to development. It is therefore important to protect local government powers against centralisation in order to enhance development at sub-national level.

In order to protect the powers and functions of sub-national units, the legal and institutional frameworks ought to be firmly entrenched in the constitution. Scholars such as Steytler and De Visser subscribe to the idea of entrenching the legal and institutional frameworks as a way of

¹⁷ Steytler N & De Visser J *Local Government Law of South Africa* (2016) ch 8-5.

¹⁸ Steytler N & De Visser J (2016) ch 8-5.

¹⁹ Shah A (ed) *Public service delivery* (2006) 6.

²⁰ Ababio EP 'Decentralisation and devolution: what can Ghana and South Africa learn from each other?' 5(1) (2014) 35 *Journal of Local Government Studies* 24-40.

²¹ Madhekeni A (2017)19.

²² Fessha Y & Kirby C 'A critical survey of subnational autonomy in African states' *Publius Vol 38, No. 2* (2008) 248 -271.

countering centralisation of local government powers and functions by the national government.²³ This is because constitutionally protected powers cannot easily be removed or amended by national legislation without amending the constitution itself.²⁴ Equally, Chikulo also supports the idea of constitutionalising local government powers and functions as a way of deepening democracy and accountability.²⁵

In addition, Ababio submits that democratising local governments does not only deepen democracy and accountability but also enhances provision of services which are consistent with voter preferences.²⁶ But does constitutionalising local government translate to an effective decentralised local government system capable of addressing developmental challenges? In this regard, the Zambian scenario, under the 2016 Constitution presents an interesting case which will be discussed in this thesis.

With regard to the Zambian scenario, it is worth mentioning that no one has so far written on administrative autonomy under the 2016 Constitution with respect to decentralised local governance. Most scholars who have written on the subject of administrative autonomy based their research on the 1996 Constitution. For instance, scholars such as Chikulo wrote on institutional frameworks of democratising local governments²⁷ while Mwasile focused on administrative autonomy with respect to human resource management.²⁸ Another scholar who has written extensively on local government administration is Lolojih. However, his argument centres on the capacity of local authorities to offer good salaries and other conditions of service.²⁹ Thus, there is no analytical literature written specifically on administrative autonomy under the 2016 Zambian Constitution.

²³ Steytler N & De Visser J (2016) ch5-5.

²⁴ Steytler N & De Visser J (2016) ch5-5.

²⁵ Chikulo BC 'Local government reform in Zambia: A review' 2009 *Commonwealth Journal of local governance* 103.

²⁶ Ababio EP (2014) 26.

²⁷ Chikulo BC (2009)103.

²⁸ Mwasile FB (2014) 127.

²⁹ Lolojih PK 'Local government and service delivery' in Chitambo A *50 years of Local Government in Zambia: Treasuring the past, reflecting the present, shapping the future* (2014)168.

5. Substantiating the argument

This study is divided into five chapters. Chapter one is this introductory chapter which provides the background and problem statement, research questions, argument, literature review, methodology and terminologies that are going to be used in the research paper.

Chapter Two will be a theoretical discussion on administrative autonomy in the context of the debates about decentralisation. The chapter will also focus on the advantages and disadvantages of administrative autonomy and institutional arrangements that should be made to capitalise on the benefits of administrative autonomy.

Chapter Three will focus on the features of the Zambian system for local government administration within the context of civil service models, what model currently works and what the law and policy provides about how local government administrations are structured within the current model of civil service. Chapter four will discuss the relevant provisions of the 2016 Constitution and Service Commissions Act of 2016 pertaining to administrative autonomy and also the general constitutional framework for local government, why it was adopted and to what extent it addresses the concerns expressed in Chapter Three.

Chapter five will focus on the conclusion, major findings, recommendations and answering the research question. The chapter will suggest what needs to change to bring the legislation discussed in Chapters Three and Four in line with the Constitution.

6. Research methodology

This research is a desktop study which analyses different journal articles, chapters in books and books relating to decentralisation and administrative autonomy in local government. There will also be an analysis of the 2016 Zambian Constitution, the Local Government Act as well as relevant pieces of legislation applicable to local government. This approach will be used because the research is qualitative.

7. Terminologies

There are different contexts within which administrative autonomy may be measured. The contexts within which administrative autonomy may be measured include common themes of local governance, decentralisation, devolution, deconcentration and delegation. These terms are

given different meanings depending on the context in which they are applied. Therefore, this section provides working definitions for these concepts including a definition of administrative autonomy and a brief analysis of the three systems of local government human resources.

7.1 Local government

According to Miller, local government is defined as “a sub-national level of government which has jurisdiction over a limited range of state functions, within a defined geographical area which is part of a large territory”.³⁰ The sub-national government exercises some level of political, economic and administrative authority in order to effectively manage local affairs within the defined geographical area.³¹ Against this backdrop, local government is justified on the premise that local authorities are better placed to understand the problems and needs of communities they represent.³²

7.2. Decentralisation

Decentralisation requires the transfer of some degree of authority to sub-national governments. According to Rondinelli, decentralisation is defined as,

“the transfer or delegation of legal and political authority to plan, make decisions and manage public functions from the central government and its agencies to field organizations of those agencies, subordinate units of government, semiautonomous public corporations, area wide or regional development authorities; functional authorities, autonomous local governments, or nongovernmental organizations.”³³

The objective of decentralisation stems from the need for the citizenry to exercise control over their local affairs and foster meaningful development.³⁴ The degree of authority depends on the form of decentralisation adopted. The three forms of decentralisation that can be adopted are

³⁰ Miller KL *Advantages and disadvantages of local government decentralisation/fiscal decentralisation* (2002)3.

³¹ Miller KL (2002)3.

³² Zahara P (2011) 289.

³³ Rondinelli DA *Government Decentralization in Comparative Perspective: Theory and Practice in Developing Countries* (1981) 137.

³⁴ Councillors and Officers Orientation Manual (2016) 8.

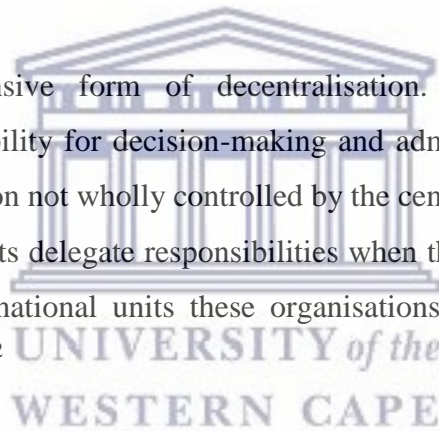
deconcentration, delegation and devolution.³⁵ All these three forms are characterised by varying degrees of sub-national autonomy as explained below.

7.2.1. Deconcentration

Deconcentration is the weakest form of decentralisation.³⁶ It refers to the transfer of administrative authority and decision-making from central government and its institutions to district or local offices working at local level.³⁷ Under this form of decentralisation, employees working at the local level are accountable to the centre, usually through their respective ministries.³⁸ The implication of deconcentration is that local governments operate essentially as agents of central government rather than as instruments of local self-expression.³⁹ The problem with this system is that central government does not confer local governments with all the benefits and advantages of decentralisation.⁴⁰

7.2.2 Delegation

Delegation is a more extensive form of decentralisation. Through delegation, central governments transfer responsibility for decision-making and administration of public functions to semi-autonomous organisation not wholly controlled by the central government, but ultimately accountable to it.⁴¹ Governments delegate responsibilities when they create public enterprises or or when they delegate to subnational units these organisations usually have a great deal of discretion in decision-making.⁴²



7.2.3 Devolution

Devolution is by far the most ambitious and strongest form of decentralisation. A key feature of devolution is that national constitutions, rather than central government legislation establishes the framework for local government with regard to the extent of its governmental relations.⁴³ As a result, devolved powers “cannot easily be removed or amended by provincial or national

³⁵ Litvack J & Seddon J (eds) *Decentralization Briefing Notes WORLD BANK INSTITUTE Working Papers* (2000) 12.

³⁶ Litvack J & Seddon J (eds) (2000) 12.

³⁷ Arthur N & Gerk S *Political accountability of decentralisation in Ghana- The unfinished business* (2011) 11.

³⁸ Arthur N & Gerk S (2011) 11.

³⁹ Miller KL (2002) 4.

⁴⁰ Miller KL (2002) 5.

⁴¹ Ministry of Local Government: *Councillors and officers Orientation Manual* (2016) 8.

⁴² Rondinelli D (1981) 3.

⁴³ Ababio EP (2014) 29.

legislation and cannot be changed other than by an amendment to the constitution itself".⁴⁴ Unlike the other two forms of decentralisation, more sub-national autonomy is said to prevail in devolved local government systems.⁴⁵ Devolution is a key principle of administrative autonomy.

7.3. Administrative autonomy

Administrative autonomy refers to the [local authority's] discretion to appoint, remunerate, discipline and dismiss staff as well as setting of internal administrative procedures.⁴⁶ Administrative autonomy may be analysed through three different local government human resources systems. The three different systems are the separate, integrated and unified systems.

7.3.1. The separate system

The separate system is when local governments have the right to choose their own staff. Under this system, each local government is a separate employer subject to national framework legislation.⁴⁷ Personnel are not transferable to other levels of government by a central body. The major disadvantage of this system is that poorer municipalities find it difficult to attract competent staff.⁴⁸

7.3.2. The integrated system

The integrated system refers to a system in which local government officers are employed locally but are organised nationwide in a single national civil service.⁴⁹ Unlike the separate system, staff under the integrated system can be transferred both to other local governments and to other government departments by bodies responsible for civil service as a whole.⁵⁰

⁴⁴ Steytler N & De Visser J *Local Government Law of South Africa* (2016) ch 5-5.

⁴⁵ Ababio EP (2014) 29.

⁴⁶ Chigwata TC (2014) 69.

⁴⁷ Cameron R *Single public service study: Development of impact scenarios for integration of local government with the public service* (2007) 8.

⁴⁸ Cameron R (2007) 8.

⁴⁹ Cameron R (2007) 8.

⁵⁰ Cameron R (2007) 8.

However, this system is said to impact negatively on local government performance because accountability tends to be upwards to central government rather than to communities.⁵¹ It is also argued that countries that use the integrated system tend to have centralised governments with no strong tradition of decentralised local government.⁵²

7.3.3. The unified system

The unified system of local government is an attempt to compromise between the two other approaches. It exists when local government staff is employed locally but can be transferred to other local governments only.⁵³ Cameron submits that where a unified system exists, it is often in respect of primarily senior local government employees.⁵⁴ Therefore, the only difference between the unified system and the integrated system is that in the former, local government staff cannot be transferred to national government.⁵⁵

The advantage of the unified system is that it can help poorer municipalities attract staff but, unlike the integrated system, it would be staff with experience and commitment to the national government.⁵⁶ The disadvantage would be that it is not as conducive to local government autonomy as the separate system as individual municipalities do not have control over the personnel conditions of their officials. The unified system is often used for centralised countries that wish to decentralise.⁵⁷

It is important to take into account the advantages and disadvantages of the local government human resources systems when analysing the extent of administrative autonomy within the context of decentralisation. This is because administrative autonomy is fundamental in the design of decentralisation. Thus, the next chapter presents a theoretical discussion on the relationship between decentralisation and administrative autonomy. The chapter argues that administrative autonomy should be seen as an essential component of decentralisation.

