

**“AN ANALYSIS OF THE MOVEMENT FOR MULTI-PARTY DEMOCRACY GOVERNMENT’S EFFORTS TO ENHANCE DEMOCRACY AT THE LOCAL GOVERNMENT LEVEL.”**

**BY**

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# UNIVERSITY OF ZAMBIA

## SCHOOL OF LAW

I RECOMMEND THAT THIS DIRECTED RESEARCH UNDER MY  
SUPERVISION

BY


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ENTITLED

***“AN ANALYSIS OF THE MOVEMENT FOR MULTI-PARTY  
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TO THE FORMAT AS LAID DOWN IN THE REGULATIONS GOVERNING  
DIRECTED RESEARCH.

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Dr. A. W. Chanda.

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## **DEDICATION**

This directed research is dedicated to my legal mentor, Mr. Lishomwa Nawa Muuka.

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## **PREFACE**

In 1991, the international community regarded Zambia as a champion of democracy after her peaceful transition from a one-party to a multi-party state. Sadly, the government's zeal for democracy is slowly being eroded by greed, corruption and intolerance, and the development of the nation envisaged as a result of democracy is taking longer to achieve.

This directed research studies the decentralisation of the local government system in Zambia because I believe that the development of an efficient, transparent, accountable and participative local government will help develop and enhance democracy in Zambia. To build a democratic culture, the people must be educated on their civic duties and their important role of participating in the democratic process.

The aim of this directed research is to show the reader that central government, despite its initiatives to decentralise local government, still has considerable control over local government. It is up to Zambian citizens to influence changes to the system in order for them to reap from the development arising from the effective democratic decentralisation of local government.

## **INTRODUCTION**

The development of democracy and decentralisation at the local level has captured the interest of most countries around the world. They have realised that such development improves the provision of services by the public sector and, thus, contributes to the quality of life of the citizens. Developed Western countries are now linking the grant of economic aid to the development of good governance and democratic practices and principles.

In 1991 Zambia became, once again, a multi-party state. One of the salient provisions of the Movement for Multi-party Democracy (MMD) Government's manifesto, as the political party's title suggests, is to transform Zambia into a democratic country. The government's 1996 Constitutional amendments resolve, in the preamble, to uphold the values of democracy, transparency, accountability and good governance.

One of the most important aspects of democracy is the participation of citizens in the democratic process. After all, democracy is a system of government of the people, by the people and for the people. The Preamble of the Zambian Constitution recognises the equal worth of men and women in their rights to participate and freely determine and build a political, economic and social system of their own free choice. In this respect, Article 109 of the Constitution provides for a system of local government that shall be based on democratically elected councils.



Harry Blair<sup>1</sup> writes that the decentralisation of government service provision and decision-making is one method of enhancing citizen participation in the democratic process:

“Its appeal lies in an expected chain of positive change: as marginal groups - women, ethnic minorities, and the poor - increase participation in campaigning and voting, they will achieve better representation on local decision-making bodies. These groups will then become empowered - able to influence public decisions about actions that affect the welfare of the group. This in turn will produce more benefits for them in terms of service delivery, which will ultimately alleviate poverty.”

The government accepts that it needs to decentralise the system of government. It admits that the system is inefficient and discourages initiative and innovation. The Government’s ‘National Decentralisation Draft Policy, Towards Empowering the People’<sup>2</sup>, June 1997, reads:

“The vision of the Zambian Government is to empower local communities by creating an enabling environment for them to determine their development activities and local affairs. Government will ensure enhanced accessibility to quality services thereby promoting good governance and raising standards of living. ... To attain this vision the Government will deconcentrate functions, decision-making authority and resources to provincial and district levels in order to improve efficiency and effectiveness in the delivery of services. Government will further devolve power and authority to facilitate participation in local affairs and development activities.”<sup>3</sup>

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<sup>1</sup> Harry Blair, ‘**Spreading Power to the Periphery: An Assessment of Democratic Local Governance,**’ at vii, (1998).

<sup>2</sup> Prepared by Cabinet Office and Ministry of Local Government.

<sup>3</sup> Ibid., *Foreword*.

The United States Agency for International Development (USAID), however, has claimed in studies conducted in 1996-7 in Bolivia, Honduras, Mali, the Philippines, Ukraine, and the Indian state of Karnataka,<sup>4</sup> that historically, despite their rhetoric, central governments do not truly want to devolve real power to the local level. They do not really decentralise significant power and tend to deconcentrate rather than devolve authority.<sup>5</sup>

The writer's hypothesis is that, despite efforts made by the MMD government, there is no democratic decentralisation of local government. This study will analyse whether the amendments made to the Local Government Act 1991 and the establishment of Health and Education Boards promote democratic decentralisation. It will determine whether local government and these Boards are accountable to the voting public, transparent and representative of the wishes of the community.

This directed research is divided into four chapters and a conclusion. Chapter one defines democracy as a system of government where the people select their leaders and decision-makers through competitive regular elections. It describes the elements of democracy, emphasising citizen participation. It then explains the local government's role in promoting citizen participation in the democratic process. Chapters two and three describe government initiatives to democratically decentralise the provision of public services under the Local Government Act 1991 and the establishment of Health and

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<sup>4</sup> Harry Blair, *supra* note 1, at vi.

<sup>5</sup> *Ibid.*, at 9.

Education Boards respectively. The chapters will examine: who selects public officials; how and when public officials will be removed from office; who the public officials are accountable to; how transparent the decision-making processes are; how institutions serving the public raise revenue for their functions; and how much central government intervention there is. Chapter four analyses the extent of democratic decentralisation and shows that efforts made by the MMD government to democratically decentralise the provision of services by the decentralisation of local government and the establishment of Health and Education Boards are ineffective. Chapter five concludes the study by recommending ways on how to strengthen democratic decentralisation in Zambia.

The directed research relies extensively on primary sources such as legislation and official government publications.

## **CHAPTER ONE**

### **THE CONCEPT OF DEMOCRACY**

This chapter will define democracy, describe the elements of democracy, and explain the local government's role in promoting citizen participation in the democratic process. It is necessary to define the concept of democracy in order for the writer to eventually determine whether Zambian practices conform with internationally accepted democratic practices and principles.

The concept of democracy as a form of government goes back to the Greek philosophers. The word 'democracy' was inherited from ancient Greece, where the city-state of Athens practised it by holding periodic meetings with citizens to discuss the problems being faced and decide on solutions by voting on alternatives offered. The word comes from two Greek words: 'demos', which means 'the people' and 'kratia', which means 'government'.<sup>1</sup>

The modern usage of 'democracy', however, dates from the revolutionary upheavals in Western society at the end of the eighteenth century. For much of the nineteenth century, the term 'democracy' had an unfavourable meaning. It was opposed to aristocracy and filled the aristocrats with dislike and fear. As popular participation in government increased in the later part of the nineteenth century and as its consequences turned out to be less calamitous than predicted, the concept of

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<sup>1</sup> A. Zain, 'Democracy and Human Rights in Developing Countries', at 17 (1991).

democracy came to be viewed more favourably.<sup>2</sup> Today, democracy has universal support.<sup>3</sup> Winston Churchill was at once a critic of democracy's failings and its most eloquent spokesman. He captured both sides in his apt description of democracy as the worst form of government in the world – except for all the others.<sup>4</sup>

### **1.1 The Meaning of Democracy**

Universal support for democracy, however, came at the price of universal disagreement over its meaning. T. S. Elliot wrote: “When a term has become so universally sanctified as ‘democracy’ now is, I begin to wonder whether it means anything, in meaning too many things.”<sup>5</sup>

Samuel P Huntington writes that as a form of government, democracy can be defined in terms of who rules, for what ends, and by what means; democracy can be defined in terms of sources, purposes or institutions.<sup>6</sup>

**Sources of Authority**      The most often-quoted meaning of ‘democracy’ is that by Abraham Lincoln. “Democracy is government of the people, by the people, and for the people.”<sup>7</sup>

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<sup>2</sup> Samuel P Huntington, ‘*The Modest Meaning of Democracy*’ in ‘**Democracy in the Americas: Stopping the Pendulum**’, at 11 (1989).

<sup>3</sup> Ibid., at 12.

<sup>4</sup> Jimmy Carter, ‘*Foreword*’ in ‘**Democracy in the Americas: Stopping the Pendulum**’, at xv (1989).

<sup>5</sup> T. S. Elliot, quoted by Samuel P. Huntington, ‘*The Modest Meaning of Democracy*’ in ‘**Democracy in the Americas: Stopping the Pendulum**’, at 12 (1989).

<sup>6</sup> Samuel P Huntington, *supra* note 2, at 12.

<sup>7</sup> Ibid.

According to James Bryce democracy exists when the will of the majority of qualified citizens rules.<sup>8</sup>

These definitions suggest that it is the people who rule in a democracy. Supreme power is vested in the people. In practice, however, 'rule by the people' is only approximated by rule by the majority.<sup>9</sup>

**Purposes of Rule** Democratic governments, it has been argued, are those which promote human welfare, equality, personal rights, justice, the 'maximisation of the self-development of every individual', human dignity, personal realisation, 'freedom from starvation, ignorance, and early diseased death,' and movement toward an 'equal society in which everybody can be fully human.'<sup>10</sup>

Defining 'democracy' in terms of purpose of rule is subjective as every author has his own set of purposes.<sup>11</sup>

**Institutions** Samuel P. Huntingdon believes that the institutional concept has won the debate as to the meaning of democracy. "“Democracy”", he writes, "has a useful meaning only when it is defined in institutional terms."<sup>12</sup> The key institution in a democracy is the selection of leaders through competitive elections. People become leaders through election by the people they govern. The most meaningful definitions

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<sup>8</sup> James Bryce, quoted by Samuel P. Huntingdon, 'The Modest Meaning of Democracy' in 'Democracy in the Americas: Stopping the Pendulum', at 13 (1989).