⁵¹ Cameron R (2007) 8.

⁵² Cameron R (2007) 8.

⁵³ Cameron R (2007) 8.

⁵⁴ Cameron R (2007) 8.

⁵⁵ Cameron R (2007) 8.

⁵⁶ Cameron R (2007) 8.

⁵⁷ Cameron R (2007) 8.

CHAPTER TWO

Decentralisation and administrative autonomy: A theoretical framework

1. Introduction

This Chapter presents a theoretical discussion on administrative autonomy within the context of the debates about decentralisation. In order to understand the connection between decentralisation and administrative autonomy, this Chapter makes reference to international literature on decentralisation and international best practice on the role of local government administration. The objective for such an enquiry is to develop a set of design features for an effective institutional arrangement that capitalises on the benefits of administrative autonomy while avoiding its negative effects.

Against this backdrop, the chapter is divided into five sections. Section one is this introduction. Section Two discusses the advantages and disadvantages of decentralisation. Section Three focuses on the advantages and disadvantages of administrative autonomy. Section Four suggests institutional arrangements that must be made to capitalise on the benefits of administrative autonomy. Section Five is the conclusion of the central themes of administrative autonomy and decentralisation discussed in this chapter.

2. Advantages and disadvantages of decentralisation

Decentralisation is a very important process in enhancing local autonomy of sub-national governments as explained in Chapter One because it transfers some degree of authority to local authorities.⁵⁸ But like any other process, the decentralisation process presents both opportunities and challenges. Thus, this section focuses on some of the advantages and disadvantages of decentralisation.

2.1. Advantages of decentralisation

Decentralisation has a number of advantages. Decentralisation increases government's accountability by allowing wider political participation and thus contributing to better democratic governance.⁵⁹ As such, presumed benefits of decentralisation become available to

⁵⁸ Zahara P (2011) 289.

⁵⁹ Vezbergaite I *Decentralisation policies, subnational autonomy and federal executive power: A comparison of Brazil and Mexico* (2016) 56.

local populations when empowered local actors are downwardly accountable.⁶⁰ In this way, citizens take charge of their government by monitoring and reviewing performance and reacting to underperformance through elections at both national and sub-national level.⁶¹ Thus, where political decentralisation allows for oversight by locally elected bodies, the need for re-election offers strong incentives for better performance.⁶² Further, decentralisation has the potential to increase opportunities for greater participation and responsiveness of government to citizens because government decision-making is brought closer to citizens.⁶³ Greater participation in public decision making is important because it improves equity and resource management.⁶⁴

Another advantage of decentralisation relates to overcoming the problem of bureaucracy. Decentralisation is seen as a means of circumventing the problem of red tape characteristic of centralised governments.⁶⁵ As a result, decentralisation enhances service delivery by sub-national governments.⁶⁶ But despite the positives of decentralisation, there are also arguments against decentralisation advanced by some scholars.

2.2. Arguments against decentralisation

One of the arguments against decentralisation is that it can lead to local state capture especially where systems of local accountability are weak. In view of this, Green argues that weak accountability and proximity may open the door to elite capture at the local level which can distort the benefits of decentralisation.⁶⁷ Green further contends that when systems of local accountability are weak, “devolving authority and financial resources to local governments can lead to waste or misuse of public funds”.⁶⁸ Therefore, it is important to have central government oversight mechanisms to reduce instances of wastage and misuse of public funds.

The other disadvantage of decentralisation is that it can exacerbate inequality between jurisdictions. Inequalities between jurisdictions may be as result of differences in resources,

⁶⁰ Agrawal A & Ribot J ‘Accountability in decentralisation: A framework with South Asia and West African cases’ (1999) *Journal of developing areas* 474.

⁶¹ De Visser J *Developmental Local Government: A Case Study of South Africa* (2005) 25.

⁶² Green AE ‘Managing human resources in a decentralized context’ in The International Bank for Reconstruction and Development / The World Bank Internet ‘East Asia decentralizes Making Local Government Work’ (2005) 132.

⁶³ Agrawal A & Ribot J (1999) 475.

⁶⁴ Agrawal A & Ribot J (1999) 475.

⁶⁵ Rondinelli DA (1981) 135.

⁶⁶ Vezbergaitė I (2016) 56.

⁶⁷ Green AE (2005) 132.

⁶⁸ Green AE (2005) 132.

population sizes and economic activity.⁶⁹ Resource-poor jurisdictions may find it difficult to raise as much revenue as richer jurisdictions, thereby increasing disparities between regions.⁷⁰ As a result, local authorities in richer jurisdictions may be better able to attract the best skilled professionals with higher pay than those in poorer jurisdictions.⁷¹

However, despite the arguments against decentralisation, it still remains a good strategy for fostering development at local level. Further, decentralisation is an essential component in the design of administrative autonomy in local governance. What is required is to design administrative within a good legal framework. Against this backdrop, the next section delves into the pros and cons of administrative autonomy.

3. Administrative autonomy

Administrative autonomy is an important measure of the degree of decentralisation⁷² and should therefore be seen as an essential component in the design of decentralised local government system. However, administrative autonomy should not be taken as a panacea to strengthen local government autonomy and accountability without evaluating how it poses a risk to decentralisation. Thus, this section focuses on how the concept of administrative autonomy supports and at the same time poses a danger to decentralisation.

3.1. How administrative autonomy supports decentralisation

The concept of administrative autonomy is integral to the manner in which decentralisation is conceived. Since decentralisation facilitates the development of functions at local level which cannot be performed by the centre,⁷³ a significant degree of administrative autonomy is crucial. Administrative autonomy has key design features which include the power to determine internal administrative procedures and the discretion to appoint, remunerate, discipline and dismiss staff and monitoring and supervision as explained below.

⁶⁹ Chigwata TC (2014) 49.

⁷⁰ Chigwata TC (2014) 49.

⁷¹ Litvack J & Seddon J (2000) 39.

⁷² Chigwata TC (2014) 69.

⁷³ Mukwena RM 'Decentralisation, democracy and development: The case of Zambia' in Chitambo A *50 years of Local Government in Zambia: Treasuring the past, reflecting the present, shapping the future* (2014) 30.

3.1.1. Power to determine internal administrative procedures

In terms of determining internal administrative procedures, decentralisation supports administrative autonomy by allowing sub-national units the flexibility to set up an organisational structure that is tailored to address the developmental plans and programmes of the actual needs existing in the council's jurisdictions.⁷⁴ In this way, local authorities can plan, initiate, coordinate, manage and execute policies in respect of all matters affecting the people within their areas.⁷⁵ As such, implementation of local policies is locally directed and driven.⁷⁶ But having power to determine internal procedures would be meaningless without having discretion over staff matters.

3.1.2. Discretion to appoint, remunerate, discipline and dismiss staff

With regard to staff matters, decentralisation supports administrative autonomy by allowing councils the discretion to appoint, remunerate, discipline and dismiss staff. Having control over local civil servants is essential to successful implementation of decentralisation because staff play a pivotal role in the delivery of essential public services to the people.⁷⁷ Control over personnel promotes responsive service delivery and is necessary for enhancing accountability in service delivery.⁷⁸ With discretion to appoint staff, councils may have the leverage to hire and retain professionals whose skills align with planned activities tailored to suit local conditions and preferences.⁷⁹ On the other hand, lack of control over staff compromises accountability which is an important component of decentralisation. Thus, decentralisation “enables sub-national governments to render civil servants more accountable to the council and responsive to the aspirations of service users thereby promoting sufficient provision of service delivery”.⁸⁰

Further, autonomy over the appointment of staff helps to avoid the problem of divided loyalties⁸¹ common in situations where the national government does the recruiting of employees who work at sub-national level.⁸² To this end, Chigwata argues that sub-national governments may not

⁷⁴ Mukwena RM (2014) 29.

⁷⁵ Ababio EP (2014) 30.

⁷⁶ Chigwata TC (2014) 69.

⁷⁷ Green AE (2005) 129.

⁷⁸ Chigwata TC (2014) 69.

⁷⁹ Chigwata TC (2014) 70.

⁸⁰ Ababio EP (2014) 30.

⁸¹ Fessha Y & Kirby C (2015) 260.

⁸² Fessha Y & Kirby C (2015) 260.

effectively deliver on their mandate by using public sector employees whom they do not have control over.⁸³ This is because a council cannot hold such employees to account for non-performance.

3.1.3. Monitoring and Supervision

Connected to accountability is the aspect of monitoring and supervision. Decentralisation enables a local authority to supervise and monitor the performance of civil servants.⁸⁴ As such, a local authority can be able to punish deficient performance through disciplinary measures or dismissals⁸⁵ because employees are accountable to the appointing authority.

Against this backdrop, it may be concluded that administrative autonomy is integral to the concept of decentralisation. The key design features of administrative autonomy may be difficult to realise without decentralisation facilitating the transfer of administrative authority and decision-making from central government to district or local offices.⁸⁶ However, there are also a number of challenges with administrative autonomy which pose a danger to decentralisation.

3.2. Dangers of administrative autonomy

There are several dangers to administrative autonomy which pose significant challenges for government performance in a decentralised setting. Some of the dangers include constricting interregional mobility of civil servants which have implications on national coverage of public services, nepotism, corruption and favouritism.⁸⁷

3.2.1. Constricting interregional mobility of civil servants

Administrative autonomy may constrict interregional mobility of civil servants and their career paths if there is no deliberate policy to recruit nationally. This may have implications on national coverage of public services because devolving authority for civil service management may make it difficult for local governments in poorer areas to compete with richer areas.⁸⁸ Thus, national coverage of public services may suffer. This is because not all councils may be able to pay

⁸³ Chigwata TC (2014) 69.

⁸⁴ Green AE (2005) 131.

⁸⁵ Green AE (2005) 131.

⁸⁶ Aurther N & Gerke S (2011) 57-81.

⁸⁷ Green AE (2005) 129.