<sup>9</sup> Samuel P. Huntingdon, *supra* note 2, at 13.

<sup>10</sup> *Ibid.*, at 14.

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*, at 15.

of democracy are those that contain this institutional element. Seven such definitions are quoted below.

Joseph A Schumpeter said: “The democratic method is that institutional arrangement for arriving at political decisions in which individuals acquire the power to decide by means of a competitive struggle for the people’s vote.”<sup>13</sup>

Jeane J Kirkpatrick says “democracies are governments whose leaders are selected in periodic competitive, inclusive elections.”<sup>14</sup>

Samuel P Huntington says a political system is ‘democratic to the extent that its most powerful collective decision-makers are selected through periodic elections in which candidates freely compete for votes and in which virtually all the adult population is eligible to vote.’<sup>15</sup>

“‘Democracy’ is a political system supplying regular constitutional opportunities for changing the government, the government officials and permitting the largest possible part of the population to influence decision making.”<sup>16</sup>

‘There is democracy where rulers are politically responsible to their subjects. There is political responsibility where two conditions hold: where citizens are free to criticise their rulers, come together to make demands on them and to win support for the

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<sup>13</sup> Joseph A. Schumpeter, quoted by Samuel P. Huntington, ‘*The Modest Meaning of Democracy*’ in ‘**Democracy in the Americas: Stopping the Pendulum**’, at 15 (1989).

<sup>14</sup> Samuel P Huntington, *supra* note 2, at 15.

<sup>15</sup> *Ibid.*, at 16.

policies they favour and the beliefs they hold; and where the supreme makers of law and policy are elected to their offices at free and periodic elections...”<sup>17</sup>

‘The characteristics of democracy are found in the principles of liberty and equality, the participation of the whole population in important social decisions, free access by all members of society to social and public offices and the availability to all members of society of the means necessary to fulfil physical and intellectual property’<sup>18</sup>

‘Democracy’ may also be defined as a ‘system of governance in which rulers are held accountable for their actions in the public realm by citizens, acting indirectly through the competition and co-operation of their elected representatives.’<sup>19</sup>

## **1.2 The Elements of a Democracy**

A country can only call itself a democracy when it has the following ‘pillars of democracy’ in place.

There must be a multi-party system, where free and fair elections are held at regular periodic intervals. An election is the means by which the governed either give their consent or withdraw it; it is the connection between the people and their leaders.<sup>20</sup> Free elections are the foundation but a democratic building will remain a shell unless the elected governments are responsive to the social and economic concerns and rights of their constituents. The government must be transparent and accountable to the

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<sup>16</sup> A. Zain, *supra* note 1, at 15.

<sup>17</sup> J. Plamentz, ‘**Democracy and Illusion**’, at 184 (1973).

<sup>18</sup> R. McKeown, ‘**Democracy in a World of Tensions**’, at 3 (1951).

<sup>19</sup> P Schmitter, ‘*What Is and Is Not Democracy*’ in ‘**Journal of Democracy**’, at 76 (1991).



people. The people must know how their elected representatives arrive at certain decisions or formulate certain policies. Government officials must be able to account for public funds or defend decisions and actions when the electorate demands an explanation. If officials fail to defend their decisions or actions the electorate must be able to remove them from power, either through elections or some other control.

All political parties and minorities with different ideologies or opinions must be tolerated by those with opposing views. All citizens must be treated equally before the law. Franklin D Roosevelt said:

“The basic things expected by our people, of their political and economic systems are simple. They are: equality of opportunity, jobs for those who can work; security for those who need it, the ending of special privileges for the few; and the preservation of civil liberties for all.”<sup>21</sup>

The rule of law must prevail, where the powers of government must be constitutionally limited. “It is increasingly recognised that good governance is an essential building block in the transition to democracy ... good governance comprises the rule of law, effective state institutions, transparency and accountability in the management of public affairs.”<sup>22</sup>

Human rights, especially freedom of expression, assembly and association, must be guaranteed to the people and fiercely protected by the courts and national legislation. A society is often called a democracy when its members are free to form associations, to discuss what they please, to criticise their governments, to propagate their opinions

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<sup>20</sup> Jimmy Carter, *supra* note 4, at xv.

<sup>21</sup> A. Akwasi, ‘*Democracy without Human Rights?*’ in **Human Rights Quarterly**, at 30 (1993).

<sup>22</sup> K. Annan, ‘**Renewal and Transition**’, at iv, (1997).

and to worship God as they feel he ought to be worshipped. "For if the people are not free to form associations, how can they give effective expression to their will? If they may not discuss what they please, how can they make a real choice between the alternatives put to them? These rights are considered the means to a good life or to the full development of the individual."<sup>23</sup>

But above all, the citizens must participate in the democratic process. In a democracy, supreme power is vested in the people. They may only control the government and hold it accountable for its actions if they participate in government. The democratic system provides the rules and the forum for an organised discussion about the preferred model of society and about the most effective way to implement it. This process assumes that there are many valid ideas and interests, and the way to test these ideas is in open and rational debate. The decision of the majority grants a *prima facie* validity to the solution and requires the people to accept it.<sup>24</sup> This means that participation is an essential component of democracy.

Citizens must stand for election, vote in elections, become informed on national issues, debate these issues at civic or community meetings, pay taxes, form pressure groups and political opposition parties to further their interests and object to any government action they oppose. Only then can the democratic process work.

Some argue that the survival of democracy is at risk when there is a high level of participation and a low level of institutionalisation – if the system is incapable of

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<sup>23</sup> R. McKeown, *supra* note 18, at 313.

channelling demands and satisfying them. In the more developed countries this was referred to as the 'crisis of democracy', and some advocated a restriction of participation as the way to deal with the problem until adequate institutions had been established. In Raul Alfonsin's opinion, 'to give democracy such a restricted meaning would devalue it. On the contrary, democracy requires the highest levels of participation in order to enrich the collective debate and to ensure that each citizen is both a part of the system and to promote the ethic of solidarity that is the foundation of the system.'<sup>25</sup> Despite the inconvenience of participatory democracy, we must seek solutions that strengthen participation rather than limit it.

Robert Dahl<sup>26</sup> sets the following as minimum standards for a democracy:

1. There must be control over government's decisions concerning policy and such control must be vested in elected officials.
2. These elected officials must be chosen in frequent and fair elections, where coercion is uncommon.
3. All adults must have the right to run for elective offices in the government.
4. All adults must have the right to vote for their representatives.
5. Citizens should be able to express themselves freely, without fear of punishment, on all political matters.
6. Citizens must have the right to seek out alternative information.
7. Citizens must have the right to form relatively independent associations or organisations including independent political and interest groups.

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<sup>24</sup> R. Alfonsin, 'Foreword' in **'Democracy in the Americas: Stopping the Pendulum'**, at xix (1989).

### **1.3 Direct and Representative Democracy**

It is impossible for a country to operate direct democracy on the national level. This is a system where all the citizens, without the intermediary of elected or appointed officials, participate in making public decisions. This type of system can only be practical with relatively small numbers of people, for example, the ancient Greek city-states, a tribe or a community organisation. As most countries have millions of people, representative democracy is the most common form of democracy in modern times. Citizens elect officials to make political decisions, formulate laws and administer programmes for the public interest. The government thus receives its power from a mandate of its citizens, who agree to be ruled by the government. The government must be accountable to the people. The people have the power to remove government officials who they believe are not acting in their best interests.

### **1.4 Citizen Participation Through Local Government**

Effective democratic governments draw their legitimacy and strength from civil society. They seek to share rather than monopolise power. Citizens can participate more effectively in governments committed to the principle of subsidiarity: allowing decisions to be taken at the lowest level at which they can be made effective.<sup>27</sup>

Society-wide, political participation necessarily implies the decentralisation of decision making.

Decentralisation is generally analysed from two different perspectives: management scientists see it as distribution of control, authority, and power within organisations;

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<sup>25</sup> Ibid., at xx.

and political scientists see it as the distribution of political power through authority. There are two forms of decentralisation. Deconcentration, which involves the top-down delegation of central administration functions and capacity and retaining control at the centre; and devolution, which involves the transfer from the centre to locality of real decision-making powers, and associated financial and manpower resources. The British system of local government, upon which the Zambian system of local government is modelled, is regarded as the primary example of devolution.<sup>28</sup>

‘Local government’ may have a wide variety of meanings. Since it is ‘government’, the system of local government which a country adopts must be part of its governmental or constitutional structure. Since it is ‘local’ it relates to specific portions of the country defined by locality. The institutions of local government are thus governmental organs having jurisdiction not over the whole of a country but over specific portions of it. Local government is also government that is subordinate to some higher governmental authority.<sup>29</sup>

Keith Davies<sup>30</sup> considers local government as ‘emphatically government: the exercise of public power. The power is exercised locally because all governments must operate in localities.’ In many modern and not-so-modern states, local administration often tends to be not much more than central government’s local offices. The central

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<sup>26</sup> R Dahl, ‘Dilemmas of a Pluralist Democracy’, at 11 (1982).