⁸⁸ Litvack J & Seddon J (eds) (2000) 39.

salaries that are high enough to attract talent.⁸⁹ As a result, a combination of low pay and difficult conditions in remote areas may create undesirable conditions for councils to attract high-quality staff. This may lead to further deterioration in conditions in poorer areas⁹⁰ making it difficult to realise the benefits of decentralisation.⁹¹

3.2.2. Nepotism, corruption and favouritism

Decentralisation can lead to nepotism, corruption and favouritism. This may be the case where critical checks and balances to protect the professionalism of civil servants are not in place.⁹² Local government officers may be rewarding family members and supporters with coveted positions at the expense of meritocracy and professionalism.⁹³ In the absence of a policy to recruit nationally, there is a danger that some [councils] may engage in preferential treatment of “sons of the soil,” or discrimination based on ethnicity, religion, or other special interests.⁹⁴ Thus, devolving the power of appointing staff to local authorities could easily be abused if mechanisms are not available to balance the appointment of competent personnel and monitoring the performance of employees.⁹⁵ Therefore, it is important to adjust decentralisation by formulating legal frameworks that clearly define responsibilities and standards to realise the benefits of administrative autonomy and mitigate the negative effects of decentralisation.

4. Institutional frameworks for effective administrative autonomy

Flowing from the preceding discussion, this section outlines some of the institutional arrangements that can be considered to capitalise on the benefits of administrative autonomy and minimise negatives. The institutional arrangements speak to the power to determining own organisational structure, power to hire, oversee, and discipline own personnel, capacity building, power to set salary levels, flexible institutional framework and supervision framework and reporting mechanisms.

⁸⁹ Litvack J & Seddon J (eds) (2000) 39.

⁹⁰ Green AE (2005) 132.

⁹¹ Litvack J & Seddon J (2000) 39.

⁹² Litvack J & Seddon J (2000) 39.

⁹³ Ababio EP (2014) 36.

⁹⁴ Green A (2005) 138.

⁹⁵ Ababio EP (2014) 36.

4.1. The power to determine own organisational structure

The institutional framework should allow local authorities the power to determine their own organisational structure. Allowing local authorities to determine their organisational structure is important for councils to design structures that serve the specific needs of each local authority. This frees local governments from relying on the national government to implement their local policy decisions.⁹⁶ However, determining an organisational structure must be done within the boundaries of reasonable national limits to avoid the negative effects of administrative autonomy. The same principle applies to the power to hire and fire staff.

4.2. Power to hire, oversee, and discipline their own personnel.

The power to determine an organisation structure to serve specific needs would not bear the desired fruits without the power to hire and fire. Local authorities must therefore, have the power to hire personnel to put into their own organisational structure and to oversee, discipline and reward their own personnel. In addition, the legal framework on administrative autonomy should address issues pertaining to appointment of staff and compensation schemes through performance agreements, employment contracts and performance appraisals. In this way, local authorities will be able to reward good performance through pay increases, promotions, and other benefits based on performance appraisal without necessarily having to rely on central government.⁹⁷ This will encourage employees to meet performance targets.⁹⁸

In addition, it is imperative to design the institutional framework in such a way that recruitment of staff does not increase interregional inequalities.⁹⁹ This can be done in several ways. One of the ways is to advertise vacancies nationally. The other strategy would be to allow local governments to set hiring levels.¹⁰⁰ Further, local authorities can be given block grants for their own capacity-building training programs to address the skills gap across local authorities.¹⁰¹ But more importantly is the discretion to determine salary levels.

⁹⁶ Fessha Y & Kirby C (2015) 259.

⁹⁷ Green AE (2005) 131.

⁹⁸ Green AE (2005) 132.

⁹⁹ Litvack J & Seddon J (2000) 40.

¹⁰⁰ Litvack J & Seddon J (2000) 40.

¹⁰¹ Litvack J & Seddon J (2000) 48.

4.3. Power to set salary levels

Autonomy to set salary levels is important in attracting qualified personnel. Therefore, local government should have something to offer, through competitive pay, career opportunities, prestige, or other incentives.¹⁰² Thus, local authorities should design and formulate financial and managerial mechanisms to set competitive compensation packages and salary levels capable of attracting local talent needed in order to deliver quality services to citizens. However, in establishing salary schemes, it is important that the national government sets the framework within which sub-national governments may determine salary levels for their employees to avoid corruption, resource wastage and inflation. Also, care must be taken to ensure that the “national standards do not place unrealistic financial burdens on local governments”.¹⁰³

4.4. Flexible institutional framework

The institutional framework must be flexible enough to avoid a ‘one-size-fits-all’ approach so that it allows for differentiation between weaker and stronger local governments. For instance, sub-national governments which have the capacity to attract and retain qualified personnel can be allowed to have full competency over staff appointments.¹⁰⁴ For those councils which might experience difficulties in attracting and retaining skilled manpower, the institutional framework should establish a deployment system where the national government deploys some of its skilled employees to sub-national governments¹⁰⁵ even though this may imply having less autonomy. However, flexibility must be exercised within national standards to avoid the negative effects of administrative autonomy.¹⁰⁶

4.5. Capacity building

The national government can support the capacity of local authorities through formulating capacity building, support, and national skills development frameworks. Where talent and skills are lacking at the local level, an elaborate national training programme should be formulated in

¹⁰² Green AE (2005) 131.

¹⁰³ Litvack J & Seddon J (2000) 40.

¹⁰⁴ Chigwata TC (2014) 69.

¹⁰⁵ Chigwata TC (2014) 70.

¹⁰⁶ Chigwata TC (2014) 69.

the legal framework to build the necessary capacity that ensures that relevant skills are present locally in all regions.¹⁰⁷

4.6. Supervision framework and reporting mechanisms

The legal framework should have a supervision framework that includes monitoring as well as intervention especially where the necessary capacity in terms of talent and skills are lacking at the local level. The national government should be able to somehow intervene when local authorities abuse their administrative autonomy. In addition, the legal framework should clearly define reporting mechanisms on personnel matters to senior governments to enable oversight. However, to achieve these benefits, accountability frameworks must be robust enough to prevent inefficiency and mismanagement.¹⁰⁸

5. Concluding remarks

The Chapter discussed the theoretical framework of administrative autonomy in the context of the debates about decentralisation. It was argued that strong decentralised systems of local government, with the enjoyment of administrative autonomy enhance efficiency, responsiveness and accountability. As a result, administrative autonomy should be seen as an essential component in the design of decentralisation.

In addition, it was also discussed that administrative autonomy presents advantages which may serve to strengthen local government accountability and increase local control. At the same time, administrative autonomy has disadvantages which relate to constricting interregional mobility and thereby threatening national coverage of public services. The other disadvantage relates to creating a fertile environment for increasing nepotism, favouritism and corruption. This may be the case where critical checks and balances to protect the neutrality and independence of civil servants are not in place. It was therefore, argued that opportunities and challenges of administrative autonomy should be weighed when designing decentralisation policies.

The chapter further argued that since administrative autonomy is an integral part of decentralisation, several institutional arrangements need to be considered to capitalise on the benefits of administrative autonomy. With regard to performance appraisals, it was contended that having adequate institutional frameworks would enable local authorities to reward good

¹⁰⁷ Litvack J & Seddon J (2000) 40.

¹⁰⁸ Green AE (2005) 132.

performance through pay increases, promotions, and other benefits without necessarily having to rely on central government. Further, it was argued that formulating necessary legal frameworks can help local authorities to set competitive compensation packages and salary levels capable of attracting local talent by designing and formulating financial and managerial mechanisms needed to deliver quality services to citizens.

Moreover, the institutional framework must be flexible enough to avoid a ‘one-size-fits-all’ approach. This would help establish a deployment system where the national government deploys some of its skilled employees to sub-national governments and reduce interregional inequalities. In cases where talent and skills are lacking at the local level, an elaborate national training programme should be formulated in the legal framework to build the necessary capacity that ensures that relevant skills are present locally in all regions. This may help to reduce chances of interregional inequalities. Where the necessary capacity in terms of talent and skills are lacking at the local level, the legal framework should have a supervision framework that includes monitoring as well as intervention to ensure that national standards are adhered to. However, the institutional framework must take into account the boundaries of reasonable national limits to avoid the negative effects of administrative autonomy.

Therefore, it can be argued that decentralisation and administrative autonomy have a bearing on effective service delivery. It is no wonder that the features of decentralisation and administrative autonomy are what essentially informed the provisions on devolved local government system in the 2016 Zambian Constitution. Against this backdrop, the following Chapter describes key features of the system for local government administration in Zambia since independence.

CHAPTER THREE

Features of the Zambian system for local government administration

1. Introduction

From the time Zambia attained political independence from Britain in 1964, the commitment to decentralisation and popular participation has been an important component of local government reform strategies.¹⁰⁹ Since 1964, local authorities have given considerable attention to the important role that human resource management plays in meeting service provision obligations.¹¹⁰

Against this backdrop, this chapter discusses the key features of the local government administration in Zambia within the context of civil service models. This chapter is largely descriptive, and divided into four sections. Section one is this introduction. Section two presents a brief history of local government administration before and after independence and traces the evolution of the civil service models of local government administration. Section three discusses the legal framework and functions of the LGSC. Section four is the conclusion.

2. Local government administration in Zambia

Local government administration in Zambia can be divided into two broad categories: the pre-independence and post-independence periods. The changing political and socio-economic context in the pre-independence and post-independence periods has impacted the development of local government administration. Hence, this section highlights the major developments in local government administration in Zambia before and after independence beginning with the pre-independence period.

2.1. Local government administration before independence

Before the Europeans arrived in the country, chiefs and headmen together, exercised the powers of government both nationally throughout their areas and locally within the boundaries of each village. In most cases, the authority of chiefs depended largely on factors of personality and

¹⁰⁹ Chikulo B (2009) 100.

¹¹⁰ Mwasile FB (2014) 131.

military strength.¹¹¹ The more powerful a chief was, the larger the area he or she governed with defined tribal boundaries.¹¹² To help chiefs administer tribal boundaries, advisors and headmen were appointed by the chief.¹¹³

The advisors or hereditary councillors were based at the chiefs' headquarters and their primary role was to advise the chiefs on various affairs of the tribe pertaining to administration and service provision. At village level, the responsibility of administering the village was given to headmen. The village headmen were responsible for relaying the chief's wishes to the inhabitants.¹¹⁴ In addition, the village headmen ensured that each village and family provided its own services. Under this traditional administration, only major services such as defending the village against invasion by enemies required the co-operation of the whole village or tribe.¹¹⁵ This traditional administration was practised for many years until the British South Africa Company (BSAC) took over the administration of chiefdoms and subsequently changed the traditional administration.¹¹⁶

The BSAC introduced direct rule in local level administration from 1911 to 1924. The policy of direct rule considerably reduced the powers of local chiefs as they now depended on administrative officers.¹¹⁷ Under this policy, native commissioners and administrative officers appointed by the BSAC were made responsible for nearly every aspect of local administration and carried out the work that chiefs used to do.¹¹⁸ The position of chief was further weakened by the enactment of the Administration of Natives Proclamation in 1916.¹¹⁹ This Proclamation made provisions for the appointment and dismissal of recognised chiefs and chiefs and headmen even faced disciplinary action if they failed to carry out orders.¹²⁰ The Proclamation further made Native Commissioners responsible for the general control of their districts. From the way the

¹¹¹ Pelekamoyo GM *Local autonomy and central control in Zambian urban authorities* (unpublished masters thesis, University of Zambia, 1977) 23.