<sup>27</sup> C J Dias, and D Gillies, ‘Human Rights, Democracy and Development’, at 27 (1993).

<sup>28</sup> M Minogue, ‘The Principles and Practice of Good Governance’, in **Law and Governance**, at 3 (1997).

<sup>29</sup> I Jennings, ‘Principles of Local Government Law’, at 1 – 5 (1960).

<sup>30</sup> K Davies, ‘Local Government Law’, at xxxv and 1 (1983).

government must ultimately be in control or else it is not a central government and 'the state' will have no international reality.

Devolving power to regional, local and municipal levels can promote the democratic virtues of citizen participation and government responsiveness through greater efficiency in the design and delivery of public services. Martin Minogue<sup>31</sup> argues that modern public administration is not just about efficiency; it also involves ideas of accountability, participation, and empowerment. The management and delivery of public policies and public services will be more effective if decision-makers are responsive to the needs and preferences of the people; and if public officials have to answer for, and justify, their actions, decisions and management. Decentralisation promises not only to provide accountable and participative local institutions, but also to be a more efficient form of organisation for the planning and delivery of effective public services.

## **1.5 Conclusion**

The term 'democracy' has a useful meaning when it is defined in institutional terms. A democracy is a system of government where the people select their leaders and decision-makers through competitive regular elections. These leaders and decision-makers are accountable to the citizens for their words and actions. The citizens participate in the democratic process. They are free to criticise their rulers, free to associate in order to make demands on their rulers and win support for the policies they favour and the beliefs they hold. All members of society have free access to

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<sup>31</sup> M Minogue, *supra* note 30, at 3.

public offices. Minorities are tolerated and every individual's human rights are respected and protected.

As the modern state is too large for direct democracy where every citizen has a say in how the country is governed, citizen participation is essential in a representative democracy. The people may only control the government and other elected officials, and hold them accountable for their actions, if they participate in government.

One way for the people to participate in and control government is through local government. The people of the various communities elect their representatives but they play a larger role in making decisions that affect their every day lives. This is referred to as devolution of decision-making powers, where such powers are transferred from the central government to the locality. As the communities are smaller, it is therefore easier to practice direct democracy. There is also greater efficiency in the management and delivery of public services at the local level.

## **CHAPTER TWO**

### **THE LOCAL GOVERNMENT ACT 1991**

This chapter examines the steps taken by the MMD government to democratically decentralise the provision of public services by local government under the Local Government Act 1991 by highlighting changes the MMD government has made to the system through amendments of the Act. In doing so, the writer will examine the level of citizens' participation in and control of the decision-making process related to the provision of public services by studying: who selects councillors; how and when councillors are removed from office; who councillors are accountable to; how councils raise funds for their functions; and the central government's control and influence over the system.

Presently, the political system in Zambia is composed of the central and local government. The central government, for purposes of this study, consists of government ministries that include the Ministry of Local Government and Housing which is the central government overseer of local level administration. Local government is a two-facet parallel structure, namely, (a) the provincial and district administration, on the one hand, and (b) the councils on the other. Although Chapter Three will briefly refer to certain offices of the provincial and district administration, this study is concerned with councils.



As explained in Chapter One, local government may be referred to as central government's offices in specific portions of the country. Article 109 of the Constitution of Zambia<sup>1</sup> provides for a system of local government as follows:

- “(1) There shall be such system of local government in Zambia as may be prescribed by an Act of Parliament.*
- (2) The system of local government shall be based on **democratically** elected councils on the basis of universal adult suffrage.”*

In 1991 the former United National Independence Party (UNIP) government, at the apex of political upheavals that called for transparency and democratic governance,<sup>2</sup> enacted the Local Government Act 1991. This Act has been amended by the MMD government but essentially provides, *inter alia*, for an integrated three tier (that is, city, municipal and district council) local administrative system.

## **2.1 Councils**

For local government purposes, Zambia is divided into seventy-two districts,<sup>3</sup> which have been created under the provisions of the Provincial and District Boundaries Act.<sup>4</sup> Section 3 of the Local Government Act 1991 empowers the Minister of Local Government and Housing to establish, by statutory order, for any District, a city council, municipal council, district council, township council or management board, as the case may be. Every council is a body corporate, with perpetual succession, with the power,

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<sup>1</sup> Chapter 1 of the Laws of Zambia.

<sup>2</sup> O S Saasa et al., '**Fiscal Decentralisation and Local Government Finance in Relation to Infrastructure and Service Provision in Zambia**', at 57 (1999).

<sup>3</sup> See the Appendix.

<sup>4</sup> Chapter 286 of the Laws of Zambia.

subject to the Act and any other written law, to do all such acts as a body corporate may do by law and as are necessary for, and incidental to, the carrying out of its functions and powers under the Act.<sup>5</sup>

## **2.2 Constitution of Councils**

Section 9 of the Act provides that a council shall consist of:

- (a) the members of Parliament in the district;
- (b) two representatives of the Chiefs, appointed by all the Chiefs in the district; and
- (c) all the elected councillors in the district.

Politically, city and municipal councils are headed by mayors, while district councils are headed by council chairmen. Mayors, council chairmen and their deputies are elected by the local councillors for a period of one year, renewable once.<sup>6</sup> Administratively, city, municipal and district councils are run by Town Clerks/Council Secretaries, who are appointed by the Minister of Local Government and Housing, and are full-time employees of the council. Their jobs are to implement the decisions of the council and attend to the day-to-day administrative operations of the council. Councils also have directors in charge of the various units of the council. A typical council has at least eight divisions, namely, Administration; Legal; Finance; Engineering; Water and Sewerage;

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<sup>5</sup> Local Government Act 1991, section 2.

<sup>6</sup> Ibid., section 16.

Town Planning; Housing and Social Services; and Public Health.<sup>7</sup> Full-time civil servants are employed to man these divisions.

### **2.3 Functions of Councils**

The Second Schedule of the Local Government Act 1991 sets out the functions of a council. Some of these functions are to: control the keeping and movement of livestock; establish and maintain roads; brew beer; provide and maintain supplies of water; establish and maintain sanitary convenience and ablution facilities; collect refuse; establish and maintain a public transport service; establish and maintain colleges, schools and day nurseries; take and require the taking of measures for the preservation and improvement of public health; and establish and maintain social and recreation facilities and public entertainment.

As councils are agents of the central government, they are required to help fulfil the obligations the government has assumed under the International Covenant on Social and Cultural Rights, the African Charter on Human and Peoples Rights, and the Directive Principles of State Policy embodied in the Constitution of Zambia, under Part IX.<sup>8</sup>

The council may do anything necessary for or incidental to the discharge of any function conferred on it by or under the Act.<sup>9</sup> Councils are empowered to make by-laws for the

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<sup>7</sup> O S Saasa et al., *supra* note 2, at 58.

<sup>8</sup> The Inter-Africa Network for Human Rights and Development's (AFRONET) Zambia Human Rights Report, at 59 (1998).

<sup>9</sup> Local Government Act 1991, section 62(2).

good rule and government of their areas. To be valid, such by-laws have to be confirmed by the Minister, who may amend or revoke them.<sup>10</sup>

The councils thus have numerous functions that affect the daily lives of their residents. The quality of life enjoyed by the people in any locality depends on the extent to which the local council provides the various services it is bound, by law, to provide.

## **2.4 Financing the Council**

The Minister of Local Government and Housing may, out of money appropriated by Parliament for that purpose, make grants or loans of money to a council for the purposes of the discharge of its functions. The central government may make specific grants to the councils for: water and sanitation; health services; fire services; road services; police services; primary education; and agricultural services.<sup>11</sup>

A council prepares annual estimates of revenues and expenditure and submits these to the Minister of Local Government and Housing for his approval sixty days before the commencement of its financial year.<sup>12</sup> This estimate may be amended. A council shall not incur any expenditure that is not included in the annual estimate. These annual estimates/budgets of a council are open to inspection by any interested person.<sup>13</sup>

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<sup>10</sup> Ibid., Part VIII.

<sup>11</sup> Ibid., section 45.

<sup>12</sup> Ibid., section 39(1).

<sup>13</sup> Ibid., section 39(5).

Section 47 of the Act was amended by the Local Government (Amendment) Act, No. 19 of 1992, authorising councils to borrow sums of money required to discharge their functions without seeking ministerial approval. A council, however, is prohibited from borrowing money from a foreign source without ministerial approval.<sup>14</sup> It may impose levies on: persons owning or occupying property; carrying on a business, trade or occupation; or on the purchase or sale of a commodity within the area of the council. A council may also impose fees and other charges on certain services. These levies (fees and charges) shall be regulated by by-laws or imposed by resolution of the Council.<sup>15</sup> Section 70 of the Act was amended by Act No. 19 of 1992 to give power to the Minister to control fees and charges in respect of owner rates and personal levy.<sup>16</sup>

## **2.5 Citizen Participation and Control of the System**

Citizens participate in the local government system through voting for councillors and/or standing for election. The area of a council is divided into wards and polling stations are established in each ward. A person must qualify for election as a councillor under the Local Government Elections Act.<sup>17</sup> Under section 16 of the Local Government Elections Act a person, to qualify for elections, must: be a citizen of Zambia; have attained the age of twenty-one years; and ordinarily reside in the area of that council. A person shall not qualify to stand for elections as a councillor if he/she: has been declared to be of unsound mind; has been sentenced to prison or is under the sentence of death; is an undischarged

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<sup>14</sup> Ibid., section 48.

<sup>15</sup> Ibid., sections 69 and 70.

<sup>16</sup> The proviso to section 70 of the Local Government Act 1991 says that a council shall not impose any fees or charges in respect of owners rates and personal levy without the prior approval of the Minister.

bankrupt; is an officer or an employee of a council; has not, on the day of nomination, paid any rate, charge or tax due to any council which he has been notified of; or he is an election officer.<sup>18</sup> Any person convicted of corrupt or illegal practices by a court of law after an election petition under the Local Government Elections Act shall not be nominated for elections as a councillor for a period of five years from the date of that conviction.<sup>19</sup>

A councillor shall hold office for the duration of the period expiring immediately before the result of the next election held in respect of that council.<sup>20</sup> He shall, however, vacate the office if: he dies or resigns from his office; circumstances arise that disqualify him for election as a councillor; he accepts any remuneration for or on account of anything done as a councillor, other than an authorised fee or allowance; he ceases to be a member of the political party that endorsed him as an election candidate; he resigns from a political party to become an independent; he ceases to be an independent councillor and joins a political party; or he absents himself from three consecutive ordinary council meetings without leave.<sup>21</sup>

The decision-making body of the council is the Full Council which is made up of all the elected ward councillors and six co-opted councillors who have been chosen to serve as representatives of the business community. Co-opted councillors have full voting rights

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<sup>17</sup> Chapter 282 of the Laws of Zambia.

<sup>18</sup> Local Government Elections Act, section 17(1).

<sup>19</sup> Ibid., section 17(2).

<sup>20</sup> Local Government Act 1991, section 13.

except on financial issues where they must abstain.<sup>22</sup> The ordinary residents of the area of the council do not take part in any of the decision-making processes. They may sit in Council meetings but they are not allowed to make any contributions to the discussion. The ward councillor represents the interests of the people in his ward.<sup>23</sup> The public is asked to leave the public gallery when internal confidential matters arise.<sup>24</sup> This compromises the transparency of the decision-making process.

There are no provisions under the Local Government Act 1991 for the residents to dismiss a councillor because they are not satisfied with his performance, (that is, hold him/her accountable for his/her actions). Mayors, council chairmen and their deputies may be removed from office by their fellow councillors by a two-thirds majority of all councillors of the council, or when they die or cease to be councillors.<sup>25</sup> It is the councillors and not the public who may remove these officers. The public may thus only remove a councillor from office through the ballot.

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<sup>21</sup> Ibid., section 14(1), as amended by section 6 of the Local Government (Amendment) Act, No. 30 of 1995.

<sup>22</sup> O S Saasa et al., *supra* note 2, at 57.

<sup>23</sup> Miss Ireen Mulundika, Assistant Director of Housing at the Lusaka City Council, claimed, during an interview with the writer on 13<sup>th</sup> July 1999, that citizens' interests may be represented through Civil Society Organisations (CSOs) or Community Based Organisations (CBOs), as they are sometimes called. These are usually found in informal settlements, for example Kanyama Township in Lusaka. Communities are zoned, and the people in a particular zone elect the Zone Development Committees. The Forum for Zone Representatives is made up of two or three members of each Zone Development Committee in the community. The Residents Development Committee is elected from the Forum for Zone Representatives. The area councillor acts as a link between the community, Council and other interested parties such as Non-Governmental Organisations (NGOs) and other donor-funded project co-ordinators. The councillor is also an ex-officio member of the Residents Development Committee. Miss Mulundika said that these Residents Development Committees have proved to be very effective: the residents work with the Council in order to achieve the needs they wish to be met; and the Council also provides the residents with training in skills in conjunction with some NGOs. The Residents Development Committee is not provided for in any statute but they must be registered by the Registrar of Societies under the Societies Act.

<sup>24</sup> Local Government Act 1991, section 29.

<sup>25</sup> Ibid., sections 16 to 18.

## **2.6 Central Government's Control and Influence Over Councils**

The Minister of Local Government and Housing exercises considerable control over the local government system. Under the Act, he may, for example

- establish councils or management boards<sup>26</sup>
- review minutes of meetings held by councils<sup>27</sup>
- alter the number of councillors by statutory order<sup>28</sup>
- approve annual estimates of councils<sup>29</sup>
- make grants or loans of money to the councils, approve other sources of finance and expenditure of the council<sup>30</sup>
- make regulations for the control and management of the finance of the councils<sup>31</sup>
- approve by-laws made by the council<sup>32</sup>
- appoint a public officer to audit the council's accounts<sup>33</sup>, give directions for compliance with auditors' reports<sup>34</sup> and suspend or withhold grants if the council does not comply with such reports<sup>35</sup>
- establish provincial local government appeals boards<sup>36</sup>
- confer additional functions on the council<sup>37</sup>

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<sup>26</sup> Ibid., section 3.

<sup>27</sup> Ibid., section 30(3).

<sup>28</sup> Ibid., section 9(2), as amended by Act No. 19 of 1992 and Act No. 30 of 1995.

<sup>29</sup> Ibid., section 39(1).

<sup>30</sup> Ibid., section 45(1).

<sup>31</sup> Ibid., section 84(1).

<sup>32</sup> Ibid., section 82.

<sup>33</sup> Ibid., section, 52(1).

<sup>34</sup> Ibid., section 56(4).

<sup>35</sup> Ibid., section 56(5).

<sup>36</sup> Ibid., section 93.

<sup>37</sup> Ibid., section 75.



- appoint a Local Government Administrator after suspending all councillors from performing any or all of their functions; suspend any officer or employee of the council from exercising the powers and functions of his office on such terms and conditions as he may think fit; and dissolve the council after receiving prior approval of the President.<sup>38</sup>

Such extensive influence has undermined the concept of autonomy of local government, as is discussed below.

## **2.7 Result of Framework of the System Under the Local Government Act 1991**

The framework of the local government system described above has not lead to an effective promotion of democracy at the local level. There has thus not been the development envisaged by democratic decentralisation.

This is evidenced by the findings of the Inter Africa Network for Human Rights and Development (AFRONET) 1998 Report on Human Rights in Zambia,<sup>39</sup> which claims that councils have dismally failed in the discharge of their functions in 1998. Most councils have failed to provide clean, safe water to their residents. Residents in high-density areas, more often than not, have no access to running water. Councils actually charge residents for water which they do not even supply.<sup>40</sup> Refuse is not collected on a regular

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<sup>38</sup> Ibid., section 88(1).

<sup>39</sup> The Inter-Africa Network for Human Rights and Development's (AFRONET) Zambia Human Rights Report, at 59 (1998).

<sup>40</sup> Ibid.

basis. For example, in June 1998, 30, 000 tonnes of refuse was generated; 3, 029 tonnes were collected by the Lusaka City Council while 561 tonnes was collected by private operators.<sup>41</sup> Most councils do not maintain efficient sewer disposal facilities. Few councils prevent pollution and provide recreational facilities for their residents. Roads are in a terrible state of repair due to lack of maintenance. Few councils provide street lighting. Few councils maintain adequate decent public toilets. Planning regulations for the construction of buildings are not followed. Most councils have failed to provide decent housing for their residents. Every town has unsightly unplanned settlements. Councils do not run schools, colleges and day nurseries. Most councils do not have fire-fighting equipment.<sup>42</sup>

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<sup>41</sup> Ibid.

<sup>42</sup> Ibid., pg. 60 to 61.

## CHAPTER THREE

### HEALTH AND EDUCATION BOARDS

In addition to the decentralisation provided for by the Local Government Act 1991, the government has embarked on a deliberate policy to decentralise the functions of certain Ministries. This chapter will describe the government's steps to set up Health and Education Boards as part of its decentralisation programme. It will examine: who selects Board members; how and when Board members will be removed from these Boards; who the Board members are accountable to; how these Boards will raise revenue for their functions; and how much central government intervention there will be.

The following quote, published by the Ministry of Education in 1997,<sup>1</sup> aptly summarises the problems that Ministerial decentralisation hopes to address:

*“The System of Education in Zambia as it stands now, is highly centralised with virtually all decision-making power vested in the Ministry of Education Headquarters. Almost all matters regarding planning and management are decided upon by the Ministry of Education Headquarters in liaison with Provincial Education Offices. The District lost the power and authority it once exercised in the management of schools. The school and college authorities also lost power to manage their institutions. Further more the existing lines of answerability and communication channels are very long and winding creating unhealthy delays in decision-making.... The effects of this system are inefficiency, marginalised community involvement in what goes on in schools, thereby eroding the sense of ownership that parents and community once had and should have in the delivery of education services. It has discouraged innovation and initiative*

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<sup>1</sup> Ministry of Education, Restructuring and Decentralisation Committee, ‘Decentralisation of the Education System in Zambia: Institutions Roles, Functions and Relationships’, (1997).

*leading the system to misallocation and misapplication in the utilisation of resources....”<sup>2</sup>*

The Government of Zambia’s decision to decentralise and establish Health and Education Boards is meant to take decision making closer to the affected communities in the hope of enhancing local participation.<sup>3</sup> As an example, the health sector reform programme seeks to provide all Zambians with ‘equity of access to cost-effective quality health care as close to the family as possible’<sup>4</sup> and aims to devolve and transfer functions and decision-making authority from the national headquarters and provincial offices to the districts.