¹¹² Pelekamoyo GM (1977) 23.

¹¹³ Pelekamoyo GM (1977) 23.

¹¹⁴ Pelekamoyo GM (1977) 23.

¹¹⁵ Pelekamoyo GM (1977) 23.

¹¹⁶ Pelekamoyo GM (1977) 23.

¹¹⁷ Davidson JW *The Northern Rhodesia Legislative Council* (1948) 17.

¹¹⁸ Pelekamoyo GM (1977) 23.

¹¹⁹ Pelekamoyo GM (1977) 24.

¹²⁰ Hailey L *Native Administration in the British African Territories* (1950) 83.

direct rule was administered, it may be argued that it was a form of centralised administration because it depended on a heavy concentration of administrative officers in the rural areas.¹²¹

The direct rule system had two major drawbacks; first, it did not allow local people to participate in local administration and second, it was costly to operate.¹²² Due to these drawbacks, the system of administration changed from direct rule to indirect rule in 1924 when the administration of Northern Rhodesia, modern day Zambia's territory, passed from the BSAC to the British Government.

Under the indirect rule, the British government administered the indigenous people through the political systems of the indigenous people.¹²³ Under the indirect rule, chiefs assumed new responsibilities. To facilitate colonial control of the indigenous people, the British government appointed District and Provincial Commissioners to act as middlemen between the indigenous people with their chiefs as principal executive officers.¹²⁴ Whereas the direct rule was found to be expensive due to huge sums that were required to pay salaries of European officials,¹²⁵ the indirect rule was perceived by the British Government to be a more flexible, progressive and cheap policy than the direct rule policy. Under the indirect rule, legislation and execution of policies and by-laws was carried out in accordance with the wishes of the colonial government. Local chiefs were only required to ensure that policies of the colonial government were carried out in accordance with African laws and customs.¹²⁶ Thus, the British government let Africans take part in ruling themselves at local level by setting up native authorities especially in rural areas though subject to the supervision and control of district officers.

Conversely, in urban areas, the British operated a direct rule system where participation in local governance was, by and large, extended to whites only. The direct rule system was imposed because at the time urban local governments were being established, Europeans had economic interest in these areas.¹²⁷ Because of the economic interests in urban areas, Europeans endeavoured to control the system of local governance in these areas. In essence, the direct and

¹²¹ Pelekamoyo GM (1977) 23.

¹²² Pelekamoyo GM (1977) 23.

¹²³ Pelekamoyo GM (1977) 25.

¹²⁴ Pelekamoyo GM (1977) 25.

¹²⁵ Pelekamoyo GM (1977) 25.

¹²⁶ Pelekamoyo GM (1977) 25.

¹²⁷ Pelekamoyo GM (1977) 27.

indirect rule systems were a depiction of the unified and separate systems of local governance defined in chapter one.

Under the direct rule, for instance, each local government was a separate employer subject to national framework legislation whereas the indirect rule required that local government staff were employed locally but organised nationwide as part of a central local government civil service. The features of direct and indirect rule systems were so entrenched that they characterised the system of local government administration in the post-independent Zambia. For instance, the unified system adopted in 1964 had features of the direct rule system whereas the separate and integrated systems had characteristics of the indirect rule as will be explained below.

2.2. Local government between independence and the 2016 Constitution

After gaining independence from Britain in 1964, the national government designed and implemented a decentralised system of local government to facilitate wider participation by the citizenry in development and service delivery.¹²⁸ In order to achieve this objective, the government enacted the Local Government Act of 1965. The Local Government Act created councils with elected representatives controlling local government at district level.¹²⁹ The government instituted a number of local government reforms which have had implications on the civil service systems for local government administration.

As earlier explained in Chapter One, civil service systems that may be adopted include the separate, unified and integrated systems.¹³⁰ In the case of Zambia, the country employed all the three major types at different times from 1964 to 2016.¹³¹ Thus, the following sub-sections address the local government civil service models as they evolved from 1964 to 2016 and why they were abandoned. The first model discussed is the separate system adapted from 1964 to 1965.

¹²⁸ Chikulo B (2008) 842.

¹²⁹ The Local Government (Officers) Act Cap 477 of 1965.

¹³⁰ Chongwe RMA 'Local Government: Its human and financial resource base' in Rothchild D (ed) *Strengthening African local initiative: Local self-governance, decentralisation and accountability* (1996) 133.

¹³¹ Chongwe RMA (1996) 133.

2.2.1. 1964 to 1965: Separate administrations

In 1964, Zambia employed the separate personnel system in which councils were administered. Under this system, Municipal and Township Councils employed their own staff.¹³² The departmental layout of local authorities was determined by statute which differed according to categories of local authorities that existed ranging from city, municipal to township councils.¹³³

The departmental layout was to some extent linked to the core functions of each category of councils. Under the separate system, city, municipal and township councils had more functions to perform than councils in rural areas. The city, municipal and township councils were responsible for electricity, street lighting, water and sewerage; refuse disposal and housing whereas the functions of rural councils were restricted to construction and maintenance of feeder roads, markets, bridges and environmental health services.¹³⁴ The differences in functions had a bearing on the kind of employees to be appointed especially at senior management level.

In city and municipal councils, for instance, the head of administration was the Town Clerk, who by statute, was supposed to be a lawyer.¹³⁵ Conversely, in township and rural councils the chief executive and administrative officers were Township and Council Secretaries respectively who required no legal background.¹³⁶ The officer responsible for financial accounting functions was the City Treasurer for cities and the Municipal Treasurer for municipalities. The City and Municipal Treasurer was required to be a qualified accountant, preferably with the qualification of the Institute of Municipal Treasurers and Accountants. In contrast, the chief financial officers or treasurers in rural councils were only required to have basic accounting qualifications.¹³⁷ But despite the differences in the qualifications of personnel required, the separate system of local governance practiced in both urban and rural areas guaranteed administrative autonomy and accountability over council staff matters. Under the separate system, each council had the freedom to plan its human resource requirements in accordance with its needs.¹³⁸

¹³² Mwasile FB (2014) 118.

¹³³ Mwasile FB (2014) 118.

¹³⁴ Mwasile FB (2014) 118.

¹³⁵ Mwasile FB (2014) 119.

¹³⁶ Mwasile FB (2014) 119.

¹³⁷ Mwasile FB (2014) 119.

¹³⁸ Mwasile FB (2014) 123.

The separate system initially worked well and smoothly as the established order of human resource management from 1964 to 1965 until critical shortages of qualified staff was experienced towards the end of 1964. The system of local government experienced an exodus of professionally and technically qualified personnel, who were mainly expatriate officers from Britain.¹³⁹ The mass exodus of expatriates such as lawyers, engineers, accountants and public health personnel created a general deficiency in critical departments of local authorities and adversely affected service delivery.¹⁴⁰

But despite the need to fill the void left by expatriates, many of the councils could not however immediately replace the expatriates for two main reasons; first there were few graduates at independence and second, many of them had no capacity to recruit suitably qualified professionals.¹⁴¹ Since no local authority, individually, had the capacity to go out and recruit professionally and technically qualified personnel, the Ministry of Local Government and Housing (MLGH), towards the end of 1964, decided to establish a recruitment panel for local authorities' staff as a way of solving the problem of staff shortages.¹⁴² The recruitment panel was meant to act as an employment agency for local authorities and its membership included councillors and officials nominated by the Local Government Association of Zambia (LGAZ) from its constituent member local authorities.¹⁴³ The recruitment panel became operational in 1965.

2.2.2. 1965 to 1980: Unified administration

In 1965 the country adopted a unified local government system of administering local authorities under the auspices of the LGSC.¹⁴⁴ This essentially meant that local government staff were employed locally but organised nationwide as part of a central local government civil service. In this system of local government administration, all council employees formed a single career service, covering the whole country which was centrally controlled by LGSC.¹⁴⁵ Initially, the LGSC operated on a part-time basis from 1965 to 1975 before a full-time one was appointed.

¹³⁹ Mwasile FB (2014) 123.

¹⁴⁰ Mwasile FB (2014) 123.

¹⁴¹ Mwasile FB (2014) 123

¹⁴² Mwasile FB (2014)123.

¹⁴³ Mwasile FB (2014) 123.

¹⁴⁴ Chongwe RMA (1996) 137.

¹⁴⁵ Mwasile FB (2014) 123.

2.2.2.1. 1965 to 1975: Part-time LGSC

The Local Government (officers) Act Cap 477 of 1965 established a part-time LGSC with limited powers. For example, the LGSC had powers to determine the salaries, salary structures and other conditions of service for council employees.¹⁴⁶ The LGSC also determined the qualifications for specified officers such as Town Clerks, City Treasurers and Engineers in city and municipal councils and Town Secretaries in township councils.¹⁴⁷ The LGSC further determined the tenure of office, duties and functions of officers and dealt with staff disciplinary appeals as an appellate body.¹⁴⁸ In addition, the Minister of Local Government established the Local Government Service Boards (LSGBs) in rural areas which performed similar functions to those of the part-time LGSC.¹⁴⁹

However, the part-time LGSC had restricted and limited powers in terms of staff appointments. The LGSC did not appoint officers but only approved appointments.¹⁵⁰ The function of recruitment and training of staff still remained with individual local authorities. As a result of these restrictive and limited powers, there were many delays on the issuance of determinations and rulings on cases submitted to the LGSC by councils which resulted in dissatisfaction on the part of local government staff.¹⁵¹ Thus, the general view of local authorities' officials was that the LGSC was not effectively discharging its functions due to its part-time nature. The deficiencies of the part-time LGSC prompted the Government to enact the Local Government Service Commission (LGSC) Act in 1974. The enactment of the LGSC Act resulted in the establishment of a full-time LGSC.¹⁵²

2.2.2.2. 1975 to 1980: Full-time LGSC

The full-time LGSC was appointed by the President under the LGSC Act. Unlike the part-time LGSC, the full-time LGSC instituted in 1975 was given more powers. The Commission was empowered to appoint, transfer and discipline officers including regulating the conditions of service.¹⁵³ Further, the full-time LGSC's ambit of responsibility encompassed councils not only

¹⁴⁶ The Local Government (Officers) Act, the Act, Cap 477 of 1965.