The new health and education systems are a maze of numerous boards and committees. This study will only concentrate on those features that the writer believes affect citizen participation and accountability of the boards to the communities they are designed to serve.

### **3.1 The Education Boards**

The Education Act has not yet been amended to address the new reforms, nor has a White Paper been issued. The writer will thus rely on interviews with personnel from the Ministry of Education and publications of the Ministry.

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<sup>2</sup> Ibid., at i.

<sup>3</sup> Ibid.

<sup>4</sup> Ministry of Health ‘National Health Strategic Plan 1998 – 2000: From Vision to Reality’, at 26

### **3.1.1 Organisational Structure and Functions**

*The Ministry of Education* will retain responsibility for key national functions such as: drafting legislation; formulating policies; planning at national level; mobilising and allocating resources; developing the national curriculum; setting national standards; collecting and analysing data; and providing effective mechanisms for accountability.<sup>5</sup>

*The Provincial Education Office's* functions are to co-ordinate, plan and evaluate the system at the provincial level.<sup>6</sup>

*The District Education Board* is responsible for managing basic education programmes in the district, especially in terms of: implementing educational policy on basic education; mobilising resources to meet the district's needs; planning programmes and/or projects to implement policy; establishing and maintaining mechanisms for accountability; managing human resources within the board; and ensuring that standards are maintained.<sup>7</sup>

**Each school and college shall have a Board.** Each Education Board must carry out functions delegated to it by the Minister of Education. It is expected that an Education Board will work together with the local community in: devising rules and regulations for the schools for which the Board is established; mobilise resources locally; and developing

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(1998).

<sup>5</sup> Ministry of Education, Restructuring and Decentralisation Committee, *supra* note 1, at 2.

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*, at 3.

rewards and incentives for its staff.<sup>8</sup> Each Board, however, will consist of duly appointed members and a Management Team responsible for the day to day running and operations of the institutions within the Board. (These Board members are equivalent to a company's Board of Directors). The Parents Teacher Association (PTA) shall exist parallel to the Board. Boards shall present their annual work plans, progress and financial reports to the annual PTA general meeting, while PTAs will also in turn present their progress and financial reports to a duly called for Board meeting.<sup>9</sup>

### **3.1.2 Composition of Boards**

(a) *The District Education Board* shall consist of the following members appointed by the Minister:

- The District Education Officer (the board's Secretariat) who shall be an ex-officio member;
- Five members of the **local** community nominated by the District Council;
- Two representatives of a Teacher's Union in the District;
- One representative of the proprietors of the Grant-Aided Schools in the District nominated by proprietors;
- Four head teachers, one from a secondary school, another from a primary or basic school nominated by the respective Head Teachers Associations in the District;

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<sup>8</sup> Ibid., at 2.

<sup>9</sup> Ibid., at 5.

- Two representatives of PTAs, non-teaching members of PTA, in the district, one from a secondary school, another from a primary or basic school nominated by the respective school PTAs in the District;
  - The Board members will elect the chairperson of the Board who shall not be a Ministry of Education official.<sup>10</sup>
- (b) Examples of school and college boards are the Secondary School Board and the Teachers Training College Board. The compositions of these boards are almost identical so only the composition of the secondary school board will be examined.

***The Secondary School Board*** shall consist of the following members appointed by the Minister:

- The Chairperson of the PTA at the school;
- The head teacher of the school shall be an ex-officio member;
- Two members of the teaching staff nominated by the teaching staff of the school;
- Two representatives of the student population provided that in co-education schools, each sex shall elect its representative;
- Four members of the community nominated by the Local Authority in which the board is established, including the local councillor;
- One representative from the Teacher's Union nominated by the respective Teacher's Union in the District;
- District Education Office's representative, as an ex-officio member;

- The board shall elect a chairperson from among its members, excluding members of staff and pupils.<sup>11</sup>

### **3.1.3 Selection of Board Members**

#### **(a) *The District Education Board***

- (i) The District Education Officer (DEO) must request the District/Municipal/City Council at a full Council meeting to select one local councillor and propose two residents of the District other than councillors to represent the local community on the Board.
- (ii) Where there is only one grant-aided school proprietor, he/she becomes a member of the board but where there are several of them the DEO will write to proprietors of Grant Aided Schools requesting them for a nomination of one person.
- (iii) The DEO will write to Head Teachers' Associations for primary, Basic and Secondary schools requesting each of them to elect its own candidate to sit on the board.
- (iv) The DEO will convene a general PTA meeting at which one PTA representative will be elected.
- (v) The District Teachers' Union will nominate a representative to be a member of the board.

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<sup>10</sup> Ibid., at 10.

<sup>11</sup> Ibid.



- (vi) The DEO will receive and compile all names of the elected, selected and nominated members and submit them to the Minister for appointment to the board.<sup>12</sup>

(b) ***The Secondary School Boards***

- (i) The District Education Officer (DEO) will write to Heads of the Secondary schools in the district asking them to establish boards. He shall at the same time send guidelines on the composition of the school boards.
- (ii) The Head of a secondary school shall ask the members of staff to elect one representative to sit on the board. In co-education institutions one representative from each sex will be selected.
- (iii) The DEO will request the Local Government Authority to nominate two members of the community to sit on the Secondary School Board.
- (iv) The Head teacher will submit the list of members to the Permanent Secretary with a copy to the Provincial Education Officer for appointment by the Minister.<sup>13</sup>

**3.1.4 Tenure of Office of Any Board Member**

The tenure of office of the Board members that has been proposed in the Education Reforms<sup>14</sup> is as follows. Other than ex-officio members, Board members will serve for a

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<sup>12</sup> Ibid., at 11.

<sup>13</sup> Ibid., at 12.

<sup>14</sup> As outlined by Mr. Arnold Chengo, head of the Ministry of Education Restructuring and Decentralisation Planning Unit, during an interview with the writer on 3<sup>rd</sup> September, 1999.

period of three years from the date of appointment. They may be re-appointed for a further period of three years.

A Board member may be removed if: he dies; he ceases to be qualified for appointment as a Board member; he becomes involved in a criminal act; he has an economic interest in the Board or school; he is absent without reasonable excuse from three consecutive meetings; he is declared insolvent or bankrupt; he is of unsound mind; he resigns by notice in writing to the Minister; or a two thirds majority of Board members in a duly convened meeting become convinced that a particular member has committed gross impropriety which may include mismanagement of assets or conduct against the policies of the Board.

The proposed amendments to the Education Act only permit the Minister of Education, upon his discretion, to revoke the appointment of all Board members and appoint others to perform their functions within three months if the Board fails to perform its functions. He may only do so on the advice of the District Education Officer and the Provincial Education Officer.

### **3.1.5 Financing the Boards**

Sources of income for Boards are:<sup>15</sup> grants from Central Government; fees and charges; loans from financial institutions; levies for specific purposes; PTA funds and Production Unit; charitable organisations; donations from foreign donors and the local community;

commissions and interests; hire of school facilities; any other business and fund raising ventures.

The Boards will not be allowed to become commercial enterprises. The State will give money to a community to construct new schools if the community can provide twenty-five percent of the cost of construction, for example, by the provision of labour and materials. The State and parents will thus share the cost of constructing schools. Teachers' salaries will be paid by the government.<sup>16</sup> The Board Management Team will be government employees paid by the government.<sup>17</sup>

Should a Board borrow money from a lending institution, the lending institution will not be able to execute judgement against the property of the Board.<sup>18</sup>

## **3.2 The Health Boards**

### **3.2.1 Organisational Structure and Functions**

The Health Post provides basic health services for 3, 500 people in rural areas and 10, 000 people in urban areas.<sup>19</sup> The Health Centre is the first contact with the formal health care, being a clinic with up to 30 beds, serving a rural population of about

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<sup>15</sup> Ministry of Education, 'Financial Guidelines', at 6 (1997).

<sup>16</sup> A. Chengo, supra note 14.

<sup>17</sup> Ministry of Education, supra note 15, at 6.

<sup>18</sup> A. Chengo, supra note 14.

<sup>19</sup> Ministry of Health, supra note 4, at 28.

10, 000 people and an urban population of about 30, 000 to 50, 000 people (both with a radius of 30km).<sup>20</sup> Following the Health Centre is the first referral level district hospital, serving a population of 80, 000 people, then the second and third referral level hospitals.<sup>21</sup>

**The Ministry of Health** is the policy making body for the whole health sector.<sup>22</sup>

**The Central Board of Health** is established by section 3 of the National Health Services Act, No. 22 of 1995. This is a body corporate with perpetual succession. The functions<sup>23</sup> of the Board are: to supervise, advise and monitor the technical performance of management boards; to set financial objectives and the framework for management boards; to provide technical consultancy to management boards and assisted non-governmental health providers; to co-ordinate the technical capacity of management boards; with the approval of the Minister, to perform the functions of failing management boards; to advise the Minister on ways to encourage and promote a social and physical environment conducive to good health and all matters affecting public health; to advise the Minister on the role of the public and private sector in providing health care; and to do all such things connected to or incidental to the Act as the Minister may direct.

The Central Board of Health is the national administrative agency for the overall technical management of health services. It implements the government's health policies.

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<sup>20</sup> Ibid., at 29.

<sup>21</sup> Ibid., at 30.

<sup>22</sup> Ministry of Health, Health Reforms Implementation Team Secretariat '**District Guidelines: Roles, Functions and Responsibilities**', at 4 (1995).

Planning, personnel management, service delivery, funding, resource allocation and revenue generation, which were functions of the Ministry of Health, are now the responsibility of the Central Board of Health.<sup>24</sup>

The Central Board of Health works through **management boards at district and second and third referral hospital levels**. Management boards for any government hospital or health service are established by section 11 of the National Health Services Act, No. 22 of 1995. These are also bodies corporate with perpetual succession. Their functions are to basically manage the hospital or health services.<sup>25</sup>

Each District shall have a **District Health Board**. Specific duties of these boards include: approval of all health development plans, budgets and progress reports; approval of initiatives for mobilisation of financial and other resources; facilitating the process of establishing Neighbourhood Committees; providing mechanisms to create conducive working environments which motivate and retain qualified and well-performing staff.<sup>26</sup>

### **3.2.2 Composition of Boards**

*The Central Board of Health* shall consist of:<sup>27</sup>

- The Dean of the School of Medicine;
- The Chairperson of the Medical Council of Zambia;

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<sup>23</sup> National Health Services Act, No. 22 of 1995, section 4.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid., section 12.

<sup>26</sup> Ministry of Health, Health Reforms Implementation Team Secretariat, *supra* note 22, at 5.

- The Chairperson of the Nursing Council of Zambia;
- One representative of the Zambia Medical Association;
- One representative of the Churches Medical Association;
- A representative of the National Traditional Healers Association;
- A representative of the Zambia Association of Chambers of Commerce and Industry;
- A representative of the Attorney-General;
- A representative of the Ministry of Local Government and Housing; and
- Seven persons appointed by the Ministry.

*A management board* shall consist of not less than five and not more than fifteen members, depending on the size of the hospital or health service.<sup>28</sup> The members shall include:

- A representative from the Ministry of Community Development and Social Welfare;  
and
- A representative of the area health board.

*The District Health Board* shall comprise of the same type of members as the management board.<sup>29</sup>

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<sup>27</sup> National Health Service Act, section 8.

<sup>28</sup> Ibid., section 14.

### **3.2.3 Selection of Board Members**

Apart from the ex-officio members of the Central Board of Health such as the Dean of the School of Medicine, the representatives of the various organisations listed under section 3.2.2 are nominated by those organisations.

The members of the management board shall be appointed by the Minister on such terms and conditions as he may think fit.<sup>30</sup> The Chairperson and the Vice-Chairperson shall be appointed by the Minister.<sup>31</sup>

The district will, through the Council Secretary, nominate the names of members of the District Health Board to the Minister of Health for appointment.<sup>32</sup>

No employee of a board may be appointed as a board member.<sup>33</sup>

### **3.2.4 Tenure of Office of Any Board Member**

A member of the board shall hold office for a period of three years from the date of appointment and may be re-appointed for a like period.<sup>34</sup> A member may resign by giving one month's notice in writing to the Minister. The board may, at any time, with the approval of the Minister, remove any person from the office of member if that person has been absent from three consecutive meetings of the board and that absence was in the

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<sup>29</sup> Ministry of Health, supra note 23, at 6.

<sup>30</sup> Ibid., section 14(5).

<sup>31</sup> Ibid., section 14(6).

<sup>32</sup> Ministry of Health, supra note 23, at 6.

opinion of the board without reasonable excuse.<sup>35</sup> When there is a vacancy before the expiry of the term of office, the Minister may appoint another person to be a member in place of the member who vacates the office.<sup>36</sup>

### **3.2.5 Financing the Boards**

Section 10(1) of the Schedule to the National Health Services Act, No. 22 of 1995, provides that the funds of the board shall consist of such moneys as may:

- Be appropriated by Parliament for the purposes of the Board;
- Be paid to the Board by way of fees, levy, grants or donations; or
- Vest in or accrue to the Board.

The Minister will have to approve any grants or donations from any source outside Zambia.<sup>37</sup> The Minister will also have to approve of any loans the board may take out.<sup>38</sup>

All salaries, allowances, loans to staff and other expenses shall be paid from the funds.<sup>39</sup>

A board shall submit to the Minister a report of its financial activities for each accounting year.<sup>40</sup>

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<sup>33</sup> National Health Services Act, section 8(2).

<sup>34</sup> Ibid., section 2(1) of the Schedule.

<sup>35</sup> Ibid., section 3 of the Schedule.

<sup>36</sup> Ibid., section 4 of the Schedule.

<sup>37</sup> Ibid., section 10(2)(a) of the Schedule.

<sup>38</sup> Ibid., section 10(2)(b) of the Schedule.

<sup>39</sup> Ibid., section 10(3) of the Schedule.



### **3.3 Level of Citizen Participation**

#### **3.3.1 The Education Boards**

The little information available on Education Boards shows that members of the local community will be chosen by the community to sit on Education Boards. Local communities will decide when and where to build new schools, sharing the cost of construction with the government. The PTA and the Board will work together in the management of these schools.

#### **3.3.2 The Health Boards**

Popular participation is one of the key issues in the health reforms. Thus, the structure of the health sector system is one of two parallel structures: a popular structure through committees and boards, and a technical structure through technical teams, offices and the Central Board of Health and the Ministry of Health Headquarters. The technical health service delivery system is intersected at four levels by representation of popular and political concerns: at the national level by Central Board of Health Management Boards, at second and third referral hospitals through hospital management boards, at the district level through the district health boards, and at the community level by the Health Centre Committees and Neighbourhood Committees.<sup>41</sup>

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<sup>40</sup> Ibid., section 13.

<sup>41</sup> Ministry of Health, *supra* note 4, at 28.

**The Neighbourhood Health Committee** is a group of people selected on the basis of their age and trust by the community. They are often composed of elderly men and women who live in and know the area. They spearhead the development of community based health activities for the people in the area around the Health Post.<sup>42</sup> The government hopes that these committees will 'promote and contribute an increased sense of ownership and responsibility by the community for the health services and care in the neighbourhood to improve their own health status'.<sup>43</sup> The functions of the Neighbourhood Health Committees are to: identify community needs and integrate these into Health Centre action plans; be the link between community, Health Centre staff and other interested parties; initiate and participate actively in health related activities at household and community level; develop mechanisms for sustainability for community based health case workers; initiate and strengthen all local development initiatives with other sectors, such as within education, agriculture, housing, social welfare etc.; identify training needs for and support community based health care volunteers; collect relevant community based data; and mobilisation and accountability of local resources.<sup>44</sup>

These committees are responsible to the community and the Health Centre Committee. They are composed of not less than 5 and not more than 15 members. At least half of the members should be women. A chairman, secretary and treasurer have to be identified among the members. The District Health Board is to facilitate the process of establishing the Neighbourhood Health Committees.

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<sup>42</sup> Ibid., at 29.

<sup>43</sup> Ministry of Health, *supra* note 23, at 18.

**The Health Centre Committee** is composed of one or two representatives from each of the Neighbourhood Health Committees in the catchment area, and one or two representatives from the Health Centre. A chairman, secretary and treasurer have to be identified. At least half the members should be women.<sup>45</sup> These committees meet monthly and their functions are to: consolidate or prioritise community needs; initiate and participate actively in health related activities at household and community level; support community based health care volunteers; support all local development; mobilise and account for resources; consolidate, analyse, use and disseminate data; contribute to preventive maintenance and security of the Health Centre; and monitor and evaluate progress.<sup>46</sup> The Health Centre Committee must be consulted on the fees to be paid at the Health Centre and on issues related to performance of the Health Centre staff. It is responsible to the District Health Board.<sup>47</sup>

The implementation of this strategy of ministry decentralization, if successful, would go a long way in fostering decentralization by ensuring local participation in decision-making processes relating to the provision of essential services which should be the essence of democracy at the local level.

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<sup>44</sup> Ibid.

<sup>45</sup> Ibid., at 21.

<sup>46</sup> Ibid.

<sup>47</sup> Ibid., at 30.

## CHAPTER FOUR

### ANALYSIS OF EXTENT OF DEMOCRATIC DECENTRALISATION

This chapter will analyze the extent of democratic decentralisation under the Local Government Act 1991 and the Health and Education Boards.

In Chapter One 'decentralisation' was defined as the distribution of political power through authority. Devolution was said to be a type of decentralisation where there is a transfer from the centre to the locality of real decision-making powers. Deconcentration was said to be the other type of decentralisation where there is a top-down delegation of central administration functions but control is retained at the centre.

The major elements constituting decentralisation are:<sup>1</sup>

- *Delegation, responsibility and autonomy.* This is indicated by the degree of freedom left to the local authority to decide on which services to offer their citizens, and how to implement them.<sup>2</sup> The local authority should be able to generate its own funds to pay for the delivery of public services, set tax rates and be able to respond quickly to any problems that may arise. Regulations must clearly spell out the functions or tasks and responsibilities of the local authority.
- *Accountability.* Quality public services must be provided as efficiently as possible.

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<sup>1</sup> O S Saasa et al., 'Fiscal Decentralisation and Local Government Finance in Relation to Infrastructure and Service Provision in Zambia', at 31 (1999).

<sup>2</sup> Ibid., at 34.

Managers must be able to freely organise their human resources.

#### **4.1 Decentralisation Under the Local Government Act**

The question under this section is whether the Local Government Act 1991 encourages decentralization through the transfer of decision-making authority from the central government to the local authorities. Do local authorities have the autonomy to raise funds and implement decisions?