¹⁴⁷ The Local Government (Officers) Act Cap 477 of 1965.

¹⁴⁸ Mwasile FB (2014) 123.

¹⁴⁹ Mwasile FB (2014) 123.

¹⁵⁰ Mwasile FB (2014) 123.

¹⁵¹ Mwasile FB (2014) 124.

¹⁵² Mwasile FB (2014) 124.

¹⁵³ The Local Government Service Commission Act 33 of 1974.

in urban areas but also in rural areas and essentially abolished the LGSBs.¹⁵⁴ However; the powers conferred on the full-time LGSC had some drawbacks on the autonomy and accountability of local authorities.

The major drawback of the full-time LGSC under the unified system was that local authorities no longer had the power to appoint and discipline their own staff.¹⁵⁵ Further, personnel tended to owe their allegiance to the appointing authorities and not to respective councils they worked for.¹⁵⁶ Apart from restricting the autonomy and accountability of local authorities, there were also cases of abuse of authority.

The LGSC sometimes abused its authority by transferring, promoting or employing personnel without due regard to the financial burden on councils.¹⁵⁷ Chongwe summed up the operations of the full-time LGSC as an “antithesis to the idea of conferring autonomy on the council”.¹⁵⁸ Following the challenges in the operations of the LGSC, the Government decided to introduce changes in the local government laws in 1980 which essentially established an integrated civil service system model.¹⁵⁹

2.2.3. 1981 to 1986: One party system and integrated administration

In 1980, the country repealed the 1965 Local Government Act and the LGSC Act of 1974 in a bid to improve the administration of local authorities. In its place, the national government enacted the Local Administration Act No 15 of 1980.¹⁶⁰ The Local Administration Act introduced a number changes in the system of local governance. First, the Act changed the system from local government to local administration and local authorities became agents of the party and its government.¹⁶¹ The change from local government to local administration essentially meant that councillors were no longer voted upon by the people but appointed by the government. Second, personnel of the National Civil Service and the Local Government Service were integrated to form one civil service. Third, personnel of local government and central

¹⁵⁴ Mwasile FB (2014) 124.

¹⁵⁵ Mwasile FB (2014) 124.

¹⁵⁶ Chongwe RMA (1996) 137.

¹⁵⁷ Chongwe RMA (1996) 137.

¹⁵⁸ Chongwe RMA (1996) 137.

¹⁵⁹ Chongwe RMA (1996) 137.

¹⁶⁰ Chongwe RMA (1996) 133.

¹⁶¹ The Local Government Administration Act 15 of 1980.

government were integrated into the ruling party, the United National Independence Party (UNIP).¹⁶² The integration of the party and government followed the change in the political scene in 1972 with the declaration of the one party state in which no other party, apart from UNIP, could exist. Thus, the central and local government administration was merged with UNIP structures to create an integrated administration in order to improve coordination and eliminate of duplication among them.¹⁶³ Fourth, the Act introduced changes at senior administrative level, system of paying salaries and disciplinary procedures. For instance, all Town Clerks and Council Secretaries became “District Executive Secretaries” whilst Chief Officers or directors became “Secretaries” in respect of their functions.¹⁶⁴ The salaries of all council officers were paid by central government.¹⁶⁵ With regard to disciplinary matters, all discipline and appeals responsibilities fell under Provincial Local Government Boards.¹⁶⁶

Fifth, the Act also introduced changes to the political system of councils. The Act abolished the elections and posts of mayors and council chairmen and in their place created the posts of district governors and district executive secretaries respectively.¹⁶⁷ The district governors and executive secretaries were powerful political figures that were directly appointed by the President and enjoyed direct patronage from the President as did the other political officers.¹⁶⁸ Thus, the 1980 reforms created an institutional synthesis between local government, central government and the party, establishing a single administrative agency.¹⁶⁹

The single administrative agency called the district council was established in each district under the chairmanship of the District Governor.¹⁷⁰ Under this arrangement, local authorities remained as statutory, deliberative and consultative bodies concerned with the determination of broad policy objectives and critical assessment of development programmes.¹⁷¹ The developmental programmes local authorities were involved in included provision of housing, land-use planning,

¹⁶² Chongwe RMA (1996) 133.

¹⁶³ Chikulo B (2009) 100.

¹⁶⁴ Mwasile FB (2014) 125.

¹⁶⁵ Mwasile FB (2014) 125.

¹⁶⁶ Mwasile FB (2014) 125.

¹⁶⁷ Chongwe RMA (1996) 133.

¹⁶⁸ Chongwe RMA (1996) 133.

¹⁶⁹ Chikulo B (2009) 101.

¹⁷⁰ Chikulo B (2009) 100.

¹⁷¹ Chikulo B (2009) 100.

construction and maintenance of roads, provision of markets and water supply to residents in their areas.¹⁷²

But despite having a single administrative agency and local authorities playing a critical role in developmental programmes, the integrated system also had its own flaws. It is argued that since the distinction between civil servants and politicians was blurred under the integrated system, political bias in most development ventures and party corruption in the allocation of development funds was the order of the day.¹⁷³ Further, contracts were being given on patronage rather than competence thereby creating tension between qualified staff and councillors due to bureaucratic in-fighting coupled with overlapping of functions.¹⁷⁴ This situation adversely affected the local authorities' efficiency and effectiveness in service delivery. Consequently, the government was forced to amend the Local Government Act in 1986 to provide for a separate personnel civil service model for each council.¹⁷⁵

2.2.4. 1986 to 1991: Separate administration

The enactment of the Local Government (Amendment) Act in 1986 provided for a separate personnel civil service model.¹⁷⁶ Under this system, councils were conferred with administrative autonomy of hiring, remunerating and firing their personnel.¹⁷⁷ As a consequence, council personnel were no longer transferable to any other body outside the council that employed them.¹⁷⁸

Although the separate system was enacted from 1986 until 1991, it was never fully implemented because of the challenges posed by this personnel system. For instance, small district councils were unable to attract qualified staff or to train their own personnel and there was a lack of clear personnel policies, poor personnel management and over-staffing, especially in the middle and lower management cadres.¹⁷⁹ As a result, there were critical shortages of skilled and qualified

¹⁷² Chikulo B (2009) 100.

¹⁷³ Chikulo B (2009) 100.

¹⁷⁴ Chikulo B (2009) 101.

¹⁷⁵ Chongwe RMA (1996) 137.

¹⁷⁶ Chongwe RMA (1996) 137.

¹⁷⁷ Chongwe RMA (1996) 137.

¹⁷⁸ Chongwe RMA (1996) 137.

¹⁷⁹ Chongwe RMA (1996) 137.

manpower in most councils.¹⁸⁰ In addition, there were no career prospects for personnel especially in rural councils.¹⁸¹

Moreover, the political landscape in the late 1980s became volatile due to economic hardships and lack of service delivery by councils which were run by UNIP. This heightened discontentment among the people resulting in several strikes and violent protests in the country.¹⁸²

The extensive protests made the ruling party UNIP under Kaunda, to realise the growing opposition to UNIP's monopoly on power and the need for reform. As a result, Kaunda promised a referendum on multiparty democracy and lifted the ban on political parties by amending the Constitution in 1990.¹⁸³ The amendment to the Constitution saw the creation of the Movement for Multiparty Democracy (MMD), a movement mainly composed of trade unionists, political activists and civil society organisations which strongly opposed the one party system. After October 1991, the country transitioned from a one-party state to a multi-party system of government.

The multiparty system of government had implications on the administration of local authorities. The transition set in motion the process of de-linking local government administration from central government and the ruling party by enacting the Local Government Act 1991.¹⁸⁴ The Local Government Act (No. 22) of 1991 essentially repealed the 1980 Local Administration Act (No.15) and re-introduced the distinction between the ruling party, the central government and local government.¹⁸⁵ The 1991 Act also provided for changes in the system and type of councils by establishing an integrated system of local government administration.

2.2.5. 1991 to 1996: Integrated administrations

The 1991 Act provided for an integrated three-tier system of local government comprising three types of councils namely, city, municipal and district councils.¹⁸⁶ The larger district councils

¹⁸⁰ Chongwe RMA (1996) 137.

¹⁸¹ Chongwe RMA (1996) 137.

¹⁸² Walton J & Seddon D *Free markets & food riots: The politics of global adjustments* (1994) 150.

¹⁸³ Chikulo B (2009) 101.

¹⁸⁴ Chikulo B (2008) 843.

¹⁸⁵ Chikulo B (2008) 843.

¹⁸⁶ The Local Government Act, Act 22 of 1991 s 3.

were designated as City Councils with the Mayor as the political head and the Town Clerk or Principal Officer as the administrative head. City Councils were followed by Municipal Councils also headed by Mayors and Town Clerks while smaller rural councils were simply called District Councils headed by council chairpersons as political heads and council secretaries as administrative heads. The three-tier system and the type of councils had implications on the autonomy of the local government system.

The Local Government Act of 1991 sought to convert local government into a fully-fledged autonomous local government system by democratising local government and introducing representative local councils.¹⁸⁷ The Act also introduced measures to strengthen democratic control over administration and increased accountability to democratically elected bodies.¹⁸⁸

The Act further conferred powers on the Minister of Local Government to make local government service regulations, establish and appoint the LGSC and its Commissioners and determine the functions of the LGSC.¹⁸⁹ Clearly, these reforms gave the Minister complete power to change the way staff were regulated in the local government service such as appointments, transfers and internal procedures. The excessive ministerial powers in the administration of local authorities contained in the Act raised concerns among key stakeholders in local governance such as the LGAZ and the Zambia United Local Authorities Workers Union (ZULAWU).¹⁹⁰

Between 1993 and 1994, the view was strongly expressed by both the LGAZ and ZULAWU that the LGSC be separately established under the Commission's Act. The idea behind this was that the excessive power which the Minister of Local Government exerted over the appointments of LGSC Commissioners and appointment of council staff and transfers would be reduced.¹⁹¹ Subsequently, the 1991 Act was amended in 1995. The amendment to the Act saw local government reverting back to the separate system in order to circumvent the challenges experienced with the integrated system.

¹⁸⁷ The Local Government Act, Act 22 of 1991 s 9(1).

¹⁸⁸ Chikulo B (2009) 101.

¹⁸⁹ The Local Government Act, Act 22 of 1991 s 94.

¹⁹⁰ Mwasile FB (2014) 126.

¹⁹¹ Mwasile FB (2014) 126.