Notwithstanding the election of a seemingly autonomous council by local communities, the manner in which these local authorities are able to implement developmental objectives is to a very great extent determined by central government and, like in the Second Republic, by party politics.

Although the Local Government Act 1991 seeks to promote the voice of the people, the selection of candidates for council elections is largely determined by the national secretaries of the respective political parties. In many cases the party national secretaries do not take into account the preferences of the local party members.<sup>3</sup> This is undemocratic as the people themselves do not choose the representative of their choice.

Section 2.6 of Chapter 2 lists the extensive powers of central government over the operations of the council, thereby negating the essence of local participation. This leads

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<sup>3</sup> J Chileshe & G Mudenda, 'Analytical Paper on Political Developments, the Democratisation Process, the Human Rights Situation and Good Governance', at 4 (1997).

to the interests of central government being the overriding consideration in developmental objectives. An example of this is the poor funding of local government which has been a major factor contributing to the very poor performance of local government institutions. Central government has grossly undermined local government. For example, in the 1998 budget, the Ministry of Local Government and Housing was only allocated K2.4 billion, to be shared between the Ministry and the councils.<sup>4</sup>

The financial constraints of Mufumbwe District Council illustrate how chronically cash-strapped most councils are. In 1998 the council's total wage bill per month was K5.5 million. The government grant was only K1.7 million. The council has only two houses, no offices, and only generates an income of K500, 000 per month. A total of K2.2 million per month was totally insufficient to meet administrative costs, wage bills, settle debts and provide essential services such as health and education.<sup>5</sup>

The majority of councils do not generate any adequate income mostly because of central government intervention. The Minister has the power to determine rates and levies, and without regard to the operational needs of the councils, central government, under section 6 of the Rating Act,<sup>6</sup> exempted public libraries, museums, cemeteries, churches, sports clubs, farms, foreign missions and parastatals such as the Tanzania-Zambia Railway Authority from paying rates.

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<sup>4</sup> The Inter-Africa Network for Human Rights and Development (AFRONET), Report on Human Rights in Zambia, at 60 (1999).

<sup>5</sup> Ibid.

<sup>6</sup> Act No. 12 of 1997.

Councils' only dependable source of revenue was the rent from council houses, but this has been lost because of central government's policy to sell the houses to sitting tenants.<sup>7</sup> Local authorities were not party to the decision-making process that led to the foregoing. The failure by the councils to meet their wage bills demoralises council employees and discourages professionals from seeking employment. Almost all councils are retrenching workers in order to reduce their wage bills. The major constraint in effecting retrenchments has been lack of funds from central government to pay retrenchment packages. The lack of human resources results in councils' inability to design and implement public policy.<sup>8</sup>

Political interference from the Minister of Local Government and Housing, and other politicians, also hinders the performance of councils. For example, in 1998 the Minister suspended the Ndola, Samfya, Choma and Serenje District Councils. One of the reasons for the suspension of the Ndola District Council was that the councilors refused to obey his instructions to renew the Town Clerk's contract.<sup>9</sup> The Deputy Minister for the Lusaka Province reversed the council's decision to close Munali Secondary School for health reasons.<sup>10</sup> Many other instances where councilors' decisions have been undermined have been reported by the media.

The report on Fiscal Decentralisation and Local Government Finance in Relation to

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<sup>7</sup> The Inter-Africa Network for Human Rights and Development (AFRONET), Report on Human Rights in Zambia, at 62 (1999).

<sup>8</sup> Ibid.

<sup>9</sup> Ibid., at 65.

Infrastructure and Service Provision in Zambia<sup>11</sup> claims that weaknesses in the local government system that hinder the progress of initiatives can be summarised as follows:

- Political interference in the operations of institutions at the local government level by central government has continued.
- The inclusion of Members of Parliament in councils as councilors has created friction in councils.
- Bureaucratic requirements that council bye-laws should be approved by central government.
- The requirement that central government determines the acceptability of council minutes, including resolutions.
- Councils do not design programs to propagate civic responsibilities to communities.
- There is no forum for councilors to meet and discuss issues with their electorate.

In rural areas, councilors have no effective means of reaching their electorate due to vastness of their wards and inadequate logistical support.

- Councils have not sensitised the general public on their rights to inspect council budgets, minutes, audited accounts and to attend council meetings as provided for under the Local Government Act 1991.
- Citizens are only involved at election time but thereafter, there is no mechanism in place to enable them influence local affairs and hold the elected representatives accountable.

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<sup>10</sup> Ibid.

<sup>11</sup> O S Saasa et al., *supra* note 1, at 60.



- Officers, both in central and local government service, are only accountable to their appointing authorities or within their respective ministries and not to the general public in the provision of goods and services.
- The election of mayors or council chairmen by fellow councilors dilutes his/her responsibility to be accountable to the general public.
- Lack of commitment on the part of central government and local authorities to sensitise the general public on their civic obligation to participate in local affairs.
- No formal structure for community sensitisation and awareness exist at local level.

The report concludes that the amendments made to the Local Government Act 1991 by the MMD Government have been focused more on the control than empowerment of councils.<sup>12</sup>

The following instances are blatant examples of central government's lack of political will to democratically decentralise local government. Central government has today still not considered and approved the Decentralisation Policy document<sup>13</sup> which was prepared in June 1997. Secondly, 'due to a host of reasons, not least the less-than-enthusiastic government interest to call for these, no local government elections were held in 1995 when they were due. As a result of considerable pressure from civil society and donors, the government facilitated the holding of elections on 30 December 1998, three years

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<sup>12</sup> Ibid., pg. 163.

<sup>13</sup> Government of the Republic of Zambia, 'National Decentralisation Draft Policy: Towards Empowering the People,' (1997).

overdue.’<sup>14</sup>

Harry Blair defines ‘democratic decentralisation, or democratic local governance’ as ‘a system in which meaningful authority is devolved to local bodies that are accountable and accessible to local citizens, who in turn enjoy full human and legal rights and political liberty, such as freedom of speech and assembly.’<sup>15</sup>

There has been no democratic decentralisation of local government as meaningful authority has not been given to local bodies. The central government is still in control of the operation of local authorities. There has been deconcentration rather than devolution. These local bodies are not accountable to local citizens, and nor do they operate in a transparent democratic environment.

#### **4.2 Decentralisation by the Creation of Health and Education Boards**

The question under this section is also whether the creation of Health and Education Boards encourage decentralization through the transfer of decision-making authority from the central government to these boards. Do Health and Education Boards have the autonomy to raise funds and implement decisions?

Central government, through the Ministries of Health and Education, is still the policy-making body. There is no grass-root support when formulating policies as the people in

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<sup>14</sup> O S Saasa et al., *supra* note 1, at 161.

<sup>15</sup> Harry Blair, ‘**Spreading Power to the Periphery: An Assessment of Democratic Local Governance,**’

the local communities where these Boards serve do not take part in the policy-making process. The Health and Education Boards merely implement policies made by central government and have been given decision-making powers to do so.

Participation of the local community in the provision of health and education has therefore only been slightly enhanced. In the provision of education services, the community may decide where to build a school and contribute to the construction of schools by providing labour and a few building materials. Under the health reforms, the Neighbourhood Health Committee and the Health Centre Committee promote citizen participation. Members, among other things, identify community needs and these are integrated into action plans. They also mobilize and allocate local resources.

Board members are not elected but **selected** every three years from a wide range of people, including professionals, laymen, residents and councilors, who are nominated by their peers. The respective Ministries appoint board members. The Minister does not have to power to remove these Board members, giving them security of tenure and the freedom and independence to act as they see fit. The Minister may only revoke the appointment of all Board members if they fail to carry out their functions. Most Board members, however, are ex-officio civil servants. They may not permanently reside in the community. If these members do not have emotional ties to the community, they may not care about the quality of services provided and decisions made. Legislation does not give the local community the power to remove ineffective Board members. There is no

reason, however, why they may not petition local councilors and other residents who are Board members to remove ineffective members, even though these Boards are answerable to provincial and district administrators. Thus, it is only Board members who may remove fellow Board members from office.

Although the Boards may raise their own funds, the major contributor of resources is still, unfortunately, the central government. For example, as seen in sections 3.1.5 of Chapter Three, the government will pay teachers' salaries and Board Management Team members' salaries. Central government still has the power to determine how much funds are allocated to a Board, and approve or disapprove other grants given to these Boards. This amounts to considerable influence over the functions of the Board by central government. It is hoped that these Boards will be able to raise sufficient funds to supplement central government funds to meet the costs of their operation by levying hospital fees, PTA funds, etc. These Boards will only have meaningful authority to make decisions if sufficient funds are available to implement decisions made.

Neither the Ministry of Health nor the Ministry of Education has set any guidelines to ensure accountability and transparency.

It is too early to determine how meaningful Boards' decision-making authority is. Time will tell how independent these Boards are from central government interference and control. The reforms allow the Boards to raise their own revenue, which will hopefully reduce the Boards' dependence on funds from central government.

## **CHAPTER FIVE**

### **CONCLUSION**

#### **5.1 Summary**

The Zambian government accepts that it needs to decentralize the system of local government as a method of enhancing democracy. The development of democracy and the decentralization of local government are viewed as a means of improving the provision of services by the public sector and thereby the quality of life of citizens.