2.2.6. 1996 to 2010: Separate administration

By 1996, the integrated system of local government had reverted to the separate system. This followed the dissolution of the LGSC and the subsequent issuance of Statutory Instrument (SI) No. 115 of 1996¹⁹² which conferred wide ranging administrative powers on councils. Councils were empowered to appoint, dismiss, promote and establish offices without seeking authority from central government.¹⁹³ Further, the statutory instrument stipulated that all appointments of council staff had to be done through the Establishment Committee of the council composed of elected councillors.¹⁹⁴ With regard to staff discipline, the statutory instrument provided for Provincial Service Boards to review disciplinary cases and hear appeals from aggrieved officers.¹⁹⁵ But despite the wide ranging administrative powers conferred on councils during this period, the separate system operated between 1996 and 2010 had one major drawback pertaining to abuse of power to hire and fire by elected councillors. For instance, Mwasile argues that under the separate system some elected officials abused the powers vested in them to the dissatisfaction of most local government officers by employing relatives and friends without due regard to qualifications.¹⁹⁶ Further, officers were often fired by councillors even on flimsy grounds.

Following complaints regarding abuse of powers by councillors to hire and fire, the Ministry of Local Government and Housing (MLGH) appointed a technical team in 2009 to consider ways and means of addressing the problem of abuse of power by councillors. The committee recommended the re-establishment of the LGSC.¹⁹⁷ Based on the recommendations of the technical committee, the Local Government (Amendment) Act No. 6 of 2010 was enacted that re-established the LGSC and reverted to a unified local government system for the fourth time.¹⁹⁸

2.2.7. 2010 to 2016: Unified administration

The Local Government (Amendment) Act No. 6 of 2010 provided for the re-introduction of the LGSC.¹⁹⁹ The decision to re-establish the LGSC and keeping local civil servants under the

¹⁹² Local Government: *Statutory Instrument* (SI) No 115 of 1996.

¹⁹³ Statutory Instrument No.115.

¹⁹⁴ The Local Government (Amendment) Act 30 of 1995 s 90.

¹⁹⁵ The Local Government (Amendment) Act, the Act 30 of 1995 s 93.

¹⁹⁶ Mwasile FB (2014) 127.

¹⁹⁷ Mwasile FB (2014) 127.

¹⁹⁸ The Local Government (Amendment) Act 6 of 2010.

¹⁹⁹ Zarina G 'Sata stirs the tribal pot in Zambia/Open Society' (2012) available at www.osisa.org/general/blog/sata-stirs-tribal-pot-zambia (accessed on 8 September 2017).

umbrella of a central direction was based on a number of advantages. First, as other scholars have noted, keeping the local civil service under the umbrella of central direction meant standardisation in working conditions across the country.²⁰⁰ Otherwise, local governments in poorer areas would have found it difficult to compete with richer areas, thereby affecting national coverage of public services.

Second, central government's involvement in staffing was viewed to be crucial in career prospects of staff. This was because central government would have expanded civil servants' career paths by opening channels between local and central employment.²⁰¹ Further, the centre would have retained control over hiring.²⁰²

Third, settling of pay levels nationally was thought to be a good way of circumventing the competition between local authorities for staff in short supply. Having a centralised organ to regulate pay schemes was viewed as the best way to harmonise salaries and conditions of service.²⁰³ The implication of the standardised pay was that staff would now be motivated to work in any part of the country. Salary levels would have been artificially enhanced if national standards were not settled and generally adhered to. Further, standardised pay structures would have shielded sub-national governments from local pressure to overspend on wages and salaries and promoted the movement of good officers between local authorities to widen their experience and to fit the best of them for the highest posts.

Fourth and most importantly, the re-establishment of the LGSC would provide security of tenure for members of staff against unfair dismissal from employment by councillors who were perceived to be abusing their powers of hiring and firing.²⁰⁴ Based on these advantages, re-establishment of the LGSC seemed to be a viable option in mitigating favouritism, nepotism and corruption in the operations of councils.²⁰⁵ Against this backdrop, the Local Government (Amendment) Act No. 6 of 2010 was enacted. The 2010 Local Government (Amendment) Act empowered the LGSC to perform several functions as explained below.

²⁰⁰ Green AE (2005) 138.

²⁰¹ Green AE (2005) 138.

²⁰² Green AE (2005) 138.

²⁰³ Report on the Committee on Local governance, housing and Chiefs' affairs of the Eleventh National Assembly (2013) 7.

²⁰⁴ Report on the Committee on Local governance, housing and Chiefs' affairs (2013) 3.

²⁰⁵ Report on the Committee on Local governance, housing and Chiefs' affairs (2013) 7.

3. Composition, powers and functions of the LGSC in the Local Government (Amendment) Act No. 6 of 2010 Act.

The LGSC under the 2010 Act consisted of five full-time members appointed by the President. The members included the Chairperson, the Vice Chairperson and three other members.²⁰⁶ The Act empowered the LGSC to appoint, re-grade and discipline employees in the Local Government Service.²⁰⁷ Further, the LGSC was conferred with the power to determine transfers²⁰⁸ and secondments of council staff.²⁰⁹ The Commission was further mandated to authorise the withholding, reduction, deferment or suspension of salaries of employees in the Local Government Service. Thus, the 2010 Local Government Act had implications on the administrative autonomy of local authorities. The 2010 Local Government Act was bolstered by the enactment of the 2016 Constitution with most of the functions of the LGSC retained in the Constitution.

4. Conclusion

The Chapter described key features of the Zambian system for local government administration from independence in 1964 to 2016. The chapter argued that Zambia has struggled with the issue of administrative autonomy. The country has meandered from the separate to a unified and integrated administrations and gone back and forth from 1964 to 2016 in an effort to make local government democratic and ensure that relevant personnel policies are developed.

The chapter also discussed the powers and functions of the LGSC as operated under the 2010 Local Government Amendment Act before the enactment of the 2016 Constitution. It was observed that under the 2010 Act, Zambia operated a unified model in devolved local government system and the LGSC was given more powers and functions to administer staff matters than before. The LGSC was empowered to manage human resource matters in local authorities such as appointing, confirming, and promoting and hear appeals of all local government officers except for general workers classified as division IV employees. It was observed that all the powers of the LGSC were subsequently entrenched in the 2016 Constitution with implications on administrative autonomy. Thus, the next chapter analyses and reflects on

²⁰⁶ The Local Government (Amendment) Act, the Act, Act 6 of 2010 s 90(2).

²⁰⁷ The Local Government (Amendment) Act, the Act, Act 6 of 2010 s 93.

²⁰⁸ The Local Government (Amendment) Act, the Act, Act 6 of 2010 s 94.

²⁰⁹ The Local Government (Amendment) Act, the Act, Act 6 of 2010 s 95.

the extent to which the 2016 Constitution impacts on the administrative autonomy of local authorities.



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CHAPTER FOUR

Administrative autonomy in the 2016 Zambian Constitution

1. Introduction

This Chapter focuses on administrative autonomy in the 2016 Zambian Constitution. The chapter discusses the general constitutional framework for local government, why it was adopted and to what extent it addresses the concerns pertaining to administrative autonomy discussed in Chapter Two.

In order to adequately address the concerns of administrative autonomy, the chapter is divided into five sections. The first section consists of this introduction. The second section provides the background to the enactment of the 2016 Constitution. Section three presents the relevant provisions of the 2016 Constitution pertaining to local government administration. The fourth section focuses on the Constitutional provisions and legislation pertaining to functions of the LGSC in respect to administrative autonomy. Section five reflects on the functions of the LGSC. Finally, the sixth section is the conclusion which summarises the important points discussed in this chapter.

2. Background to the 2016 constitutional amendment

Before analysing some of the provisions on local government administration in the 2016 Constitution, it is important to provide a background to the enactment of the 2016 Constitution. By 2011, there was growing discontentment among people with regard to the failure by the MMD government to enact a new constitution which guaranteed fundamental human rights and principles of decentralisation. The failure to enact a new constitution led to the defeat of the ruling MMD by the Patriotic Front (PF) in the 2011 general elections.²¹⁰ The PF, led by Micheal Sata, promised to, among other things; enact a new constitution that would guarantee fundamental human rights, rule of law and a decentralisation system of governance.²¹¹ To actualise the dream of a new constitution, President Sata immediately constituted a Technical Committee to consider the recommendations of all previous Constitution Commissions.²¹²

²¹⁰ Madhekeni A (2017) 14.

²¹¹ Zarina G 'Sata stirs the tribal pot in Zambia/Open Society' (2012) available at www.osisa.org/general/blog/sata-stirs-tribal-pot-zambia (accessed on 8 September 2017).

²¹² Technical Committee on Drafting the Zambian Constitution (TCDZC) 2011.

Unfortunately, President Sata died in 2014 before the conclusion of the constitution making process.

Following the death of Michael Sata in November 2014, the Constitution was amended and enacted in January 2016.²¹³ The amended Constitution provided for, among other things, values and principles of devolution to guide local government administration.²¹⁴ The provisions on devolved local government system have had implications on the autonomy of local authorities as explained below.

3. Relevant provisions on local government autonomy

The 2016 Zambian Constitution promotes democratic and accountable exercise of power in administering districts in addition to encouraging the involvement of communities in local government matters. Thus, the Constitution entrenches the democratic nature of local government, their powers, financial powers and prohibitions to interfere as discussed below.

3.1. Democratic nature of local government

A democratic local government system is one of the cornerstones of the 2016 Constitution. Thus, Article 147 of the Constitution provides for a powerful, democratic and autonomous devolved system of local government.²¹⁵ Similarly, Article 151 provides that the local government system shall promote democratic and accountable exercise of power and foster national unity.²¹⁶ In order to promote democratic and accountable exercise of power, the Constitution explicitly states that the management and administration of the political, social, legal and economic affairs of the State shall be devolved from the national government level to the local government level.²¹⁷ The Constitution also provides that the people's participation in democratic governance shall be promoted.²¹⁸ Further, the Constitution emphasises that capacity of local authorities to initiate, manage and execute policies in respect of matters that affect the people within their respective districts shall be enhanced.²¹⁹ All these objectives can be achieved in a democratic local

²¹³ Madhekeni A (2017) 14.

²¹⁴ Art 147 (1) Constitution of Zambia (Amendment).

²¹⁵ Art 147 Constitution of Zambia (Amendment).

²¹⁶ Art 151(2) Constitution of Zambia (Amendment).

²¹⁷ Art 147 (1) Constitution of Zambia (Amendment).

²¹⁸ Art 151 (1)(b) Constitution of Zambia (Amendment).

²¹⁹ Art 151 (1)(d) Constitution of Zambia (Amendment).

government system especially where local authorities have discretion to exercise executive and legislative powers.

3.2. Executive and legislative powers of local government

Having executive and legislative powers is a key component of a devolved system of local government. Thus, the 2016 Constitution provides that local authorities shall have autonomy in the exercise of executive and legislative powers.²²⁰ To this end, the Constitution provides that local authorities shall have powers to administer the district, oversee programmes and projects in the district, make by-laws and perform other prescribed functions.²²¹ As earlier stated, such provisions empower local authorities to make legally binding decisions with respect to administration and management of local affairs.²²²

In addition, local authorities have exclusive functions²²³ listed in Annex C of the Constitution. Among the exclusive functions of local authorities are powers over levies, tariffs, tolls, trading, vehicle licensing, local tourism, local spatial planning, markets and local roads²²⁴ among others. These exclusive functions can empower local authorities to implement local policies which are locally directed and driven by promoting accountability of local administrative officials to sub-national governments.²²⁵ However, implementation of local policies, to large extent, requires financial powers.

3.3. Financial powers

The 2016 Constitution entrenches financial powers of local authorities by providing that local authorities should establish a sound financial base with reliable and predictable sources of revenue.²²⁶ Further, local authorities are empowered to levy, impose, recover and retain local taxes.²²⁷ Local authorities also have power to raise loans to finance their operations.²²⁸ The discretion to raise and manage own revenue is enhanced by non-interference by central government.

²²⁰ Art 152 (1) Constitution of Zambia (Amendment).

²²¹ Art 152 (1) Constitution of Zambia (Amendment).

²²² Steytler N & De Visser J (2016) ch 8-9.

²²³ Art 147 (2) Constitution of Zambia (Amendment).

²²⁴ Annex C Constitution of Zambia (Amendment).

²²⁵ Chigwata TC (2014) 69.

²²⁶ Art 152 (1)(f) Constitution of Zambia (Amendment).

²²⁷ Art 161 Constitution of Zambia (Amendment).

²²⁸ Art 164 (d) Constitution of Zambia (Amendment).

3.4. Prohibitions to interfere

The 2016 Constitution guarantees the autonomy of local authorities in administering their local affairs without interference. For instance, Article 152(2) of the Constitution provides that the national government and provincial administration shall not interfere with or compromise a local authority's ability or right to perform its functions.²²⁹ Principally, these provisions seem to suggest that central government will no longer be directly involved in the administration and management of council affairs. From the provisions on the system of governance, the 2016 Constitution seems to guarantee the autonomy of local authorities in administering local affairs within their jurisdictions.²³⁰ However, the current practice is that local authorities have limited autonomy particularly in human resource matters. These functions are the sole responsibilities of the LGSC as provided for in the Constitution and the Service Commissions Act No. 10 of 2016.

4. Constitutional provisions on the functions of the Local Government Service Commission

Article 227 of the Constitution provides for the establishment of the Local Government Service (LGS) and the LGSC. The LGSC shall constitute offices in the Local Government Service, appoint, confirm, promote and hear appeals from officers of the Local Government Service.²³¹ Further, the Constitution provides that the LGSC shall ensure efficient and effective functioning of local authorities and perform such other functions as prescribed.²³² From the wording of Article 228(2)(b), the Constitution implies that the LGSC "constitutes offices", so that means it determines organisational structures. This means that the LGSC has authority to create or abolish any post in a council.

The 2016 Constitution empowers the LGSC to manage all human resource matters relating to staff appointments, transfers, determination of complaints and appeals of town clerks and council secretaries and other senior officers of the Local Government Service.²³³ It could be argued that Article 227(2) seems to suggest that all local authority staff is part of the LGS. However, despite there being one LGS, not all officers of the Local Government Service are appointed by the LGSC. Article 228 (2)(a) seems to suggest that the LGSC does not appoint all staff but only

²²⁹ Art 152(2) Constitution of Zambia (Amendment).

²³⁰ Art 147(3)(b)(c) Constitution (Amendment).

²³¹ Art 228(2)(b)(c) Constitution (Amendment).

²³² Art 228(2)(d)(e) Constitution of Zambia (Amendment).

²³³ Art 228(a)(c). Officers of the Local Government Service are those in Division (i-iii) excluding those in Division (iv). Division (iv) are the support staff who are employed by the Town Clerk or Council Secretary.

appoints the Town Clerk and the Council Secretary. However, the entrenchment of the LGSC to manage human resource matters for all employees of the local service contradicts the very precepts of decentralisation envisaged in Article 152 of the 2016 Constitution and has a number of implications of the effective functioning of councils.

5. Reflections on the functions of the LGSC

The Constitutional provisions which empower the LGSC to manage human resource matters have implications on the operations of local authorities. Some of the implications are as a result of contradictory and unclear constitutional provisions, impacts on accountability of local government staff and power to determine organisational structures are discussed below.

5.1. Contradictory and unclear provisions

The 2016 Constitution has a number of provisions which are contradictory. Some of the contradictory provisions relate to Articles 152 and 228. Article 152(2) stipulates the right of local authorities to perform their functions without being impeded or compromised by higher governments whereas Article 228 establishes the LGSC to administer staff matters for local authorities. Therefore, Article 228(a)(c) contradicts Article 152(2) that stipulates the right of local authorities to perform their functions without being impeded or compromised by higher governments. Despite Article 152 of the Constitution providing for a devolved local government system, Article 228 provides for centralisation of administrative powers by establishing the LGSC to administer staff matters in local authorities. Through the re-establishment of the LGSC to administer staff matters, the national government has centralised council functions in staff matters. Hence, the role of the LGSC undermines the ability of local authorities to carry out their duties effectively without interference. Therefore, despite the Constitution giving local authorities' autonomy with one hand, it takes away the autonomy of local authorities with the other by centralising staff appointments through the LGSC. This adversely affects the operations of councils as opposed to enhancing the capacity of local authorities to improve service delivery. It can therefore, be argued that the entrenchment of the LGSC in Article 228 of the Constitution seems to imply that central government has reneged on devolution and instead centralised the powers and functions of local authorities.

The Constitution further has unclear provisions. For instance, the Constitution envisages that Article 227 says there is one Local Government Service yet Article 228 says that the LGSC appoints the Town Clerks and the Council Secretaries. It thereby, implies that the rest of the staff is appointed by the local authorities in terms of the rules that are set up by the LGSC.

5.2. Implications on autonomy and accountability of local government staff

Despite the Constitution guaranteeing that the accountability,²³⁴ as well as the democratic exercise of power by local authorities shall be ensured,²³⁵ centralisation of staff recruitment puts the accountability of councils in a very difficult position and compromises the autonomy and accountability of local authorities. In reality, councils are supposed to be accountable to the people with respect to the efficient administration of their local areas because they are the ones held responsible by residents for non-implementation of projects.²³⁶ But the current practice in Zambia makes accountability difficult because councils have no influence whatsoever on the performance of their staff. As a result, local administrative officials would rather be accountable to the national government which appoints them instead of the sub-national government they work for.²³⁷ Thus, councils would not effectively deliver on their mandate by using public sector employees whom they do not have control over.²³⁸ If local authorities were allowed to recruit their own staff, it would promote accountability as local authorities would have the power to hold staff accountable for their performance. Connected to staff matters is the implication on staff transfers.

5.2.1. Implications on staff transfers

The LGSC is mandated to transfer local government staff.²³⁹ However, the manner in which these transfers are done affects council operations. Transfers are done arbitrary and in uncoordinated manner and mostly against the wishes of the staff concerned and the consent of the local authorities.²⁴⁰ Further, these uncoordinated transfers have had a bearing on the financial base of local authorities. The financial stability of local authorities has been affected because

²³⁴ Art 151 (1)(i) Constitution of Zambia.

²³⁵ Art 151 (1)(j) Constitution of Zambia.

²³⁶ Report on the Committee on Local governance, housing and Chiefs' affairs (2013) 4.

²³⁷ Fessha Y & Kirby C (2015) 260.

²³⁸ Chigwata TC (2014) 69.

²³⁹ The Service Commissions Act, the Act, Act 2016 s 16 (1)(c).

²⁴⁰ Mbulo E PF using the local government service commission to punish workers on political grounds (21 December 2017) available at <http://www.themastonline.com/.../pf-usin...> (accessed on 8th September 2018).

they have to source for funds to pay settling-in- allowances for staff transferred to these councils.²⁴¹

5.3. Implications on the power to determine own organisational structure

The LGSC has the power to determine organisational structures by constituting offices in the local government service.²⁴² Centrally determining organisational structures may lead to low morale and motivation and lack of environmental adaption. As a result of lack of power to determine their own organisational structure, local authorities find it difficult to adapt their internal administrative procedures to the local environment.²⁴³

6. Conclusion

In this chapter, it was discussed that the 2016 Zambian Constitution lays a firm foundation for devolution and administrative autonomy of local authorities by providing values and principles that guide council administration. It was explained in the chapter that the Constitution provides that the management and administration of the political, social, legal and economic affairs of the State shall be devolved from the national government level to the local government level. Further, the Constitution provides that local authorities are spheres of government with exclusive powers to administer the district. But despite laying a firm foundation for a devolved local government system, the 2016 Constitution contradicts the precepts of devolution by also providing centralist provisions which are not consistent with the principles of a decentralised local government system of autonomy and accountability. The re-establishment of the LGSC has implications on devolution, the appointment of staff, transfer of staff and power to determine their own organisational structure. Further, the Constitution does not specify the appointment of all employees of the local government service. In view of the implications of the re-establishment of the LGSC on local authorities, the following chapter focus on recommendations by suggesting what needs to change to bring the legislation discussed in this Chapter in line with the 2016 Constitution.

²⁴¹ Mbulo E PF using the local government service commission to punish workers on political grounds (21 December 2017) available at <http://www.themastonline.com/.../pf-usin...> (accessed on 8th September 2018)

²⁴² Art 228 (2)(b) Constitution of Zambia.

²⁴³ Chigwata TC (2014) 279.

CHAPTER FIVE

Conclusion and recommendations

1. Introduction

This thesis analysed administrative autonomy of local government in Zambia under the 2016 Constitution. The thesis sought to contribute towards a better understanding of local government administrative authority by identifying the strengths and weaknesses of the decentralisation framework provided for in the 2016 Constitution.

From the analysis of the general constitutional framework for local government, several challenges pertaining to autonomy and accountability were pointed out. Thus, in this chapter, the study provides the concluding analysis and offers recommendations to improve the ability of sub-national governments to operate in an autonomous and accountable manner in order to effectively deliver services.

This concluding chapter has two objectives. First, it provides the major findings of this study. Second, it suggests some recommendations of what needs to change in the legislation in order for administrative autonomy in local government to be actualised as envisaged in the spirit and letter of the 2016 Constitution. On the basis of the analysis and recommendations, the Chapter concludes with an answer to the research question presented in Chapter One.