A democracy is a system of government where the people select their leaders and decision-makers through competitive regular elections. These leaders and decision-makers are accountable to the citizens for their words and actions. Citizens are free to criticize their rulers, free to associate in order to make demands on their rulers and win support for the policies they favour and beliefs they hold: they participate in the democratic process. An independent judiciary must fiercely protect these rights. One way for citizens to participate in and control government is through local government. Local government is central government's offices in specific portions of the country.

The Local Government Act 1991 provides for a system of local administration. Citizens elect councilors, who represent them at council meetings convened to make decisions on the services rendered to the public. The local government system in Zambia is not democratic. Citizens do not influence local affairs due to the lack of commitment by both

central and local government to educate and sensitise citizens on their civic obligation to participate in local affairs. Councils are not accountable to the communities they purport to serve. The major factor contributing to this state of affairs is that the Local Government Act 1991 does not empower citizens to remove inefficient and ineffective councilors from office. There has been no decentralization as local authorities do not have the autonomy to implement decisions. Local government has been greatly undermined by central government (whose control is considerable), especially when granting operational funds. Amendments made to the Local Government Act 1991 by central government seek to control rather than empower local government. Political interference is rife. Central government efforts to democratically decentralize local government have resulted in the deconcentration and not the devolution of decision-making authority.

Initiatives to empower communities to take part in the provision of education through the introduction of Education Boards have been slow. The Education Act has still not been amended to provide for Education Boards. Health reform initiatives to empower communities to take part in the provision of health services have progressed at a faster rate. Proposed amendments to the Education Act and the enactment of the National Health Services Act indicate that central government is still the policy-making body. There is no grass-root support for policies made, as communities do not take part in the decision-making process. Health and Education Boards only implement central government's policies, and have been given revenue-raising powers to do so. These Boards members are not elected but selected, and most members are ex-officio civil

servants rather than people from the communities they serve. Most Board members are thus imposed on the community. It is too early to determine whether these Boards will promote democratic decentralization. Time will tell the degree of autonomy that these Boards will enjoy.

Efforts that have been made by the MMD government to enhance democracy at the local government level have not been effective mainly due to the lack of political will from central government. Despite its rhetoric, central government has tended to deconcentrate rather than devolve power.

## **5.2 Recommendations**

The ultimate purpose of decentralization is to place decision-making into the hands of the people through representation that is closer and more directly accountable, thereby promoting democracy and good governance. Central government can place decision-making authority into the hands of the people by merely relinquishing control on the operations of local government and allowing local government to work together with non-governmental organizations and the private sector to provide public services. All this takes is political will.

A report on Fiscal Decentralisation and Local Government Finance in Relation to Infrastructure and Service Provision in Zambia reads:<sup>1</sup>

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<sup>1</sup> O S Saasa et al., 'Fiscal Decentralisation and Local Government Finance in Relation to Infrastructure and Service Provision in Zambia', at 163 (1999).

*“... it is important to observe that, in the Zambian case, observed weaknesses in the level and quality of infrastructure and service provision is sometimes more a function of institutional, organisational, and resource capacity limitations than the absence of regulatory and legislative frameworks. Equally observable is the fact that deliberate flouting of laid down procedures and legislation has been evident at both the level of central government as well as sub-national government authorities.”*

The writer concurs with this observation. The legal framework for an effective local government does exist in Zambia, save for those sections of the Local Government Act 1991 that need to be repealed in order to reduce central government's control on local government. For example, central government should not determine the acceptability of council minutes and resolutions, approve council bye-laws nor levy rates. It should also only suspend councils when they fail to perform their functions (without central government interference) and not for political reasons.

Central government now has to focus on capacity building measures that concentrate on building a regime that promotes accountability and public responsiveness to local needs and demands. In other words, central government must create a democratic environment. Politicians must be held fully responsible for their actions if they transgress the bounds of legal and ethical conduct by using the media and regular fair elections. Such a regime will take a long time to achieve through: an open, fair political system with free and fair elections; transparency in local political and economic affairs; a central government that is neutral (that is, does not intervene in local affairs) and objective when giving grants to local government.



Local government must be able to formulate policy, implement it and co-ordinate this. This entails training local government personnel especially in local government management and development planning. Conditions of service must be improved and the labour force reduced. Central government has attempted to reduce the labour force of local governments through the Public Sector Reform Program. It has only to release funds to pay for retrenchment packages in order to councils to go ahead with plans to improve human resources in local government. Central government must also provide state of the art office equipment, and plant and machinery to help councils formulate and implement policy.

Citizens must be sensitised on the importance of participating in local government. Councilors must meet and discuss issues with the electorate. They must be provided with transport to reach rural areas. The general public must be sensitised on their right to inspect council budgets, minutes, audited accounts and to attend council meetings as provided for under the Local Government Act 1991. During council meetings, citizens should be able to vote or make contributions. They must also be given the power, between elections, to remove councilors who are ineffective. Citizens should elect mayors and chairmen so that these officers are accountable to the general public and not their fellow councilors. Traditional rulers could be used to motivate people to take part in local affairs. Councilors should also be trained so that they understand their functions and responsibilities.

Most important of all, central government must provide adequate funding to councils.

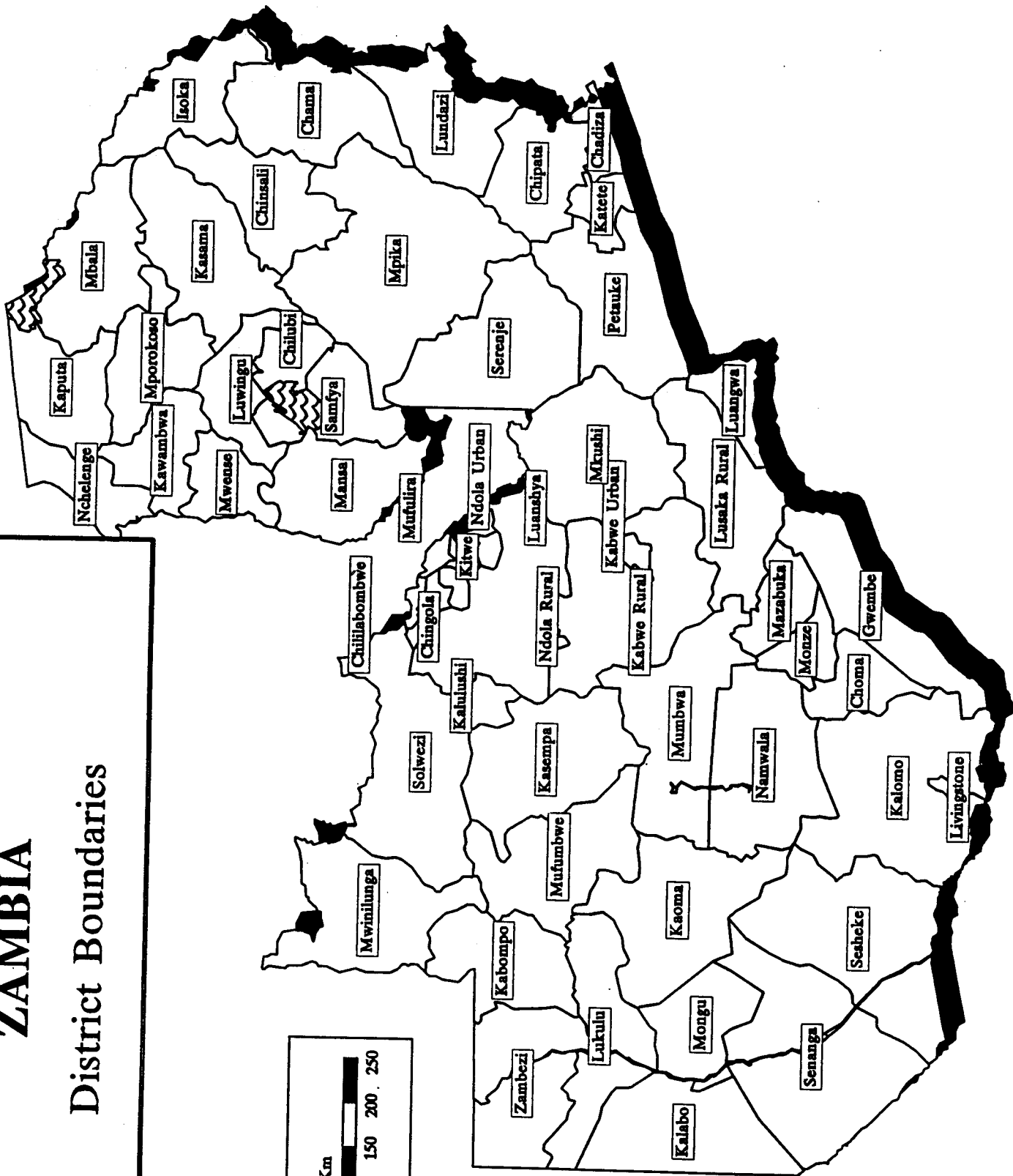
Councils must also be encouraged to develop their own tax bases without interference from central government.

Once these recommendations are put in place, local government will be autonomous enough to control and supervise the Health and Education Boards established by central government. Placing the control and supervision of Health and Education Boards into the hands of local authorities will remove decision-making authority from the Ministries of Health and Education and place it into the hands of local authorities. Citizens will then be able to participate in policy formulation and hold these Boards accountable for their actions through control of the local authorities. Citizens must, however, elect Health and Education Board members so that they chose who represents them.

# APPENDIX

## ZAMBIA

### District Boundaries



TOTAL 72  
DIST

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