2. Major findings of the study

On the basis of the principles and values of decentralisation and the system of local government administration in Zambia, the following are the major findings of this thesis;

- a) Decentralisation helps to deepen democracy and limit the centralisation of power by empowering local authorities to make legally binding decisions with respect to administration and management of local affairs. It was further submitted that administrative autonomy in a devolved system ensures that implementation of local policies is locally directed and driven by promoting the accountability of local administrative officials to sub-national governments and not to the national governments.
- b) Administrative autonomy is an important measure of the degree of decentralisation. Administrative autonomy has key design features which include the power to determine

internal administrative procedures and the discretion to appoint, remunerate, discipline and dismiss staff and monitoring and supervision. It was therefore, submitted that several institutional arrangements need to be considered to capitalise on the benefits of administrative autonomy.

- c) Zambia has struggled with the issue of administrative autonomy. The country has meandered back and forth from 1964 to 2016 from the separate, to unified and to integrated administrations due to several challenges that have confronted the system of local government. Some of the challenges relate to poor service delivery, failure by local authorities to attract and retain qualified staff, poor conditions of service, lack of policy guidelines on recruitment, divided loyalty due to certain recruitment policies, councillor/officer relationship, favouritism and nepotism among others. In short, the reason for the swings from one system to another was to make local government responsive, democratic and ensure that relevant personnel policies are developed for improved service delivery.
- d) The thesis argued that despite laying a firm foundation for a devolved local government system, the 2016 Constitution constrains administrative autonomy in several ways. First, the Constitution allows the LGSC to employ the Town Clerk and Council Secretary but does not specify the appointment of all employees of the local government service. Second, local authorities have no power to determine their own organisational structure. Instead, the power to determine organisational structures lies with the LGSC. Last, the challenges of the centralised system of recruitment and selection of staff as conducted by the LGSC, is that it tends to lead to bureaucratic tendencies, thereby delaying the recruitment and selection process. Thus, the continuation of the LGSC to manage human resource matters in local authorities contradicts the very precepts of decentralisation by devolution envisaged in the Constitution.

It may therefore, be concluded that despite the 2016 Zambian Constitution categorically providing for a devolved local government system, the current practice of local governance raises serious concerns regarding the extent to which local authorities in Zambia actually have

administrative autonomy. Thus, the following section suggests what needs to change in the legislation to enhance administrative autonomy.

3. Recommendations

In the preceding sections the chapter provides major conclusions or findings of this study. In this section the chapter provides proposals which can be considered when reforming the system of local government administration to guarantee administrative autonomy, especially given the fact that the 1995 Local Government Act and Local Government Service Regulations are undergoing review to align them with the 2016 Constitution. The study established that the provisions of the 2016 Constitution on a devolved local government system are not consistent with the principles of devolution. What is required is the development of a legal framework that reflects the constitutional spirit of a decentralised local government system and devolution of power. Some of the issues which may be considered when developing a new institutional framework are provided below.

3.1. Devolved system of local government

The study established that the 2016 Constitution provides for values and principles of devolution. For example, devolution is identified as one of the key features of the system of governance.²⁴⁴ In fact, Article 147 of the Constitution carries a constitutional instruction for the national government to devolve power to the local government level. It was however, argued that there are identified contradictions which regard to the operations of local authorities and the LGSC in the 2016 Constitution. It was argued in Chapter Four that whereas article 147 of the 2016 Constitution provides for a devolved system of governance, Article 228 of the same Constitution provides for re-centralisation of local government functions by establishing the LGSC to administer staff matters for local authorities. It was argued that Article 227 provides that there is one Local Government Service but that not all local authority staff is appointed by the LGSC. Article 227(2) says all local authority staff are part of the Local Government Service, but Article 228 (2)(a) seems to suggest that the Commission does not appoint all staff but only appoints the Town Clerk and the Council Secretary. Thus, it is submitted that there is need for legislation that clearly stipulates the officers of the service commission which the LGSC can appoint and which ones can be appointed by Town Clerks or Council Secretaries. Such legislation should speak to

²⁴⁴ Art 151 Constitution of Zambia.

the constitutional spirit of devolution and the development of service regulations to operationalise the provisions of Article 147 and Article 151 of the 2016 Constitution. Thus, it is submitted that legislation should be enacted, informed by principles of devolution, to give clearer and narrower guidance to the work of the LGSC. Such legislation should strengthen local government autonomy and eliminate inconsistencies between the functions of national government and local government.

3.2. Organisational structure

It was established in Chapters Two and Four that local authorities should have the power to determine their own organisational structure. Having the power to determine own organisational structures would help councils to design organisational structures that serve the specific needs of their local areas. The lack of such powers makes it difficult for local governments to adapt their internal administrative procedures to the local environment.²⁴⁵ It is therefore, submitted that legislation should be enacted that forces the LGSC to consult local governments before making its decisions on organisational structures.

3.3. Staff matters

The LGSC should play an oversight role in terms of staff matters by monitoring the effectiveness of local government and the decentralisation process, advising government on local government issues, promoting and administering local government training institutions. Thus, it is submitted that the LGSC should relinquish human resource powers to councils while retaining the functions of monitoring and evaluating compliance with the code of ethics and human resource management principles.²⁴⁶ Further, appointment of Town Clerks or Council Secretaries and senior managers should be done by human resource committees in the various councils. The appointments should be based on employment contracts and performance agreements in order to enhance performance and accountability so as to improve service delivery.

Further, Town Clerks and Council Secretaries should have the right to discipline and dismiss lower-level employees who are underperforming, subject to due process and approval from the council and the LGSC. This will enhance accountability on the part of employees as well as

²⁴⁵ Chigwata TC (2014) 279.

²⁴⁶ The Service Commissions Act, the Act, Act 10 of 2016 s 16(1)(h).

avoiding the problem of divided loyalties.²⁴⁷ For councils which might experience difficulties in attracting and retaining skilled manpower, it may be necessary to establish a system where the national government deploys some of its skilled employees to such councils.

Thus, legislation should be designed so as to safeguard local authorities against critical shortages of skilled and qualified manpower, lack of clear personnel policies, poor personnel management and over-staffing; especially in the middle and lower management cadres by providing for national support in cases where a local authority cannot attract qualified staff.

3.4. Staff transfers

It was observed that the LGSC has the sole responsibility of transferring local government staff. It was contended that the challenge being experienced by councils is the manner in which the transfers are done. The transferring of staff by the LGSC contradicts Article 152(2) that gives local authorities the right to perform their functions without being impeded or compromised by higher governments. It was submitted in Chapter Four that transfers done in this manner have a bearing on the financial base of local authorities. It was contended that the LGSC makes arbitrary decisions on transfers because there is nothing in the 2016 Constitution or legislation that instructs the LGSC to consult councils regarding transfers. This demotivates members of staff who are transferred from one council to another on a regular basis. Thus, it is submitted that the Service Commissions Act should be amended to clearly stipulate in a predicable manner how transfers should be done such as seeking the consent of the individual and the affected local authorities. Such legislation should promote transparency in transfers and ensure that transfers are done in ways which do not endanger local autonomy.

3.5. Filling of vacancies

It was argued in Chapter Two that administrative autonomy may lead to two major drawbacks. First, it may constrict the interregional mobility of civil servants, and therefore their career paths.²⁴⁸ Second, it may lead to discriminatory hiring practices at the local level where some heads of local authorities may engage in preferential treatment or discrimination based on ethnicity, religion, or other special interests.²⁴⁹ Thus, it is submitted that there should be

²⁴⁷ Fessha Y & Kirkby C (2015) 260.

²⁴⁸ Green AE (2005) 138.

²⁴⁹ Green AE (2005) 138.

legislation on national hiring rules. Such legislation should have national procedural rules to ensure fair hiring to curb the potential of constricting of interregional mobility and help ensure national unity and acceptable levels of service delivery in more remote regions.

3.6. Supervision

It was observed in Chapter Four that the LGSC has unlimited supervisory powers over local authorities.²⁵⁰ Such powers include the power to appoint, re-grade, promote, transfer, discipline and terminate employment.²⁵¹ It was argued in Chapter Two that if local authorities have such powers, they will be accountable to the communities they serve with regards to service delivery.²⁵² Thus, it is submitted that legislation should be enacted to redefine the role of the LGSC. Such legislation should establish service regulations to ensure that the LGSC plays an oversight role of monitoring the operations of councils that it is in line with Article 228 as long as it pertains to staff other than the Town Clerks and Council Secretaries. Where need be, there should be intervention powers in order to create an appropriate balance between the requirement for supervision and the need for local autonomy. This would ensure adherence to set national standards, guidelines and principles of human resource management matters and avoid abuse of administrative autonomy by local authorities.

4. Answering the research question

The overall research question of this thesis was whether the legal and institutional framework in the devolved local government system under the 2016 Constitution is consistent with principles of decentralisation and administrative autonomy to enable sub-national governments to play a pivotal role in the delivery of basic services in an effective and efficient manner. In Chapter Two, the design features and institutional arrangements which must be made to capitalise on the benefits of administrative autonomy yet not suffer negative effects were examined. The study established that the Zambian system of local government administration lacks key features which are necessary if councils are to play a role in development and democracy in a decentralised setting. The thesis has argued that in order to enhance performance and service delivery, local governments should have the autonomy to determine their own organisational structures and exercise power to employ personnel a council needs. However, the current practice points to the

²⁵⁰ Art 228 Constitution of Zambia.

²⁵¹ Art 228(2)(b)(c) Constitution (Amendment).

²⁵² Ababio EP (2014) 30.

fact that devolution in Zambia is a fallacy. The establishment of the LGSC in Article 228 of the 2016 Constitution contradicts the principles and values of a devolved local system. The functions of the LGSC constrain administrative autonomy of local authorities thereby inhibiting service delivery and development. The power conferred on the LGSC to appoint, transfer and discipline staff and setting of council's internal procedures is inconsistent with the constitutional spirit of devolution. This negatively impacts on the performance of councils.

Furthermore, the increased control over sub-national governments by the central government has provided a weak decentralisation framework and restricted local autonomy, thereby negatively affecting service delivery. Thus, the overall conclusion of the study is that the system of local government administration in Zambia is less likely to realise the benefits of administrative autonomy. What is required is the full implementation of the 2016 Constitution by enacting relevant pieces of legislation that would empower local authorities to administer their respective districts. The national government must devolve power to local authorities as required by the Constitution. The right of local authorities to administer local affairs in the district must be respected, protected and promoted. It is hoped that the national government will be supportive of the idea to fully decentralise the system of local government administration by devolving powers and responsibilities to councils. In addition, local authorities should be given adequate fiscal powers, significant expenditure responsibilities and some measure of discretion when undertaking delegated functions.

The operations of local authorities will however, require the national government to supervise them through the LGSC. Such supervision, however, should be regulated and exercised within the legal framework that clearly defines responsibilities and standards to realise the benefits of administrative autonomy and mitigate the negative effects of decentralisation. In this way, the development of mechanisms of promoting administrative autonomy will be underscored.

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